

Shiv Dass Vs. State of H.P.

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Court : Himachal Pradesh

Decided On : Apr-28-2009

Judge : Deepak Gupta and; V.K. Ahuja, JJ.

Appellant : Shiv Dass

Respondent : State of H.P.

Disposition : Appeal dismissed

Judgement :

Deepak Gupta, J.

1. This appeal is directed against the judgment dated 26.6.2006 passed by the learned Presiding Officer, Fast Track Court, Mandi in Sessions Trial Nos. 14-2004, 77-2005, whereby the accused has been found guilty of having committed offences punishable under Sections 18 & 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the Act). The accused has been sentenced to undergo rigorous imprisonment for a period of 8 years and to pay fine of Rs. 80,000/- and in default of payment of fine to undergo further imprisonment for one year under Section 18 of the Act. The accused has further been sentenced to undergo rigorous imprisonment for a period of 10 years and to pay fine of Rs. 1,00,000/- and in default of payment of fine to undergo further imprisonment for two years under Section 20 of the Act. The sentences have been ordered to run concurrently.

2. The prosecution story, in brief, is that on 29.3.2004, PW-10 Asish Sharma who was at that time SHO, Police Station, Sarkaghat along with PW-9 S.I. Anil Verma, PW-3 HHC Lalit Kumar, Constable Vinod Kumar, HHC Ghanshyam, Hoshiar Singh and Ramesh Kumar were on patrolling and traffic checking duty at village Nabahi. At about 4.30 p.m., PW-10 received secret information that the accused was in possession of contraband in his house at village Bhambla. He recorded this information in writing. He also felt that it was not possible to secure search warrant from the Court due to shortage of time and after recording the aforesaid reasons he conducted a raid on the house of the accused. Two independent witnesses PW-1 Rajinder Singh and one Jeet Ram were associated in the raid. Before proceeding to raid the house of the accused, PW-10 sent information in writing in terms of Section 42 of the Act to the SDPO, Sarkaghat which is Ext.PW-7/E. On search of the house of the accused, contraband was recovered. The same was kept in a tin box Ext.P-1 which was locked and lying in the bed room of the accused in the upper storey of the house. Since the key was not produced the lock was broken open. Inside this tin box there was one packet containing opium weighing 2 k.g. 100 grams and in another packet charas, which on weighment was found to be 3 k.g. 750 grams.

3. Two samples each weighing 25 grams were separated from the opium and similarly two samples were taken from the bulk charas. Each of these samples were packed separately and sealed with seal impression 'H' at four places. The remaining bulk charas and opium were packed in two separate parcels and sealed with seal impression 'H' at seven places. Sample seal impressions Ext.PW-9/A were separately drawn. All the aforesaid packets were taken into possession vide memo Ext.PW-1/B.

4. In addition to the aforesaid contraband, on search of a trunk lying near the bed of the accused currency notes of Rs. 1,06,450/- of different denominations were recovered. These were also seized by treating them as the sale proceeds of narcotic substances. Other investigation was done and thereafter the case property was deposited by PW-10 with PW-8 Dev Raj who was then working as MHC Malkhana. On 31.3.2004 two samples, that is, one sample of charas and one sample of opium were forwarded to the CTL, Kandaghat by PW-8 through

Constable Ravi Singh PW-5 vide R/C No. 46/2004. These samples were deposited with the CTL, Kandaghat and the Chemical Examiner vide his report Ext.PW-10/L was of the opinion that one packet contained charas and the other packet contained opium. On the basis of the investigation and material collected, the accused was charged for having committed offences punishable under Sections 18 and 20 of the Act. He pleaded not guilty and claimed trial. He has been found guilty and sentenced as aforesaid. Hence, the present appeal. We have heard Sh. G.R. Palsra, learned Counsel for the appellant and Sh. Rajesh Mandhotra, learned Deputy Advocate General for the State.

5. Sh. Palsra submits that the appellant is an innocent person and has been falsely implicated in the case. It is urged that there is nothing to show that the house from where the recovery was made belongs to the accused. He also urges that the link evidence is missing since the register of the Malkhana has not been produced and he further states that Investigating Officer has not stated that he deposited the seal impressions in the Malkhana. According to him, PW-5 constable Ravi Singh has admitted that the specimen seal was not handed over to him and as such there is no evidence to link the report of the Chemical Examiner with the seal. He also urges that Jeet Ram with whom the specimen seal was stated to have been given by the Investigating Officer has not been examined. It is also urged that Hoshiar Singh through whom the ruqua has been sent has also not been examined and as such the appellant is entitled to be acquitted.

6. It has not been disputed before us that this was a case of search on the basis of prior information. It is admitted by Sh. Palsra that the procedure prescribed under Section 42 has been followed and all the requirements of the said Section have been complied with.

