

A

DAULAT RAM & ANR.

v.

CBN MANDSAUR, M.P.

(Criminal Appeal No. 259 of 2006)

JANUARY 27, 2011

B

[HARJIT SINGH BEDI AND CHANDRAMAULI KR.  
PRASAD, JJ.]

C

*Narcotic Drugs and Psychotropic Substances Act, 1985 – s. 8 read with s. 18 – Appellants cultivating opium under a licence – Recovery of undeclared opium from the field of the appellants – Confession by the appellants that they had withheld the opium to sell it in the market in an unauthorized manner – Conviction u/s. 8 read with s. 18 by courts below –*

D

*On appeal, held: Justified – Rule 13 makes it obligatory for an opium producer to make a declaration to the lambardar as to the quantity of opium produced everyday – No evidence to show that the opium which had been recovered had been declared or accounted for before the Lambardar – However,*

E

*the fact that opium was buried three feet underground and far away from the residence of the appellants clearly shows that the intention was to stash away the opium for sale in an unauthorized way – Even though no independent witness supported the prosecution story, the evidence of the official*

F

*witness is supported by the recovery of the opium and also by the confessions made by the appellants that they had withheld the opium to sell it in the market – Narcotic Drugs and Psychotropic Substances Rule, 1985 – r. 13*

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*Bheru Lal v. State of Rajasthan RLW 2003 (2) Raj 1056 – referred to.*

**Case Law Reference:**

**RLW 2003 (2) Raj 1056 Referred to Para 5**

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal A  
No. 259 of 2006.

From the Judgment & Order dated 20.09.2004 of the High B  
Court of Madhya Pradesh Indore Bench, Indore in Criminal  
Appeal No. 259 of 2001.

Ashok Kumar Sharma, Avinash Kumar Jain for the  
Appellants.

J.S. Attri, Sadhana Sandhu, Rashmi, Sushma Suri for the C  
Respondent.

The following order of the Court was delivered

### O R D E R

1. This appeal arises out of the following facts: D

1.1 The appellants herein, both brothers, Daulat Ram and  
Mangilal, sons of Hurdabai, were living with their mother at  
village Dorana. Hurdabai had been issued a licence to grow  
opium in her land and the appellants were looking after the  
cultivation on her behalf. On the 5th April, 1997, reports were E  
received in the Narcotics Office that Hurdabai was not  
depositing the entire yield of opium with the Lambardar. The  
ASI CBN, Balaram PW 2, and the District Opium officer,  
Satyaveer Singh Choudhary PW 6, along with other members F  
of a raiding party reached the village Dorana at 2:00p.m., and  
on inquiry it was ascertained that the allegations appeared to  
be correct. The appellants were, accordingly, apprehended and  
interrogated by the ASI and during interrogation Daulat Ram  
admitted that some of the undeclared opium had been hidden F  
in his field. Thereafter Mangilal appellant was also interrogated  
and he made a similar statement. The raiding party then visited  
the field of Daulat Ram and after digging the pit at the place  
pointed out by him, took out a polythene bag which when  
weighed was found to contain 3kg of opium. Similarly, Mangilal  
took the officers to the place which he had identified and H

A another 3 kg of opium was recovered from another pit. The appellants also gave their confessions Exhibits P 16 and P17 respectively, stating therein that they had withheld the opium to sell it in the market in an unauthorised manner.

B 1.2 On the completion of the investigation, the appellants were charged under Section 8 read with Section 18 of the Narcotic Drugs and Psychotropic Substances Act, (hereinafter referred to as 'the Act'). The trial court relying on the evidence of P.W. 1 Bhanwarilal Patwari who had identified the fields as belonging to Hurdabai and in particular the evidence of P.W. C 2, P.W. 5 and P.W. 6 and also on the confessions made by the accused held that the case against them had been proved beyond doubt. The appellants were each sentenced to 10 years rigorous imprisonment and a fine of Rs.1 lakh with a default sentence. An appeal taken to the High Court too was D dismissed.

2. Before us, today, Mr. Ashok Kumar Sharma the learned Amicus Curiae for the appellants, has raised one basic argument. He has submitted that as per the Act and Rule 13 E of the Narcotics Drugs & Psychotropic Substances Rule, 1985, framed thereunder the opium which was produced had to be reported to the Lambardar and it was only after the final notification had been issued and the production had been quantified that the final accounting had to be made and not at F any stage prior thereto. It has also been pointed out that the two independent witnesses having not supported the prosecution there was no independent evidence against the appellants.

G 3. Mr. J.S. Attri, the learned senior counsel for the respondents has, however, supported the judgment of the courts below.

H 4. We have considered the arguments advanced by the learned counsel. It is true, as contended by Mr. Sharma, that an over all accounting of the opium has to be made after the

notification has been issued identifying the percentage of opium that should be in the hands of a producer. However, there is an obligation under Rule 13 of the Rules, 1985 to make a declaration to the Lambardar as to the quantity of opium produced everyday. There is no evidence or suggestion to show that the opium which had been recovered had been declared or accounted for before the Lambardar. On the contrary the fact that it had been buried three feet underground and far away from the residence of the appellants clearly shows that the intention was to stash away the opium for sale in an authorised way.

5. Mr. Sharma has, however, cited *Bheru Lal v. State of Rajasthan* RLW 2003 (2) Raj 1056 to contend that till the final quantification had been made the opium could not be said to be contraband. We find that some of the conclusions drawn in the cited judgment are too far reaching and basically ignore Rule 13 which requires a day to day accountability before the Lambardar. On facts, it is also apparent that the opium in Bheru Lal's case had been recovered from the residential house of the accused. In the case before us, as per the prosecution story, the opium had been recovered from 3 feet underground.

6. It is equally true that no independent witness has supported the prosecution story. The evidence of the official witnesses is, however, supported by the recovery of the opium and also by the confessions made by the appellants.

7. The appeal is, accordingly, dismissed.

N.J.

Appeal dismissed.