

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-1988-SB of 2003
Date of Decision: August 26, 2015

Amarjit Singh @ Lambar

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.D.S.Sandhu, Advocate
for the appellant.

Mr.B.S.Bhullar, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the judgment of conviction and order of sentence dated 16.10.2003 passed by learned Judge, Special Court, Kapurthala, whereby he was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹20,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months under Section 15 of the NDPS Act.

The brief facts of the prosecution case are that on 29.02.2000, ASI Iqbal Singh along with other police officials was holding nakabandi at Octroi post, Sultanpur Lodhi. One Hazara Singh came there and he was joined in the police party. After some time,

accused person carrying something on his head was seeing coming from the side of railway crossing, who was signalled to stop but he tried to turn back. On suspicion he was apprehended and on enquiry, he disclosed his name as Amarjit Singh @ Lambar. Accused was carrying a gunny bag on his head. An offer was given to the accused regarding search. Then DSP was called and DSP Ravcharan Singh along with gunman reached the spot. DSP Ravcharan Singh disclosed his identity and then search of the bag was made, out of which 8 kgs. of poppy husk was recovered. 250 gram of poppy husk was separated as sample and on weighment, remaining poppy husk came to 7.750 kgs. Sealed parcels were prepared along with sample seals and taken into police possession vide recovery memo. Ruqa was sent to the police station, on the basis of which formal FIR was registered. Accused was arrested. Statements of witnesses were recorded. The case property was deposited with MHC Sakattar Singh on return to the police station. After necessary investigation, challan was presented against accused-appellant.

On presentation of challan against accused-appellant, copies of challan and other documents were supplied to him under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant was charge-sheeted under Section 15 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 ASI Iqbal Singh, who is Investigating Officer and deposed regarding investigation conducted by him in the present case. PW-2 Head

Constable Sakattar Singh, is a formal witness, who tendered into evidence his affidavit Ex.PG. PW-3 ASI Jaswinder Singh mainly deposed that on receipt of ruqa Ex.PD, he recorded formal FIR Ex.PD/1. PW-4 DSP Ravcharan Singh mainly deposed as per prosecution version. PW-5 SI Sarup Singh deposed regarding presentation of challan. PW-6 Constable Surinder Pal, is also formal witness, who tendered into evidence his affidavit Ex.PG/1. Learned Public Prosecutor closed the evidence after tendering report of chemical examiner Ex.PH.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. and he denied the correctness of the evidence and pleaded himself as innocent. He further pleaded that no recovery was effected from him and his brother Sukhwinder Singh. The police raided their residence and brought him and his brother to police station and falsely implicated him in this case and his brother in another case after the gap of one or two days. He also pleaded that scooter of his brother struck against an employee of police station a few days ago, due to which, lateron, they falsely implicated him in this case and his brother in another case. Nothing has been recovered from their house.

In defence, accused-appellant examined DW-1 Head Constable Partap Singh, who mainly brought the record of FIR No.33 dated 29.02.2000 under Section 15 of the NDPS Act vide which present accused Amarjit Singh @ Lambar son of Neja Singh resident of Toti was arrested on 29.02.2000 and in FIR No.32 dated

28.02.2000 under Section 15 of the NDPS Act, accused Sukhwinder Singh alias Chhinda son of Neja Singh resident of Toti was arrested on 28.02.2000. DW-2 Atma Singh mainly deposed that about 3¼ years ago, one Thanedar and two Constables came in village Toti and searched the house of accused. Thereafter, the police party told that scooter in possession of the accused is a stolen property and they took both the accused to police station. This witness along with chowkidar Bawa Singh and Lamberdar Dwarka Singh and 10-12 other persons went to the police station on the same day along with parents of the accused. Both the accused were in police station. They asked the police as to why they were detained and the police replied that they were to be interrogated regarding the theft of scooter but both of them have been falsely implicated in this case.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant, as stated above.

