

SUPREME COURT OF INDIA

Abbas Khan

Vs.

Central Bureau of Narcotics

Crl.A.No.101 of 2005

(K.G. Balakrishnan, P.Sathasivam and J.M. Panchal JJ.)

14.01.2009

ORDER

1. These appellants were tried along with two other accused by the Special Judge, N.D.P.S., Mandsoore(M.P.) for the offences punishable under Section 18 read with Section 8 of the *Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act')*. The prosecution case was that the Superintendent-M.C.Vijay of the Central Bureau of Narcotics, along with other officers, were on patrol duty on 1.5.1997 and at about 9.45 p.m. they intercepted the truck-DIG 4753. Two persons were in the truck and when they stopped the truck and thereafter started running away and the Inspector A.K.Tulsidasan apprehended them. The truck was searched in the presence of the witnesses and it was found that 2.10 KGs of Opium and 8 KGs of Dodachura were also found in the truck. The officers prepared a mazhar and seized the articles and a case was registered against two accused viz. Shri Hardeo Singh and Daljeet Singh. On questioning these two accused, officers came to know that Opium was sold by the present appellants Abbas Khan and Azam Khan. P.W.6 issued a notice under Section 67 of the Act to the appellants and their statements were taken. In their statements they admitted having sold Opium to other accused who were also travelling in the truck.

2. After the trial the Special Judge found all the four guilty under Section 18 of the Act and they were sentenced to undergo 10 years rigorous imprisonment with a fine of Rs.1 lac each. In the appeal filed by the accused, the High Court confirmed the conviction. The first and second accused Hardeo Singh and Daljeet Singh did not prefer any appeal while accused nos.3 and 4 have filed the present appeals before this Court. Heard both sides.

3. The prosecution relied on the admission made under Section 67 of the Act by these two accused before P.W.6 but we notice that the contraband articles allegedly seized from the first and second accused were not shown to the present two appellants and there is no evidence to show that the very same articles were seized by the officers in the course of investigation. There is practically no evidence to show as to how much quantity of articles were allegedly sold by these appellants. However, we do not think that the statements made by these accused are inadmissible in evidence as they were made under Section 67 of the Act. At the same time the evidence adduced would only prove that they had dealt with

narcotic drugs and to that extent the admission is valid. As the quantity itself is not proved, one could only say that it is not possible to assume that they were dealing with any commercial quantity of contraband articles, which offence by itself is of a very serious nature. The prosecution should have produced better evidence to sustain such conviction.

4. Under the above circumstances, we hold that the accused could only be convicted under Section 18(b) of the Act. We are told that the appellants have already undergone a fairly long period of sentence. There is no evidence that they were dealing with any commercial quantity of these contraband articles. Therefore, we confirm the conviction. In our opinion, the sentence already undergone by the appellants is sufficient to meet the ends of justice. We direct the appellants to be released forthwith, if not required in any other case. Learned counsel for the appellants submits that the fine imposed is also not paid so far. The fine so imposed upon the appellants is also waived off. The appeals are disposed of accordingly.