

Dhima Ram and ors. Vs. State and ors.

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Court : Rajasthan

Decided On : Jan-07-2002

Reported in : 2002CriLJ2348

Judge : O.P. Bishnoi, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 8, 17, 18, 42, 55 and 57; Code of Criminal Procedure (CrPC) - Sections 161 and 313

Appeal No. : Crl. Appeal No. 337 of 2000

Appellant : Dhima Ram and ors.

Respondent : State and ors.

Advocate for Def. : Ramesh Purohit, Public Prosecutor

Advocate for Pet/Ap. : B.S. Rathore, Adv.

Disposition : Appeal allowed

Judgement :

O.P. Bishnoi, J.

1. This appeal has been filed by Dhima Ram and Sona Ram against the judgment delivered by Special Judge, NDPS Cases, Jodhpur dated 18-5-2001 whereby the two accused persons were found guilty under Sections 8/18 of the said Act and

both were sentenced to undergo rigorous imprisonment for ten years and each one was fined Rs. 1,50,000/-. For default of payment of fine further imprisonment for two and a half years has been ordered. It is not made clear as to whether this additional period of imprisonment would be simple or rigorous.

2. According to the prosecution story PW 4 Faulal Panwar, SHO, Police Station Kalyanpur, Distt. Barmer on 26-6-1999 received a message from the informer to the effect that the accused Dhima Ram along with his associate was likely to go on a motor cycle towards 'Sankhlon Ki Dhani' to sell opium. Accordingly, the message was recorded and the SHO Faulal along with other police personnel and a 'Motbir' PW 3 Jethu Singh proceeded towards the given place. Both the accused persons came on a motor -cycle bearing No. RJ-19/9M-4616 and were stopped by the police party. According to the prosecution story the jeep of the police station was sent to the Tehsildar. Pachpadra, PW 7 Ashok Kumar and after his arrival the search was conducted and opium in two polythene bags weighing one Kg. each was recovered from the dicky of the motor-cycle. Accordingly, the documents were prepared. The accused persons were arrested and a case was registered at the Police Station. The samples which were taken on the spot were sent for chemical examination to the FSL at Jaipur and as per the report Ex. P/27 the material sent for examination was found to be opium. Ultimately, both were challenged. They were charged under Sections 8/17 and 8/18 of the said Act and both pleaded not guilty. Nine witnesses were examined by the prosecution and thereafter the statements of the accused persons were recorded under Section 313 of the Cr.P.C. The accused persons stated that they have been falsely implicated and no opium was ever carried by them. They stated that they had gone to village Surpura and both were arrested in village Surpura in the presence of DW 2 Chiman Singh. DW 1 Jaskaran, DW 2 Chiman Singh and DW 3 Sarupa Ram (son of the accused Dhima Ram) were examined in defence. The three witnesses deposed to the effect that the accused persons along with DW 3 Sarupa Ram were in village Surpura to negotiate the cultivation of the fields of DW 1 Jaskaran, where the police came and arrested the two accused persons.

3. PW-1 Narpat Singh is the H.M. of Police Station Kalyanpur who has deposed that he was incharge of the 'Maal Khana' of the police station and six sealed bags

were deposited by the SHO with him on 26-6-1999. He further stated that on 5-7-1999 the said packets were sent to FSL' Jaipur with DW 5 Amara Ram. PW 2 Hanumana Ram has deposed to the effect that the report prepared under Section 42 of the Act was taken by him to the office of the police Superintendent at Barmer and was delivered by him there. PW 6 Daulat Singh, SHO Police Station Siwana, has stated that the case was investigated by him during which the site inspection note Ex. P/26 was prepared and the statements of the witnesses were recorded under Section 161 of the Cr.P.C. PW 8 Swaroop Singh a constable in the S.P. Office, Barmer has stated that constable Amara Ram, on 5-7-1999, came to the SP Office where the forwarding letter Ex.P/23 was prepared and given to Amara Ram. PW 9 Narpat Singh is a 'Motbir' witness of the site plan Ex. P/26 who has admitted that there were 15 to 20 residential houses near the place of the recovery.

4. PW 4 Faulal, SHO and PW 5 Amara Ram constable have supported the story of recovery of opium from the two accused persons. PW 3 Jethu Singh and PW 7 Ashok Kumar, Tehsildar have been examined as independent Motbirs' in whose presence the recovery was, allegedly made.

5. The defence version is to the effect that no such incident took place and the whole case has been fabricated and foisted upon the two accused persons. The learned counsel for the appellants has taken me through the prosecution evidence and has pointed out towards major contradictions and has contended that no such incident took place and the entire story is false from beginning to the end.

