

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

CRA-S-1410-SB-2004

Date of decision: 15.09.2015

Balwinder Singh

..... Appellant

Versus

The State of Punjab

..... 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. Manpreet Singh, Advocate for the appellant.

Mr. Ajaib Singh, Additional Advocate General
for the State of Punjab.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment of conviction dated 26.05.2004, passed by the learned Judge, Special Court, Moga, vide which accused-appellant Balwinder Singh has been held guilty and convicted for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (here-in-after called the 'Act') and the order on quantum of sentence dated 27.05.2015,

vide which the appellant has been sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.1,00,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one year.

2- As per the prosecution case, on 20.03.1999 PW7 SI Jasbir Singh, (the Investigating Officer) along with other police officials was on patrol duty and they were going from village Kili Chahal to village Chuhar Chak through *Katcha* passage. When they reached near the railway crossing, the accused-appellant was seen coming from the front side on a scooter and on seeing the police party, he tried to turn back. He was apprehended by the police. Two gunny bags were loaded on the scooter. SI Jasbir Singh informed him that he wants to take search of the bags and that he has legal right of his search in the presence of a Magistrate or a Gazetted Officer. Vide his consent memo Ex.PD, the accused replied that his search be conducted in presence of some Gazetted Officer. Jarnail Singh Dhaliwal, Superintendent of Police (D), Moga was called at the spot through wireless message. In the meantime, Gurcharan Singh son of Lal Singh, resident of Ghalkalan came from the side of village Kili Chahal on a scooter. He was also joined in the police party. Then, in the presence of the S.P. (D), the bags in the possession of the accused were searched, which was found containing poppy straw. Two samples of 250 grams each i.e. one sample from the each bag, were separated. The residue, on weighment, came to be 35 kilograms in each bags. Separate sealed parcels of the samples and the residue were

prepared and sealed with seal of the Investigating Officer 'JS' and seal of the S.P. (D) 'JSD' and taken into possession vide seizure memo Ex.PJ. The Investigating Officer entrusted his seal after use to Gurcharan Singh, private witness, whereas the S.P. (D) kept his seal with him. The Investigating Officer sent Rukka Ex.PH to the Police Station. On the basis of which, formal FIR Ex.PH/1 was registered. The Investigating Officer prepared the site plan of the place of recovery Ex.PI. Statements of the witnesses were recorded. The accused was arrested vide arrest memo Ex.PG.

3- On returned to the Police Station, the Investigating Officer produced the accused, witnesses and case property before ASI Bhinder Singh, the SHO, P.S. Mehna. He verified the facts of the case and affixed his seal 'BS' on the parcels of contraband. Thereafter, the case property was produced before the Illaqa Magistrate vide application Ex.PB. On which, learned Illaqa Magistrate passed his order Ex.PB/1. Sample parcels were sent to the Forensic Science Laboratory, Punjab, Chandigarh 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 (here-in-after called the 'Cr.P.C.') was presented in the Court.

4- The accused appellant was charge sheeted for the offence punishable under Section 15 of the Act vide order dated 23.07.1999 by the learned trial Court, to which the appellant pleaded not guilty and claimed trial.

5- In order to substantiate its case, prosecution examined as many as ten witnesses.

6- When examined under Section 313 Cr.P.C., the accused-appellant pleaded innocence and false implication. He stated that he was picked up from his house in the presence of respectables of the village and no poppy straw was recovered from him.

7- In the defence evidence, accused examined Hardy Singh, Lambardar of the village as DW1. Thereafter, the defence evidence was closed.

8- Appreciating the evidence on record and the contentions raised by learned counsel for the parties, the accused appellant was held guilty and convicted for the offence punishable under Section 15 of the Act and was awarded the sentence as mentioned in the upper part of the judgment.

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

10- I have heard Mr. Manpreet Singh, Advocate, learned counsel appearing for the appellant, Mr. Ajaib Singh, learned Additional Advocate General for the State of Punjab and have meticulously examined the record of the case.

11- Initiating the arguments, learned counsel for the appellant contended that as per the prosecution story, one Gurcharan Singh son of Lal Singh was associated as an independent witness in the investigation of the case and even the seal after use was entrusted to him but he has not

been examined by the prosecution. In his absence, the entire case of the prosecution is based on the statements of the official witnesses, to which there is no independent corroboration.

