

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRA-S-1907-SB-2003

Date of decision: 23.01.2015

Sunder alias Ravinder

..... Appellant

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

Present: Mr.A.P.S. Sandhu, Advocate (Legal Aid Counsel)
for the appellant.

Mr.Mukesh Kaushik, Deputy Advocate General
for the State of Haryana.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment dated 02.09.2003 passed by the learned Judge, Special Court, Faridabad, vide which accused-appellant Sunder alias Ravinder has been held guilty and convicted for the offences punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called the 'Act') and the order on quantum of sentence dated 04.09.2003, vide which the appellant has been sentenced to undergo rigorous

imprisonment for a period of three years and to pay a fine of Rs.5000/-, in default of payment of fine to further undergo rigorous imprisonment for nine months.

2- As per the prosecution case on 31.03.2002 PW8 SI Dhan Singh along with police employees was present near Gaunchi Octroi Post in connection with patrolling. PW7 Arjun Singh met them. In the meanwhile, SI Dhan Singh received a secret information against the appellant that he was selling the Ganja at Sona 'T' point. The Investigating Officer constituted a raiding party and the Nakabandi was conducted at Sona 'T' point. After some time, an auto rickshaw was seen coming from the side of Ballabhgarh. Out of which some persons, including the appellant, alighted. The appellant after alighting from the three wheeler, tried to turn back on seeing the police party. He was apprehended on suspicion. The Investigating Officer served the notice Ex.PF giving him an option for his search in the presence of a Gazette Officer or the Magistrate. Vide consent memo Ex.PF/1, he opted his search in the presence of some Gazetted Officer. PW5 Jagroop Singh, Additional Superintendent of Police, Faridabad was called at the spot. In his presence the polythene bag in the possession of the accused was searched, which was found containing 4 kilogram 500 grams Ganja. 10 grams of Ganja was separated as sample. Separated sealed parcels of sample and residue Ganja were prepared and taken into possession vide memo Ex.PF. The Investigating Officer sent Rukka Ex.PG to the Police Station. On the basis of which, formal FIR Ex.PD was registered. The

Investigating Officer prepared the site plan of the place of recovery Ex.PE. The accused was arrested. The case property was deposited in intact condition in the Malkhana. Sample parcel was sent to the Forensic Science Laboratory, Madhuban (Karnal) for examination. On receipt of the report of the FSL Ex.PJ and completion of formalities of the investigation, the report under Section 173 of Code of Criminal Procedure, 1973 (hereinafter called 'Cr.P.C.') was presented in the Court.

3- The accused appellant was charge sheeted for the offence punishable under Section 20 of the Act vide order dated 03.07.2002 by the learned trial Court, to which the appellant pleaded not guilty and claimed trial.

4- In order to substantiate its case, prosecution examined as many as eight witnesses.

5- When examined under Section 313 Cr.P.C., accused pleaded false implication and pleaded that the witnesses are police officials and procured one.

6- In the defence evidence, accused examined Ashok Kumar as DW1. Thereafter, the defence evidence was closed.

7- Appreciating the evidence on record and the contentions raised by learned counsel for the parties, the accused appellant was held guilty for the offence punishable under Section 20 of the Act and was awarded the sentence as mentioned in the upper part of the judgment.

8- Aggrieved with the aforesaid judgment of conviction and order of sentence the present appeal has been preferred.

9- I have heard Mr.A.P.S. Sandhu, Advocate, learned Legal Aid Counsel for the appellant, Mr.Mukesh Kaushik, learned Deputy Advocate General for the State of Haryana and have meticulously examined the record of the case.

10- Initiating the arguments, learned counsel for the appellant pleaded that there are material contradictions in the testimonies of the prosecution witnesses, which shows that no recovery has been effected from the possession of the appellant as alleged by the prosecution. The prosecution witnesses are discrepant on the material aspects of the case. He pointed out that as per PW5 Jagroop Singh, Additional S.P., he received the telephonic message from SI Dhan Singh at 05:15 p.m. but PW7 Arjun Singh stated that there is no telephone booth near the place of recovery. As per PW5 Jagroop Singh Additional S.P. and PW8 SI Dhan Singh the weighing material was brought by Constable Suresh but PW7 Arjun Singh stated that these articles were brought by HC Ranbir Singh. He further contended that as per PW5 Jagroop Singh Additional S.P. and SI Dhan Singh the police party remained at the spot upto 08.15 p.m. but PW7 Arjun Singh stated that the police party spent only half an hour at the place of recovery. PW7 Arjun Singh has also stated that none from the police party went to the police post but SI Dhan Singh has stated that Constable Suresh Kumar has carried the Rukka Ex.PG to the police station. Thus, he contended that these contradictions have rendered the prosecution case doubtful.

