

\$~R-95

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 26th March, 2019

+ CRL.A. 793/2002

SATISH PANDEY @ SANJIV PANDEY Appellant

Through: Mr. M.L.Yadav, Advocate with
Mr. M.K. Yadav, Advocate

versus

STATE N.C.T. OF DELHI Respondent

Through: Mr. Amit Ahlawat, APP for the
State with SI Ashish Sharma,
PS Welcome.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant was tried by the court of Sessions on the charge under Section 20 of Narcotics Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS'), the gravamen being that on 10.02.2001, at about 8:45 a.m., while being present at a public place (Welcome bus stand), near petrol pump G.T. Karnal Road, he was found having in his possession substance found to be *charas* to the extent of one kg and 100 gms. The prosecution led evidence that had been collected during investigation into the First Information Report (FIR) No. 48 of 2001 (Ex.PW2/A), which had been registered at 10:35 a.m. on 10.02.2001 at PS Welcome, on the basis of *rukka* (Ex.PW-10A) sent by ASI Sukhpal Singh (PW-10). The Additional Sessions Judge presiding over the trial, by his judgment dated 05.09.2002, held the

appellant guilty, as charged, thereby convicting him, and by order dated 06.09.2002 awarded rigorous imprisonment for ten years with fine of Rs. 1,00,000/-, in default to undergo rigorous imprisonment for two years. The said judgment and order on sentence were challenged by the present appeal. The sentence was suspended and the appellant was released on bail pending hearing on the appeal. The appeal has come up for hearing and adjudication more than sixteen years after it had been preferred.

2. The case of the prosecution, in a nutshell, was very simple. PW-10 assisted by Head Constable Tejpal Singh (PW-4) and two constables viz. Constable Amar Pal and Constable Birbal were on a crime prevention duty checking the buses, being particularly on the lookout for pick-pockets, their focus being on the buses arriving at the aforementioned bus stand, this duty having begun sometime around 8 a.m. as per DD No.2 dated 10.02.2001 (of the office of special Staff copy at page No.117 of the trial court record). It is stated that at about 8:45 a.m. a bus plying on route No.246 had arrived at the place from the direction of Inter State Bus Terminus (ISBT). While the bus was being checked by the said police staff, the appellant allegedly got down and started running towards the other side. He was chased, stopped and found to be carrying in his right hand, a polythene bag which upon being checked was found to contain the abovementioned substance. Since, according to PW-1, *charas* had been found being carried at the public place, he had informed his superior, Inspector R.K. Singh (PW-5), who was in charge of the special staff for North East. PW-5 arrived at the scene and, under his supervision, guidance

and directions, after he had statedly interrogated the appellant, requisite proceedings were conducted by PW-10. The said proceedings are stated to have included the *charas* being weighed, sample to the extent of 100 gms being separated, the remainder and the sample being sealed separately, CFSL form being filled up, all this besides preparation of the seizure memo (Ex.PW4/A). Further steps taken included service of notice under Section 50 of NDPS Act on the appellant (Ex.PW4/B), securing his reply (Ex.PW4/C) thereto, the general and personal search (Ex.PW10/B) of the arrestee, and preparation of *rukka* (Ex. PW10/A). The *rukka* was dispatched at about 10:25 a.m. and was taken to the police station by PW-4 whereupon the FIR was registered by ASI Gokal Chand (PW-2), who was the duty officer in the police station at the relevant point of time.

3. The prosecution case states that after the registration of the FIR, the case was investigated into by ASI K.P. Shah, (PW-8) who had statedly reached the spot and arrested the appellant by memo (Ex. PW8/C) after his personal search (Ex. PW4/D), the Investigating Officer (IO) having prepared notice under Section 52 of NDPS Act (Ex.PW4/E) and a report under Section 57 of NDPS Act (Ex.PW1/A), which was brought to the notice of the superior police officers through ASI Shiv Kumar. The Investigating Officer had also prepared a site plan (Ex. PW8/B).

4. The sample drawn from the substance allegedly recovered from the appellant was eventually sent to the Forensic Science Laboratory (FSL) by Head Constable Krishan Kumar (PW-6), the *Moharrar Malkhana*. Mr. S.K. Singla (PW-7), Senior Scientific Officer,

Chemistry proved his report (Ex. PW7/A) confirming that the chemical analysis of the sample of the substance showed that it was indeed *charas*.

5. At the trial, the prosecution examined ten witnesses. Out of them, PW-4 and PW-10 are the material witnesses they only being present at the time of the appellant being apprehended and alleged recovery being effected from him. Besides them PW5, their superior, also deposed but then his evidence relates to police proceedings that were drawn after the recovery had been effected. Similarly, the testimony of PW-8 is restricted to the steps taken by him during investigation.

6. The sequence of events leading to the recovery is narrated by PW-4 and PW-10 by their respective testimonies. The defence during their cross-examination brought out a number of contradictions and discrepancies. The said contradictions were presented as defence arguments at the time of final conclusion by the trial court. The Additional Sessions Judge, however, refused to extend any benefit of doubt on such basis, his view primarily being that they were insignificant and that it was only natural that such contradictions would surface, the occasion for the witnesses who had appeared and testified having come up after some time gap.

