

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Appeal No.S-2376-SB of 2003

Date of Decision: *August 14, 2015*

Roop Chand @ Chugi

..... APPELLANT

VERSUS

State of Punjab

..... RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

PRESENT: Mr. Dhirinder Chopra, Advocate, for the appellant.

Mr. K.K. Gupta, Additional Advocate General, Punjab.

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Jaspal Singh, J

1. Challenge in this appeal is to judgment of conviction and order of sentence dated November 24, 2003 passed by Judge, Special Court, Patiala, in case FIR No.32 dated January 28, 2002, under Section 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short, 'Act'), registered at Police Station, Kotwali, Patiala, whereby he has been held guilty & convicted under Section 20(b)(ii)(B) of the Act and sentenced to undergo RI for a period of one year alongwith fine to the tune of Rs 1,000/- and in default to undergo RI for one month.

2. Briefly stated, the case of the prosecution is that on January 28, 2002, SI Jagrup Singh, while attached with CIA Staff, Patiala, alongwith ASI Paramjit Singh, ASI Bhag Singh and other police officials went in a

government vehicle bearing No.PB-11R-7938 driven by C – Narinder Singh for patrolling. When they reached near old Octroi post on Patiala – Rajpura Road, PW – Subheg Singh met and joined in the police party. In the meantime, accused was seen coming from the side of Bishan Nagar on the bank of ‘ganda nala’. He tried to slip away, however, was detained on suspicion that he was carrying some contraband. SI Jagrup Singh asked him that his search is to be conducted and if he so desires, some gazetted officer or Magistrate could be called. Accused, vide statement Ex.PC, opted to be searched in the presence of a gazetted officer. Ex.PC was thumb marked by the accused and attested by PW – Subheg Singh and ASI Paamjit Singh. DSP Satbir Singh was called at the spot, who on arrival, disclosed his identity to accused. Search of accused was conducted by SI Jagrup Singh which resulted in recovery of Charas wrapped in a glazed paper from right fold (dub in the local parlance) of his trouser worn by him.

3. After completion of investigation, challan was presented and copies of documents as required under Section 207 Cr.P.C. were furnished to the accused, free of costs.

4. There being a prima facie evidence appearing in report under Section 173(2) Cr.P.C. and the documents annexed with it, the accused was chargesheeted to face trial under Section 20 of the Act. The accused did not plead guilty to the charge and opted to contest the same. Accordingly, the prosecution was asked to adduce evidence in support of its case.

5. In order to substantiate its charge framed against the accused, the prosecution examined as many as 6 witnesses and thereafter, the prosecution closed its evidence.

6. Incriminating substances appearing in the prosecution evidence were put to the accused for eliciting his explanation as required under Section 313 Cr.P.C. He denied the same and complained of false implication. However, no evidence was led in defence.

7. After hearing learned counsel for the parties and appraisal of the evidence available on record, the trial court while believing the story of prosecution, convicted and sentenced the accused/appellant in the manner as reflected in Para 1 of this judgment.

8. Aggrieved against the said judgment, appellants preferred the instant appeal which was admitted for hearing. The trial court's record was also required and received.

9. While assailing the impugned judgment of conviction and order of sentence, it has been ebulliently argued by learned counsel for the appellant that the same are absolutely against evidence available on file and settled canons of law. There is a vital snag in the case of prosecution with regard to link evidence. The accused was allegedly arrested on January 28, 2002 and the sample is alleged to have been taken on the same day from the case property alleged to have been recovered from the accused. Sample was sent for chemical analysis after 8 days i.e. February 5, 2002 despite the fact that office of the Chemical Examiner, Patiala was at a distance of 200 yards away from the Police Station, Kotwali and in such circumstances, tampering with the case property cannot be ruled out.

