

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-674-SB of 2004
Date of Decision: September 16, 2015

Wazid Sabri

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.P.S.Brar, Advocate and
Mr.Rao Ajender Singh, Advocate for
Mr.J.S.Mehandiratta, Legal Aid counsel
for the appellant.

Mr.B.S.Bhullar, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the judgment of conviction and order of sentence dated 09.03.2004 passed by learned Judge, Special Court, Ludhiana, whereby he was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months under Section 18 of the NDPS Act.

The brief facts of the case are that on 19.02.1999, police party headed by ASI Rulda Singh along with police officials and Jatinder Singh, a private witness, was going from the side of

Fereozepur road towards village Jhande in connection with search of suspects and when they crossed railway crossing, accused was seen coming from the side of village Threekay carrying a steel pot (*dolu*) in right hand. On seeing the police party, he at once kept the *dolu* in bushes and tried to turn back. On suspicion, he was apprehended. He was asked to lift *dolu* from the bushes. Smell of opium like substance was coming from the *dolu*. On this, ASI Rulda Singh told the accused that he suspects some contraband in the *dolu* and if he desired, then gazetted officer or Magistrate can be called for the purpose of search. On this accused opted for search from higher official. ASI Rulda Singh sent a message to DSP Paramjit Singh Khera, who came on the spot. DSP disclosed his identity to the accused and further told him that he wants to conduct search of his *dolu* and if he so desires, then search could be conducted in the presence of other gazetted officer or Magistrate, but accused reposed confidence in him. On the directions of DSP Paramjit Singh Khera, ASI Rulda Singh conducted search of the *dolu* and from it opium wrapped in a glazed paper was recovered. On weighment, opium came to 2 kgs. Out of it, two samples of 10 grams each were separated and converted into two separate parcels. The remaining opium was put in the same *dolu* and converted into separate parcel. All the parcels were sealed by DSP Paramjit Singh Khera with his seal bearing impression 'PS'. Sample seal/chit was also prepared. The case property was taken into possession by the Investigating Officer. Ruqa was sent to the police station, on the basis of which FIR

Ex.PD/1 was registered. The Investigating Officer prepared rough site plan. Statements of the witnesses recorded. Accused was arrested. On return to the police station, the Investigating Officer produced accused and case property before SHO Rajeshwar Singh, who verified the facts of the case and further sealed the case property with his seal bearing impression 'RS'. Thereafter, ASI Rulda Singh deposited the case property with MHC Baldev Singh on the same day with seals intact. On next day, after producing the case property in the Court, it was again deposited with MHC with seals intact. After receiving report of Chemical Examiner and on completion of investigation, challan was presented against the accused.

On presentation of challan against accused-appellant, copies of challan and other documents were supplied to him under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant was charge-sheeted under Section 18 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Head Constable Baldev Singh, formal witness, who tendered into evidence his affidavit Ex.PA. PW-2 DSP Paramjit Singh Khera deposed as per prosecution version. He further deposed that he was called by the Investigating Officer on the spot, in whose presence search was conducted and he deposed regarding the recovery of the opium, separating samples, sealing the case property and also taking the case property into the police possession vide recovery memo Ex.PB attested by him as well as by ASI Swaran Singh, Jatinder Singh. PW-

3 ASI Rulda Singh, Investigating Officer, deposed regarding investigation conducted by him in the present case. PW-4 Head Constable Inderjit Singh mainly deposed that on 19.04.1999, he obtained one sample parcel duly sealed with seals bearing impressions 'RS' and 'PS' and sample seal chit from MHC Baldev Singh and deposited the same in the office of Chemical Examiner, Patiala. PW-5 DSP Rajeshwar Singh, who was posted as SHO in the police station, Ludhiana, deposed regarding verification of the investigation on that day and also that on his directions, the case property was deposited with MHC by ASI Rulda Singh.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. and he denied the correctness of the evidence and pleaded himself as innocent. He further pleaded that he was picked up on 18.02.1999 from his house by CIA Staff officials at the instance of Kuldip Chand of his village. Nothing was recovered from his possession.

In defence, accused-appellant examined DW-1 Darshna Devi, who mainly deposed that she knows accused who belongs to her village and he is also known by the name of Vijay Kumar and he sings *Qualis*. She also knows Kuldip Chand, who is of the same village. Kuldip Chand and Wazid Sabri were having dispute regarding some land. She further deposed that in second week of February 1999, police came in the village and Kuldip Chand was also with the police party. They took Wazid Sabri from his house. She enquired from the police and they told her that they are to inquire something

from the accused and after 2-3 days, she came to know that accused has falsely been implicated.

