

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-1107-DB-2009 (O/M)

Date of decision : 30.7.2018

Rukmani and another

..... Appellant (s)

Versus

State of Haryana

..... Respondent (s)

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Rishipal Rana, Advocate,
for appellants.

Ms. Tanisha Peshawaria, DAG Haryana.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH, J

Appellants, abovenoted, have preferred present appeal against judgment of conviction dated 23.10.2009 and order of sentence dated 26.10.2009, passed by learned Additional Sessions Judge-III, Bhiwani, vide which both appellants, namely, Rukmani and Raj Kumar alias Raju, have been convicted under Sections 20/29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') and were sentenced to undergo rigorous imprisonment for life and to pay fine of Rs. 1,00,000/- each, in default thereof, to further undergo simple imprisonment for 6 months each. The period of custody already undergone during the trial and investigation of case was ordered to be set off under Section 428 Cr.P.C. from substantive sentence.

The prosecution story is that on 18.10.2008, ASI Rajender Singh alongwith other police officials was present at Railway Station, Platform No. 3, Bhiwani, for checking. In the meanwhile, train No. 4519 arrived. When passengers were alighting, they were checked. One lady having, one Katta (bag) plastic of white colour in her right hand was seen coming towards backside of train. On seeing police party, she turned back and started walking briskly. She was apprehended and served with notice under Section 50 of the NDPS Act. She opted for search before a gazetted officer. Therefore, DSP Randhir Singh, GRP, Hisar, was called at spot and the search of the bag was conducted in his presence. On search of same, 5½ kilograms Charas was recovered. 2 samples of 100 grams each and bulk case property was taken into possession in accordance with law. Accused namely Smt. Rukmani was also produced before the Court in compliance with Section 52-A of the NDPS Act. During the police remand, she suffered a disclosure statement that she brought the Charas from Raj Kumar alias Raju Dube (co-accused) and it was to be supplied to Surender alias Pappu, resident of Mithathal, for which she was paid Rs. 1,000/- for every trip. She also demarcated the house of Raj Kumar alias Raju Dube. She also demarcated the house of Pappu alias Surender, son of Hari Singh, who was not present in the house. Accused Raj Kumar alias Raju Dube was arrested. During investigation, vide order dated 7.2.2009, Surender alias Pappu was declared proclaimed offender, whereas Smt. Rukmani and Raj Kumar alias Raju Dube were challaned under Sections 20 and 29 of the NDPS Act. Both of them were accordingly chargesheeted.

In support of its case, prosecution examined as many as 10 witnesses. When examined under Section 313 Cr..C., both accused denied the evidence led against them as incorrect and claimed innocence. Accused

did not lead any defence in evidence.

After hearing prosecution, learned defence counsel and going through the evidence, both accused were convicted under Sections 20 and 29 of the NDPS Act by learned Additional Sessions Judge-III, Bhiwani, and sentenced as aforesaid.

We have heard learned counsel for appellants, learned State counsel and have also carefully gone through the file and also perused the lower Court file.

First of all, we will take up the case of accused Raj Kumar alias Raju Dube. Only evidence against accused Raj Kumar alias Raju Dube, is that on arrest of accused Rukmani, she was interrogated. She disclosed that Raj Kumar alias Raju Dube use to supply her Charas, which was to be further supplied to Surender alias Pappu and she was paid Rs. 1,000/- for every trip. In pursuance to said disclosure statement, Raj Kumar alias Raju Dube was arrested, but nothing was recovered from him.

Now, question would arise as to whether disclosure statement of co-accused without any recovery is sufficient to convict Raj Kumar ?

Under Section 27 of the Indian Evidence Act, 1872, only that part of disclosure statement is admissible in pursuance to which recovery is effected. The other part incriminating accused amounts to confession before the police and is not admissible in evidence. Therefore, merely on the basis of disclosure statement of co-accused and accused Raj Kumar alias Raju Dube himself, he could not be convicted without any evidence to corroborate that infact he used to supply contraband to Rukmani. Even police did not try to recover money used for contraband business. On search, no contraband was recovered from the house of Raj Kumar alias Raju Dube.

