

SUPREME COURT OF INDIA

Jagdish Rai

Vs.

State of Punjab

CrI.A.No.1450 of 2008

(Aftab Alam and R.M. Lodha,JJ.,)

11.03.2011

JUDGMENT

Aftab Alam, J.,

1. The appellant Jagdish Rai, along with another accused Ajaib Singh is convicted under section 18 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short "the Act") and sentenced to 10 years' rigorous imprisonment and a fine of Rs.1 lakh with the direction that in default of payment of fine he would undergo rigorous imprisonment for 1 year.

2. According to the prosecution case, the appellant was coming on a Rajdoot motorcycle when he was intercepted by the police party. On seeing the police party, the appellant tried to turn around and flee away. He was, however, not successful in making good the escape and the motorcycle was stopped by the police party. Riding with the appellant on the pillion of the motorcycle was the other accused Ajaib Singh who had a bag slung from his shoulder carrying 4 kgs. of opium.

3. After the investigation was completed, both the accused were put on trial and were convicted and sentenced by the trial court, as noted above. In appeal, the High Court affirmed their conviction and the sentence awarded to them by the trial court.

4. As noted above, the High Court upheld the judgment of the trial court and dismissed the appellant's appeal (Criminal Appeal no.478 SB of 1998) by judgment and order dated December 13, 2007, [that was passed on the record of Criminal Appeal no.582 SB of 1998 (in Ajaib Singh v. State of Punjab)].

5. Before us, the only point urged on behalf of the appellant was that on the basis of the prosecution case and the evidences led on its behalf, it was not possible to attribute conscious possession of the contraband to the appellant. Mr. Chahar, senior advocate, appearing for the appellant, submitted that the bag containing opium was carried by the other accused, the

pillion rider and the appellant was driving the motorcycle. It, therefore, cannot be assumed that the appellant was aware of the contents of the bag being carried by the other accused.

6. The question whether the appellant can be said to be in conscious possession of the contraband has been considered by the High Court in detail and relying upon a number of decisions, both of the courts of this country and of some foreign courts, the High Court held and found that the conscious possession of the contraband by the appellant was fully established. In this regard, the High Court made the following observations:

"... Two persons were concededly seen coming on a motorcycle. Having seen the police, efforts were made to retreat. The appellants, however, were nabbed. Why would appellant Jagdish Rai, who was seen driving the motorcycle, would make an effort to retreat in case he was not aware of what was being carried by his pillion rider appellant Ajaib Singh? Appellant Ajaib Singh was found carrying bag on his shoulder. It is not the case of the appellants that they both were strangers or Ajaib Singh had taken lift from him. They both were traveling on a private motorcycle and it was not a public vehicle. It is difficult to assume that Jagdish Rai was not in conscious possession of the said contraband.... Once appellant Jagdish Rai was seen riding a motorcycle with a person on his pillion from whom this contraband was recovered, the prosecution, in my view, succeeded in showing that physical possession was that of appellant, Ajaib Singh and appellant Jagdish Rai knew about it which is noticed from his action to retreat on seeing the police party and, thus, could be construed in possession of the contraband. He apparently was conscious of the fact that his pillion is carrying opium. It is to cover such situations, that provisions in the form of Sections 35 and 54 of the Act are made where presumptions are available to be drawn from the possession of illicit articles as established. It would, as such, be difficult to say that the appellant Jagdish Rai was not found to be in conscious possession of the contraband. Once he was shown to be driving a motorcycle with appellant carrying bag, it was for him to show that he was not aware of what was being carried in the bag and the special provisions of Sections 35 and 54 of the Act would require him to do so."

7. On hearing counsel for the parties and on going through the materials on record we are fully in agreement with the view taken by the High Court.

8. In support of the submission that the appellant cannot be presumed to be aware of the contents of the bag being carried by the other accused and no conscious possession of opium can be attributed to him, Mr. Chahar relied upon a decision of this court in *Avtar Singh & Ors. v. State of Punjab*¹, In *Avtar Singh*, the three appellants before this Court were the driver of the truck and two persons sitting on the bags of poppy husk being carried on the vehicle. It is significant to note that those three appellants were not the only occupants of the truck but there were two other persons, one sitting in the cabin and the other sitting at the back of the truck who were able to run away when the vehicle was stopped by the police and the prosecution was not able to establish their identity. This Court observed that it was quite probable that one of them could be the custodian of the goods whether or not he was the

proprietor. In regard to the two appellants who were sitting on the bags containing poppy husk, the Court observed as follows:

"The persons who were merely sitting on the bags, in the absence of proof of anything more, cannot be presumed to be in possession of the goods. For instance, if they are labourers engaged merely for loading and unloading purposes and there is nothing to show that the goods were at least in their temporary custody, conviction under Section 15 may not be warranted. At best, they may be abettors, but, there is no such charge here. True, their silence and failure to explain the circumstances in which they were traveling in the vehicle at the odd hours, is one strong circumstance that can be put against them. A case of drawing presumption under Section 114 of the Evidence Act could perhaps be made out then to prove the possession of the accused, but the fact remains that in the course of examination under Section 313 CrPC, not even a question was asked that they were the persons in possession of poppy husk placed in the vehicle. The only question put to them was that as per the prosecution evidence, they were sitting on the bags of poppy husk."

9. To the driver also the Court gave the benefit of doubt due to his flawed examination under section 313 of the Code of Criminal Procedure. The decision in Avtar Singh has no application to the facts of the present case.

10. No other point was urged before us.

11. In light of the discussion made above, we find no merit in the appeal. It is, accordingly, dismissed.

¹(2002) 7 SCC 0419