SUPREME COURT OF INDIA

Jarnail Singh

Vs.

State of Punjab

Crl.A.No.1960 of 2009

(B.Sudershan Reddy and Surinder Singh Nijjar,JJ.,)

11.02.2011

JUDGMENT

Surinder Singh Nijjar, J.,

1. This appeal is directed against the final Order of the High Court of Punjab and Haryana at Chandigarh dated 12th May, 2008 passed in Criminal Appeal No. 590 - SB of 1999, whereby the High Court upheld the order of conviction passed against the appellant herein under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "NDPS Act"), and sentenced him to undergo rigorous imprisonment for ten years and to pay a fine of Rs. one lac and in default of payment of the same, to undergo rigorous imprisonment for another two years, for having been found in possession of 1 kg and 750 grams of opium without any permit or licence.

2. The prosecution story is that on 23rd September, 1994 at around 2.30 PM, Inspector Ram Pal Singh (PW4) along with SI Gurdeep Singh, ASI Satpal Singh (PW5) and other officials were on duty and coming from village Hassanpur to village Mirsapur. After reaching near the bridge of canal minor while going on kacha path, the police party noticed the appellant coming from the bank of canal. On seeing the police party, the appellant tried to run away but on suspicion he was apprehended. On enquiry, he informed the police about his name, parentage, address etc. At that time, he was carrying a bag (thaili) in his right hand. PW4 suspected that that the appellant was carrying some incriminating articles in his bag. The search was conducted and the police party recovered 1 Kg and 750 gram opium from his custody.

3. Ten grams of opium was put into a tin container as a sample. It was duly sealed. The entire case property was taken into possession vide memo Ex. PD attested by SI Gurdeep Singh and ASI Satpal Singh. The seal after use was handed over to ASI Satpal Singh (PW5). The appellant could not produce any valid license or permit for possession of the said opium. On personal search, currency notes amounting to Rs. 25 /- was also recovered from the accused and the same was taken into possession vide memo Ex. P1, signed by the appellant. Ruqa Ex.

PF was sent to the police station and subsequently the FIR was registered. Inspector, Ram Pal (PW4) recorded the statements of the witnesses and arrested the appellant.

4. Inspector, Ram Pal (PW4) then produced the appellant along with the case property and witnesses before Satpal Singh (PW5) on the same day of the alleged crime. PW4 enquired about the alleged incident from other witnesses and checked the case property and also affixed his own seal bearing impression `RP' on the case property and on samples of seal Ex. PD/1. Thereafter, PW3 at 7.30 PM deposited the sealed case property with MHC Shudh Singh. The investigation was duly completed and challan against the appellant was prepared by S.I. Bagh Singh. The prosecution in support of its case, examined Sudh Singh (Head Constable) (PW1), Chet Ram (PW2), Rachpal Singh (Inspector) (PW3), Ram Pal Singh (PW4) and Satpal Singh (PW5).

5. The Addl. Sessions Judge vide its final order and judgment dated 19th May, 1999 convicted and sentenced the appellant under section 18 of the NDPS Act, as noticed above. The High Court, in an appeal, vide judgment dated 12th May, 2008 affirmed the findings of the Sessions Court and dismissed the appeal filed by the appellant. Hence the appeal before this Court.

6. We have heard the counsel for both parties. Mr. Ujjal Singh, counsel for the appellant submits as follows:

> "i. The whole incident happened in a densely populated area and there were so many independent witnesses but only the police have been made the prosecution witnesses. The appellant has been falsely implicated.
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> ii. The courts below have not considered the appellant's version as recorded under Section 313 Cr.P.C. The appellant was apprehended from his village on 10th September, 1994 by the police party. Another police party dug up his house and courtyard looking for illicit arms. But nothing incriminating was found. The Ex-Sarpanch, Narang Singh asked them the reason for the digging. The police told him that they were searching for opium and illicit arms, and that he had relations with terrorists.
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> Thereafter, the police took the appellant to CIA staff. He was tortured by using third degree methods. Then he was falsely implicated in this case. The Courts below have also disregarded the deposition of DW-1, Sarpanch Narang Singh for no valid grounds.
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> iii. Section 50 of the NDPS Act is a mandatory provision but the same was never followed in the present case. The appellant was never given any option nor taken to the nearest Gazetted Officer or Magistrate for his search.

