

A BAHADUR SINGH
v.
STATE OF MADHYA PRADESH AND ANR.
DECEMBER 4, 2001

B [UMESH C. BANERJEE AND Y.K. SABHARWAL, JJ.]

Narcotic Drugs and Psychotropic Substances Act, 1985.

C *Sections 8, 15 and 35—Recovery and seizure of contraband—Panch witness denying that contraband recovered and seized in his presence—Conviction based on sole testimony of Investigating Officer—Serious discrepancies in recovery, seizure and deposit of contraband in Maalkhana—Held, accused entitled to benefit of doubt.*

D Prosecution alleged that poppy straw weighing 3.900 kgs. was recovered from the truck driven by appellant. Special Court convicted driver and cleaner of the truck for offences under Section 8 read with Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985. In appeal, High Court acquitted cleaner but upheld the conviction of driver. Hence, this appeal by truck-driver.

E Appellant contended that there was no reliable evidence to establish recovery and seizure of contraband and that conviction on the sole testimony of the Investigating Officer, PW 3, was unwarranted.

Allowing the appeal, the Court

F HELD : 1. The question of applicability of Section 35 of the Narcotic
G Drugs and Psychotropic Substances Act, 1985 will not arise when the
recovery itself is doubtful. The appellant had disputed the recovery of
contraband. There are serious discrepancies in its recovery, seizure and
deposit in the Maalkhana. Prosecution examined only one Panch Witness
who denied that in his presence contraband was recovered from the driver
and cleaner of the truck. Investigating officer had taken the search of the
truck before the arrival of panch witness. Under the circumstances the
appellant cannot be convicted on the sole testimony of police witness, the
Investigating Officer. The prosecution has thus failed to prove its case
beyond all reasonable doubts against the appellant and so he is entitled to
H benefit of doubt. [434-B; 431-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 824 A
of 2000.

From the Judgment and Order dated 29.3.2000 of the Madhya Pradesh
High Court in CrI A. No. 2502 of 1999.

Shiv Sagar Tiwari for the Appellant. B

Mrs. Madhur Dudani, for Prakash Shrivastava and B.S. Banthia for the
Respondents.

The Judgment of the Court was delivered by

Y.K. SABHARWAL, J. The appellant, Bahadur Singh and one Amreek C
Singh were convicted by the Special Court constituted under the Narcotic
Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') having been
found guilty for the offence under Section 8 read with Section 15 of the Act.
Both of them were sentenced to 10 years' rigorous imprisonment and a fine D
of Rs.1 lakh each. The High Court has, however, allowed the appeal of Amreek
Singh. His conviction and sentence has been set aside. The conviction and
sentence of Bahadur Singh having been maintained, he is in appeal before us
on grant of special leave.

Bahadur Singh was a driver and Amreek Singh a cleaner of a truck. The
case of the prosecution is that information had been received that the poppy E
straw is being carried in the said truck. On search of the truck four polythene
bags containing poppy straw weighing 3.900 kgs. was found. After completion
of the formalities, the accused were tried which resulted in the conviction and
sentence as aforesaid.

According to the prosecution there were two independent witnesses in F
whose presence the poppy straw was recovered and seized. The prosecution,
however, examined only one of them, namely, Pawan Kumar Sharma, PW1.
PW1 did not support the prosecution and was declared hostile. He though
admitted his signatures as a panch witness to the documents but denied that in
his presence 3.900 kgs. of poppy straw was recovered and seized from the G
driver, Bahadur Singh and cleaner, Amreek Singh. The conviction was, how-
ever, based on the sole testimony of Investigating Officer, Head Constable
Gontiya, PW3.

Learned counsel for the appellant submits that there is no reliable evi- H
dence to establish the recovery and seizure of the contraband and on the facts

- A and circumstances of the case the conviction on the sole testimony of PW3 is unwarranted. There is substance in the submission.

