

A THE STATE OF HIMACHAL PRADESH

v.

PARDEEP KUMAR ETC.

(Criminal Appeal Nos. 276-277 of 2018)

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FEBRUARY 16, 2018

[RANJAN GOGOI AND R. BANUMATHI, JJ.]

C *Narcotics Drugs and Psychotropic Substances Act, 1985 – s.20 r/w. s.29 – Conviction under – Propriety of – On 27.01.2009 a police party on patrolling duty on National Highway 21 on Manali-Kullu road, signaled a car to stop – Vehicle stopped and a person allegedly fled away from the car, while accused-respondent nos.1 and 2 were found sitting in the car – On search, rucksack containing cannabis mixture found from the car – Trial court convicted and*
D *sentenced the accused for offences u/s. 20 r/w. s.29 – High Court in appeal reversed the order of conviction on the ground that prosecution did not discharge its burden of examining independent witnesses in support of its case and that the contraband article was produced before trial court in a torn condition raising serious doubt*
E *about its authenticity – Held: Examination of independent witnesses is not an indispensable requirement and such non-examination is not necessarily fatal to the prosecution case – In the present case, according to the prosecution, independent witnesses were not available to witness the recovery of contraband due to extreme cold*
F *– In absence of any animosity between the police party and the accused and having regard to the large quantity of contraband that was recovered (18.85 kgs.), it is unlikely that the contraband was planted/foisted in the vehicle of accused persons – Further, w.r.t. condition of the contraband parcel, the prosecution witnesses examined in this regard testified that the parcel was in a torn condition*
G *due to its bulky nature and also due to nails on the stool on which it was kept – Order of High Court is set aside and that of trial court convicting and sentencing the accused-respondents, restored.*

Evidence – Independent witnesses – Non-examination of – Discussed.

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Allowing the appeals, the Court

HELD: 1.1 Examination of independent witnesses is not an indispensable requirement and such non-examination is not necessarily fatal to the prosecution case. In the present case, according to the prosecution, independent witnesses were not available to witness the recovery of the contraband due to extreme cold. The fact that the incident took place at about 6.30 p.m. on 27-01-2009 and that too on the Manali-Kulu road may lend credence to the prosecution version of its inability to produce independent witnesses. In the absence of any animosity between the police party and the accused and having regard to the large quantity of contraband that was recovered (18.85 kgs.), it is unlikely that the contraband had been planted/foisted in the vehicle of the accused persons. In so far as the condition of the contraband parcel is concerned, the materials on record indicate that the said parcel was brought to the trial Court on 15-9-2009 in a torn condition. The prosecution witnesses examined in this regard had testified that the parcel was in a torn condition due to its bulky nature and also due to nails on the stool on which it was kept. In this regard, it may also be noted that the samples from the contraband parcel were sent to the Forensic Laboratory on 23.7.2010. No suggestion was given to the witnesses (PWs 12 and 13) who had taken the samples to the laboratory that the contraband parcel had been tampered with. PW-16, who had chemically examined the contraband samples, was fully cross-examined by the defence. There is nothing in his evidence to suggest that the sample(s) came to him in a torn or otherwise doubtful condition. The grounds on which the High Court had reversed the findings of conviction of the accused-respondents ought not to be accepted. [Para 6][659-E-H; 660-A-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 276-277 of 2018.

From the Judgment and Order dated 02.04.2015 of the High Court of Himachal Pradesh at Shimla in Cr. A. No. 179/2011 and Cr. A. No. 180/2011 respectively.

D. K. Thakur, AAG, Varinder Kumar Sharma, Adv. for the Appellant.

Rabin Majumder, Ms. Antima Bazaz, Advs. for the Respondents.

A The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. Leave granted.

2. These appeals are by the State of Himachal Pradesh challenging the judgment of the High Court acquitting the accused-respondent Nos.1 and 2 of the charge of commission of offences under Section 20 read with Section 29 of the Narcotics Drugs and Psychotropic Substances Act (hereinafter referred to as “NDPS Act”). The Judgment of acquittal by the High Court is in reversal of the conviction recorded by learned trial court which had imposed a sentence of rigorous imprisonment for 12 years and fine of Rs.1,50,000/- on each of the accused. On default of payment of the fine amount, it was ordered by the learned trial Court that the accused-respondents will suffer imprisonment for a further period of one year.