12- He further contended that the case property produced during trial is not connected with this case. The investigating officer has admitted in the cross-examination that seals were broken and were not legible. Thus, virtually the case property has not been produced in the Court during the trial, which is fatal to the prosecution case. He further contended that in fact the appellant has been falsely implicated. He is a milk vendor by profession, having good reputation. He was taken away forcibly from his house by the police and was falsely implicated in this case. To stress his contentions, he has drawn my attention to the statement of DW1 Hardy Singh, who is the Lambardar of the village. Thus, he pleaded that the conviction of the appellant has been wrongly recorded.

13- On the other hand, learned State counsel pleaded that 70 kilograms 500 grams poppy husk has been recovered from the possession of the appellant. The prosecution allegations are fully established from the statements of PW7 SI Jasbir Singh, the Investigating Officer of the Case and PW6 ASI Gurcharan Singh, the recovery witness. Their statements are further corroborated from the testimonies of PW9 ASI Bhinder Singh, the then SHO P.S. Mehna. The search and seizure has been conducted in the presence of PW10 Jarnail Singh Dhaliwal, the then Superintendent of Police (Detective), Moga. He contended that the

independent witness Gurcharan Singh has to be given up as he has been won over and sided with the accused. He further contended that no other defect in the parcels of the case property has been pointed out except that the seals were found brittle, which can happen with the passage of time. 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- Gurcharan Singh son of Lal Singh, resident of village Ghal Kalan was associated as a public witness in the investigation of the case by the Investigating Officer but he has not been examined and was given up by learned Public Prosecutor as having been won over by the accused vide his statement dated 05.04.2004. Said witness was given up by learned Public Prosecutor as he was not going to support the prosecution and was won over by accused-appellant. The law is well settled that the prosecution is not bound to examine each and every witness particularly the witness who has been won over by the accused and is not going to support its case. The Hon'ble Supreme Court in case ***Banti alias Guddu Vs. State of Madhya Pradesh 2003(4) RCR (Criminal) 911*** has laid down that there is no illegality if the Public Prosecutor has given up the witness who was not likely to support the prosecution case. In case ***Masalti Vs. State of Uttar Pradesh, AIR 1965 SC 202***, it was held that it is, undoubtedly the duty of the prosecution to lay before the Court all material witnesses, available to it, whose evidence is necessary for unfolding the case, it would be unsound to lay

down it as a general rule that every witness must be examined even though his evidence may not be material or even if it is known that he has been won over or terrorised. In ***Roop Singh Vs. State of Punjab 1996 (1) RCR (Criminal) 146***, the Division Bench of this Court held that no adverse inference can be drawn, when the only independent witness was given up by the prosecution, as won over by the accused. It was further laid down that the panch witnesses, being human beings, are quite exposed and vulnerable to human feelings of yielding, browbeating, threats and inducements and giving up of the public witnesses as won over, is fully justified in the present day situation, prevailing in the society. The same rule of law has been reiterated by another Division Bench of this Court in case ***Karnail Singh Vs. State of Punjab 1983 Criminal Law Journal, 1218***.

16- In view of the consistent rule of law laid down in the cases referred above, the non-examination of Gurcharan Singh as having been won over by the accused is no ground to reject the prosecution version. It is further the well settled principle of law by this time that the testimonies of the official witnesses are at par with the other witnesses. Their statements cannot be discarded simply on account of their official designation. There is no statutory or absolute rule that their depositions should be treated with suspicion. The police witnesses cannot be viewed with distrust every time. To support this view, reference can be made to cases ***Ram Swaroop Vs. State (Government of NCT of Delhi) (2013) 14, Supreme Court Cases 235*** and ***Kashmiri Lal Vs. State of Haryana 2013***

(6) Supreme Court Cases 595. Thus, the testimonies of the official witnesses examined by the prosecution cannot be discarded simply on the ground that Gurcharan Singh, the independent witness, associated in the investigation of the case, has not been examined.

