

SUPREME COURT OF INDIA

Balwinder Singh

Vs.

Assistant Commissioner Customs and Central Excise

Crl.A.No.547 of 2004

(K. G. Balakrishnan and B. N. Srikrishna JJ.)

22.02.2005

ORDER

1. These two appellants, along with two others, were found guilty by the District Judge, Ludhiana for the offences punishable under Sections 18, 22, 23, 25, 28, 29 and 30 of the N.D.P.S. Act and Section 120B of the Indian Penal Code. Two of them i.e. Tarlochan Singh, S/o Chct Singh and Devinder Singh were acquitted by the High Court and the present appellants i.e. Balwinder Singh and Tarlochan Singh S/o Darshan Singh were found guilty. It is against this that the appellants have come up before this Court by way of these appeals, i.e. Criminal Appeal No. 547 of 2004 was preferred by Balwinder Singh and Criminal Appeal No. 548 of 2004 was preferred by Tarlochan Singh.

Criminal Appeal No. 547 of 2004:

2. The facts of this case are that on 6-1-1988 two trucks bearing Registration No. PJA 8677 and DIL 3372 were intercepted by the Central Excise and Customs Department, Ludhiana Division. The officers of the Customs Department conducted search of the vehicle in the presence of witnesses and it was found that the truck bearing registration No. PJA 8677 was having a secret compartment and found that 175 Kgs. of heroine and 39 Kgs. of Opium of foreign origin were concealed in this chamber. The sample was taken and it was found that these articles were Opium and Heroine as contended by the prosecution. During the course of investigation, the statement of the appellant was taken under Section 108 of the Customs Act and 15 witnesses have been examined. The appellant herein completely denied his culpability in the crime.

3. The present appellant has been found guilty on the ground that he was the registered owner of the vehicle PJA 8677. Counsel for the appellant contends that he purchased this lorry in 1982, along with one Kesar Singh but in 1986 he transferred the vehicle with a third party and the Investigating Officer PW 13, who was examined deposed that during the course of his investigation he came to know that though the present appellant was the original owner of vehicle bearing registration No. PJA 8677, he had sold the vehicle to one Sucha Singh in 1986, however the registration was not changed in his name. This appellant

was convicted solely for the reason that he was the registered owner of the vehicle PJA 8677. There is no evidence to prove that he knowingly allowed any person to use the vehicle for any illegal purpose. There is also no evidence to prove the conspiracy set up by the prosecution. Therefore, it is clear that though the articles were recovered from the lorry, there is no evidence to show that the appellant had any control over the vehicle nor he was in possession of these drugs. In the result, we allow the appeal and acquit the appellant Balwinder Singh of all charges framed against him.

Criminal Appeal No. 548 of 2004:

4. In this case, the appellant Tralochan Singh was the driver of the vehicle DIL 3372. He was also in custody of vehicle PJA 8677. His statement was recorded under Section 108 of the Customs Act. From his possession the articles of Opium and Heroine were recovered and in his statement he admitted that he knew about the presence of these drugs in the vehicle and about the transport of the drugs illegally from Ludhiana to Bombay. It is evident from the statement made by him that he committed the offences punishable under Sections 18, 21, 22, 23, 25, 29 and 30 of the NDPS Act. # We find no reason to interfere with the conviction and sentence entered against the appellant Tralochan Singh and the criminal appeal stands dismissed. We are told that the appellant was convicted of this offence for the first time. The sentence imposed on him was imprisonment for a period of 14 years. Having regard to the facts and circumstances of this case, we reduce the sentence from 14 years to 10 years each for the offences under the NDPS Act and for the offence under Section 120B of the IPC. The sentences shall run concurrently. The direction to pay fine is maintained, but the default sentences shall also run concurrently.