iv. There is a delay of twelve days in sending the sample for the chemical examination. The prosecution has not been able to give any reasonable justification for such delay.

v. The consent statement made by the appellant is in-admissible under section 25 of the Indian Evidence Act, 1872.

vi. There are vital lapses in the present case. The version deposed by PW -3 is inconsistent with the deposition of PW -4.

vii. The prosecution has not been able to prove as to from where they got weighing scale, tin dabba and dabhi. The police also could not give any valid reason as to why they had gone to the spot.

This shows that they were pre - prepared and have falsely implicated the appellant.

7. On the other hand, Mr. H.M. Singh, counsel for the respondent submits as follows:

"i. The appellant is rightly been convicted under section 18 of the NDPS Act. There are numerous witnesses and evidences to prove his guilt.

ii. The appellant was apprehended with contraband by the policy party and he was arrested after the registration of his case vide Ruqa Ex. PF.

iii. The deposition of DW-1, Sarpanch Narang Singh is baseless. The appellant was arrested on 23rd September, 1994 but DW -1 appeared for the first time before the Sessions Court on 13th May, 1999, i.e. after five long years.

iv. Delay of 11 - 12 days in sending the sample for chemical examination is not enough to demolish the case of the prosecution. There is nothing on record to show that the sample parcel was tampered by the prosecution at any stage."

8. The trial court as also the High Court have meticulously examined and re-examined the entire evidence. On such close scrutiny, both the courts have concurrently found that the prosecution has proved its case beyond reasonable doubt. Undoubtedly the jurisdiction and the powers of this Court under Article 136 are very wide. Even then, interference with concurrent findings of fact would be an exception and not the rule. On numerous occasions, this Court has emphasised that an appeal under Article 136 cannot be converted into a third appeal on facts. This Court in the case of *Ganga Kumar Srivastava Vs. State of Bihar*[1] discussed at length, the circumstances in which this Court may interfere with the concurrent finding of facts; which are as follows:

"From the aforesaid series of decisions of this Court on the exercise of power of the Supreme Court under Article 136 of the Constitution following principles emerge:

(i) The powers of this Court under Article 136 of the Constitution are very wide but in criminal appeals this Court does not interfere with the concurrent findings of fact save in exceptional circumstances.

(ii) It is open to this Court to interfere with the findings of fact given by the High Court, if the High Court has acted perversely or otherwise improperly.

(iii) It is open to this Court to invoke the power under Article 136 only in very exceptional circumstances as and when a question of law of general public importance arises or a decision shocks the conscience of the Court.

(iv) When the evidence adduced by the prosecution fell short of the test of reliability and acceptability and as such it is highly unsafe to act upon it.

(v) Where the appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record."

9. The first submission of Mr. Ujjal Singh, learned counsel, is that the appellant has been falsely implicated. We are unable to accept this submission. Merely because the prosecution has not examined any independent witness, would not necessarily lead to the conclusion that the appellant has been falsely implicated. It was clearly a case where the police personnel had noticed the odd behaviour of the appellant when he was walking towards them on a path which led to village Mirzapur. It was the display of hesitation by the appellant on sighting the police party that Satpal Singh (PW5) became suspicious. On seeing the police personnel, the appellant tried to run away from the scene. It was not a case where the prosecution has claimed that the appellant was apprehended on the basis of any earlier information having been given by any secret informer. It was also not a case of trap. In such circumstances, it would not be possible to hold that the appellant has been falsely implicated.

10. The prosecution has offered a plausible explanation with regard to non-joining of the independent witnesses. It was clearly stated by PW5 that the path on which the appellant was apprehended was not frequently used by the public. In fact, efforts were made to bring a member of Panchayat or Sarpanch of the village. However, the Head Constable Baldev Singh who had been sent, reported that none of the villagers were prepared to join as independent witnesses. This reluctance on the part of the villagers is neither strange nor unbelievable. Generally, people belonging to the same village would not unnecessarily want to create bad relations/enmity with any other villager. Especially when such a person would be feeling insecure, having been accused of committing a crime.