7. The appellant challenges the judgment holding him guilty and convicting him primarily on the ground that the evidence of PW-4 and PW-10 is not in *sync* with each other, there being many areas where both differently stated about not only the events that took place prior to the search but also the steps that had been taken in the course of the

police proceedings being drawn up, by PW-10 initially, and by PW-8 later, after the registration of the FIR. It is the argument of the appellant that these contradictions lead one to wonder as to what to believe and what not to believe. The appellant submits that the evidence led is incredible and on that basis it is not fair or just to hold him guilty. Indeed, the evidence of the prosecution is full of holes.

8. PW-4 and PW-10 contradict each other on many an issue. The bus checking duty, as noted above, had commenced when the police personnel of North-East special staff had left the office at about 8:00 a.m. Assumably, they would have reached the place where the appellant was apprehended by 8:15 a.m. as is the time indicated by PW-4. PW-4 spoke about 15-20 buses having been already checked when the bus in question, in which the appellant arrived, had reached the scene. PW-10, on the other hand, stated that the bus in question (in which the appellant had come) was the first one to be subjected to such check, his explanation being that no occasion for checking other buses had come up since the police party got involved in this case. He would not even know as to whether the bus in question was a private one or one of Delhi Transport Corporation (DTC).

9. PW-10 would indicate that the police personnel were yet to board the bus when it was noticed that the appellant had started running away. PW-4 contradicted him by stating that Constable Amar Pal had already got in when this had happened. Be that as it may, when the appellant had been apprehended and the contraband recovered from his hand, PW-10 being an officer of lower rank was seemingly reluctant to proceed with the formal action on his own. He

informed his superior, PW-5. He would state that he had gone to a nearby petrol pump from where he had made a call to PW-5 inviting him to the place. PW-4, on the other hand, spoke about PW-10 using a mobile phone to give such communication. Either they were not present together or they are prone to spinning stories.

10. PW-5 does confirm that he had arrived at the scene upon learning about recovery telephonically from PW-10. He was an officer of the Inspector rank. Since the recovery had already been made, one wonders what purpose was to be served by any endeavour to join public witnesses. Be that as it may, apparently more as a show of compliance with the requirements of procedure that is generally followed, both PW-10 and PW-5 speak about some public persons having been requested to join in the police proceedings, none having agreed to do so. The testimony of PW-4, in contrast, does not talk about any such effort being made.

11. As per the prosecution witnesses, PW-4, PW-5 and PW-10, the recovered substance was weighed. PW-4 and PW-5 would claim that the weighing instrument was available in the bag of the investigating officer – apparently referring to PW-10. But then, while PW-10 would state that it was a weighing scale, PW-4 talked of it being an electric weighing machine, PW-5 adding yet another possibility stating that it was a plastic machine which had been called for. If PW-5 was present throughout the proceedings in which such exercise was undertaken, he was bound to know that PW-10 was already having such an instrument available and, in that case, there would be no occasion for it to be arranged elsewhere as is the impression given by PW-5.

12. Strangely, the sealing was done with the help of seal of 'AKC'. PW-10 disclosed only during court testimony that the seal of 'AKC' belonged to a colleague named SI A.K. Chaudhary. He stated that he did not have any seal of his own and the seal of 'AKC' was lying in his bag. He has not explained as to how he was having the control of the seal of some other police official, SI A.K. Chaudhary not having been called in for clarity or confirmation.

13. The police proceedings recorded at the spot included filling up of the CFSL form. Even here, the evidence of PW-4 and PW-10 is at cross purposes. While PW-10 would insist the said form was filled in at the spot, PW-4 would speak about such formalities being completed later at the police station. Since all these documents were collected by PW-8 (the investigating officer) after he had taken over the case at the spot, the act of filling of the CFSL form at the spot becomes doubtful if it had not even been prepared till the police personnel had returned to the police station.

14. In the face of the above noted contradictions, this court finds it difficult to accept the testimony of PW-4 or PW-10. Noticeably, the two constables, mentioned earlier, were crucial witnesses. During his cross examination, the investigating officer (PW-8) confirmed that he had not even examined the said police officials under Section 161 Cr.P.C. There is no explanation offered for such omission.

15. In the testimony of the investigating officer, even during the chief-examination, there is reference to recovery of contraband of huge quantity from another person. The prosecution has not explained the relevance of the said circumstance. Against this backdrop, the

defence plea of contraband being planted on the appellant cannot be lightly brushed aside, particularly when his identity was concededly wrongly noted in the initial stage.

16. Some of the above contradictions, by themselves, or in isolation, may not be of much significance. Non-joining of public witnesses in a case of this nature where the recovery is described to be made by chance, may be irrelevant. But then, the contradictions tell adversely on the credibility of the witnesses.

17. The evidence of the prosecution gives the impression that truth, half-truth and fiction are inextricably mixed. The oral evidence of the material witnesses, in such circumstances, does not inspire confidence. With credibility of the said witnesses being questionable, it is found unsafe to accept the prosecution case for upholding the finding of guilt.

18. Benefit of doubts arising as a result will have to be extended to the appellant. Ordered accordingly.

19. The impugned judgment and order on sentence are set aside. The appellant is acquitted. The appeal stands disposed of.

R.K.GAUBA, J.

MARCH 26, 2019

neelam/vk