

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Pronounced on: 04.10.2010

+ **CRL.A.802/2000**

SUDHIR & ANR.

..... Appellants

- versus -

STATE

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Vishwa Wadhwa, Adv. for
Ms. Saahila Lamba, Adv.
For the Respondent : Mr Navin Sharma, APP

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in Digest? No

V.K. JAIN, J (Oral)

1. This appeal is directed against the judgment dated 27.11.2000 and Order on Sentence dated 29.11.2000, whereby both the appellants were convicted under Section 29 of the NDPS Act and were sentenced to undergo RI for 10 years each and to pay fine of Rs. 1 lakh each or to undergo RI for six months each in default. The appellant Sudhir was further convicted under Section 20 of the NDPS Act and was

sentenced to undergo RI for 10 years and to pay fine of Rs. 1 lakh or to go undergo RI for six months in default. The sentences were directed to run concurrently.

2. The prosecution produced as many as 13 witnesses in support of its case. No witness was produced in defence.

3. PW-3 Head Constable Suresh Kumar stated that on 10th October, 1999 he, along with SI Ramesh Kansal, Constable Amar Pal and Constable Sunil Kumwar, was on duty at the bus stop of Taj Enclave for checking the passersby. At about 2.15 p.m., a bus, plying on Route No. 317, stopped there and the accused Sudhir alighted from the rear gate alongwith the accused Raj Kumar. The accused Raj Kumar was carrying a bag in his hand. When SI Ramesh Kansal asked him to hand over the bag to him for the purpose of checking it, he threw the bag towards the accused Sudhir, suggesting that they should run way from there. The accused Sudhir caught hold of the bag and started running away. The accused was chased by them and was apprehended alongwith the bag. Raj Kumar had already been apprehended by SI Ramesh Kansal. On checking the bag, it was found to contain *charas* in 4 rectangular shape

slabs, in a shirt. On weighing, *charas* was found to be 1.850 kgs. 100 grams of *charas* was taken as sample from all the four slabs, which were found in the bag. The sample as well as the balance quantity of *charas* was duly sealed with the seal of RK and VS. Form CFSL was filled on the spot and the entire case property was seized.

4. The testimony of PW-3 has been corroborated by SI Ramesh Kansal, who stated that he was on the front gate of the bus, alongwith Constable Amar Pal, whereas Head Constable Suresh Kumar and Constable Sunil, were on the rear gate. He further stated that on seeing them, Raj Kumar threw the bag towards Sudhir and asked him to run away. He was chased and apprehended. On checking the bag, it was found to contain 4 slabs of *charas* in a shirt. After taking samples, the *charas* was sealed. The sample as well as the remaining quantity of *charas* were duly sealed with the seal of RK of IO and seal of VS, which belonged to the SHO, who has come on the spot.

5. PW-6 Constable Sunil Kumar and PW-9 Constable Amar Pal are the other police officials, who were present at the spot when the appellants were apprehended and *charas* was seized. They have fully corroborated the testimony of

PW-3 and 4.

6. PW-13 Head Constable Zahoor Ahmed is the official who was posted as MHCM at PS Geeta Colony on 10.10.1999. Accordingly to him, two parcels duly sealed with the seals of VS and RK alongwith documents and FSL Form were deposited on that day. He further stated that the sample was sent to the laboratory on 17.12.1999 and there was no tampering with the case property as long as it remained in his custody.

7. PW-8 Head Constable Bijender Kumar is the police official who took the sealed parcels along with Form CFSL from *Munshi* Constable Rajesh Kumar and deposited the same with FSL Malviya Nagar. *Munshi* Constable Rajesh Kumar came in the witness box as PW-7 and stated that the sealed parcels along with Form CFSL were sent by him through Head Constable Bijender Kumar to FSL.

8. In their statements under Section 313 Cr.P.C, the appellants denied the allegations against them.

9. I see no reason to disbelieve the testimony of the police officials who apprehended the appellants and recovered the bag containing *charas*. There is no enmity or ill-will between them and the appellants. Their testimonies

cannot be discarded merely because they happen to be police officers, particularly when they have successfully withstood the test of cross examination. No material discrepancy in their testimony has been brought to my notice.

10. The conduct of the appellant Sudhir in catching hold of the bag thrown towards him by his co-appellant Raj Kumar and then trying to run away from the spot along with the bag, clearly indicates that the *charas* found in the bag was in joint possession of the appellants. Link evidence has also been produced by the prosecution to prove that there was no tampering with the case property till it was received in the laboratory. A perusal of the report of FSL Ex.P-X, would show that the substance sent to the laboratory was found to be *charas*.

11. The learned counsel for the appellant states that considering the voluminous evidence produced against the appellants during trial, he does not have much to say, as far as the merits of the case are concerned.

12. Taking into consideration all the facts and circumstances of the case, the conviction of both the appellants under Section 29 of NDPS Act and the conviction

of appellant Sudhir under Section 20 of the NDPS Act are maintained. There is no scope of reduction of the substantive sentence, awarded to them. It is however directed that in default of payment of fine, imposed under Section 29 of NDPS Act, the appellant shall undergo RI for five months each. The appellant Sudhir in default of fine, imposed on him under Section 20 NDPS Act will undergo RI for 5 months.

The appeal stands disposed of. One copy of this order be sent forthwith to the Superintendent of the concerned jail for information and necessary action.

(V.K. JAIN)
JUDGE

OCTOBER 04, 2010

BG