

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-418-SB of 2001

Date of decision: 08.04.2015

Dara Singh

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

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

Present: Mr. Sumeet Puri, Advocate
for the appellant.

Mr. Gurveer Sidhu, AAG, Punjab.

R.P. NAGRATH, J.

The appellant faced trial of the charge for offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short to be referred to as "the Act") for being found in possession of 40 bags of poppy-husk each containing 30 kgs. of quantity on 26.09.1994 at about 06.15 a.m. Learned trial Court convicted the appellant of the said charge and awarded him the sentence to undergo rigorous imprisonment for ten years and to pay fine of ₹ 1 lac, in default of making payment of fine to further undergo rigorous imprisonment for six months. As per custody certificate produced by learned State counsel, the appellant was released in the instant case on 16.11.2005 after completing his sentence by giving him remissions of five years, 10 months and 24

days but payment of fine was pending. He is also undergoing imprisonment in certain other FIRs.

2. The prosecution story briefly stated is that;

Police party headed by Inspector Jai Pal Singh was holding picketing on the link road from village Paharpur to village Sultanpur near the bridge of drain on 26.09.1994 under the directions of Deputy Superintendent of Police of the sub-division. The picketing was held quite early in the morning. Meanwhile, one Karnail Singh son of Ganda Singh of village Sultanpur came there and associated by the police party. During picketing the police party spotted a person coming on a scooter from the side of village Sultanpur to whom signal was given with the torch light to stop. The scooterist threw his scooter on the ground and tried to run away. The appellant was apprehended by the incharge of police party with the help of police officials. There were two bags tied with rope loaded on the pillion of the scooter.

3. According to the prosecution, the investigating officer asked the accused-appellant, if he wanted his search to be effected from a gazetted officer or a Magistrate but the accused reposed confidence in Inspector Jai Pal Singh. Statement of the appellant in this regard is Ex. PA and the same is thumb marked by him and attested by the witnesses.

4. Both the bags were removed from the rear seat of the scooter and each bag was found containing 30 kgs. of poppy-husk.

One sample of 250 gms. of poppy-husk was separated from each

bag and prepared into sealed parcels. The sample parcels and gunny bags containing rest of the poppy-husk were sealed with seal bearing impression 'JS' of the Investigating Officer and seal after use was handed over to Karnail Singh PW. The scooter recovered was without any document. From the pocket of the trousers which the appellant was wearing, the cash amount of ₹ 24,300/- was recovered. The recovery memo of the case property prepared by the Investigating Officer is Ex. PC and the personal search memo is Ex. PB. Investigating Officer also prepared rough site plan Ex. PH.

5. *Ruqa*, Ex. PG, was sent from the spot to the Police Station on the basis of which formal FIR, Ex. PG/1 was registered.

6. It is further the prosecution story that appellant was further interrogated and he made a disclosure statement that he had kept concealed 38 more bags of poppy-husk in the sugarcane fields on the Paharpur side of the drain falling on the Sultanpur-Paharpur road which he only knows and could get the same recovered. Statement of the appellant, Ex. PD, was reduced in writing and the same was thumb marked by the appellant and attested by the witnesses. The appellant led the police party to the disclosed place, the sugarcane fields of Karnail Singh, who was an independent witness associated by the police party. All these bags were containing 30 kgs. of poppy-husk each. One sample of 250 gms. of poppy-husk was separated from each of the bag and prepared into sealed parcels and entire case property was sealed

with seal bearing impression 'JS' and taken into possession vide memo Ex. PE. The rough site plan of this place of recovery, Ex. PJ, was prepared. For this recovery a special information report, Ex. PH, was also sent to the Magistrate. As per prosecution story, initially *ruqa* was sent at 06.15 a.m. on 26.09.1994 when two bags of poppy-husk were recovered and that FIR reached the area Magistrate at 08.30 a.m. and the subsequent report was delivered to the Magistrate at 12.05 p.m. on the same day.

7. It is also the prosecution story that case property i.e. all the sample parcels and poppy-husk and the bags containing rest of the poppy-husk were produced before the Magistrate on the next day.

8. The prosecution examined six witnesses in support of its case.

9. The appellant was examined under Section 313 Cr.P.C. and he denied all the incriminating circumstances appearing against him in the prosecution evidence and pleaded false implication.

10. Thereafter, the prosecution moved an application under Section 311 Cr.P.C. to summon and re-examine PW-5 Constable Bhagwant Singh, which was allowed by the trial Court on 27.03.1999. PW-5 was re-examined on 07.12.1999. Thereafter, the supplementary statement of the appellant was recorded under Section 313 Cr.P.C. and he even denied that incriminating

evidence. The appellant did not produce any defence evidence.