11. We also do not find any substance in the submission of Mr. Ujjal Singh that both the courts have ignored the plea of the appellant under Section 313 of the Cr.P.C. without any basis. The evidence of DW1, Narang Singh, upon which the appellant placed heavy reliance

would not be of much assistance to the appellant. It is note worthy that even according to the appellant the police had dug up his house and the courtyard on 10th September, 1994. According to the appellant, nothing incriminating was found. This was sought to be supported by the evidence given by DW1, the Ex-Sarpanch, Narang Singh. Both the courts below, in our opinion, have correctly concluded that such evidence cannot be believed as the witness DW1 seems to have appeared for the first time as a witness in court on 13th May, 1999. Prior to the appearance in court, this Ex- Sarpanch did not make any complaint in writing either to the police authorities or to the civil administration. Being the Ex- Sarpanch of the village, he can be expected to act with responsibility. There is no material to show that he made any efforts to complain about the high handed behaviour of the police. In our opinion, both the courts below have rightly discarded the evidence of DW1.

12. The next submission made by Mr. Ujjal Singh is that there has been non compliance of Section 50 of the NDPS Act, in that requisite option was not given to the appellant, as to, whether he wanted to be searched in the presence of a Gazetted Officer or a Magistrate. We are unable to accept the aforesaid submission. Inspector Ram Pal (PW4) has clearly stated that the option was duly given to the appellant. The appellant had, in fact, signed on the consent statement expressing his confidence to be searched in presence of the aforesaid witness. Similarly, Satpal Singh PW5 has also stated that before affecting the search, the accused/appellant was given the necessary option as to whether he wanted to be searched before a Gazetted Officer or a Magistrate. This witness also stated that the appellant reposed his confidence in Inspector Rampal. In such circumstances, it cannot be held that there was non compliance with Section 50 of the NDPS Act.

12. This apart, it is accepted that the narcotic/opium, i.e., 1 kg. and 750 grams was recovered from the bag (thaili) which was being carried by the appellant. In such circumstances, Section 50 would not be applicable. The aforesaid Section can be invoked only in cases where the drug/narcotic/NDPS substance is recovered as a consequence of the body search of the accused. In case, the recovery of the narcotic is made from a container being carried by the individual, the provisions of Section 50 would not be attracted. This Court in the case of *Kalema Tumba Vs. State of Maharastra*[2] discussed the provisions pertaining to `personal search' under Section 50 of the NDPS Act and held as follows;

> "....... if a person is carrying a bag or some other article with him and narcotic drug or psychotropic substance is found from it, it cannot be said that it was found from his person."
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> Similarly, in the case of *Megh Singh Vs. State of Punjab*[3], this Court observed that;
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> "A bare reading of section 50 shows that it applies in case of personal search of a person. It does not extend to a search of a vehicle or container or a bag or premises."

The scope and ambit of Section 50 was also examined by this Court in the case of *State of Himachal Pradesh Vs. Pawan Kumar*[4]. In paragraphs 10 and 11, this Court observed as follows:-

> "10. We are not concerned here with the wide definition of the word "person", which in the legal world includes corporations, associations or body of individuals as factually in these type of cases search of their premises can be done and not of their person. Having regard to the scheme of the Act and the context in which it has been used in the section it naturally means a human being or a living individual unit and not an artificial person. The word has to be understood in a broad common-sense manner and, therefore, not a naked or nude body of a human being but the manner in which a normal human being will move about in a civilised society. Therefore, the most appropriate meaning of the word "person" appears to be "the body of a human being as presented to public view usually with its appropriate coverings and clothing". In a civilised society appropriate coverings and clothings are considered absolutely essential and no sane human being comes in the gaze of others without appropriate coverings and clothings. The appropriate coverings will include footwear also as normally it is considered an essential article to be worn while moving outside one's home. Such appropriate coverings or clothings or footwear, after being worn, move along with the human body without any appreciable or extra effort. Once worn, they would not normally get detached from the body of the human being unless some specific effort in that direction is made. For interpreting the provision, rare cases of some religious monks and sages, who, according to the tenets of their religious belief do not cover their body with clothings, are not to be taken notice of. Therefore, the word "person" would mean a human being with appropriate coverings and clothings and also footwear.
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> 11. A bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even remotely be treated to be part of the body of a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a thaila, a jhola, a gathri, a holdall, a carton, etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word "person" occurring in Section 50 of the Act." It has come in evidence that although the body search of the appellant was conducted but no recovery of any narcotic was made. The body search only led to the recovery of Rs.25/-from his pocket.

