RAJESH KUMAR AND ANR. A

v.

STATE GOVT. OF NCT OF DELHI

(Criminal Appeal No. 380 of 2008)

FEBRUARY 25, 2008

B

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ]

Code of Criminal Procedure, 1973 – s. 293 – Reports of Government scientific experts – Deposition of expert in proceedings before the Court – Necessity of – Held: Is not C *obligatory.*

Punjab Excise Act, 1914 – s. 61 – Conviction under, for smuggling liquor – Upheld by courts below – High Court holding that as documents marked in terms of s. 293 Cr.P.C, examination of witness to prove the Excise Control Laboratory D *report not required – On appeal, held: Conviction justified– However, sentence of six months simple imprisonment reduced to the period already undergone – Code of Criminal Procedure, 1973 – s. 293 - Sentence/Sentencing.*

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It is alleged that the appellants indulged in the smuggling of liquor from Haryana to Delhi. The raiding party intercepted the vehicle in which the appellants were traveling and apprehended the appellants. The bottles of liquor were recovered. Form M-29 was filed up. The F **samples were sealed and sent to the Excise Control Laboratory for testing and the samples tested positive as whisky. Prosecution examined the witnesses and they testified as to recovery of samples. Appellants were convicted for offence under s. 61 of the Punjab Excise Act, 1914 and sentenced to six months simple** G **imprisonment. The Sessions Judge upheld the order. In the Revision petition, the High Court referring to the evidence of the prosecution witnesses about sealing and sending samples to the Excise Control Laboratory held**

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A **that there was no necessity for examining any witness to prove the Excise Control Laboratory report as documents were marked in terms of section 293 Cr.P.C. Hence the present appeal.**

B **Disposing of the appeal, the Court**

HELD: 1.1 A bare reading of sub-sections (1) and (2) of Section 293 Cr.P.C. of Criminal Procedure shows that it is not obligatory that an expert who furnishes his opinion on the scientific issue of the chemical examination of
C **substance, should be of necessity made to depose in proceedings before Court. [Para 9] [395-F]**

Usha Kolhe v. The State of Maharashtra **AIR 1963 SC 1531;** *Bhupinder Singh v. State of Punjab* **AIR 1988 SC 1011 – relied on.**

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2. With regard to the submission that the appellants have already suffered custody for more than three months, and the occurrence took place nearly 13 years back, there was no minimum sentence prescribed at the relevant point
E **of time. That being so, while upholding the conviction, the sentence is reduced to the period already undergone. [Para 10] [395-G; 396-A]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 380 of 2008

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From the final Judgment and order dated 18/1/2007 of the High Court of Delhi at New Delhi in Crl. R.P. No. 190/2006.

M.N. Krishnamani, Soumyajit Pani and Ansar Ahmad Chaudhary for the Appellants.

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B.B. Singh, Abha R. Sharma and D.S. Mahra for the Respondent.

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Leave granted.

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2. Challenge in this appeal is to the judgment of a learned Single Judge of the Delhi High Court dismissing the revision petition filed by the appellants. By the revision petition challenge was to the judgment of learned Additional Sessions Judge, New Delhi, upholding the conviction and sentence imposed by the learned Metropolitan Magistrate.

3. Background facts in a nutshell are as follows:

The appellants were alleged to have been indulging in smuggling of liquor from Haryana to Delhi. The prosecution alleged that upon receipt of information, S.I. Lalit Mohan, alongwith certain police officials, constituted a raiding party, assembled near a traffic intersection and on 8.4.1994 at about 1.45 A.M. intercepted a Tata 407 vehicle in which the appellants were travelling. Despite being signalled to stop, the vehicle sped away. The police officials chased it, and stopped it and apprehended the appellants. Eighteen cartons containing 12 bottles of "Bonnie Scot" Special Malt Whisky, each being an 750 ml bottle, were recovered. Two sample bottles were taken out separately as samples and (from each carton i.e., 36 bottles). The heads of the samples bottles were enclosed in White Pullanda and sealed with the letters "LMN". Form M-29 was also filled. The seal was handed over to Head Constable Satpal Singh. An FIR was lodged and a site plan was prepared. The appellants were arrayed as accused and arrested. The Excise Control Laboratory opined that the samples submitted tested positive as Whisky. The appellants were charged with having committed offence under Section 61 of the Punjab Excise Act, 1914 (in short the 'Act'). They stood trial pleading not guilty.

4. The prosecution examined three witnesses. All of them testified as to recovery of the samples. The accused persons did not lead any evidence in their defence. They however, denied the accusations through statements under Section 313 of the Criminal Procedure Code, 1973 (in short the 'Cr.P.C.')

5. The Metropolitan Magistrate i.e., the Trial Court by judgment and order dated 1.5.2001 found the appellants guilty

A and sentenced them to six months simple imprisonment with fine of Rs.2,000/- and in default a further three months simple imprisonment. The appeal preferred by the petitioners to the Additional Sessions Judge was dismissed by order dated 22.2.2006.

B 6. The only stand before the High Court was that there was delay in dispatch of the sample and none was examined to prove the reports. The High Court found that there was no substance in the plea. Referring to the evidence of SI PW3 and PW1 about the sealing and sending samples to the Excise Control C Laboratory, it was noted that the Form M-29 was filled up by PW 2 at the time of recovery. All the prosecution witnesses have testified that the same was filled up by PW3. The seal after use was handed over to PW1. These were tallied with the specimen seal of M29 when the Excise Control Laboratory sealed them. It D was noted that there was no necessity for examining any witness to prove the Excise Control Laboratory report as documents were marked in terms of Section 293 Cr.P.C.

7. Learned counsel for appellants reiterated the submissions made before the High Court. Learned counsel for E the respondent, on the other hand, supported the judgment of the High Court. It is submitted that no question was put to either PW1 or PW3 on the aspect of alleged delay in sending the samples.

F 8. Section 293 Cr.P.C. reads as follows:

"293. Reports_ of certain Government scientific experts. (1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted G to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, summon and examine any H

such expert as to the subject-matter of his report.

(3) Where any such expert is summoned by a Court and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on this behalf.

(4) This section applies to the following Government scientific experts, namely:-

(a) any Chemical Examiner or Assistant Chemical Examiner to Government;

(b) the Chief Controller of Explosives;

(c) the Director of the Finger Print Bureau;

(d) the Director, Haffkeine Institute, Bombay;

(e) the Director [Deputy Director or Assistant Director] of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;

(f) the Serologist to the Government.

(g) any other Government Scientific Expert specified by notification by Central Government for this purpose.]"

9. A bare reading of sub-sections (1) and (2) of Section 293 shows that it is not obligatory that an expert who furnishes his opinion on the scientific issue of the chemical examination of substance, should be of necessity made to depose in proceedings before Court. This aspect has been highlighted by this Court in *Ukha Kolhe v. The State of Maharashtra* (AIR 1963 SC 1531) and *Bhupinder Singh v. State of Punjab* (AIR 1988 SC 1011). Therefore, there is no substance in the revision petition so far as the conviction is concerned.

10. Learned counsel for the appellants submitted that the appellants have already suffered custody for more than three

A months, and the occurrence took place nearly 13 years back. It is noted that there was no minimum sentence prescribed at the relevant point of time. That being so, while upholding the conviction, we reduce the sentence to the period already undergone. The prayer for exemption from surrendering was
B accepted by order dated 12.4.2007.

11. The appeal is disposed of accordingly.

N.J. Appeal disposed of.