

STATE OF HIMACHAL PRADESH

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v.

TRILOK CHAND & ANR.

(Criminal Appeal Nos. 2133-2134 of 2011)

JANUARY 17, 2008

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**[N. V. RAMANA AND S. ABDUL NAZEER, JJ.]**

*Narcotic Drugs and Psychotropic Substances Act, 1985 – s.55 – Contraband goods – Recovery of – Conviction of respondents-accused under s.20 and sentence of 10 years rigorous imprisonment – Acquittal by High Court – State’s appeal against acquittal on the ground that High Court gave greater importance to trivial discrepancies in the prosecution case and without assigning any plausible reason allowed the appeals of accused – Held: The discrepancies in the prosecution case highlighted were the evidence of DW-1 that on the fateful day, police officials asked him to load gunny bags lying outside the abandoned house; the evidence of independent witnesses to the effect that they were not present at the spot when the incident took place and that they were called to police station and their signatures were taken on some papers – These discrepancies were major in character – The evidence is lacking support to establish that the contraband was really recovered from the possession of the accused in the manner alleged by the prosecution on the said date and time – In view of number of discrepancies in the prosecution case coupled with the contradictory statements by prosecution witnesses, the prosecution story appeared doubt – Prosecution having failed to establish the commission of alleged offence by the accused beyond reasonable doubt, accused-respondents are granted benefit of doubt – Interference with the order of acquittal not called for.*

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**Dismissing the appeals, the Court**

**HELD: 1. The record showed that in order to satisfy the requirement of Section 55 of N.D.P.S. Act, the case property was accordingly tampered by the police. In the prescribed form, the place of seizure was mentioned as Nagwain and not Panarsa Bridge and the name of only one accused was shown from whom the contraband was said to have been seized while he was carrying**

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A three gunny bags. The name of other accused was added afterwards to justify the fact that one person could not have carried three bags of contraband at a time. In view of number of discrepancies in the prosecution case coupled with the contradictory statements by prosecution witnesses, the entire prosecution story vitiated and led for discrediting its version.

B Contradictions in the statement of the witnesses are fatal for the case, though minor discrepancies or variance in their evidence will not disfavour. Considering the circumstances of the case on hand, it can be said that the discrepancies are comparatively of a major character and go to the root of the prosecution story. These

C cannot therefore be ignored to give undue importance to the prosecution case. It is well settled that the Court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. The evidence is to be considered from the point of view of trustworthiness and once the same stands satisfied, it

D ought to inspire confidence in the mind of the Court to accept the stated evidence. [Paras 11, 12][260-C-G]

2. The evidence is scanty and lacking support to establish that the contraband was really recovered from the possession of the respondents in the manner alleged by the prosecution on the said date and time. It is imperative that the law the Court should

E follow for awarding conviction under the provisions of N.D.P.S. Act is “stringent the punishment stricter the proof.” In such cases, the prosecution evidence has to be examined very zealously so as to exclude every chance of false implication. But, in the case on hand, under the circumstances, the prosecution

F story cannot be believed to award conviction to the accused-respondents. They deserve benefit of doubt. [Para 13][261-A-C]

G *State of H.P. v. Lekh Raj* (2000) 1 SCC 247 : [1999] 4 Suppl. SCR 286; *Sukhdev Yadav v. State of Bihar* (2001) 8 SCC 86 : [2001] 3 Suppl. SCR 91 – relied on.

Case Law Reference

[1999] 4 Suppl. SCR 286	relied on	Para 12
[2001] 3 Suppl. SCR 91	relied on	Para 12

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal A  
Nos. 2133-2134 of 2011.

From the Judgment and Order dated 14.10.2009 of the High Court of Himachal Pradesh at Shimla in Criminal Appeal Nos. 220 and 348 of 2006.