7. The version of the prosecution has been fully supported by the Investigating Officer PW-10 Inspector Asish Sharma, PW-3 HHC Lalit Kumar and PW-9 SI Anil Verma. They have stated in one voice that on the search of the house of the accused a tin box which was locked was found near the bed of the accused in his bedroom. When the lock of this tin box was broken the contraband as detailed hereinabove was found in two separate packets. PW-10 clearly states that he had

sealed the packets with seal 'H'. He had also prepared the sample seal impressions Ext.PW-9/A. He states that the entire case property was handed over to MHC Dev Raj. In cross examination he denied the suggestion that he did not deposit the specimen seal impressions in the Malkhana. He reiterates that he deposited the same with MHC Dev Raj. PW-9 SI Anil Verma has also stated that sample seal Ext.PW-9/A was separately drawn. It is thus clear that sample seal impression was prepared at the spot and this sample seal impression was handed over to PW-8 Dev Raj. A perusal of the NCB form Ext.PW-10/A shows that against column No. 8 of the same which reads as 'Facsimile of seal' the words 'attached' have been mentioned. The rubber stamp of the Chemical Examiner also shows that the seal/seals on the samples tallied with the specimen seal impressions sent separately.

8. PW-8 has given details of the property deposited with him and has also stated that he made entry of all the property deposited with him in the Malkhana Register which he had brought with him. He also states that he had handed over two specimen packets sealed with seal 'H' to Ravi Kumar vide RC No. 46 of 2004 for transmission to CTL Kandaghat. The examination in chief of this witness was recorded on 18.5.2005 and his cross examination was deferred as Court time was over. It appears that in the meantime he was promoted and posted as ASI, Police Station, Reckong Peo in Kinnaur. He was cross examined on 12.1.2006. At that time he was not posted at Mandi and stated that he had not brought the Malkhana register. No suggestion has been put to this witness that seal impression was not sent with the specimen samples. Much emphasis has been led on the fact that this witness did not produce the Malkhana register on the date when he was being cross examined. We find from the record that the Malkhana register was produced on the first date and if the defence wanted to take any advantage of the entries in the Malkhana register nothing prevented them from petitioning the Court to summon the Malkhana register.

9. It is important to note that PW-5 who took the samples from the Police Station, Sarkaghat to CTL Kandaghat clearly states that on 31.3.2004 PW-8 Dev Raj had handed over to him sample seal vide RC No. 46/2004 along with the specimen sealed packets. In cross examination he also states that sample seal was

embossed with the specimen of 'H' seal. Thereafter, he was asked a question as to whether he knew that the seal has been deposited with the MHC and he rightly replied that he did not know if the sample seal had been deposited or not with the MHC. He admits a suggestion that the sample seal was not handed over to him separately. Reliance placed by Sh. Palsra on this portion of the statement is totally mis-conceived. The suggestion put to the witness was that the sample seal was not handed over to him separately. He admitted this suggestion. No suggestion was put to this witness that the sample seal was not handed over to him. This witness had clearly stated that the specimen sealed packets sealed with seal 'H' along with the sample seal were handed over to him by PW-8. In this view of the matter, we are clearly of the opinion that the prosecution has led sufficient evidence to show that the specimen seal impressions were sent and they were taken by Ravi Kumar to the CTL, Kandaghat.

10. The non-examination of Hoshiar Singh who carried the ruqua is not fatal to the prosecution case. PW-6 ASI Prem Lal has stated that on 29.3.2004 ruqua was received by him through constable Hoshiar Singh and on the basis of the said ruqua FIR Ext.PW-6/A was recorded. There is no suggestion to this witness that Hoshiar Singh had not brought the ruqua. Therefore, it was not necessary to examine Hoshiar Singh.

11. As far as the non-examination of Jeet Ram is concerned in view of the evidence led by the prosecution which shows that the samples were sealed and after sealing they remained intact and the proper procedure was followed, the mere non-production of the seal or non-examination of Jeet Ram would not render the prosecution case doubtful.

12. Lastly, it is contended that the house in question did not belong to the accused. This stand of the accused is falsified from the pariwar register Ext.D-2 produced by the accused in defence which shows that the accused is the head of the family. He is a shopkeeper and is a literate person. Faced with this situation Sh. Palsra urged that in fact the accused was not the sole occupant of the house and his elder son was also living with him. This argument is without any force. Pw-4 Kala Devi is the wife of the accused. She states that she and her husband have

three sons and four daughters. In examination-in-chief she stated that elder son Tejender lives with her and the remaining live separately. All the daughters are married. She states that she is living with her husband. It is clear that according to this witness she and her husband live in one house. However, her testimony has been totally shattered in cross examination. She was confronted with the statement made to the police. She admits that her elder son is posted as a Patwari at Jogindernagar and lives there with his family. Interestingly, this witness who is the wife of the accused does not deny the recovery of the currency notes and states that this money belongs to her and this was given to her by her sons.

13. Though the accused has taken a plea that the contraband was recovered from an open veranda, this version is untrue. It has been proved that the recovery was made from the bed room of the accused and therefore it has been proved beyond doubt that the accused was in conscious possession of the said contraband. There is no explanation with regard to the huge amount of money which has been recovered. The accused was alone in his house when the search of his house was conducted and contraband was recovered from the bedroom of the accused. The learned trial Court held that this is sufficient to show that the contraband was in exclusive and conscious possession of the accused. This finding calls for no interference.

14. In view of the aforesaid discussion, we find no merit in the appeal and the same is accordingly dismissed.