

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

**Criminal Appeal No.S-1610-SB of 2004
Date of decision : 30.09.2015**

Chhinder 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 Chhinder Singh has filed the present appeal against the judgment of conviction dated 06.08.2004 and order of sentence dated 07.08.2004, passed by the learned Special Judge, Ferozepur, vide which he has been held guilty for the commission of offence punishable under Section 15 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 ₹3,000/- 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 05.03.1996, ASI Joginder Singh alongwith other police officials was going in a mini bus No.PIC-2913, driven by Constable Lal Chand from Village Patti Sadiq towards bridge canal Chimar Khera via

kacha rasta in connection with patrol duty and when they reached near the bridge in the area of Village Patti Sadiq, the accused Chhinder Singh was seen coming on a bicycle from opposite side, who, on seeing the police party became perplexed and turned his cycle towards his left side. On suspicion, he was apprehended by ASI Joginder Singh with the help of other police officials. The accused was carrying a small bag(gatta) on the carrier of his cycle. An offer was given to accused by ASI Joginder Singh whether he wanted to get his search conducted in the presence of gazetted officer, Magistrate or from him. The accused stated that he has no objection if the search is conducted by ASI Joginder Singh, Investigating Officer. Then, as per rules, search was conducted. Poppy husk was recovered from the said bag, which on weighment, came to 15 kgs. 100 grams poppy husk was separated as sample. Sample parcel as well as bulk parcel were sealed with the seal bearing impression 'JS" of ASI Joginder Singh, Investigating Officer, and were taken into police possession. Ruqa was sent to the police station on the basis of which FIR was registered. The accused was arrested. Statements of witnesses were recorded. Rough site plan was prepared. On return to the police station, the case property, accused and witnesses were produced before SI Babu Ram, SHO, who, again sealed the parcels with his own seal bearing impression 'BR' and the case property was deposited with MHC. After necessary investigation, challan against the accused was presented.

On presentation of challan, copies of challan and other documents were 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.

Earlier, the accused was absented and he was declared as proclaimed offender but lateron, on his arrest, supplementary challan was presented against him in the Court.

The prosecution, in support of its case, examined **PW1** SI Babu Ram, who was posted as SHO on 05.03.1996, before whom the case property and the accused were produced to verify the investigation and to seal the case property. **PW2** Constable Satpal Chand is a formal witness, who tendered into evidence his affidavit Ex.P9. **PW3** ASI Joginder Singh, Investigating Officer mainly deposed regarding the investigation in the present case and the recovery of poppy husk from the accused. **PW4** ASI Hari Chand, who was with the police party, headed by ASI Joginder Singh, deposed regarding the recovery from the accused.

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.

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 contradiction has 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 regarding the fact that no independent witness has been examined, non-examination of independent witness in no way creates 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 35 years old. The recovery has been effected in the year 1996 and for the last about 20 years, the accused is suffering from long protracted criminal proceedings. The appellant is the first offender. As contended, the accused is a poor person and only bread earner of his family.

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 35 years old; no other conviction has been proved against him; he is the first offender; he has already suffered a lot due to long protracted criminal proceedings since the year 1996 i.e. about 20 years and he has already undergone 01 year and 02 days of actual sentence, the sentence imposed upon him is reduced from three years to the period already undergone by him. The sentence of fine shall remain the same but in default of payment of fine, he shall undergo rigorous imprisonment for a period of one month instead of rigorous imprisonment for a period of 6 months.

With the aforesaid modification in sentence, the instant appeal stands dismissed.

(INDERJIT SINGH)
JUDGE

30th September, 2015
mamta