6. PW 4 Faulal, SHO has stated that the accused persons were given the option of a search either before a Gazetted Officer or before a Magistrate and they expressed that they may be searched in the presence of a Magistrate whereupon the police jeep was sent to 'Pachpadra' and the Tehsildar was requested to witness the search and after the arrival of the Tehsildar the search was made which resulted in the recovery of two Kgs. opium from the Dicky of the motor cycle. In the cross-examination the witnesses stated initially that the two packets containing opium were actually taken out from the Dicky of the motor cycle by the Tehsildar-Ashok Kumar. Subsequently, he has changed the version and has

stated that the opium was actually taken out by th constable Sanwal Ram and the packets were opened by constable Budha Ram. Sanwal Ram and Budha Ram have not. been examined and the tetimony of Tehsildar Ashok Kumar does not support that search was made in his presence, Ashok Kumar's testi-mony is to the effect that when he reached on the spot the recovery had already been affected and the packets containing opium were already in the hands of the SHO who told him that he has affected the recovery and the documents are only to be prepared. He has further denied the prosecution story that the various documents were prepared in the presence of the Executive Magistrate Sh. Ashok Kumar. Ashok Kumar has admitted that no document was prepared in his presence on the spot. This inconsistency goes to the very root of the prosecution story and is fatal for its reliability. The other 'Motbir' PW 3 Jethu Singh has stated in his examination in chief that opium was recovered from Dhima Ram and the various documents were prepared which were signed by him. The SHO Faulal has insisted that Jethu Singh is an independent person who was not previously known to him but PW 3 Jethu Singh has admitted that he is a supplier of milk to the house of the SHO. Faulal has denied that Jethu Singh is a supplier of milk to his house. This contradiction further goes to show that instead of finding an independent person of the locality the SHO got the memos signed by Jethu Singh who was a milk supplier to his own house. Not only this Faulal has gone to the extent of telling that there being no populated area it was not possible to get a 'Motbir' from the nearby place of recovery but the investigating officer PW 9 Narpat Singh has admitted that there were 15 to 20 residential houses situated near the place of recovery. This supports the prosecution argument that the whole story is bogus and concocted.

7. According to PW 3 Jethu Singh a 'Nakabandi' was carried out at the place of recovery and after a wait of 2-3 hours the accused persons appeared on the motor cycle. According to Jethu Singh during these 2-3 hours 8 to 10 other motor cycles were stopped and all were searched prior to the search of the accused persons. However, according to the SHO Faulal the accused persons appeared within a couple of minutes after the arrival of the police party and no other vehicle, other than the motor cycle in question, arrived prior or after the recovery. This contradiction also makes it clear that the whole testimony is unbelievable.

8. According to the recovery memo Ex. P/8 the opium was recovered and the recovery memo Ex. P/8 was prepared at 8.40 a.m. The SHO Faulal has stated that the Tehsildar Ashok Kumar was summoned and he arrived prior to 8.30 am. on the spot and thereafter the consent of the accused persons was obtained vide Ex. P/13 and Ex P/14. The time of the preparation of documents Ex. P/13 and Ex. P/14 has been recorded at 8.30 am. However, the Tehsildar PW 7 Ashok Kumar has stated that his place of posting 'Pachpadra' is 55 Kms. away from the place of recovery and he was at 'Pachpadra' from where he started at 8.30 a.m. and it took him one hour to reach at the place of recovery and he reached at 9.30 a.m. Apart from oral testimony of the Tehsildar the entry of the Log Book of his car, Ex.D-1 goes to show that at 8.30 a.m. the Tehsildar was at 'Pachpadra' and, thus the prosecution documents showing the recovery at 8.30 or 8.40 a.m. in the presence of the Tehsildar becomes false. It is argued by the learned counsel for the defence that the Tehsildar never went to the alleged place of recovery and was made to sign the various documents at the police station.

9. The SHO Faulal has stated that after detaining the accused persons at the place of recovery the police jeep was sent back to 'Pachpadra' to request the Tehsildar to witness the search. However, the Tehsildar has stated to the effect that no police jeep came to him and he was requested by telephone to reach the place near the 'Sankhlon Ki Dhani'. He has stated that he travelled the distance in his own official jeep. PW 5 Amara Ram, constable, has stated to the effect that the Tehsildar came on the spot in the police jeep which was sent to fetch him.

10. On 12-7-2000 Faulal deposed that the opium was retrieved from the Dicky of the motor vehicle by the Tehsildar himself. In the next sentence he corrected himself and stated that the opium was taken out from the Dicky by the constable Sanwal Ram. On 9-8-2000 the same witness stated that he himself retrieved the opium from the Dicky of the motor cycle in the presence of the Tehsildar.

11. I find that the whole incident is bogus and no conviction can be based on the basis of such evidence. It is not at all believable that any recovery was made in the manner suggested by the prosecution story. There is no evidence to suggest that the recovered packets which were sealed on the spot were again sealed by the

seal of the police station at the time of putting them into Maal Khana. Nor any witness has been examined to prove that any detailed report under Section 57 of the Act was taken to the Superintendent of Police or to any other higher police official. In this way there is no compliance of Section 55 or 57 of the Act.

12. In the result the appeal is allowed, the judgment dated 18-5-2000 is set aside and both the appellants are acquitted of the offences. Amount of fine if deposited shall be refunded to the appellants.

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