

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

CRA-S-913-SB-2004

Date of decision: 19.08.2015

Manga

..... Appellant

Versus

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. B.S. Sra, Advocate for the appellant.

Mr.Sandeep Bansal, Assistant Advocate General
for the State of Punjab.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment of conviction dated 15.03.2004, passed by the learned Judge, Special Court, Kapurthala, vide which accused-appellant Manga 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 of the even dated,

vide which the appellant has been sentenced to undergo rigorous imprisonment for a period of one and a half year and to pay a fine of Rs.15,000/-, in default of payment of fine to further undergo rigorous imprisonment for two months.

2- As per the prosecution case, on 21.08.2000 PW5 ASI Gian Chand, (the Investigating Officer) along with Head Constable Narinderjit Singh and other police employees was on patrol duty and when they were little ahead of Government School, Biharipur, Balkar Singh met them per chance. The Investigating Officer was talking with him. In the meantime, one person was seen coming on foot while carrying a plastic bag on his head from the side of village Sialan. On suspicion, he was apprehended. On checking his plastic bag, it was found containing poppy husk. On enquiry, he disclosed his name as Manga son of Jagga, resident of village Kahlwan. From the recovered poppy husk, 250 grams poppy husk was separated as sample and on weightment, the residue was found to be 6 kilograms and 750 grams. The sample was converted into a separate parcel and the residue was put in the same plastic bag. The sample parcel and residue were sealed by the Investigating Officer bearing seal impression 'GC' and were taken into possession vide separate recovery memo Ex.PC, which was attested by the witnesses. The seal after use was handed over to HC Narinderjit Singh. The accused was arrested. Ruqqa Ex.PD was sent to the police station. On the basis of which, formal FIR Ex.PD/1 was registered. The Investigating Officer prepared the site plan of the place of recovery Ex.PE.

3- On return to the police Station, accused, witnesses and the case property were produced before SI Hardeep Singh, the SHO, Police Station Sadar, Kapurthala, who verified the recovery. He put his seal bearing impression 'HS' on the parcels of the case property and sample seal chit. Case property was deposited with the Moharir Head Constable Ram Lal. On 22.08.000, the Investigating Officer, took the case property from the MHC and produced the same before the Illaqa Magistrate, who had seen the case property and passed his order Ex.PG. The sample was sent to the Chemical Examiner, Jalandhar for examination. On receipt of the report of the FSL Ex.PH and completion of formalities of the investigation, the report under Section 173 of Code of Criminal Procedure, 1973 (here-in-after called '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 08.11.2000 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 five witnesses.

6- When examined under Section 313 Cr.P.C., the accused-appellant pleaded innocence and false implication. The accused-appellant pleaded that he has been falsely implicated in this case on account of enmity with the police officials of P.S. Sadar, Kapurthala.

7- In the defence evidence, accused examined HC Jarnail

Singh as DW1 and Charan Singh as DW2. 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. B.S. Sra, Advocate, learned counsel for the appellant, Mr. Sandeep Bansal, learned Assistant 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 independent prosecution witness Balkar Singh was alleged to have been joined in the investigation but he has not been produced in the witness box. He was not even given up by the learned Public Prosecutor. So, his presence at the spot is extremely doubtful. The seal after use was not handed over to him, rather the seal was entrusted to PW3 Narinderjit Singh, the subordinate of the Investigating Officer.

12- He further contended that PW3 Narinderjit Singh, the witness of recovery has nowhere stated that he had appeared before the SHO along with accused and the case property, for verification of the facts. He further contended that entire proceedings of the prosecution

appears to have been fabricated in view of the statement made by PW3 HC Narinderjit Singh, the witness of recovery. The ruqqa was sent to the Police Station at 2:30 P.M. after practically completing the entire proceedings but it is alleged that they returned to the Police Station at 9:30 P.M. It is not explained as to for what purpose they remained at the spot for such a long duration thereafter.

13- He further contended that provisions of Sections 52, 55 and 57 of the Act have been totally violated in this case. The Investigating Officer has not prepared any inventory and no grounds of arrest were conveyed to the accused-appellant. The Officer Incharge of the Police Station did not take over the charge of the case property and no report under Section 57 of the Act has been sent to the superior officers by the Investigating Officer. He further contended that tampering with of the case property is not ruled out as ASI Gian Chand has received back the seal on the next day itself i.e. 22.08.2000 and there is delay of 8 days in sending the sample to the FSL, which further render the prosecution case doubtful.

14- He further contended that the accused was alleged to have been apprehended at a distance of 7/8 kilometres from his home village. The Investigating Officer has not prepared any memo of personal search of the accused, which adversely affects the veracity of the prosecution case with respect to the time and place of apprehension. Thus, he pleaded that the conviction of the appellant has been wrongly recorded by the learned trial Court.