17- It is settled principle of law that the case property is only a corroborative piece of evidence. The purpose of producing the case property during the trial is only to corroborate the substantive evidence adduced by the prosecution. The case property in this case has been produced at the time of the examination of PW7 SI Jasbir Singh, the Investigating Officer of the case. In the cross-examination he has stated that remnants of the seals are available on both the gunny bags though none of the seal is legible at this moment because the sealing wax containing impression of seal has brittle away. The recovery in this case was effected on 20.03.1999. The statement of PW7 SI Jasbir Singh has been recorded on 05.12.2003 i.e. after more than 04 years and 08 months. With the lapse of such a long period, it is not expected that the seals will remain unbroken, as the case property is handled various times while lying in the Malkhana. It has also to be brought to the Court during trial and in that process, the seals may broke. Moreover, with the lapse of time, even the strength of sealing wax also diminish and due to this natural process, the seals on the case property may brittle away. It is a fact of common knowledge that the case chits are also affixed on the articles of the case property. The Investigating Officer has not been cross-examined with respect to the presence or absence of the case chit on the

bags produced in the Court. In the absence of the cross-examination of the Investigating Officer on that point, simply due to brittling away of the seals, it cannot be stated that the bags produced by the prosecution during trial were not connected with the present case.

18- I do not find any substance in the plea raised by learned counsel for the appellant that the appellant has been falsely implicated in this case. DW1 Hardy Singh, Lambardar, of the village has stated that he is known to Balwinder Singh accused present in the Court. He is a man of good reputation and is a milk vendor. On 22.03.1999, he was apprehended by the police from his house and was taken to Police Station in his presence. At that time no incriminating article was recovered from the possession of accused. But in the cross-examination, he stated that no application was moved by him to the higher authorities regarding false implication in the case. Though they had appeared before the D.S.P. in this connection. He further stated that house of the accused is situated at a distance of 150 meters from his house. DW1 Hardy Singh has not explained as to for what purpose he was present near the house of the accused-appellant, when allegedly he was taken away by the police. Moreover, as per the prosecution story, the recovery was effected on 20.03.1999 whereas this witness has stated that the appellant was taken away by the police from his house on 22.03.1999 when he was already arrested in this case. Thus, the statement of DW1 Hardy Singh does not inspire any confidence. The case of the prosecution is supported by PW10 Jarnail Singh Dhaliwal the Superintendent of Police (Detective), Moga, a Senior

Police Officer, under whose supervision the search and seizure has been conducted. He had reached at the spot on receiving the wireless message. Thereafter, the search of the bags found in possession of the appellant was conducted, which led to the recovery of the poppy straw. It is not believable that such a senior police officer will support the false version put forwarded by his subordinates. So, the plea of false implication raised by the accused-appellant has no legs to stand.

19- PW7 SI Jasbir Singh, the Investigating Officer of the case and PW6 ASI Gurcharan Singh, the witness of recovery, have consistently deposed about the manner in which the accused-appellant was apprehended. Thereafter, on receiving the wireless message from the Investigating Officer, PW10 Jarnail Singh Dhaliwas Superintendent of Police (Detective), Moga has reached at the spot in whose supervision, the search and seizure was conducted which led to the recovery of 70 kilograms and 500 grams poppy straw from the possession of present appellant stored in two gunny bags. The case of the prosecution is also corroborated from the testimony of PW9 ASI Binder Singh, the then SHO Police Station, Mehna before whom the case property along with accused was produced immediately after the recovery. Learned counsel for the appellant has not been able to point out any discrepancy in their testimonies. The statement of all the four witnesses are consistent, cogent and reliable, which are sufficient to establish beyond shadow of reasonable doubt that accused-appellant was found in conscious possession of 70 kilograms and 500 grams of the poppy straw. Thus, the

conviction of the appellant as recorded by the learned trial Court and the sentence awarded to him is well founded and is hereby maintained and upheld.

20- Consequently, present appeal has no merits and the same is hereby dismissed. The accused-appellant is on bail. His bail stand cancelled. He shall surrender within 15 days from the date of this judgment before the learned Chief Judicial Magistrate, Moga, who shall send him to jail to undergo the remaining part of his sentence. If, he fails to surrender, the learned Chief Judicial Magistrate, Moga, shall take coercive steps to secure his presence and send him to jail to undergo the remaining part of the sentence.

Dated: 15.09.2015.
sunil yadav

(DARSHAN SINGH)
JUDGE