

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-905-SB of 2004
Date of Decision: September 16, 2015

Mohan

...Appellant

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.P.S.Sakhan, Advocate
for the appellant.

Mr.Anmom Malik, Asstt. Advocate General, Haryana
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 19.03.2004 passed by learned Addl. Sessions Judge, Sirsa, 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 ₹20,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year under Section 18 of the NDPS Act.

The brief facts of the case are that on 20.03.2002, ASI Jaibir Singh along with police officials was present in area of village Bhamboor in connection with patrolling. In the meantime, accused was seen coming towards them in a jeep. Accused got down from the jeep. On suspicion, he was given notice under Section 50 of the

NDPS Act asking him as to whether he desired his search before a gazetted officer or a Magistrate. Accused declined the offer and reposed faith in the police party. On search, accused was found in possession of 500 grams of opium milk. Two samples weighing 10 grams each were removed from the bulk of opium milk and remaining came to 480 grams. The case property was taken into police possession vide recovery memo Ex.PF. Ruqa was sent to the police station, on the basis of which FIR was registered. Accused was arrested. Statements of witnesses recorded. On return, the case property along with the accused was produced before SHO Chet Ram, who also affixed his seal on case property and sample parcels and case property was deposited with the police malkhana. After necessary investigation, the challan was presented against the accused-appellant.

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 ASI Dharam Pal, who mainly deposed regarding recording of formal FIR Ex.PA/1. PW-2 SI Hawa Singh deposed that he prepared report under Section 173 Cr.P.C. PW-3 Inspector Chet Ram mainly deposed that on 20.03.2002, he was posted as SI/SHO and on that day, ASI Jaibir Singh produced witnesses, accused and case property before

him. He verified the facts from the witnesses and accused and affixed his seal on the case property and on his directions, the accused was locked up in the lock-up and the case property was deposited by Investigating Officer with the MHC. He further deposed that ASI Jaibir Singh also produced before him report under Section 57 of the NDPS Act, on which, after verification, he had made endorsement and sent to senior officers and was perused by DSP (Head Quarter) Rai Singh, Sirsa. PW-4 Head Constable Raja Ram and PW-5 Constable Dalbir Singh are the formal witnesses, who tendered into evidence their affidavits Ex.PC and PD respectively. PW-6 SI Jaibir Singh, Investigating Officer, deposed regarding investigation conducted by him in the present case. PW-7 ASI Amar Nath, who was along with the police party and recovery witness, deposed as per prosecution version. Learned Public Prosecutor closed the prosecution evidence after tendering into evidence FSL report Ex.PH.

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 has been falsely implicated.

In defence, accused-appellant examined DW-1 Sher Singh, who mainly deposed that about two years back, he along with Mohan Singh was coming from Barnala and at Mushabwala Barrier, police checked the bus. There were exchange of hot words between Mohan Singh and ASI Jaivir Singh and he got down accused Mohan Singh from the bus in his presence. He further deposed that he

requested ASI Jaivir Singh that Mohan Singh is an old man and he be allowed to go with him in the bus as they have to visit Dera Sacha Sauda. Nothing was recovered from the accused. Mohan Singh was not allowed to go with him and he was kept by the police. Later on, he came to know that Mohan Singh has been falsely implicated in case of opium.

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 prosecution has failed to prove the guilt of the accused beyond reasonable doubt. The accused-appellant has been falsely implicated in the present case. He further argued that the prosecution has only examined only official witnesses. Neither any independent witness has been joined in the investigation nor any independent witness has been examined which also creates reasonable doubt in the prosecution version. Learned counsel for the appellant, therefore, argued that there being merit in the appeal, the same should be allowed and accused-appellant should be acquitted.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved. The recovery of 500 gm. opium milk has also been proved. He next argued that necessary provisions of NDPS Act have been duly complied with. He further argued that as recovery was sudden and by chance, therefore, there was no time to join an 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.

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

Firstly, I find that it is settled law that testimony of 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, DW-1 Sher Singh has been examined to show that there was some altercation between accused-appellant and ASI Jaibir Singh and accused was got down from the bus and later on falsely implicated in this case. The version of DW-1 cannot be believed firstly because accused has not taken this plea in the statement under Section 313 Cr.P.C. He simply stated that he was falsely implicated. Secondly, this DW-1 Sher Singh was not summoned and was brought by the accused himself. This witness also belongs to the same village to which accused belongs. DW-1 Sher Singh has also stated in cross-examination that he had not moved any application to the higher authorities regarding false implication of the accused-appellant in this case. If the accused was falsely implicated in this case, as stated by DW-1 Sher Singh, then he being the Member Panchayat should have got passed the Resolution in the Panchayat regarding false implication of the accused-appellant. Further, DW-1 has also not made any attempt to file any application or complaint to the higher police authorities regarding false implication of the accused-appellant in this case.

From the record, I find that the defence version is not supported by any documentary evidence nor it looks probable. Such type of witnesses can be procured at the time of defence evidence and the version of DW-1 cannot be believed.

As regarding joining of independent witness, I find that as per prosecution version, when the police party of ASI Jaibir Singh was on patrolling duty, accused was seen coming in a jeep and the recovery from the accused-appellant is sudden and by chance. There was no time with the police party to join independent witness. As already discussed, no enmity or motive of the police officials against the accused-appellant has been proved, therefore, the testimony of police officials is as good as of any other witness.

Further, I find that the prosecution has duly proved that all the necessary provisions of NDPS Act have been complied with. The PWs have consistently deposed regarding the prosecution version. There are no material contradictions or material improvements in the statements of the PWs. There is nothing in the cross-examination of the PWs which may make their statements unreliable. The prosecution has duly proved its case beyond reasonable doubt against the accused-appellant by leading cogent evidence. Therefore, the judgment of conviction dated 19.03.2004 passed by learned Addl. Sessions Judge, Sirsa, is correct, as per law and the same is upheld.

At the time of arguments, learned counsel for the appellant prayed that lenient view be taken and sentence of the appellant should be reduced.

From the record, I find that the appellant is first offender and no other conviction has been proved against him. Accused-appellant is a poor person and he is now stated to be more than 60 years of age and further, he is facing long protracted criminal trial since 2002 i.e. more than 13 years.

Keeping in view the facts and circumstances of the present case and the recovery from the accused-appellant, the sentence imposed upon the appellant is reduced and he is directed to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹10,000/- and in the default of payment of fine to further undergo rigorous imprisonment for a period of three months.

With the above-said modification in the sentence, the present appeal stands dismissed.

As appellant Mohan 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