15- On the other hand, learned State counsel pleaded that from the consistent testimonies of PW3 HC Narinderjit Singh and PW5 ASI Gian Chand, the Investigating Officer of the case, it is established that 7 kilograms poppy husk was recovered from the possession of the accused-appellant. Their testimonies are further corroborated by statements of PW4 SI Hardip Singh, the then SHO Police Station Sadar, Kapurthala. He further contended that the non-examination of Balkar Singh does not render the testimonies of official witnesses unreliable. The chain of the link evidence is also complete, so, the delay in sending the sample parcel to the FSL is of no legal consequence.

16- I have duly considered the aforesaid contentions.

17- I found considerable substance in the contentions raised by learned counsel for the appellant. It is the settled principle of law that the prosecution is required to establish its case beyond shadow of reasonable doubt and in the manner alleged by it, by leading cogent, convincing and reliable evidence. In the instant case, the entire prosecution version with respect to the apprehension of the accused-appellant, search and seizure of the contraband is based on the statements of two junior police officials namely PW5 ASI Gian Chand, the Investigating Officer of the case and PW3 HC Narinderjit Singh, his subordinate. There is no independent corroboration to their testimonies. There is no dispute with respect with the preposition of law that mere this fact that the independent witness has not been examined, is itself not a ground to discard the testimonies of the official witnesses, but if the story

of the prosecution is suspicious and doubtful, then the statements of the official witnesses cannot be acted upon without independent corroboration.

18- In the instant case, it is alleged that one Balkar Singh was associated as an independent witness in the investigation of the case but this witness has not been produced in the witness box by the prosecution. He was not even given up by learned Public Prosecutor. So, the alleged independent witness Balkar Singh was neither produced in the witness box nor was given up by the learned Public Prosecutor. So, it is a mystery as to why and for what reasons he has not been examined. As per statement of PW3 Narinderjit Singh, the village of PW Balkar Singh is at a distance of 5/6 kilometres from the place of recovery. There is no explanation from the side of the prosecution as to for what purpose he happens to be present at the place of recovery and in what manner he met the police party. Thus, in these circumstances, even the joining of said Balkar Singh in the investigation appears to be extremely doubtful.

19- As per the statement of PW3 Narinderjit Singh, they started from the Police Post at 2:00 P.M. and before apprehending the accused, they have patrolled in village Biharipur. Perusal of ruqqa Ex.PD shows that the same was dispatched to the Police Station at 2:30 P.M. i.e. within half an hour from the time the police party started from the Police Post. PW3 Narinderjit Singh has stated that before reaching the place of recovery and apprehending the appellant, they had patrolled in village Biharipur. The patrolling in village Biharipur also might have consumed

some time. The ruqqa Ex.PD shows that the same was prepared after the apprehension of the accused, the search of the plastic bag in the possession of the appellant, the separation of the sample, weighing the remainder poppy husk after arranging the weighing material through Constable Kulwant Singh from village Khera, preparing the sealed parcels of the sample and residue poppy husk and then preparing seizure memo to take into possession the parcels of the contraband. It is not believable that all these proceedings could have been completed by the Investigating Officer within a short span of less than half an hour, which renders the entire proceedings shown to have been conducted by the Investigating Officer at the spot, extremely doubtful.

20- The ruqqa Ex.PD practically after completing the entire proceedings was sent to the Police Station at 2:30 P.M. After sending the ruqqa, the Investigating Officer might have prepared the site plan of the occurrence, the information regarding arrest and might have recorded the statements of the witnesses. But as per the statement of PW3 Narinderjit Singh, they went back to Police Station Sadar Kapurthala at 9:30 P.M. It is admitted case of the prosecution that they were patrolling on scooters and Police Station was only at a distance of 13 kilometres from the place of occurrence. So, it is not explained that how this delay of seven hours had occurred in reaching the Police Station after sending the ruqqa Ex.PD to the Police Station. This fact also renders the prosecution case extremely doubtful with respect to the time of the apprehension of the accused and recovery.

21- Even the presence of PW3 HC Narinderjit Singh is extremely doubtful. As per the prosecution story, on return to the Police Station, the Investigating Officer produced the case property and the accused before PW4 SI Hardip Singh, SHO Police Station Sadar Kapurthala for verification of the investigation but PW3 HC Narinderjit Singh has not deposed anything about this aspect. He did not depose that in his presence the accused along with case property was produced before the SHO Police Station Sadar Kapurthala and he had verified the investigation. If he had accompanied PW5 ASI Gian Chand, he must have been aware about the aforesaid facts also and must have deposed to that effect. But these facts are entirely missing from his statements.

22- Thus, keeping in view my aforesaid discussion and the totality of the circumstances discussed above, the prosecution has not been able to establish its case beyond shadow of reasonable doubt against the present appellant and the conviction and sentence of the appellant, as recorded by the learned trial Court, is unsustainable.

23- Resultantly, the present appeal is hereby allowed. The conviction of the appellant and the sentence awarded to him by the learned trial Court are hereby set aside. By giving benefit of doubt, the accused-appellant is hereby acquitted of the charges.

Dated: 19.08.2015.
sunil yadav

(DARSHAN SINGH)
JUDGE