

SUPREME COURT OF INDIA

State of Orissa

Vs.

Kanduri Sahoo

(D. Raju and A Pasayat JJ.)

04.12.2003

ORDER

1. The State of Orissa questions correctness of judgment of a learned Single Judge of the Orissa High Court by which the respondent was acquitted of the charges under Section 20(b)(i) of the *Narcotic Drugs & Psychotropic Substances Act 1985* (for short 'the Act'). Though the trial court found the respondent-accused guilty of offences, the High Court held that the accusation was not established and, therefore, directed acquittal.

2. The factual position is as under:

“On 13.5.1994 at about 7.00 A.M. the Excise Sub-Inspector, Mobile Squad No. 1, Cuttack (PW-1) while patrolling with his Assistant Sub-Inspector and constables at Gandhi Palli area in Cuttack City noticed the accused with a full gunny bag. Being auspicious that the accused was carrying contraband articles, he searched the accused in presence of witnesses. He found that the gunny bag contained cannabis (ganja) weighing about 12 kg. 5.0 grains were taken as sample and was sent for chemical examination. The chemical examination report indicated that the sample was cannabis (ganja). On completion of investigation, the accused was sent up for trial which ended in conviction and sentence of 5 years R.I. and fine of Rs. 5000/- with default condition of further imprisonment for six months. The accused denied the charges. In order to bring home the accusations, the prosecution examined three witnesses; PW-1, the Excise Sub-Inspector, Mobile Equal No. 1, Cuttack, P.W. 2 was a witness to the seizure and P.W.3 the ASI who accompanied PW-1 on patrol duty.”

3. PW-2 pleaded ignorance about the contents of the seizure memo though ha admitted his signature. Considering the evidence on record, the trial court held the accused guilty and sentence was imposed.

4. In appeal the only question which was urged was that there was no explanation about the custody of the articles for a period, of four days. With reference to the period of delay, it was submitted that though the seizure was allegedly made on 13.5.1994, the sample was sent to the State Drug Testing Research Laboratory, Bhubaneswar on 17.5.1994 which, according to the accused, was sufficient to discard the accusation. Stand of the State before the High

Court was that the articles were kept in the safe custody and were deposited in the Excise Malkhana at Cuttack pursuant to an order of the S.D.J.M., Cuttack before whom the accused was produced at the first instance.

5. The High Court found that there was no specific order of the S.D.J.M. Cuttack that the articles were to be kept in the Excise Malkhana. That being so, the High Court held that the prosecution version was not acceptable. Reliance was placed in *Valasla v. States of Kerala* to support the conclusion. Accordingly the High Court directed acquittal the accused.

6. In support of the appeal, Mr. Radha Shyam Jena, learned counsel submitted that the decision in *Valasla's case (supra)* is clearly distinguishable on facts. In the said case the delay was not held to be fatal. What weighed with this case was absence of material regarding safe custody. Merely because that the articles were kept in the Excise Malkhana for four days would not make the prosecution version suspect.

7. There is no appearance on behalf of the respondent in spite of service.

8. We find that though there was no specific order of the SDJM, Cuttack for custody of the articles when the accused was produced in the Court on 13.5.1994, it was clearly stated in the forwarding report that the seized articles and the sample thereof (MOS. I & II) were produced in the Court alongwith the accused. The evidence of PW-1 was categorical to the effect that the articles were kept in the Excise, Malkhana from where they were brought and sent for chemical examination. This relevant aspect, appears to have been missed by the High Court. In *Valasla's Case (supra)* it was not laid down that whenever there is delay in sending the samples, the prosecution version would become vulnerable. What was emphasised related to proper and safe custody of the seized articles. In the background of that particular case, when delay of three months was there and there was no clear evidence as to with whom the articles were lying, the decision was rendered. No evidence was led to show that the contra-band articles were in proper custody and in proper form. But the factual situation is different hers. That being so the High Court's judgment does not stand scrutiny and is set aside. The conviction as done by the trial court was proper. We direct restoration of the conviction as directed by the trial court along with the sentence imposed.

9. The accused shall surrender to custody, if he has not served full sentence as imposed by the trial court, to serve remainder of sentence.

10. The appeal is allowed.