B There are serious material discrepancies in the evidence in respect of recovery and seizure. PW4, a constable, stated in the cross-examination that when Pawan Kumar Sharma reached Kabir Chowk where the truck was apprehended PW3 told him that there is poppy straw in the truck and when they reached there, PW3 had already taken the search of the truck. There are also serious discrepancies in respect of the deposit of the seized poppy straw in the Maalkhana. The deposit is shown to have been made under Entry No.68-A dated 11th October, 1997. The date of the incident is 10th October, 1997. The C Entry above Entry 68-A, is Entry No.68 dated 15th October, 1997. The Entry after Entry 68-A, is Entry No.69. That is also dated 15th October, 1997. The concerned police official who made these entries was not examined by the prosecution but was examined as a defence witness. His explanation to the aforesaid entries was that he forgot to make an Entry of the seized material in the Maalkhana register and made the entry later after '15th day'. The explanation is far from satisfactory. Assuming he forgot to make the entry, that then cannot be made by interpolation as aforesaid. The entry could be made at its appropriate place under the correct date on which it was actually made and delay in making the entry could be explained. He further deposed that since no cash was deposited he did not make any Entry for receipt of Rs.27,000 D E connected with the crime. In respect of this amount, PW3, the Investigating Officer, in cross-examination stated as under:

F "During arrest, 54 currency note of Rs.500 denomination each were seized from Bahadur Singh, which was Rs.27,000 in all and it is true. It is wrong to say that Rs. 27,000 were never returned to Bahadur Singh. Head Moharrir Jagat Ram of police station has got the receipt of the refund of that money. It is wrong to say that for harassing accused Bahadur Singh and Amreek Singh, I entered in their truck and searched the truck unnecessarily and the accused were unnecessarily arrested. It is wrong to say that Rs.27,000 were not returned to accused persons." G

H However, on the date when the case was fixed for judgment before the trial judge, an application was filed by PW3 stating that he had not seized any amount from accused Bahadur Singh and was confused when he admitted the seizure of the amount of Rs.27,000. According to the appellant, PW3 had seized that amount and not returned. In respect of this controversy, the trial

judge said as under:

"I have very carefully examined Ex. P-15, the arrest memo of accused Bahadur Singh and also seen Ex.P-15-C, the photocopy of Ex.P-15, which was later on filed by H.C. Gontiya. Certainly in Ex.P-15-C the entries regarding the currency notes are not there, in both these documents a vertical line is there in the space left for the particulars to be filled regarding the seizure. This type of line is usually drawn when there is nothing to be entered. Although, H.C. Gontiya has not proved that who was the person who wrote the concerning document and made entries in the diary as R.N. Sharma PW-5 denied that he wrote the Ex.P-15, still I think that H.C. Gontiya could not be held guilty for engulfing 27,000 of the accused. The reasons for this are as follows:

17. First, if one compares the writing in Ex.P-15 carefully, one would find, that the entries regarding the description of amount and currency notes are not written by the same person, who wrote and made rest of the entries in Ex.P-15. Figure (4) of 54 is quite different than in figures (4) of 451/97 on the very first column and there is no doubt that these two figures of (4) are not written by the same persons. Apart from this, I have also carefully compared the writing of case diary written on 10.10.97. The writing in Ex.P-15 and this appears to be written by same person. In the case diary of 10.10.97, the fact of seizure of 27,000 rupees is not mentioned which in ordinary course of nature should have been mentioned. Apart from this, the said amount was seized on 10.10.97, the date on which the accused Bahadur Singh was arrested but for the first time the allegation was leveled against the I.O. on 29.09.98 the date on which the accused were examined by the court under Section 313 of the Cr.P.C. for complete one year the accused remained dormant and did not made any hue and cry which in ordinary course of nature should have been made because the Rs.27,000 is not a small amount and the person to whom they belonged should have made some effort to get the amount in supurdnama as has been done for the truck. So far all these reasons I hold that the entries in the Ex.P-15 regarding the amount was made after the challan was completed and filed."

The appellant cannot be made to suffer on prosecution failure to prove as to who made the entries in exhibit P-15 regarding the amount and as to when the same were made.

- A Under the aforesaid circumstances the appellant cannot be convicted on the sole testimony of police witnesses, PW3. The question of applicability of Section 35 of the Act will not arise in the present case when the recovery itself is doubtful. The appellant had disputed the recovery of contraband. There are serious discrepancies in its recovery, seizure and deposit in the Maalkhana. The
- B prosecution has thus failed to prove its case beyond all reasonable doubts against the appellant who is accordingly entitled to benefit of doubt.

For the foregoing reasons, we set aside the judgment of the High Court as well as of the Special Court and allowing the appeal, acquit the appellant.

- C A.K.T. Appeal allowed.