

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2127 OF 2011

Mohammad Rafikul Islam
...Appellant

Versus

State of Rajasthan
...Respondent

O R D E R

The appellant faced trial for the offence punishable under Section 8/21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the Act") before the learned Special Judge, NDPS cases, Ajmer, in Criminal Case No. 10 of 2004 and being found guilty was sentenced to ten years rigorous imprisonment with fine of rupees one lakh and, in default of payment of fine, to suffer further rigorous imprisonment for a period of two years and in a motion of appeal the same was affirmed.

The prosecution case, in brief, is that on 10.4.2004 three constables, namely, Srimanlal, Bhim Singh and Chandra Prakash of P.S. GRP Ajmer had seen two persons in the general compartment of train No. 582 down, which was coming to Ajmer from Pune, were carrying one plastic water bottle and two bags. On being questioned both of them became visibly perplexed. They got down from the train near the southern bridge of platform Nos. 4 and 5. Srimanlal sent a written information, Ext.P-20, to the P.S. GRP Ajmer through Constable Bhim Singh, PW-3. Shiv Datta Singh, the then officer-in-charge being on leave, the concerned officer sent the information to the Deputy Superintendent of Police, GRP, Chandra Prakash Sharma, as required under Section 42 of the Act and thereafter they reached the spot. The accused was informed about their right to be searched either in presence of a gazetted officer or a Magistrate. The accused agreed to be searched by the police officers and, accordingly, the plastic bottle and the two bags were searched and it was found that two polythene bags contained heroin weighing 1 kg. and 400 grams. Thereafter, the samples were taken after following due procedure and sent to the Forensic Science Laboratory for chemical examination. The test report, Ext.P-31, was obtained and after completion of investigating charge-sheet was submitted before the competent court.

The accused pleaded false implication and claimed to be tried.

The prosecution in order to establish the charges examined Bhanu Prakash Bayala, an independent witness, PW-1, Chandra Prakash Sharma, PW-2, Constable Bhim Singh, PW-3, Bhawani Singh, PW-4, Om Prakash, PW-5, Lalit Maheshwari, PW-6, Shiv Datta Singh, PW-7, Sita Ram, PW-8, Constable Sribhan Singh, PW-9 and Constable Govind Prasad, PW-10, and produced Ext.P-1 to Ext.P-40 as documentary evidence. The learned Special Judge, analyzing the evidence on record, came to hold that there had been statutory compliance of Sections 42, 50 and 55 of the Act and the recovery had been proven beyond doubt and the accused was guilty of the offence. Being of this view, he imposed the sentence as has been stated hereinabove.

Grieved by the aforesaid judgment of conviction, the accused preferred Criminal Appeal No. 232 of 2006 before the High Court and the learned single Judge, reappreciating the evidence in detail, dealt with the challenges pertaining to the statutory compliance and concurred with the view expressed by the learned trial Judge.

We have heard Mr. Ashutosh Bhattacharjee, learned counsel for the appellant and Ms. Sonia Mathur, learned counsel for the State.

The principal ground that has been urged before us is that there has been non-compliance of Section 50 of the Act inasmuch as there was no proper information pertaining to right to information to be searched in presence of a gazetted officer or a Magistrate. The learned counsel has commended us to the Constitution Bench judgment in *Vijaysinh Chandubha Jadeja v. State of Gujarat*[1]. In our considered opinion the dictum laid down by the larger Bench is not applicable to the case at hand inasmuch as the bottle and polythene bags containing heroin had been seized from the accused. It has not been seized from the person of the appellant and the other co-accused. The prosecution by adducing cogent and reliable evidence has proven that the bottle and the bags belonged to the appellant. In this context, we may refer with profit to the pronouncement in *Ajmer Singh v. State of Haryana*[2] wherein it has been laid down as follows: -

"Thus, applying the interpretation of the word "search of person" as laid down by this Court in the decision mentioned above, to facts of present case, it is clear that the compliance with Section 50 of the Act is not required. Therefore, the search conducted by the investigating officer and the evidence collected thereby, is not illegal. Consequently, we do not find any merit in the contention of the learned counsel of the appellant as regards the non-compliance with Section 50 of the Act."

In view of the aforesaid dictum, Section 50 of the Act is not applicable.

The second limb of submission is that only a singular chance witness has been examined and the conduct of the investigating agency would clearly reveal that there was an attempt to falsely implicate the accused. To appreciate the said submission, we have carefully perused both the judgments and the evidence brought on record. We find that the official witnesses and the independent witness have deposed with consistency and there is nothing to discard their testimony to be untrustworthy. There is no absolute rule that the testimony of the official or police witnesses should be looked with suspicion. If their version is credible and reliable, same can be accepted. As we notice, in the case at hand, despite roving cross-examination nothing has been elicited to disbelieve their testimony. Thus, we do not find any substance in the said submission.

A feeble attempt was made to show that the sample that was collected and which was sent to the FSL are different inasmuch as the report given by FSL on chemical analysis was cryptic. The learned trial Judge has dealt with it in an apposite manner and rejected the contention. The report clearly shows that it was heroin. There is no other allegation to show that the report has no acceptable value and should be rejected. Hence, we repel the said contention.

In the ultimate analysis, we do not perceive any merit in this appeal and, accordingly, the same stands dismissed.

.....J.
[Dr. B.S. Chauhan]

.....J.

New Delhi;
May 23, 2013.

ITEM NO.103

COURT NO.2

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CRIMINAL APPEAL NO(s). 2127 OF 2011

MOHD. RAFIKUL ISLAM

Appellant (s)

VERSUS

STATE OF RAJASTHAN

Respondent(s)

(With office report)

Date: 23/05/2013 This Appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN
HON'BLE MR. JUSTICE DIPAK MISRA
(VACATION BENCH)

For Appellant(s) Mr.Ashutosh Bhattacharjee, Adv.(A.C.)

For Respondent(s) Ms.Sonia Mathur, Adv.
Ms. Pragati Neekhra, A.O.R.(Not Present)

UPON hearing counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

(Satish K.Yadav)
Court Master

(M.S.Negi)
Court Master

(Signed order is placed on the file)

[1] (2011) 1 SCC 609
[2] (2010) 3 SCC 746