It being so, practically there is no evidence against Raj Kumar

alias Raju Dube. Consequently, appeal qua accused Raj Kumar alias Raju Dube is allowed and he stands acquitted of the charges framed against him. He be released forthwith, if not required in any other case.

Now, we come to the case qua Rukmani.

In this case, Rukmani was arrested from a public place i.e. Railway Station, Platform No. 3, Bhiwani. She had alighted from a train and was going towards backside of a train. When police party confronted her, she tried to turn back and was arrested. The recovery was effected at railway station itself. PW10 ASI Rajender Parshad, Investigating Officer as well as PW2 ASI Ranbir Singh, who is other recovery witness, have stood by their statements regarding recovery of contraband from Rukmani. They have also proved separating of samples.

As per FSL report, the contents were found to be that of Charas. The link evidence is also complete in the form of statement of EHC Sushil Kumar No. 59 (PW3) as well as EHC Sushil Kumar No. 857 (PW4), who tendered their affidavits in evidence Ex.PD and Ex.PE respectively.

Retired DSP Randhir Singh, GRP, Hisar, has appeared as PW9 and also proved that search was conducted in his presence and that 5½ kilogram Charas was recovered from accused Rukmani.

The perusal of testimony of PWs shows that there is no discrepancy on the material particulars. The recovery is from a public place. The non joining of independent witness is immaterial. Considering the present circumstances in the society wherein nobody is ready to join the police party, the non joining of independent witness is immaterial. The minor discrepancies here and there are to be ignored. The fact remains that from the statements of investigating officer, DSP Randhir Singh (retired) and other recovery witnesses, recovery of contraband from appellant Rukmani is

proved.

Faced with this situation, learned counsel for appellant has argued that he does not challenge the conviction. However, sentence awarded by trial Court is very harsh. He has also contended that appellant does not have previous criminal history. She is a woman and, therefore, lenient view should be taken in the matter of sentence.

Considering the facts and circumstances of the case, we are of the view that sentence awarded to appellant Rukmani (accused) is quite harsh. Therefore, while maintaining conviction against accused Rukmani under Sections 20 and 29 of the NDPS Act, her substantive sentence is modified and reduced from rigorous imprisonment for life to rigorous imprisonment for 11 years. Sentence of fine is maintained. In default of payment of fine, appellant Rukmani shall further undergo simple imprisonment for 6 months.

As a result of foregoing discussion, appeal is partly allowed. We pass the following order :-

- (i) CRA-D-1107-DB-2009 is partly allowed.
- (ii) Impugned judgment of conviction dated 23.10.2009 and order of sentence dated 26.10.2009, passed by the Additional Sessions Judge-III, Bhiwani, convicting appellant No. 2-Raj Kumar alias Raju for the offence under Sections 20/29 of the NDPS Act, sentencing him to undergo rigorous imprisonment for a period of life with a fine of Rs. 1,00,000/-, is set aside.
- (iii) Appellant No. 2-Raj Kumar alias Raju is acquitted of the charge for which he was convicted.
- (iv) He be released forthwith, if not required in any other case.
- (v) The judgment of conviction dated 23.10.2009 and order of sentence dated 26.10.2009, passed by the Additional Sessions Judge-III,

Bhiwani, convicting appellant No. 1-Rukmani for the offence under Section 20/29 of the NDPS Act, sentencing her to undergo rigorous imprisonment for a period of life with a fine of Rs. 1,00,000/-, is set aside in part.

(vi) Her conviction for the offence charged is maintained, however, the order of sentence is modified and in place of rigorous imprisonment for life, she shall undergo imprisonment for 11 years and fine of Rs. 1,00,000/-. In default, she will undergo six months more simple imprisonment.

(A.B. CHAUDHARI)
JUDGE

(KULDIP SINGH)
JUDGE

30.7.2018
sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No

