

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No.S-1579-SB of 2004 (O&M)

Date of decision: 30th September, 2015

Manjit Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Gurpal Sandhu, Advocate,
for the appellant.

Mr. B.S.Bhullar, AAG, Punjab,
for the respondent(s)-State.

INDERJIT SINGH, J.

Appellant Manjit Singh has filed the present appeal against the judgment of conviction dated 31.07.2004 and order of sentence dated 02.08.2004, passed by the learned Special Judge, Moga, vide which he has been held guilty for the commission of offence punishable under Section 15 (b) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (in short 'the Act') and accordingly convicted and sentenced to undergo rigorous imprisonment for a period of 03 years and to pay a fine of ₹50,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of six months under the aforesaid Section.

Brief facts of the prosecution case are that on 23.08.2002, when ASI Nirmal Singh alongwith other police officials was present on the bridge of Canal Minor in the area of Village Mander for checking of ante-social elements and search of proclaimed offenders, three persons carrying plastic bags on their

heads came from the side of village Daulewala and tried to cross the bridge. On suspicion, they were signalled to stop but they tried to slip away towards different sides. The accused was apprehended by ASI Nirmal Singh with the help of his police party whereas the other persons namely Mukhtiar Singh and Jagtar Singh were apprehended by the police party of ASI Harjit Singh and ASI Mohinder Singh regarding which separate proceedings were conducted. Accused Manjit Singh was told that police party is having suspicion that some intoxicant substances is there in the bag being carried on his head. He was asked whether he wanted to get searched the bag in the presence of ASI Nirmal Singh or Gazetted Officer or Magistrate. Accused reposed confidence in ASI Nirmal Singh. In the meantime, Sewak Singh and Chhinder Singh came there and joined the police party. ASI Nirmal Singh got conducted the search of the gunny bag and recovered the poppy straw from it. 250 grams poppy straw was separated as sample and remaining poppy straw came to be 9 kg 750 grams. Separate parcels of the sample as well as the bulk were prepared and sealed with the seal bearing impression 'JS' of ASI Nirmal Singh. Case property was taken into police possession. Site plan was prepared and statements of witnesses were recorded. Accused were arrested. Ruqa was sent to the police station on the basis of which FIR was registered.

On presentation of challan, copies of challan and other documents was supplied to accused under Section 207 Cr.P.C. Finding a prima facie case against the accused, he was charge-sheeted for the commission of offence punishable under Section 15

of the Act to which he pleaded not guilty and claimed trial.

The prosecution, in support of its case, examined **PW1** ASI Mohinder Singh, who produced the accused and case property before the Court of learned Judicial Magistrate Ist Class, Moga. **PW2** ASI Suba Singh conducted the partial investigation. **PW3** Head Constable Kuldip Kumar is a formal witness, who deposed regarding depositing the case property. **PW4** Kirpal Singh, SHO, deposed regarding the verification of the investigation. **PW5** Constable Jagjit Singh is a formal witness, who tendered into evidence his affidavit Ex.PE. **PW6** Head Constable Sukhdev Singh deposed regarding the investigation of the present case as he joined the police party headed by ASI Nirmal Singh. **PW7** ASI Nirmal Singh, Investigating Officer, deposed regarding the investigation of this case. **PW8** Constable Gurmej Singh is a formal witness, who tendered into evidence his affidavit Ex.PK.

At the close of prosecution evidence, the accused was examined under Section 313 Cr.P.C. and was confronted with the evidence of prosecution. He denied the correctness of the evidence and pleaded himself as innocent. He also stated that he has been falsely implicated in this case. He was apprehended from his house and was brought to the police station and later on false case was planted upon him.

The accused did not lead any defence evidence.

The trial Court, after appreciation of evidence, convicted and sentenced the appellant-accused as stated above.

Aggrieved against the said judgment of conviction and

order of sentence, the appellant has preferred this appeal.

At the time of arguments, learned counsel for the appellant contended that the appellant has been falsely implicated in the present case. He further contended that the statements of the police officials cannot be believed and reasonable doubt exists in the prosecution version. He contended that no independent witness has been examined. Therefore, learned counsel for the appellant contended that there being merit in the appeal, it should be allowed. Learned counsel for the appellant, in the alternative, prayed for reduction of sentence.

On the other hand, learned State counsel contended that case has been duly proved by the prosecution by bringing on record cogent evidence. There are no material contradictions or improbabilities in the prosecution version. Learned State counsel further contended that there is no merit in the appeal and the same should be dismissed.

I have heard learned counsel for the appellant as well as learned State counsel and have gone through the record.

It is now settled law that the testimony of police official is as good as of any other witness unless some enmity or motive of police official is alleged and proved against the accused. In the present case, there is no such evidence on record to prove any enmity or motive of the police officials to falsely implicate the accused. Therefore, there is nothing on the record to show that the accused has been falsely implicated in the present case. PWs have consistently deposed regarding the prosecution version. No material

contradictions have been pointed out in their statements. There is nothing in the cross-examination of Pws which may make their statements as unreliable. There is compliance of mandatory provisions under the Narcotic Drugs & Psychotropic Substances Act. As per evidence, two independent witness were with the police official at the time of recovery but these PWs have already been given up by the learned public prosecutor and thus non-examination of independent witness in no way create reasonable doubt in the prosecution version.

From the aforesaid discussion, I find that the prosecution has duly proved its case by leading cogent evidence and no reasonable doubt exists in the prosecution version. The impugned judgment of conviction passed by the learned trial Court is correct and as per law and the same is upheld.

As regarding the sentence awarded to appellant, this Court finds that at the time of recovery, the accused was stated to be young man of 20 years. The recovery has been effected in the year 2002 and for the last more than 13 years, the accused is suffering from long protracted criminal proceedings. The appellant is the first offender and recovery effected from him is non commercial i.e. only 10 kgs. poppy straw.

Keeping in view the facts and circumstances of the present case and the facts that at the time of occurrence, the appellant was stated to be young person of 20 years old; no other conviction has been proved against him; he is the first offender and he has already suffered a lot due to long protracted criminal proceedings since the

year 2002 i.e. for more than 13 years, the sentence imposed upon him is reduced to rigorous imprisonment for a period of 9 months. He is directed to pay a fine of Rs.2,000/- and in default of payment of fine, he is directed to further undergo rigorous imprisonment for a period of one month. The sentence of fine is also reduced accordingly.

With the aforesaid modification, the instant appeal stands dismissed.

The appellant is directed to surrender himself before the jail authorities to undergo remainder of sentence, failing which, the concerned authority shall proceed against him as per law.

30th September, 2015
mamta

(INDERJIT SINGH)
JUDGE