D. K. Thakur, S. Ahmed, Varinder Kumar Sharma, Naresh K. B  
Sharma, Advs. for the Appellant.

S. S. Ray, Vaibhav G., Ms. Rakhi Ray, Advs. for the Respondents.

The Judgment of the Court was delivered by

**N. V. RAMANA, J. 1.** These appeals are filed by the State C  
having aggrieved by the judgment and order dated 14<sup>th</sup> October, 2009 passed by the High Court of Himachal Pradesh, allowing the Criminal Appeals filed by the accused—respondents herein against their conviction passed by the trial Court under the Narcotic Drugs and Psychotropic Substances Act (for short “the N.D.P.S. Act”). By the said order, the High Court set aside the order of conviction and sentence passed by the D  
trial Court against the accused—respondents herein.

2. In order to appreciate the merits of these appeals, brief facts as emerged from the prosecution case need to be noted at the outset. On 10<sup>th</sup> July, 2004, Anjani Kumar, Inspector, CID, Shimla (PW12), upon receiving a secret information that some people are pursuing the unlawful E  
business of charas, proceeded towards Panarsa Bridge along with ASI Gian Chand (PW 9) and Constable Rakesh Kumar (PW 8) and some other police personnel. Amar Chand (PW 1) and Kuldeep Kumar (PW 2) who were going on that route at that time, also joined them as witnesses. At around 11.30 p.m. in the night, the accused—respondents F  
herein arrived at that place carrying with them three gunny bags of contraband (Charas) and upon seeing police, they tried to run away. Police overpowered the accused and seized the contraband from their possession, prepared samples, sealed and marked them and registered the case. After investigation, charges were framed against the accused and upon their denial, the case was committed for trial. G

3. The Trial Court convicted the accused for the offence punishable under Section 20 of the N.D.P.S. Act and sentenced them to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.1,00,000/- each and in default of payment of fine, to undergo further imprisonment for two years. H

A           4. Aggrieved by the order of conviction and sentence passed by the trial Court, the accused filed appeals before the High Court and the High Court after analyzing the evidence allowed their appeals and set aside the conviction. Dissatisfied with the acquittal order passed by the High Court, the State is in appeal before us.

B           5. We have heard learned counsel appearing for the appellant – State of Himachal Pradesh and the learned counsel appearing for the respondents as well, and carefully gone through the material on record.

C           6. It is submitted before us by the learned counsel for the State that while dealing with the appeals of the accused, the High Court has given greater importance to trivial discrepancies in the prosecution case. Ignoring the cogent evidence advanced by official witnesses, the High Court simply held that there were material contradictions in their depositions and without assigning any plausible reason allowed the appeals of the accused and thereby committed an error of law.

D           7. Learned counsel appearing for the accused—respondents, however, supported the view taken by the High Court in acquitting the accused.

E           8. Having given our thoughtful consideration to the rival submissions and after going through the material available on record, we notice the following discrepancies in the prosecution case, which in our considered opinion, bear greater importance in dealing with the case on hand :

F           (i) The evidence of Tulsi Ram (DW 2) makes it clear that on the day of incident i.e. 10-7-2004, when he was going to his house through Panarsa Bridge at about 4/5 p.m., police officials met him on the way near Panarsa Bridge. They asked him to load three gunny bags lying outside an abandoned house, into the vehicle. Accordingly he carried two gunny bags while one bag was carried by the police officials and loaded them in the vehicle.

G           He has also deposed that the police officials told him that the bags contained contraband material ‘charas’ and the same was recovered from the abandoned house.

H           (ii) PW 1 (Amar Chand) and PW 2 (Kuldip Kumar) who were said to be the independent witnesses, did not support the case

of prosecution. They clearly stated that they were not present at the spot when the incident took place and denied the detaining of accused—respondents in their presence and alleged recovery of contraband from the accused. In categorical terms, they deposed that they were called to the police station and their signatures were taken on some papers. Moreover, they have admitted that earlier also they were used by the police as prosecution witnesses in some other cases.

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(iii) According to the depositions of police officials PW 9 (Gian Chand) was sent to shopkeeper Hem Raj (PW5) to borrow scale and weights on the intervening night of 10<sup>th</sup> & 11<sup>th</sup> July, 2004, and the seized material was sent to malkhana. Contrary to this, PW 5 (Hem Raj) stated that the scale and weights were borrowed from him by the police officials in the morning 9 or 10 am on 11<sup>th</sup> July, 2004. The said PW5 was also declared hostile. Not only this, according to Anjani Kumar (PW 12), Gian Chand (PW 9) left the spot to get scale and weights at 11.30 p.m. returned to the spot at 8.15 p.m., ante time. Whereas another witness Constable Rakesh Kumar (PW 8) deposed that Gian Chand (PW 9) left the spot to bring scale and weights at 1 a.m.

