

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA No.834-DB of 2009
DATE OF DECISION: July 20, 2015

Baldev and another

....Appellants

versus

The State of Punjab

.....Respondent

CORAM:- HON'BLE MR. JUSTICE S.S.SARON
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr.K.P.S. Virk, Advocate for
Mr.K.S.Dhaliwal, Advocate for the appellants.
Ms.Deipa Singh, Addl. A.G., Punjab.

RAMENDRA JAIN,J.

The present appeal has been filed by the appellants-
accused challenging the judgment of conviction and order of sentence
dated 29.7.2009 passed by the Judge, Special Court, Patiala
convicting them under section 15 of the Narcotic Drugs and
Psychotropic Substances Act, 1985 (hereinafter called as the `Act').

The relevant facts, for the decision of the appeal, are as
under:

On 27.3.2008, Inspector Jassa Singh along with Head Constable Kuldeep Singh, Assistant Sub Inspectors Amarjit Singh and Harwinder Singh and other police officials was on patrol duty having government vehicle No.PB-11R-7938 driven by Head Constable Balwinder Singh. On reaching in the area of village Galauli near Govt. tubewell, he joined Kamaljeet Singh son of Sohan Singh, resident of Shutrana in the police party. When they were proceeding towards village Barta, Police Station Garhi in Haryana and reached 1 km ahead of village Galauli, saw two persons coming on a bullock cart carrying gunny bags, from the side of village Barta towards village Galauli. They were apprehended and enquired about their whereabouts. They disclosed their names as Baldev Singh and Ram Niwas (appellants), residents of village Barta, Police Station Garhi. Inspector Jassa Singh apprised his identity as Incharge of CIA Staff, Patiala. He told them about his suspicion of some contraband in the gunny bags on cart and that he wanted to conduct search and that they had the right to call some Gazetted Officer or Magistrate at the spot. The appellants reposed confidence in Deputy Superintendent of Police. The statements of both the appellants Ex.PA and Ex.PB in this respect were recorded separately, duly signed and thumb marked by them and attested by the witnesses, namely, Head Constable Kuldeep Singh, Assistant Sub Inspector Amarjit Singh and PW Kamaljit Singh, Manjit Singh Brar, Deputy Superintendent of Police (D), Patiala was called. He arrived at the spot around 8.00 a.m. and disclosed his identity to the

appellants. He too told to the appellants that he suspects some contraband in the gunny bags on cart and wanted to conduct search. The consent statements of the appellants Ex.PC and Ex.PD were recorded separately by DSP which were read over and explained to them, and in token of its correctness, they appended their signatures and thumb impressions upon the same. The statements were attested by Investigating Officer, Sub Inspector Kuldeep Singh, Assistant Sub Inspector Amarjit Singh and PW Kamaljit Singh. On the direction of Deputy Superintendent of Police, the gunny bags, 11 in numbers, were unloaded from the cart. On opening the bags, they were found containing poppy husk. The Investigating Officer separated two samples of 100 gms each from every bag and remaining poppy husk in each bag, including gunny bags, came to be 39,800 kgs. The sample parcels were numbered 1/1, 1/ 2 to 11/2. All the twenty two sample parcels, eleven gunny bags and bullock cart were taken into possession vide recovery memo Ex.PE after sealing the same with the seal 'JS' and 'MS' of Deputy Superintendent of Police. Sample seal Ex.P1 was prepared separately. Seal of 'JS' after use was handed over to PW Kamaljeet Singh, whereas, DSP retained his seal 'MS' with him. Ruqa, Ex.PF was sent through Constable Iqbal Singh, whereupon, formal FIR Ex.PF/1 was recorded by Assistant Sub Inspector Nishan Singh. Rough site plan Ex.PG was prepared. From personal search of appellant Baldev Singh, a sum of Rs.150/- was recovered which was taken into police possession vide recovery memo Ex.PH, whereas, from the