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

At the time of arguments learned counsel for the appellant argued that independent witness has not been examined in the present case and in the absence of independent witness, the testimony of police officials cannot be believed. They further argued that the driver of private jeep was available but he was also not joined in the investigation. They next argued that the Magistrate has signed on the slip but that slip did not reach to the laboratory. Learned counsel for the appellants also contended that on affidavit Ex.PA, the seal of the Magistrate was not affixed. It is further argued that there are discrepancies in the statements of the PWs as DSP Paramjit Singh Khera stated that ASI Rulda Singh recorded the statement of Swaran Singh whereas ASI Rulda Singh has stated that Swaran Singh himself wrote his statement on dictation. Learned counsel for the appellant, therefore, argued that there being merit in the appeal, it should be allowed and accused-appellant should be acquitted.

On the other hand, learned State counsel argued that prosecution has duly proved its case by leading cogent evidence. PWs have consistently deposed regarding prosecution version. He next argued that the independent witness was already with the police party, so, there was no necessity to join other independent witness. He also argued that there are no material contradictions or material

improvements in the statements of the PWs. Learned State counsel, therefore, argued that there being no merit in the appeal, the same should be dismissed.

After hearing learned counsel for the appellant as well as learned State counsel and after going through the record, I find that it is settled law that testimony of the police official is as good as of any other witness unless some enmity or motive of the police official against the accused is alleged and proved. In the present case, there is no enmity or motive of the police officials to falsely implicate the accused-appellant. As per the defence version, especially the statement of DW-1 Darshna Devi, the appellant has been implicated at the instance of one Kuldip Chand but there is nothing on the record to show as to how Kuldip Chand has influence upon the police officials or whether Kuldip Chand is related to any police official or having close relation with him. Otherwise also, in the present case, search has been conducted in the presence of DSP, who is Gazetted Officer. There is nothing on the record as to how the police officials including DSP, would falsely deposed against the accused-appellant. Moreover, there is nothing on the record that any Resolution was passed in the Gram Panchayat or any complaint was sent to higher authorities regarding false implication of the accused. There is also nothing on the record as to what was the dispute between Kuldip Chand and the present accused-appellant. The statement of DW-1 Darshna Devi also cannot be believed as she has not filed any complaint to the higher authorities regarding false implication. She

stated in the cross-examination that she did not file any complaint with the police or any other authority regarding illegal detention or false implication of the accused. She further stated in the cross-examination that she does not know the name of police official who came to their village. As this witness is of the same village to which the accused belongs, therefore, such type of witness can be procured at later stage to depose in favour of the accused. Therefore, the defence version is not believable nor the accused has proved any enmity or motive to falsely implicate him.

The independent witness Jatinder Singh was with the police party, therefore, even if driver of the private jeep, if any, was available, it was not necessary to join him. Learned Public Prosecutor has also given up the independent witness being won over. It is not necessary for the prosecution to examine each and every witness to prove its case. The prosecution has already examined DSP, Investigating Officer and the SHO etc., who have consistently deposed regarding the prosecution version. No material contradictions or improvements have been pointed out at the time of arguments by learned counsel for the appellant, which may go to the root of the case. The minor discrepancies as pointed out by learned counsel for the appellant do not go to the root of the case. Such type of discrepancies are to occur in the statements of truthful witnesses with the passage of time.

I have also gone through affidavit Ex.PA. It was signed by the Magistrate and on the stamp was also fixed by the Magistrate.

Otherwise also, there is no evidence on the record that the other witness has not deposed before the Illaqa Magistrate. The other grounds taken by learned counsel for the appellant are not material discrepancies in the prosecution version nor on these grounds it can be held that a reasonable doubt exists in the prosecution case. The link evidence is complete. No material contradictions or improvements are there in the statements of the PWs, which may go to the root of the case. There is also nothing in the cross-examination of the witnesses, which may make their statements unreliable.

I have also gone through the statement of PW-3 ASI Rulda Singh Investigating Officer. In chief-examination, he has stated that on the next date, he obtained the case property from the MHC and produced the same along with accused before the Magistrate. After the request Ex.PH, on which the Magistrate passed the order Ex.PH/1, the Investigating Officer re-deposited the case property with the MHC on the same day with seals intact. I have gone through Ex.PH. The Magistrate has nowhere stated that he has signed on the samples chit. As per order Ex.PH/1, case property was bearing seals of "PS" and "RS" and two samples were signed and initialed. Therefore, this argument of learned counsel for the appellant has also no merit.

In view of the above discussion, I find that the prosecution has duly proved its case by leading cogent evidence beyond reasonable doubt against the accused-appellant. The judgment of conviction and order of sentence dated 09.03.2004 passed by learned

Judge, Special Court, Ludhiana, are correct, as per law and do not require any interference from this Court and the same are upheld.

Therefore, finding no merit in the present appeal, the same is dismissed.

As appellant Wazid Sabri is on bail, his bail bonds stand cancelled and he is directed to surrender himself before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against him in accordance with law.

September 16, 2015
Vgulati

(INDERJIT SINGH)
JUDGE