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(iv) According to Anjani Kumar (PW 12), he called Rajinder Kumar (PW11) on his cell phone and asked to join him at Kullu whereas the record shows that Rajinder Kumar (PW 11) joined PW 12 at Panarsa and he has clearly denied to have received any call from PW 12.

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(v) It is the case of the accused—respondents that while they were taking tea at a Dhaba, police arrived there and taken them to police station and falsely implicated them in the case. This fact corroborates with the deposition of Bihari Lal (DW 3), a tea vendor, who stated that police officials came to his shop and took away the accused on 11-7-2004.

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9. Besides the above noted inadequacies, there are also certain other contradictory statements by the prosecution witnesses relating to other aspects of the case, *per se*, according to Rakesh Kumar (PW8), he carried the report (Ex.PH) to police station in a truck, whereas PW-9 (Gaiian Chand) states that PW8 travelled by a scooter and the prime

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A witness Anjani Kumar (PW12) says that PW8 went to police station and returned to the spot by foot.

10. One more important discrepancy in the prosecution case that gives rise to suspicion of truthfulness of police officers is that, as deposed by Anjani Kumar (PW 12) the entire seized case property together with six sample parcels was deposited by him with Gandhi Ram (PW 6). Whereas Dabe Ram, SHO (PW4) says that Anjani Kumar (PW12) produced three bags and three sample parcels before him at 8.30 pm. On the other hand, the material on record proves the same wrong as at the relevant time, PW12 was present at Sadar Police Station, Mandi and sent special report to Superintendent of Police (Ext. PW 11/A).

11. It also appears from the record that in order to satisfy the requirement of Section 55 of N.D.P.S. Act, the case property was accordingly tampered by the police. It is also relevant to mention here that in the prescribed form, the place of seizure was mentioned as Nagwain and not Panarsa Bridge and the name of only one accused i.e. Santosh Kumar was shown from whom the contraband was said to have been seized while he was carrying three gunny bags. As rightly observed by the High Court, it appears that the name of other accused was added afterwards to justify the fact that one person could not have carried three bags of contraband at a time.

12. Going by the number of discrepancies in the prosecution case coupled with the contradictory statements by prosecution witnesses, the entire prosecution story vitiates and leads for discrediting its version. Contradictions in the statement of the witnesses are fatal for the case, though minor discrepancies or variance in their evidence will not disfavour [See: *State of H.P. Vs. Lekh Raj* (2000) 1 SCC 247]. Considering the circumstances of the case on hand, it can be said that the discrepancies are comparatively of a major character and go to the root of the prosecution story. We cannot therefore ignore them to give undue importance to the prosecution case. It is well settled that the Court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. The evidence is to be considered from the point of view of trustworthiness and once the same stands satisfied, it ought to inspire confidence in the mind of the Court to accept the stated evidence [See: *Sukhdev Yadav v. State of Bihar*, (2001) 8 SCC 86].

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13. In the light of the above discussion, in our considered opinion, A  
the prosecution has failed to establish the commission of alleged offence  
by the accused—respondents beyond reasonable doubt. The evidence  
is scanty and lacking support to establish that the contraband was really  
recovered from the possession of the respondents in the manner alleged  
by the prosecution on the said date and time. It is imperative that the law B  
the Court should follow for awarding conviction under the provisions of  
N.D.P.S. Act is “stringent the punishment stricter the proof.” In such  
cases, the prosecution evidence has to be examined very zealously so as  
to exclude every chance of false implication. But, in the case on hand,  
under the above explained circumstances, the prosecution story cannot C  
be believed to award conviction to the accused—respondents. They  
deserve benefit of doubt. We are, therefore, in complete agreement with  
the view taken by the High Court and see no reason to interfere with the  
order impugned herein.

14. Accordingly, the Criminal Appeals stand dismissed.