11- He further contended that in those days, the mobile

phones were very rare. There was no telephone booth near the place of recovery as stated by PW7 Arjun Singh. So, the calling of PW5 Jagroop Singh Additional S.P. at the spot is extremely doubtful.

12- He further contended that as per the documents Ex.D1 and D2, the accused was arrested on 17.03.2002, which corroborates the statement of DW1 Ashok Kumar that the accused was taken away from the room in his presence on 17.03.2002 and was falsely implicated in this case. He contended that these documents show that the appellant was illegally detained on 17.03.2002 and was framed in this case later on, on 21.03.2002. Earlier also, a case under the Act was registered against the appellant but he was acquitted. In this background it is established that the appellant has been falsely implicated.

13- On the other hand, learned State counsel contended that from the testimonies of PW5 Jagroop Singh Additional S.P. PW7 Arjun Singh, the independent witness and PW8 SI Dhan Singh, it is established that 4.5 Kg. Ganja was recovered from the possession of the appellant. He contended that the mistake of date of arrest of appellant in the documents Ex.D1 and Ex.D2 is only a clerical mistake i.e. a slip of pen. The date has been correctly mentioned under the signatures of the Investigating Officer in both these documents. He further contended that some discrepancies are bound to occur in the statements of the witnesses with the passage of time. The discrepancies pointed by learned counsel for the appellant are not material in nature and does not affect the veracity of the prosecution witnesses. Thus, he pleaded that there is no legal

infirmity in the conviction of the appellant recorded by the learned trial Court.

14- I have duly considered the aforesaid contentions.

15- As per the prosecution allegations, on 21.03.2002 PW8 SI Dhan Singh had received a secret information against the present appellant of indulging in sale of the Ganja. As a result of which, a Nakabandi was held at Sona 'T' point, Faridabad. The appellant arrived at the spot after some time from the side of Ballabhgarh in an auto rickshaw. After alighting from the auto rickshaw, on seeing the police party, he tried to turn back. He was apprehended on suspicion. On the basis of the option exercised by him, PW5 Jagroop Singh, Additional S.P. was called at the spot. A search was conducted under his supervision, which led to the recovery of 4.5 Kg. Ganja from the possession of the appellant. Learned counsel for the appellant has challenged the conviction of the appellant recorded by the learned trial Court on the basis of discrepancies in the statements of the prosecution witnesses, that he was illegally detained on 17.03.2002 and later on, falsely implicated in this case on 21.03.2002 and that previously also, he was implicated in such case and was acquitted by the Court.

16- PW8 SI Dan Singh, the Investigating Officer of the case, has deposed in detail about receiving the secret information against the appellant and, thereafter holding the Nakabandi at Sona 'T' point, Faridabad. He further deposed that the appellant was having a polythene bag in his right hand. He served the notice Ex.PF upon the appellant and

he gave his consent vide memo Ex.PF/1 that he wants the search to be taken in the presence of a Gazetted Officer. So, PW5 Jagroop Singh Rathi, Additional S.P., Faridabad was called at the spot. On his instructions, he carried out the search of the polythene bag and the Ganja weighing 4½ kg. was recovered. Thereafter, he has deposed about proceedings conducted by him at the spot i.e. separating 10 grams Ganja as sample, preparing the sealed parcels and the documents. This version of PW8 SI Dhan Singh has been fully corroborated by PW5 Jagroop Singh, Additional S.P., who has supervised the search and seizure of the contraband from the possession of the appellant. PW7 Arjun Singh, an independent witness has also fully corroborated the prosecution version with respect to the apprehension of the accused by the police, serving the notice giving him option for his search in presence of Magistrate or a Gazetted Officer, his reply to the said notice that he would like to be searched in the presence of a Gazetted Officer, the arrival of PW5 Jagroop Singh Additional S.P. at the spot, carrying out the search of the accused on the instructions of the Additional S.P. and recovery of 4½ Kg. Ganja from the possession of the appellant. He also deposed about separation of 10 grams Ganja for chemical examination and, thereafter the sealing of the parcels. He also deposed that seal, after use, was handed over to him. Thus, independent witness PW7 Arjun Singh has fully corroborated the prosecution version on all the material aspects.