10. The second contention raised by learned counsel for the appellant is that the entire case of the prosecution hinges on the testimonies of the official witnesses. Though the place of recovery is a thorough fare and large number of persons passed from there and the police party remained at

the spot for 5/6 hours but to the utter surprise, not even a single witness from the public was associated by the Investigating Officer for the reasons known to him. In the given circumstances, non-joining of a witness(es) from the public creates a dent in prosecution story and is fatal to the case of prosecution.

11. In the alternative, it has been submitted that if this Court is of the view that the submissions made by him do not appeal, a lenient view in the matter of sentence be taken in view of the fact(s) that appellant has already undergone more than two months of actual sentence and is facing the trial since 2002. The case property alleged to have been recovered from the possession of appellant is non-commercial i.e. only 500 grams. Thus, conviction and sentence imposed by learned Special Judge are not sustainable in the eyes of law and deserve to be set aside by way of acceptance of the instant appeal.

12. Per contra, learned State counsel has supported the impugned judgment of conviction and order of sentence. She submitted that there is no infirmity or illegality in the impugned judgment of conviction and order of sentence. The well-reasoned judgment passed by learned Special Judge calls for no interference by this Court and the appeal being devoid of any merits is liable to be dismissed.

13. This court has given an anxious thought to the rival submissions made by learned counsel for the parties and has perused the record available on file.

14. As regards non examining of independent witness(es) is concerned. Though Subheg Singh was associated in the police party, but he could not be examined during trial and was given up by the prosecution

having been won over. Case of the prosecution cannot be disbelieved simply on the ground that independent witness was not examined. It is common knowledge that many people do not come forward to depose. They are averse to depose in favour of prosecution as they are required to go to the court time & again and ultimately, they feel harassed. Moreover, witnesses examined in this case are not alleged to have any animus against the accused. By now, it is beyond cavil of doubt that statements of police officials are to be weighed in the same scales as of other witnesses. The statements of police officials are to be scrutinised with due care and caution when the same do not find corroboration from any independent source, and in the case in hand, a careful delving into their statements would reveal that there is no material infirmity.

15. Now coming on the contention regarding delay in sending the samples to the Forensic Science Laboratory. In view of cogent evidence that charas was seized from appellant and seal was put on the sample were intact till was handed over to chemical examiner, delay itself is not fatal to the prosecution case. The sample parcel was sent to Forensic Science Laboratory on February 05, 2002 through Constable Avtar Singh (PW-2). The evidence of this witness could not be shattered in cross examination. Avtar Singh (PW-2) tendered his affidavit Ex.PB to the effect that on February 05, 2002, sample parcel was handed over to him by Sukhpal Singh MHC for depositing in FSL and he deposited the same in the laboratory. He adjured in the affidavit that as long as the sample parcel remained in his possession, nobody tampered the same. As the evidence of PW-2 could not be shattered in cross examination, there is no evidence to indicate that sample parcel was ever tampered. Moreover, it has also come on evidence

that till the date sample was received by chemical examiner, the seal put on the same was intact. That itself proves and establishes that there was no tampering with the aforesaid seal in the sample at any stage and sample received by the analyst for chemical examination contained the same contraband which was recovered from the possession of the appellant. In this view of the matter, delay of 8 days in sending the sample has not caused any prejudice to the appellant. Thus, link evidence in this case is complete.

16. So far as the contention of learned counsel for the appellant, for taking a lenient view in the matter of sentence is concerned, accused – appellant has been found to be in possession of 500 grams of opium without any permit or license. The mere fact that he has already undergone a period two months and 10 days is not suffice to let him off or to absolve him for liability. Now a days, such cases are increasing day by day which is resulting in ruining the members of the society, particularly the Youths. The commission of such like offence(s) deserved to be curbed with heavy hands.

17. In the light of what has been discussed above, there is no merit in the instant appeal. Impugned judgment of conviction and order of sentence do not call for any interference by this Court. Accordingly, the appeal is dismissed.

August 14, 2015
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(Jaspal Singh)
Judge