personal search of appellant Ram Niwas, a sum of Rs.100/- and mobile phone make Nokia 1110 were recovered which were taken into police possession vide recovery memo Ex.PJ. Appellants were served with grounds of arrest vide memos Ex.PK and Ex.PL, respectively. The information memo Ex.PM/1 regarding their arrest was prepared. The statements of relevant witnesses were recorded. The report Ex.PN under Section 57 of the Act was sent to the higher officers. On return to the Police Station Patran, Investigating Officer, produced the case property before Sub Inspector/SHO Jaswinder Singh who after verifying the facts, affixed his own seal 'JS'. It was further handed over in intact condition to MHC Shamsheer Singh. The appellants and case property were produced before the Judicial Magistrate Ist Class, Samana. The report Ex.PR was obtained from Chemical Examiner. On completion of investigation, challan under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 was presented.

The learned trial Court after hearing learned PP for the State and learned counsel for the accused, framed charge under Sections 15 of the Act against the accused to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined as many as seven witnesses, namely, PW1 Inspector Jassa Singh, PW2 Sub Inspector Kuldeep Singh, PW3 MHC Shamsheer Singh, PW4 Head Constable Gurcharan Singh, PW5 Sub Inspector Jaswinder Singh, PW6 Deputy Superintendent of Police, Manjit Singh and PW7 Head Constable

Balbir Singh. It also relied upon certain documents collected during investigation.

After closure of prosecution evidence, the statements of appellants were recorded putting entire incriminating evidence came on record against them to which they denied and pleaded their false implication. In defence, the appellants examined DW1 Head Constable Amrik Singh and DW2 Head Constable Balbir Singh.

After hearing learned Public Prosecutor for the State and learned counsel for the accused, the trial Court held them guilty under section 15 of the Act and sentenced them to undergo rigorous imprisonment for eleven years and to pay a fine of Rs.1,50,000/- each and in default of payment of fine to further undergo rigorous imprisonment for one year each vide impugned judgment of conviction and order of sentence dated 29.7.2009.

Learned counsel for the appellants argued that the impugned judgment of the learned Special Court is based on surmises and conjectures. The learned trial Court has failed to appreciate that non-compliance of Section 50 of the Act had vitiated the trial. It was incumbent upon the Investigating Officer PW-1 Inspector Jassa Singh and PW-6 DSP Manjit Singh Brar to make the appellants aware of their right to have their search before any Gazetted Officer or a Magistrate. The appellants have been falsely implicated in this case by planting false recovery upon them. No independent witness was joined at any stage during the investigating which casts serious doubt upon the

prosecution story. The sample was sent late to the FSL authorities. Hence, tampering with the same cannot be ruled out. The material witness i.e. Illaqa Magistrate was also not examined. The prosecution has miserably failed to prove alleged conscious possession of the appellant-accused of 11 bags of Poppy Husk and thus, they ought to have been acquitted.

We have given our thoughtful consideration to the matter.

In the instant case, the appellants are father and son. As per prosecution story they were bringing 11 bags of Poppy Husk being 40 kg each, including gunny bags i.e. totalling 440 Kg. in a cart. On 27.03.2008, they were apprehended by Inspector Jassa Singh PW-1 alongwith his police party in the area of Village Galauli. However, perusal of the statements of the appellants-accused recorded under Section 313 show that they were taken to surprise by putting some following wrong, illegal and irrelevant questions i.e.

" It is further in evidence against you that on 06.12.2005 I.O. took into possession the affidavit of Rajinder Singh vide memo Ex.PW7/B, photocopy of RC of Car vide memo Ex.PW7/A, photocopy of affidavit of Sukhwinder Singh accused vide memo Ex.PW7/C, I.O. moved application Ex.PW7/E before DTO Mansa to ascertain the ownership of car and he gave his report Ex.PW10/F. What have you to say about it?"

Admittedly, no car was ever involved in the instant case, rather it was a cart. Hence, introduction of car in the instant case to the utter surprise of the appellants-accused has certainly prejudiced their right of producing their defence properly. It is well settled that

when the right of defence of an accused is affected, he is liable to be acquitted.