17- Learned counsel for the appellant has pointed out certain discrepancies in the statement of the prosecution witnesses detailed

above. The discrepancies pointed out by learned counsel for the appellant relates to the name of the person who had brought the weighing material at the spot, the time spent by the police party at the spot, about the departure of the Constable from the spot along with the Rukka Ex.PG for registration of the case and the mode used for calling PW5 Jagroop Singh Additional S.P. at the spot. Both PW5 Jagroop Singh Additional S.P. and PW8 SI Dhan Singh have consistently deposed that information was given by SI Dhan Singh to PW5 Jagroop Singh Additional S.P. telephonically. PW7 Arjun Singh has simply stated that there was no STD booth near the 'T' point. PW8 SI Dhan Singh has not been questioned by the learned defence counsel as to what type of telephone he had used to give the information to PW5 Jagroop Singh. PW7 Arjun Singh has stated that he does not know whether Dhan Singh ASI was having mobile phone or not. Thus, in the absence of cross examination of PW8 SI Dhan Singh on that aspect, no conclusion can be drawn that in fact no such information was flashed to PW5 Jagroop Singh Additional S.P. The remaining contradiction pointed by learned counsel for the appellant about the name of the person, who has brought the weighing material, the time spent by the police party at the spot, and as to whether or not any Constable had left the spot with Rukka for registration of the case are the minor contradictions and are bound to occur even in the testimonies of truthful witnesses, as the human memory fades with the passage of time. These type of minor contradictions cannot be made the basis to ignore the consistent version of the prosecution witnesses on the point of

apprehension of the accused, his search and seizure of the contraband from his possession.

18- On the basis of the mistake of date in the memo regarding information of arrest and identification slip Ex.D1 and Ex.D2 respectively, it cannot be held that the appellant was illegally detained on 17th March, 2002 and was framed in this case on 21.03.2002. In the documents Ex.D1 and Ex.D2, the FIR number, date and offence are correctly mentioned. Even under the signatures of the Investigating Officer, the date has been correctly mentioned as 21.03.2002. However, in the body of both these documents, the date of arrest has been mentioned as 17.03.2002. All other documents prepared by the Investigating Officer i.e. FIR Ex.PD, seizure memo Ex.PE, notice Ex.PF, Rukka Ex.PG, site plan Ex.PH clearly depicts that accused was apprehended on 21.03.2002 and this version of the prosecution is even corroborated by PW7 Arjun Singh, an independent witness. So, it appears that in the body of the documents Ex.D1 and Ex.D2, there is only a clerical mistake with respect to the date of arrest of the accused. Testimony of DW1 Ashok Kumar has no credibility, as he was his roommate, belonging to same community and place. He has not made any complaint to any authority about lifting away of the appellant illegally by the police. Mere this fact that in an earlier case the appellant was acquitted, is also no ground to presume that he has been falsely implicated in this case when in the instant case prosecution has led cogent, consistent and reliable evidence including the testimony of an

independent witness to establish the recovery of 4½ Kg. Ganja from the possession of the appellant. Thus, I do not find any illegality in the conviction of the appellant recorded by the trial Court.

19- In the alternative, learned counsel for the appellant has pleaded that the accused appellant is a poor person and was working only as a rickshaw puller. He is not a previous convict. He has already undergone 01 year 10 months in custody out of the sentence awarded to him, which is quite sufficient period and he pleaded for reduction of sentence.

20- I find substance in this plea of learned counsel for the appellant. The learned trial Court has recorded the statement of the appellant on 04.09.2003 on the quantum of sentence, which shows that he has five small children. His wife remains ill. He earns the livelihood by pulling the rickshaw. His wife, children and old parents were living in Bihar and he was the sole bread earner of his family. The appellant is also facing the agony of this litigation for the last more than 12 years. The custody certificate placed on record by the learned State counsel shows that he has already undergone 1 year and 10 months out of the sentence of three years awarded by the learned trial Court. There is also no material on record to show that appellant is a previous convict. Rather, the custody certificate shows that he was acquitted in another case registered against the appellant under the provisions of the Act. Thus, the antecedents of the convict, the facts and circumstances of the case even the reduction of the sentence will suffice the ends of the justice.

21- Thus, keeping in view my aforesaid discussion, I do not find any legal infirmity and impropriety in the conviction of the appellant recorded by the learned trial Court and the same is hereby affirmed. However, the sentence awarded to the appellant by the learned trial Court is hereby modified. The appellant is sentenced to the imprisonment already undergone by him i.e. 1 year and 10 months. The penalty of the fine will remain the same. However, in default of payment of fine, he will undergo simple imprisonment for a period of 2 months instead of 9 months ordered by the learned trial Court. The appellant will deposit the fine within one month from the date of this judgment, failing which he will undergo simple imprisonment for two months, for which the process shall be started by the learned trial Court.

Dated: 23.01.2015
sunil yadav

(DARSHAN SINGH)
JUDGE