

CASE NO.:
Appeal (crl.) 996 of 2006

PETITIONER:
Francis Stanly @ Stalin

RESPONDENT:
Intelligence Officer, Narcotic Control Bureau, Thiruvananthapuram

DATE OF JUDGMENT: 14/12/2006

BENCH:
S. B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T

MARKANDEY KATJU, J.

This appeal has been filed against the impugned judgment of the Kerala High Court dated 5.4.2004 in Criminal Appeal No. 217 of 2002.

Heard learned counsel for the parties and perused the record.

The appellant was accused No. 2 in the criminal case under the NDPS Act with which we are concerned.

The prosecution case briefly stated is that on 1.10.2000 at 3.45 P.M., PW7, Radhesh, Intelligence Officer, received information that one person was standing in the parking area between Gandhi Park and Pattomthanu Pillai Park at East Fort, Thiruvananthapuram waiting for somebody to dispose of about one kilogram of heroin which was in his possession. PW7 recorded the information and submitted Ext. P10 report to PW5, the Superintendent, Narcotic Control Bureau Regional Intelligence Unit, Thiruvananthapuram. PW7 alongwith the informant proceeded to the place where the 1st accused was waiting and the 1st accused was shown to PW7 by the informant. PW5 alongwith PW4 and PW6 reached near Pattomthanu Pillai Park about 4.30 P.M. and PW7 pointed out the 1st accused to them. PWs 4, 5 and 6 alongwith the witnesses approached the accused who was holding M.O. 2 (a) bag. PWs 4 to 6 disclosed their identity and expressed their desire to search the 1st accused. He was also informed of his right to be searched in the presence of a gazetted officer or a Magistrate. The 1st accused waived the right and expressed his willingness to be searched by the officers. When PW1 asked the 1st accused whether he was possessing any narcotic drug, the 1st accused handed over M.O. 2 (a) bag to PW4. The bag was found to contain M.O.2(d) white full shirt and a bundle of M.O. 2 (b) and M.O.2 (c) lungies. When the lungies were removed, a transparent polythene cover containing brownish powder was recovered. PW4 opened the polythene packet and took a pinch of the powder and tested it with a Field Drug Detection Kit. Since the test gave positive result, PW4 seized the narcotic drug. The polythene cover and the drug were found to weigh 1.110 kilograms. Two samples were taken and the samples were separately packed and sealed. The remaining drug was also separately packed and sealed. PW4 prepared Ext. P1 Mahazar. At the request of PW4, PW6 served Ext. P2 summons on the 1st accused directing him to appear on the N.C.B. Office at 7 P.M. on the same day. Since the 1st accused did not know the place, PW7 was asked to accompany the 1st accused to the N.C.B. Office. In obedience to the summons the 1st accused appeared before the N.C.B. Office and gave Ext. P12 statement in Tamil which was recorded by PW6. Thereafter PW6 arrested the 1st accused. On the next day the 1st accused was produced before the Magistrate who remanded him to the Sub Jail. Since the name of the 2nd accused was also mentioned in Ext. P12

statement, PW5 proceeded to Idinthikara of Thirunalveli District on the morning of 2.10.2000 and Ext. P15 summons was served on the 2nd accused directing him to appear before the N.C.B. Office at Thiruvananthapuram at 5 P.M. on that day. The 2nd accused appeared before the N.C.B. Office in the evening and gave Ext. P16 statement in his own handwriting. PW6 arrested the 2nd accused. The 2nd accused was also produced before the Magistrate, who remanded him to the Sub Jail. The investigation was handed over to PW 7. The samples were sent to the Customs Laboratory, Cochin and Ext. P5 report was obtained. After completing the investigation, PW7 lodged the complaint before the Court.

The accused denied the charge. Thereupon the prosecution examined PWs 1 to 7, marked Exts. P1 to P20 and identified M.Os. 1 to 4. After the close of the prosecution evidence the accused were examined under Section 313 of the Cr.P.C. They denied the prosecution evidence and pleaded that they were innocent.

A perusal of the facts of the case would show that there is no allegation that the appellant himself was found in possession of any narcotics. The allegation was only that he handed over some narcotics to accused No. 1. The only evidence against the appellant is the retracted statement of accused No. 1 and the appellant's own retracted confession.