11. The trial Court convicted and awarded the sentence upon the appellant as aforesaid.

12. I have heard learned counsel for the appellant, the State counsel and also gone through the record.

13. Learned counsel for the appellant at the outset submitted that the appellant having undergone the period of sentence awarded in this case, the instant appeal may be disposed of accordingly. However, the fact whether the conviction recorded by the trial Court on merits can be sustained on the basis of evidence is required to be thoroughly examined.

14. The prosecution version has been testified by PW-2 Inspector Jai Pal Singh and he is materially and substantially corroborated by ASI Jaswinder Singh, a recovery witness.

15. It is quite important to note that the factum of the commodity recovered being poppy-husk, has not been denied by the appellant. It was suggested to PW-1 ASI Jaswinder Singh that poppy-husk recovered in the instant case in fact belonged to Karnail Singh, the independent witness. Another suggestion put to PW-1 was that Karnail Singh was let off and false recovery was planted upon the appellant. PW-1 denied these suggestions as wrong. Similar suggestion was put to Investigating Officer as PW-2. It is not acceptable proposition that Karnail Singh in whose sugarcane fields huge quantity of poppy-husk was concealed, would invite trouble for himself by becoming a witness in support of

the prosecution case. Most important factor is that the *ruqa* with regard to first recovery of two gunny bags loaded on the scooter being driven by the appellant was prepared at 06.15 am and FIR reaches the area Magistrate at 08.30 a.m. and with regard to subsequent recovery of 38 bags, a special information report was dispatched which reaches the area Magistrate at 12.05 p.m. on the same day. So there was no possibility of manipulating the story which rather appears to be quite natural.

16. It is pertinent to note that even Karnail Singh, the independent witness was examined by the prosecution as PW-3 but he was declared hostile to the prosecution case because he tried to twist the facts. PW-3 stated that recovery of 40 bags of poppy-husk was made from his sugarcane fields which the police party loaded in a tempo and took away the bags to the police station. Since the witness further stated that he cannot identify the appellant facing trial, he was permitted to be cross-examined by the State counsel and was duly confronted with the relevant portions of the statement made to the police. In cross-examination by the defence, PW-3 stated that he had gone to the fields at about 07.00 or 08.00 a.m. and one person was already in custody of the police party. The aforesaid circumstance would bring support to the veracity of prosecution story. Karnail Singh even stated that there were 4-5 persons already present when he reached his fields and those persons were the passersby. However, there was no suggestion to PW-3 to the effect that commodity belongs in fact to

him or that the same was in his conscious possession.

17. Both the recovery witnesses, namely; PW-1 ASI Jaswinder Singh and PW-2 Inspector Jai Pal Singh have been extensively cross-examined but no material discrepancy appeared to shatter confidence in the story. PW-2 Inspector Jai Pal Singh in his cross-examination stated that it was his training period and was holding charge of SHO of the Police Station. PW-2 further stated that he did not know Karnail Singh prior to this recovery. Both PW-1 and PW-2 stated that Karnail Singh did not accompany them to Police Station. Apart from aforesaid few factors there is absolutely nothing in cross-examination of PW-1 and PW-2 to challenge the prosecution story.

18. PW-4 MHC Satnam Singh tendered his affidavit, Ex. AX. According to PW-2 and PW-4, the case property on return to the Police Station was deposited with MHC of the Police Station. It is stated by PW-2 and also by PW-4 in his affidavit that case property was entrusted to ASI Ajaib Singh to be produced before the Magistrate on 27.09.1994. ASI Ajaib Singh has been examined as PW-6 for supporting this version. Constable Bhagwant Singh was entrusted with the samples to be deposited in the office of Chemical Examiner. There is no flaw in the link evidence.

19. The entire case property i.e. 40 bags of poppy-husk was produced during examination of both PW-1 and PW-2. The gunny bags are Ex. P-1 to P-40, and the rope with which two gunny bags were tied with the scooter is Ex. P-42. In cross-examination,

PW-2 stated that there is no identification mark on the bags produced nor the *malkhana* number written over the gunny bags. The above inconsistency is not quite significant as the entire case property was produced in court after almost one year from the recovery and such type of defects do occur. This will have no bearing especially when the case property was produced before the Magistrate immediately on the next day as testified by PW-6. Further cross-examination of PW-4 HC Satnam Singh was deferred and he stated in his cross-examination on 22.11.1997 that he brought register no. 19 with him and there are entries in the register about taking of the case property by ASI Ajaib Singh and redeposit of the same after production before the Magistrate. PW-6 also stated that when the case property was produced on 27.09.1994 before the Magistrate, the Magistrate checked the sample parcels and specimen seals and put his own signatures by way of attestation.

20. From the above discussion, I find that the trial Court was quite correct in holding the charge against the appellant to be proved beyond suspicion. In view of the quantity recovered, which is commercial, the sentence awarded by the trial Court to the appellant is quite appropriate and there is no scope of interference.

21. Finding no merit in the instant appeal, the same is dismissed.

April 08, 2015
jk

(R.P. NAGRATH)
JUDGE