

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

CRA-S-1295-SB-2004

Date of decision : October 07, 2015

Kundan

.....Appellant

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE GURMIT RAM

1. To be referred to the Reporters or not? No / Yes
2. Whether the judgment should be reported in the Digest? No / Yes

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

Mr. A.S. Klar, Asstt. A.G., Punjab
for the respondent-State.

GURMIT RAM, J.

1. By this appeal the appellant-Kundan Singh has assailed the judgment and order of sentence dated 02.06.2004 passed by learned Judge, Special Court, Sangrur vide which he was held guilty for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short "the Act") in criminal case bearing FIR No.154 dated 29.06.2000, Police Station, Dhuri and sentenced thereunder.
2. The prosecution version in nutshell was that on 29.06.2000 Atma Singh, Sub-Inspector, Incharge CIA Staff Bahadur Singh Wala along

with ASI Harminder Singh and other police officials was going from village Bhalwan to Samundgarh Channa via metalled road in connection with checking of suspects on a Government vehicle No.PB-13-B-1580. When the police party went ahead of village Bhalwan by a distance of about $\frac{1}{2}$ K.M., then from the front side, one person was seen coming on foot while carrying a plastic bag on his head. On seeing the police party he retreated at once, but he was anyhow apprehended by the police party on the suspicion. During interrogation he told his name as Kundan Singh son of Lalu resident of Samudgarh Channa. SI Atma Singh asked from him that he has suspicion that there is narcotic in his plastic bag, as such, he wants to take search of this bag. He further offered him that in case he desires that his search be conducted from any Magistrate or Gazetted Officer, then arrangement could be made for that. But the accused reposed confidence in him and the consent memo in this regard was prepared. During search of his said bag, it was found to be containing poppy husk, out of which two samples of 250 grams each were separated and its remaining contents were found to be $19\frac{1}{2}$ K.Gs. on weighment. Both the sample parcels and the bag containing remaining poppy husk were sealed by SI Atma Singh with his seal of "AS". Specimen seal was prepared separately. Abovesaid all the parcels duly sealed alongwith the specimen seal were taken into police possession vide a memo since the accused could not produce any license to keep this narcotic in his possession. Ruqa was sent to the Police Station on the basis of which instant case was registered. Accused was formally arrested in this case after disclosing him grounds of his arrest. Site plan of place of recovery was prepared. On returning to the Police Station, case property was produced along with the accused before SHO Police Station, Dhuri, who verified the

facts of the case and sealed the parcels of case property and specimen seal chit with his seal. Case property was deposited with MHC. Statements of witnesses were recorded. On the completion of investigation, challan against the accused was presented in the Court of learned Judge, Special Court, Sangrur.

3. After making compliance of the provision of Section 207, Cr.P.C. and on finding a prima facie case punishable under Section 15 of the Act against the accused, he was charge-sheeted accordingly to which he pleaded not guilty and claimed trial.

4. The prosecution in order to prove its case examined six witnesses in total during the trial.

5. Then as per the provisions of Section 313, Cr.P.C., accused was duly examined. During his examination, entire incriminating evidence as brought on the file against him during trial of the case was put to him, which he denied in toto and pleaded his innocence and false implication in this case by the Police. Nothing was recovered from him.

6. Learned trial Court after hearing learned counsel for both the parties and going through the record as well held the accused guilty for the offence under Section 15 of the Act and convicted him thereunder vide impugned judgment and order of sentence as detailed below:-

“Rigorous imprisonment for two years along with fine of ₹5,000/- and in default of payment of fine to further undergo rigorous imprisonment for three months”

7. The appellant/accused being not satisfied with the impugned judgment of conviction and order of sentence has come up in the instant appeal, notice of which was given to the respondent - State.

8. Record of learned trial Court was also requisitioned. Learned counsel for both the parties were heard and record was also scanned with their able assistance.

9. Learned counsel for the appellant submitted that the impugned judgment and order of conviction are based on mere conjectures and surmises and not on the basis of evidence brought on the file. Further, he has contended that at the time of the alleged search of the bag of the accused, no Gazetted Officer or any Magistrate was called at the spot and as such there is a clear cut violation of the provisions of the Act. Then he has also pointed out about the delay of five days in sending the sample to the office of Chemical Examiner which is stated to be not explained by the prosecution.

10. But on the other hand, learned State counsel has strongly controverted the above points of contention of learned counsel for the appellant and submitted that prosecution during trial of the case had brought on the record the entire evidence complete in all the aspects to prove the guilt of the accused. It is further his contention that the impugned judgment and order of sentence are in consonance with evidence available on the file and there is nothing on record to make any kind of interference in the same.

