

CASE NO.:
Appeal (crl.) 983 2000

PETITIONER:
BHOLA RAM KUSHWAHA

Vs.

RESPONDENT:
THE STATE OF MADHYA PRADESH

DATE OF JUDGMENT: 16/11/2000

BENCH:
K.T.Thomas, R.P.Sethi

JUDGMENT:

SETHI, J.
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Leave granted. For allegedly being in possession of one gram of brown sugar, the appellant was found guilty and convicted for an offence punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "NDPS Act"). He was sentenced to undergo rigorous imprisonment for 10 years besides paying a fine of Rs.1 lakh. Appeal filed against the judgment of the trial court was dismissed by the High Court vide the judgment impugned in this appeal. According to the prosecution Shri S.N. Tripathi (PW4), after having received an information that the appellant was having brown sugar in his pant's pocket, the appellant was caught hold of and searched in presence of the witnesses Raju Khanna (PW1) and Arjun Kumar (PW2). Before searching the appellant, PW4 had telephonically informed his higher officers about the information received by him. After the appellant consented to be searched by PW4, the recovery of one gram of powder was made from his back pocket in the presence of witnesses PWs 1 and 2. After procedural formalities the prosecution was launched against the appellant. The appellant denied the charge against him and submitted that he was falsely implicated on account of enmity. Solely relying upon the testimony of PW4, the appellant was convicted and sentenced as noticed earlier. Witnesses Raju Khanna and Arjun Kumar have admittedly not supported the prosecution story. Learned counsel appearing for the appellant submitted that as both the witnesses who were stated to be independent witnesses have turned hostile, the trial court should have acquitted the accused. We are not impressed with such a general submission. In order to satisfy ourselves we have perused the statements of all the prosecution witnesses and ascertained as to whether their testimonies inspire confidence for holding the appellant guilty of the offence for which he has been convicted and sentenced. Raju Khanna (PW1) in his statement, recorded in the trial court on 5th November, 1997 stated that he did not know the accused. Police had not recovered any material from the person of

Bhola Ram Kushwaha on 20th May, 1997. He had signed some documents at the instance of police. Some case was pending against him in Ambikapur Court and in connection with that the police called him and obtained signatures on the papers. The witness was declared hostile by the prosecution and cross-examined. Similarly Arjun Kumar (PW2) categorically stated that he did not know the appellant. His signatures were also obtained on some papers at the instance of police. The appellant was never interrogated or searched in his presence. Jitender Singh (PW3) Head Constable of Police is stated to have received on 20th May, 1997 a sealed packet allegedly containing brown sugar for keeping in safe custody. He made entry of deposit of the material in the Confiscation Register and issued receipt therefor. S.N. Tripathi (PW4) stated that he was on round in the town on 20th May, 1997 when he got an information that the appellant was moving around having brown sugar in his pant's pocket. The appellant was encircled by the witness along with his staff and informed that he was to be searched. He was intimated of his right as to whether he wanted himself to be searched in the presence of a Gazetted Officer or the Magistrate. With his consent search was made by the witness and one gram of brown sugar was seized. He did not deny the suggestion that between Raju and Arjun some disputes was pending in the court. Upon analysis of the evidence led in the case and finding glaring discrepancies in the statements of the prosecution witnesses we feel that the prosecution has failed to prove its case against the appellant beyond all reasonable doubts. In all material particulars PW4 stands contradicted by PWs 1 and 2 who are admittedly the panch witnesses. The prosecution also failed to associate three constables who accompanied S.N. Tripathi (PW4) as the witnesses. The trial court appears to have omitted to note the glaring contradictions in the testimony of prosecution witnesses. PW4 in his testimony in the court submitted that: "...he received the information that accused Bholaram Kushwaha was having brown sugar in the pocket of his trouser. He recorded that information in the Sanha. That is Ex.P/13".

However, a perusal of Exhibit P13 showed that no entry was made therein regarding the appellant having brown sugar in his pocket. We feel that the appellant cannot be convicted on the basis of evidence led, which in this case, we have found to be contradictory and not reliable. Under the circumstances, the appeal is allowed by setting aside the conviction and sentence as passed by the trial court and confirmed by the High Court. The appellant is acquitted of the charges framed against him under Section 21 of the NDPS Act. He shall be set at liberty forthwith if not required in any other case.