At the time of arguments, learned counsel for the appellant argued that first of all no recovery witness has been examined. The statement of PW-1 ASI Iqbal Singh, Investigating Officer, is not supported and corroborated by any other witness. PW-4 DSP Ravcharan Singh has come on the spot when the recovery was already effected and lying there. DSP Ravcharan Singh is not a recovery witness. He next argued that only one sample was taken out of the case property. No sample was separated by the Court when the case property was produced before it. He further argued that case property was not produced before the SHO. There are also

discrepancies in the statements of ASI Iqbal Singh and DSP Ravcharan Singh. He next contended that defence version is more probable. The present accused and his brother were arrested by the police in two different i.e. FIR No.32 dated 28.02.2000 and FIR No.33 dated 29.02.2000. Learned counsel for the appellant, therefore, argued that there being merit in the appeal, the same should be allowed and accused-appellant should be acquitted.

On the other hand, learned State counsel argued that prosecution has duly proved its case by leading cogent evidence. The version of PW-1 ASI Iqbal Singh is duly supported and corroborated by PW-4 DSP Ravcharan Singh and further by the report of chemical examiner. The discrepancies in the statements are minor. Learned State counsel, therefore, argued that there being no merit in the appeal, the same should be dismissed.

After hearing learned counsel for the appellant as well as learned State counsel and after going through the record, I find that statement of PW-1 ASI Iqbal Singh regarding recovery from the accused is not supported and corroborated by any other witness. It is admitted fact that one independent witness Hazara Singh and other police officials were present on the spot at nakabandi duty. The independent witness has been given up by the Public Prosecutor and no reason or ground or explanation has been given as to why no other recovery witness has been examined in the present case. PW-1 ASI Iqbal Singh is the Investigating Officer. His statement is required to be supported and corroborated by any of the police official but no

recovery witness has been examined by the prosecution.

Secondly, I find that PW-4 DSP Ravcharan Singh cannot be held as recovery witness as during cross-examination, he stated that when he reached the place of recovery, the plastic bag was lying on the ground. He got his statement recorded under Section 161 Cr.P.C. that when he reached the spot, a plastic bag which was being carried by the accused on his head, was searched. This witness also stated that weighing scale was also with the police party and the scale was having wooden handle and iron pans whereas the Investigating Officer has stated that weighing scale was having iron string and it was brought by one of the police official from the nearby shop. Further, DSP Ravcharan Singh has stated that plastic bag was lying on the ground whereas ASI Iqbal Singh has stated that the accused was carrying a gunny bag on his head. So, the witnesses have also contradicted with each other on these points.

Further, from the record, I find that it is in the statement of DSP Ravcharan Singh that there were shops nearby the place of recovery but no attempt was made to join independent witness from the locality as one of the independent witness was with the police party. Even if there was one witness with the police party, the Investigating Officer should have made an attempt to join independent witness whosoever was available but no such attempt was made by the Investigating Officer.

Next, I find that the case property was not produced before the SHO on return to the police station nor the same was sealed etc.

by the SHO nor the SHO got recovery verified from the accused and the witnesses. Further, I find that defence version is probable and supported by documentary evidence. DW-2 Atma Singh has deposed regarding defence version that accused and his brother were taken by the police along with the scooter. DW-1 Head Constable Partap Singh brought the record and proved that one FIR No.32 dated 28.02.2000 was registered against brother of the accused-appellant and another FIR No.33 dated 29.02.2000 was registered against the present accused. This defence version also creates reasonable doubt in the prosecution version.

Keeping in view the above discussion, I find that a reasonable doubt exists in the prosecution version and the prosecution has failed to prove its case by leading cogent evidence beyond reasonable doubt. Therefore, the benefit of doubt is always to go to the accused and hence giving benefit of doubt, the accused-appellant is acquitted of the charges framed against him. The judgment of conviction and order of sentence dated 16.10.2003 passed by learned Judge, Special Court, Kapurthala, are set aside. Since, the appellant Amarjit Singh @ Lambar is on bail, his bail bonds stand discharged.

Resultantly, the present appeal stands allowed.

August 26, 2015
Vgulati

(INDERJIT SINGH)
JUDGE