11. The prosecution version as has come on the record during trial of the case was that on 29.06.2000 PW-3, Inspector, Atma Singh was posted as Sub-Inspector Incharge of CIA staff, Bahadur Singh Wala. On that date, his police party apprehended the appellant in the area of village Bhalwan while carrying a gunny bag on his head. On the basis of suspicion, offer was given to him for the search of his bag before any Gazetted Officer or Magistrate, if he so desires, but he reposed confidence in this witness

vide his consent memo Ex.PC. Then during search of his bag poppy husk was recovered, out of which two samples weighing 250 grams each were separated and the residue poppy husk on weighment was found to be 19 ½ K.Gs. He sealed both the sample parcels and bulk parcel with his seal of “AS” and took the same into his possession vide memo Ex.PD. Further he also proved personal search memo of the accused Ex.PE, ruqa Ex.PF, FIR Ex.PF/1 and rough site-plan Ex.PH. Grounds of arrest were also disclosed to him and thereafter, he was formally arrested in this case vide memo Ex.PG. Ex.P1 was the sample seal chit, Ex.P2 was the 2nd sample parcel and Ex.P3 was the bulk parcel. On returning to Police Station, case property was produced along with accused before Swarn Singh, SHO and then the same was deposited in the *malkhana*.

12. PW-4 ASI Harminder Singh was also posted in CIA staff Bahadur Singh Wala on the date of alleged recovery and he was also one of the members of the police party of PW-3 Inspector Atma Singh at the relevant time. Seal after its use was handed over to him by the Investigating Officer. He fully supported the version of prosecution by rendering corroboration to above discussed statement of PW-3 Inspector Atma Singh, Investigating Officer.

13. PW-6, Inspector Swarn Singh on the relevant date was posted as SHO, Police Station Dhuri. It was in his statement that case property of this case along with accused was produced before him by Sub-Inspector, Atma Singh. He checked the case property and put his seal on all the parcels and sample seal chit Ex.P1 bearing impressions of “SS”.

14. PW-1, HC Nirmal Singh was posted as MHC in Police Station Dhuri on the date of alleged recovery. He tendered in his statement

his duly sworn affidavit Ex.PA to the effect that case property of this case duly sealed was deposited with him on the said date by the Investigating Officer.

PW-2, C.Jangeer Singh had deposited the sample parcel of this case along with sample seal chit in the office of Chemical Examiner after obtaining the same from MHC on 03.07.2000. His duly sworn affidavit to this effect was Ex.PB.

15. PW-5, Vijay Kumar retired Head Constable was posted as HC in CIA Staff, Bahadur Singh Wala on 30.06.2000. He produced the case property of this case along with accused before the Court on the next date of recovery and his affidavit to this effect was Ex.PK.

16. Learned counsel for the appellant, besides his abovesaid contentions as mentioned in para No.9 of this judgment has failed to point out any other material discrepancy/infirmity in the case of prosecution. Prosecution witnesses are found to be very much consistent and corroborating with each other with regard to recovery of the narcotics in question from the bag of the accused, which he was carrying on his head. Delay of 5 days in sending the sample to the office of abovesaid Chemical Examiner cannot be treated to a good ground to disbelieve the version of prosecution when other evidence available on the file in support of prosecution version is held to be quite reliable as well as complete in all respects. There is nothing on the record to say that the impugned judgment is based on surmises or conjectures. Since accused reposed confidence in the I.O. vide his consent memo Ex.PC regarding search of his bag, so there was no need to call any Gazetted Officer or Magistrate for this purpose.

17. In view of the above discussion the impugned judgment of

conviction is upheld, this appeal to this extent stands dismissed.

18. Then as per the record the appellant has been facing proceedings in this case since the last about 15 years. Now by this time he might be of about 45 years of age. As per the custody certificate available on the record, he has already undergone the period of six months and eighteen days of actual sentence in total. So his substantive sentence is reduced to the extent of period which he had already undergone. But his sentence of fine is upheld. He is directed to deposit the same either before the learned trial Court or C.J.M., Sangrur within 21 days from today if not deposited earlier failing which to further undergo rigorous imprisonment for a period of 3 months as imposed upon him vide the impugned quantum of sentence. In case he does not deposit this amount of fine within above stipulated time then in that eventuality, he be taken into custody and sent to the concerned jail for undergoing the sentence as narrated above. So the quantum of sentence is modified to the extent stated above.

Copy of this judgment be sent to learned trial Court as well as to the C.J.M. concerned for the strict compliance.

October 07, 2015

Gaurav Sorot

**(GURMIT RAM)
JUDGE**