

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Order: February 12, 2019

+ **CRL.A.813/2014**

SHIRLEY SILVANA LASUT

..... Appellant

Through: Mr. Kushal Gupta, Advocate

Versus

DIRECTORATE OF REVENUE INTELLIGENCE

..... Respondent

Through: Mr. Satish Aggarwala, Senior
Standing Counsel

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

Impugned judgment of 28th November, 2013 holds appellant guilty for the offence punishable under Section 21(c) of the Narcotic Drugs and Psychotropic Substances, Act, 1985 and vide order of 13th December, 2013 appellant has been sentenced to rigorous imprisonment for ten years with fine of ₹ 1,00,000/- and in default of payment of fine, appellant has been sentenced to undergo simple imprisonment for three months. The facts as noticed in the impugned judgment are as under:-

“The brief facts of the case are that on 26.11.2009 at about 2:00 PM PW/IO Sh Angad Meena had gathered some secret intelligence from a reliable source that one Indonesian national by the name of Ms Shirley Silvana Lasut, having fair complexion, slightly plum and aged about 35 years, would be traveling from Delhi to Hyderabad by Indigo Flight No. 6E311 scheduled to depart at 4.55 PM on that day from the Domestic Airport Terminal No. 1D, New Delhi and she would be carrying some narcotic drugs concealed in her baggage. PW1 had immediately reduced the above information in writing as

Ex. PW1/1 and had put up the same before PW4 Sh Tassine Sultan, an Appraiser of DRI, who was the immediate official superior of PW1 for the purposes of intelligence, and PW4 had further put up the said information before PW12 Sh Nilank Kumar, Assistant Director, DRI, and after having some discussions with PW1, PW12 had directed for constitution of a raiding team, under the supervision of PW3 Sh Man Singh Yadav and an endorsement in this regard was also made on the said information itself.”

Apart from the evidence of Investigating Officer, prosecution has relied upon evidence of 18 witnesses. The stand of appellant-accused before trial court was of denial in respect of 1.296 kgs. of heroin recovered from her baggage at domestic airport terminal. Appellant has not got any witness examined in her defence. On the basis of the evidence led, trial court has convicted and sentenced appellant as noticed hereinabove.

Learned counsel for appellant assails the impugned conviction and sentence on the ground that there are patent flaws in the prosecution case, which entitles appellant to acquittal. It is submitted that no CFSL form was prepared when the alleged recovery was effected. It is submitted that the Test Memo and the recovery made was never deposited with Malkhana. According to appellant's counsel, the sample collected had remained in between Investigating Officer, (PW-1) and Senior Intelligence Officer, (PW-3). It is pointed out that the forwarding letter for sending the sample to CFSL bears the facsimile of sample seal and the forwarding letter was admittedly prepared by PW-3. It is submitted that PW-3 was in possession of the sample seal and the case property in the

night intervening 26th and 27th November, 2009 and it remained with him till the case property was sent to Malkhana on 27th November, 2009”.

It is further submitted that the sample, test memo and the sample seal were never deposited in the Malkhana and had remained with PW-3. It is pointed out that out of the twelve envelopes prepared by the Investigating Officer, nine were samples and the remaining three parcels were the case property. It is pointed out that when the case property was produced before the trial court, the envelope/parcel did not have the paper slip on it and in fact the paper slip was found inside the envelope and the paper slip found in the parcel did not have any DRI initials. It is submitted that the sample seal was not given to an independent witness. Thus, it is submitted that the aforesaid infirmities pointed out by the prosecution case renders prosecution case doubtful and so, the benefit of doubt ought to be granted to appellant.

On the other hand, learned standing counsel for respondent-DRI supports the impugned judgment and the order and submits that the sample seal had remained with the Investigating Officer (PW-1) whereas sample had remained with PW-3. It is next submitted that the DRI slip may not have been pasted on the case property but it was found inside the case property. It is pointed out that the sample was found in intact condition when it had reached the CRCL (Central Revenue Control Laboratory). It is further submitted that there is no basis to conclude that the case property or the sample at any point of time was tampered with and so, there is no infirmity in the impugned judgment and thus, this appeal deserves to be dismissed.

Upon hearing and on perusal of the impugned judgment, order and the evidence on record, I find that the evidence of the Investigating Officer, (PW-1) and evidence of Senior Intelligence Officer, (PW-3) is consistent and reliable. There is no basis to conclude that the sample, sample seal and the case property were tampered with. Upon scrutiny of evidence on record, I find that so-called infirmities pointed out in the prosecution case do not go to the root of the case. The place and the manner of recovery of heavy quantity of heroin rules out false implication and makes prosecution version probable. Pertinently, no suggestion has been put to any of the material witnesses that the sample, sample seal and the case property were tampered with at any stage. It is relevant to note that when the sample as well as the sample seal had reached the CRCL, they were found to be intact and when these exhibits were produced before the court, then also they were intact. Merely because the paper slip was found inside the sample and not pasted on the sample or the case property would not by itself render the entire recovery to be suspect. The stand of appellant before the trial court was of denial though the recovery in the instant case has been affected at the Domestic Airport Terminal No. 1D.

This court finds the prosecution version to be consistent and reliable. Finding no infirmity in the impugned judgment and the sentence awarded to appellant, this appeal is accordingly dismissed.

(SUNIL GAUR)
JUDGE

FEBRUARY 12, 2019

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