3. The case of the prosecution in short is that on 27-1-2009 at about 6.30 p.m. while a police party was on patrolling duty on National Highway 21 on the Manali- Kullu road, a white colour Indica car was signaled to stop. According to the prosecution, the vehicle stopped at a distance of about 25 feet away from the police party. One person is alleged to fled away from the car and the accused No.1 was found sitting in the rear seat of the vehicle whereas the accused No.2 was found sitting in driver’s seat. The prosecution further alleges that the accused Nos.1 and 2 disclosed their names and had further stated that the person who fled away is one Rajbir Singh. It is the further case of the prosecution that prior to search of the vehicle, police constables were sent to bring local witnesses but they did not succeed in bringing any witnesses as on account of the severe cold on the date of occurrence, no independent person was available. Thereafter, a search of the car was conducted by the police party and a rucksack was found lying near the legs of accused No.2 which was found to contain cannabis mixture weighing about 18.85 kgs. According to the prosecution two samples of about 25 grams each were taken from the contraband recovered and the samples were separated and sealed. Both the accused Nos.1 and 2 were arrested and on the next day accused No.3 was also arrested. During interrogation, the accused persons had named one Jeewan Lal as the person from whom they had purchased the contraband. The house of Jeewan Lal was searched on 29.11.2009 and an electronic weighing machine, envelopes containing small particles of cannabis and

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other such materials were recovered. Accordingly, Jeewan Lal (accused A
No.4) was arrested. Charges were framed against all the four accused
who were sent for trial. At the conclusion of the trial, the learned trial
court while convicting and sentencing the accused Nos.1 and 2, as
aforesaid, acquitted the other accused Nos.3 and 4.

4. Aggrieved, the accused-respondents had filed appeals before B
the High Court.

5. The High Court, as it appears from the impugned judgment,
took the view that the prosecution had not discharged its burden of
examining independent witnesses in support of its case inasmuch as
there was a bazaar situated at a distance of about 100 meters and further C
the place where the contraband was allegedly detected and seized was
on the Manali-Kullu Road which is a busy road with many buses and
vehicles plying on the same. The High Court also took the view that the
contraband article was produced before the learned trial court in a torn
condition which raised serious doubts as to its origin and authenticity. D
On the basis of the aforesaid twin findings, the appeal was allowed and
the order of conviction of the accused-respondents was reversed.

6. We have considered the matter and have heard the learned
counsels for the parties. So far as examination of independent witnesses
in support of the prosecution case is concerned all that would be E
necessary to say in this regard is that examination of independent
witnesses is not an indispensable requirement and such non-examination
is not necessarily fatal to the prosecution case. In the present case,
according to the prosecution, independent witnesses were not available
to witness the recovery of the contraband due to extreme cold. The
fact that the incident took place at about 6.30 p.m. on 27-01-2009 and F
that too on the Manali-Kulu road may lend credence to the prosecution
version of its inability to produce independent witnesses. In the absence
of any animosity between the police party and the accused and having
regard to the large quantity of contraband that was recovered (18.85
kgs.), we are of the view that it is unlikely that the contraband had been G
planted/foisted in the vehicle of the accused persons. In so far as the
condition of the contraband parcel is concerned, the materials on record
indicate that the said parcel was brought to the learned trial Court on 15-
9-2009 in a torn condition. The prosecution witnesses examined in this
regard had testified that the parcel was in a torn condition due to its

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- A bulky nature and also due to nails on the stool on which it was kept. In this regard, it may also be noted that the samples from the contraband parcel were sent to the Forensic Laboratory on 23.7.2010. No suggestion was given to the witnesses (PWs 12 and 13) who had taken the samples to the laboratory that the contraband parcel has been tampered with.
- B PW-16, who had chemically examined the contraband samples, was fully cross-examined by the defence. There is nothing in his evidence to suggest that the sample(s) came to him in a torn or otherwise doubtful condition. In view of all the above, we are of the opinion that the grounds on which the High Court have reversed the findings of conviction of the accused-respondents ought not to be accepted.
- C 7. We, therefore, for the aforementioned reasons, set aside the order of the High Court acquitting the accused-respondents and restore the order of the learned trial court convicting the accused-respondents under Section 20 read with Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The sentence imposed by the learned trial Court is also restored. The accused respondents shall surrender forthwith to serve out the remaining part of the sentence failing which they will be taken into custody.
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8. The appeals are allowed as indicated above.