In Chonampara Chellappan vs. State of Kerala AIR 1979 SC 1761, it has been held (in paragraph 4) that "it is equally well settled that one tainted evidence cannot corroborate another tainted evidence because if this is allowed to be done then the very necessity of corroboration is frustrated"

In paragraph 5 of the same judgment this Court relied on a decision in Piara Singh vs. State of Punjab (1969) 3 SCR 236, in which it was observed:

"An accomplice is undoubtedly a competent witness under the Indian Evidence Act. There can be, however, no doubt that the very fact that he has participated in the commission of the offence introduces a serious taint in his evidence and Courts are naturally reluctant to act on such tainted evidence unless it is corroborated in material particulars by other independent evidence".

Thus, it appears from the above decision that there is some taint in the evidence of an accomplice, and the reason for this obviously is that an accomplice's evidence is looked upon with suspicion because to protect himself he may be inclined to implicate the co-accused.

We make it clear that we are not of the opinion that the evidence of the accomplice can never be relied upon, since such evidence is admissible under Section 133 of the Evidence Act. However, Section 133 has to be read along with Section 114(b) of the Evidence Act, and reading them together the law is well settled that the rule of prudence requires that the evidence of an accomplice should ordinarily be corroborated by some other evidence vide Suresh Chandra Bahri vs. State of Bihar AIR 1994 SC 2420.

Learned counsel for the respondent relied upon a decision of this Court in M. Prabhulal vs. Assistant Director, Directorate of Revenue Intelligence (2003) 8 SCC 449, wherein it has been held that if the confessional statement is found to be voluntary and free from pressure, it can be accepted. This is no doubt true, but it all depends on the facts and circumstances of each case and no hard and fast rule can be laid down in this connection whether a particular alleged confessional statement should be accepted.

Learned counsel for the respondent then relied upon a decision of this Court in T. Thomson vs. State of Kerala and another (2002) 9 SCC 618, wherein it was held that the confession in question was voluntary. In this

connection we reiterate that it all depends on the facts and circumstances of each case, and no hard and fast rule can be laid down as to when a confession can be regarded as voluntary and when it should not.

In State (NCT of Delhi) vs. Navjot Sandhu @ Afasan Guru (2005) 11 SCC 600 (vide para 34) this Court observed :

"A retracted confession may form the legal basis of a conviction if the court is satisfied that it was true and was voluntarily made. But it has been held that a court shall not base a conviction on such a confession without corroboration. It is not a rule of law, but is only a rule of prudence that under no circumstances can such a conviction be made without corroboration, for a court may, in a particular case, be convinced of the absolute truth of a confession and prepared to act upon it without corroboration; but it may be laid down as a general rule of practice that it is unsafe to rely upon a confession, much less on a retracted confession, unless the court is satisfied that the retracted confession is true and voluntarily made and has been corroborated in material particulars".

It is true that in the present case the confession was made by the accused not before an ordinary police officer, but before an officer, under the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act') who is an officer of the Department of Revenue Intelligence, and it is held by this Court in Raj Kumar Karwal vs. Union of India and others (1990) 2 SCC 409, that such a confession is not hit by Section 25 of the Evidence Act.

We are of the opinion that while it is true that a confession made before an officer of the Department of Revenue Intelligence under the NDPS Act may not be hit by Section 25 in view of the aforesaid decisions, yet such a confession must be subject to closer scrutiny than a confession made to private citizens or officials who do not have investigating powers under Act. Hence the alleged confession made by the same appellant must be subjected to closer scrutiny than would otherwise be required.

We have carefully perused the facts of the present case, and we are of the opinion that on the evidence of this particular case it would not be safe to maintain the conviction of the appellant, and he must be given the benefit of reasonable doubt.

We make it clear that we are not laying down any general principle in this case, and are deciding it only on the particular facts and circumstances of this case. Hence, this case cannot be a precedent for other cases which may be on their own facts.

We are informed that the appellant has already undergone more than six years' imprisonment.

On the facts and circumstances of the case, we allow this appeal and set aside the orders of the courts below. The appellant who is in jail shall be set free forthwith unless required in connection with some other case.