13. Mr. Ujjal Singh then submitted that the consent statement made by the appellant is inadmissible under Section 25 of the Indian Evidence Act, 1872. We are unable to accept this

submission. The consent statement signed by the appellant has not been used as a confession, therefore, the bar under Section 25 would not be applicable. A statement in order to be treated as a confession must either admit in terms of an offence, or at any rate substantially all the facts which constitute the offence. No confession has been made in this case through the consent given by the appellant with regard to any of the ingredients of the offence with which he was subsequently charged.

14. Mr. Ujjal Singh then submitted that there was a delay of twelve days in sending the sample of narcotic for chemical examination. This submission, in our opinion, is without any factual basis. The trial court as well as the High Court, on examination of the entire material, concluded that there was sufficient independent evidence produced by the prosecution regarding the completion of link evidence. Therefore, the delay in sending the sample parcel to the office of Chemical Examiner pales into insignificance. We are of the considered opinion that mere delay in sending the sample of the narcotic to the office of the Chemical Examiner would not be sufficient to conclude that the sample has been tampered with. There is sufficient evidence to indicate that the delay, if any, was wholly unintentional. This Court had occasion to deal with a similar issue, in the case of *Balbir Kaur Vs. State of Punjab*[5].

The Court made the following observations:

> "As far as delay in sending the samples is concerned, we find the said contention untenable in law. Reference in this regard may be made to the decision of this Court in Hardip Singh case6 wherein there was a gap of 40 days between seizure and sending the sample to the chemical examiner. Despite the said fact the Court held that in view of cogent evidence that opium was seized from the appellant and the seals put on the sample were intact till it was handed over to the chemical examiner, delay itself is not fatal to the prosecution case."
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> The trial court as well as the High Court, on examination of the evidence on record, concluded that the case property was handed over by Ram Pal (PW4), Investigating Officer to the SHO Inspector Rachhpal Singh (PW3). This witness checked the case property and affixed his own seal bearing impression `RS' on the case property as also on the sample impression of the seal. The case property was deposited with MHC Sudh Singh on the same day. Sudh Singh appeared as PW1 in court and tendered his affidavit Ex. PA to the effect that the case property including the sample parcel and the specimen impression of the seal, duly sealed and intact was deposited with him by Ram Pal, PW4, on 23rd September, 1994. He also stated that he handed over the sample parcel, duly sealed and sample impression of seal to Constable Chet Ram on 4th October, 1994 for depositing the same in the office of Chemical Examiner. It was further stated that none had tampered with the aforesaid case property and the seal which remained in his custody. He ultimately deposited the case property in the office of Chemical Examiner on the same day and tendered receipt. This apart, there is a report of the Chemical Examiner (Ex. PJ) which indicates that the seals were intact when the sample was received and tallied with the sample impression of the seal. It is note worthy that such a report of the Chemical Examiner would be admissible under

Section 293 of the Cr.P.C. Considering the aforesaid clear evidence, it cannot be said that there is any infirmity in the link evidence merely because there was a delay of few days in sending the sample to the office of the Chemical Examiner.

15. Having considered the entire material on the record, the trial court as well as the High Court have concurrently found the appellant guilty. We are unable to find any perversity or any miscarriage of justice in the findings so recorded. Finding no merit, we dismiss the appeal.

Judgment Referred.

[1] *(2005) 6 SCC 0211*
[2] *(1999) 8 SCC 0257*
[3] *(2003) 8 SCC 0666*
[4] *(2005) 4 SCC 0350*
[5] *(2009) 15 SCC 0795*