

SUPREME COURT OF INDIA

Gopal

Vs.

State of M.P.

Crl.A.No.248 of 2000

(A.S.Anand CJI., R.C.Lahoti and Ashok Bhan JJ.)

18.09.2001

ORDER

1. This appeal by special leave assails the judgment and order of the High Court of Madhya Pradesh (Indore Bench) dated 23rd June, 1999 vide which conviction and sentence of the appellants, for an offence under Ss. 8/18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act') as recorded by the trial Court, was upheld. According to the prosecution case, on 13th January, 1988, on receipt of secret information by Bherusingh Malviya P.W. 5, Station Officer of the Police Station Malhargarh to the effect that certain persons could be processing opium in the jungle between villages Palewana, Mundedi and Bhuki, P.W. 5 reportedly recorded that information in the Rojnamacha, Ex. P-7. He, along with other police staff after associating public witnesses, proceeded towards the jungle and reached there at about 4.35 a.m. It was found that two persons were moving about in suspicious conditions and were carrying some articles with them. On seeing the police party, both tried to run away. They were chased for a distance of about 1-1 and 1/2 km and found hiding themselves behind a heap of Kadvi. The police party, on searching the Kadvi, recovered from that heap, a polythene bag allegedly containing about 1.300 kg. of opium besides 3 iron kadas and certain other articles like Khurchas, Sigdi, gunny bag, empty tins of Dalda etc. Two of the iron Kadas were having opium stuck on them and on scrapping, 250 grams of opium was recovered. On the basis of this recovery, a First Information Report was lodged on 14th January, 1988. The recovered articles were seized and later on samples of 30 grams each were sent to Govt. Opium and Alkaloid Factory, Neemuch for testing, where it was found that sample taken out of contents of the plastic bag, weighing 1.300 kg., did not match to the description of opium. However, the sample, out of 250 gms., scrapping of Kadas, was opined to be "qualitatively" opium. After receipt of the test report, appellants and one Prabhu were sent up for trial. After recording evidence of five witnesses, examined by the prosecution, the appellants were convicted for an offence under Ss. 8/18 of the NDPS Act and sentenced to undergo 10 years R.I. No fine was, however, imposed. Accused-Prabhu, was acquitted of all the charges. Aggrieved by the judgment and order of the trial Court dated 6th December, 1988, the appellants filed an appeal in the High Court, which was dismissed on 23rd June, 1999. The appellants or his counsel were not present before the High Court at the time of hearing of the appeal which had been listed on several

occasions and everytime the counsel as well as the appellant did not appear before the High Court. The High Court, under these circumstances, proceeded to dispose of the appeal on perusal of record and appreciation of evidence with the assistance of the public prosecutor only. The High Court, agreeing with the appreciation of evidence, as recorded by the trial Court, upheld the conviction and sentence of the appellant. Hence, this appeal by special leave. Mr. Saxena, learned counsel for the appellant raised a number of pleas in support of this appeal. We, however, need not detain ourselves to deal with all those contentions, as in our opinion, the prosecution has failed to establish conscious possession of contraband, in so far as the appellant is concerned. The trial Court, while dealing with the question of conscious possession of the contraband observed as under :

'Though there is no convincing evidence that the accused persons or any one of them put any article in the heap of Kadabi, but it is material to note that the heap of Kadbi stood on the medh or boundary of agricultural fields Survey Nos. 1511 and 1517. As per the testimony of the village Patwari Mangilal (P.W. 3) Survey No. 1511 belongs to accused-Gopal, whereas Survey No. 1517 belongs to Pannalal s/o Nathu Chamar. Pannalal happens to be the father of accused-Prabhu. The testimony of Mangilal finds support from the trace settlement map (Ex. P/3) and copy of Khasra Panch Sala (Ex. P/5) amply supports the testimony of Patwari Mangilal that Survey No. 1511 belongs to accused-Gopal and Survey No. 1517 belongs to Pannalal.'

The High Court did not deal with this aspect in any detail but agreed with the trial Court. The approach adopted by the trial Court does not appeal to us.

2. The trial Court is right in its assessment that "there is no convincing evidence that the accused persons or any one of them put any article in the heap of Kadavi" but its finding that appellant had conscious possession of the contraband suffers from serious infirmities and flaws.

3. According to the prosecution contraband was recovered from a heap of Kadavi, which was lying on the boundary of agricultural fields of Survey Nos. 1511 and 1517, one belonging to the appellant-Gopal while the other belonging to Pannalal father of acquitted accused-Prabhu. There is no evidence on the record to show as to who had placed the Kadavi on the boundary of the two fields. After having given benefit of doubt to co-accused-Prabhu, against whose acquittal the State did not file any appeal, it was not open to the trial Court to have surmised that the contraband was in conscious possession of the appellant. Prosecution has relied upon the revenue record in support of its findings.

4. P.W. 3, Mange Lal, Patwari of Halka, who proved the revenue record stated that so far as the land under Survey No. 1511 is concerned, the same stands in the name of the appellant, while the land under Survey No. 1517/4 stands in the name of Panna Lal, father of Prabhu co-accused. He went on to admit during cross-examination that though ownership of two Survey Nos. is recorded in the revenue record as stated by the prosecution, actual possession of either of the fields has not been mentioned in the records to be with either of them. In the face of this evidence, it is not possible to hold that the appellant could be said to be in

conscious possession of the contraband. Both the Courts below have allowed surmises and conjectures to take the place of proof. That cannot be done. The possibility that the appellant has been roped in due to misguided suspicion cannot be ruled out. That being the position, the appellant is entitled to benefit of doubt and accordingly we grant that to him. Consequently, we allow this appeal and set aside the conviction and sentence of the appellant.

5. The appellant is in custody. He shall be released forthwith, if not required in any other case.

Appeal allowed.