Though independent witness Kamaljeet Singh was allegedly joined in the investigation, but he was not produced in the witness box by the prosecution for the reasons best known to it. He was given up simply on the ground of his winning over. This exercise adopted by the prosecution was not sufficient. The prosecution instead of giving him up in routine or in a casual manner, should have summoned and produced him in the witness box to bring the truth on record. In case, he was not favouring the prosecution, then only, he could have been declared hostile. Giving him up in a routine, shows that the things and events did not happen in the manner as narrated by the prosecution.

As per prosecution version, after apprehension of the accused and effecting alleged recovery of 11 bags of Poppy Husk from them, Ruqa Ex.PF was sent through Constable Iqbal Singh, whereupon formal FIR Ex.PF/1 was recorded by ASI Nishan Singh. However, the prosecution has not examined Constable Iqbal Singh, who carried the said Ruqa to the Police Station as well as ASI Nishan Singh, who recorded the formal FIR Ex.PF/1. Thus chain of events is also not complete in this case. Accordingly, the accused are liable to be acquitted by giving them benefit of doubt.

More so, as per prosecution story, Investigating Officer, PW-1 SI Jassa Singh, after arrest of appellants-accused had prepared recovery memo of the Poppy Husk Ex.PE and then Ruqa was sent to the

police station for recording the FIR. However, recovery memo Ex.PE finds mention, the FIR number. In case, the investigation should have been conducted in a fair manner, in that event, FIR number could not have been existed on the recovery memo Ex.PE, because the FIR came into existence much later on after its preparation. This was only possible, when aforesaid document were prepared after registration of FIR Ex.PF/1.

The above fact and manipulation completely falsify the prosecution story. It is held in **State of Orrisa v. Sitauru Sakher Kanugo JT 2002 (8) SC 292** that manipulation in documents is not permissible in law.

Inspector Jassa Singh PW-1 has deposed that on the next day of incident, he had produced the case property alongwith both the accused before JMIC, Samana after obtaining their thumb impression. In his cross-examination too, he reiterated the above stand and also clarified that Sh.Sham Lal was JMIC Samana. However, the said Judicial Magistrate has not been examined by the prosecution to complete the chain of events, which again casts a serious doubt about the prosecution story. This witness has further deposed that the seal with which the samples of the case property were sealed was returned to him after depositing it with the MHC. Meaning thereby, I.O. Jassa Singh had received his seal on the same day from Kamaljit Singh. Thus, possibility of tampering with the case property cannot be ruled out as has been held in **Sukhdev Singh alias Sukha vs. State of Punjab**

2006 (1) RCR (Criminal) 4 and Fateh Singh vs. State of Haryana**2006 (2) RCR (Criminal) 762.**

The alleged cart in which appellants-accused were allegedly carrying 11 gunny bags of Poppy Husk was not produced in the Court. This fact is categorically admitted by Inspector Jassa Singh PW-1 in his cross-examination. No explanation has come forward that what happened to that cart, though it was taken into possession. Hence, it can safely be inferred that the things did not happen in the manner as narrated by the prosecution. Even otherwise, it was not possible to carry 440 kgs poppy Husk in a cart by two persons. Such a huge quantity can only be carried away by an animal that too with difficulty. Hence, the prosecution story seems to be false, more particularly in the absence of production of cart in the Court.

DW2 HC Balbir Singh has stated that DDR No.10, recorded by Inspector Jassa Singh PW-1, Investigating Officer, but the same was signed by ASI Ajaib Singh. Similarly, Inspector Jassa Singh PW-1, Investigating Officer, made his entry regarding his return. However, the same was later on cancelled and the name of ASI Ajaib Singh was inserted therein and he signed the same.

The prosecution has not explained that how the name of the ASI Ajaib Singh came into existence instead of Investigating Officer Jassa Singh. The above sequence of discrepancies falsifies the prosecution story. Consequently, the appellants-accused are liable to be acquitted by giving them benefit of doubt.

No other point was urged before us.

In view of the discussion above, the appeal is accepted.

The impugned judgment of conviction and order of sentence dated 29.07.2009 are set aside and the appellants-accused are acquitted of the charges framed against them.

(S.S.SARON)
JUDGE

(RAMENDRA JAIN)
JUDGE

20.07.2015
KD/anil