

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

CRA-S-994-SB-2004

Date of decision: 17.08.2015

Subhash

..... 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: Ms. Divya Sharma, Advocate,
Legal Aid Counsel for appellant.

Mr. Sandeep Bansal, A.A.G., Punjab.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment of conviction dated 01.03.2004, passed by the learned Judge, Special Court, Patiala, vide which accused-appellant Subhash 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 year and to pay a fine of Rs.2000/-, in default of payment of fine to further undergo rigorous imprisonment for

two months.

2- As per the prosecution case, on 15.09.2001, Assistant Sub Inspector Tek Singh along with other police officials was going on scooter from village Rohti bridge towards Rohti Khas in connection with patrolling. When they reached near the canal rest house, one person was seen coming from the turning of village Rohti road. He was carrying a gunny bag on his head. On seeing the police party, he tried to retreat. On suspicion, he was apprehended. On inquiry, he disclosed his name as Subhash son of Gurmeet. ASI Tek Singh stated him that he wants to take search of the bag. The Investigating Officer also informed the accused that he has legal right of his search in the presence of a Magistrate or a Gazetted Officer. Vide his statement Ex.PE, the accused replied that his search be conducted in presence of some Gazetted Officer. Parduman Singh happened to be present there per chance. He was also joined and he attested the statement Ex.PE. Harminder Pal Singh, Deputy Superintendent of Police, Nabha was called at the spot through wireless message. Vide his consent memo Ex.PA, the accused opted his search to be conducted in the presence of DSP. Then, in the presence of the DSP, the bag in the possession of the accused was searched, which was found containing chura poppy heads. Two samples of 250 grams each were separated. The residue, on weighment, came to be 25 kilograms and 50 grams. Separate sealed parcels of sample and the residue chura poppy heads were prepared and sealed with seal of the Investigating Officer 'TS' and seal of the DSP 'HPS' and taken into possession vide seizure memo

Ex.PB. The Investigating Officer sent Rukka Ex.PG to the Police Station. On the basis of which, formal FIR Ex.PG/1 was registered. The Investigating Officer prepared the site plan of the place of recovery Ex.PH. Statements of the witnesses were recorded. The accused was arrested. On returned to the Police Station, the Investigating Officer produced the accused, witnesses and case property before SI Lakhbir Singh, the SHO. He inquired from the accused and witnesses and verified the case property and affixed his seal 'LS' on the parcels and sample seal chit. The case property was deposited in the Malkhana. On the next day, the case property was produced before the Illaqa Magistrate vide application Ex.PK. On which, learned Illaqa Magistrate passed his order Ex.PK/1. Sample parcels were sent to the Forensic Science Laboratory, Chandigarh for examination. On receipt of the report of the FSL Ex.PL and completion of formalities of the investigation, the report under Section 173 of Code of Criminal Procedure, 1973 (here-in-after called the 'Cr.P.C.') was presented in the Court.

3- The accused appellant was charge sheeted for the offence punishable under Section 15 of the Act vide order dated 29.01.2002 by the learned trial Court, to which the appellant pleaded not guilty and claimed trial.

4- In order to substantiate its case, prosecution examined as many as five witnesses.

5- When examined under Section 313 Cr.P.C., accused pleaded false implication. He stated that no recovery was effected form

him.

6- No evidence was adduced by the accused in his defence.

7- Appreciating the evidence on record and the contentions raised by learned counsel for the parties, the accused appellant was held guilty for the offence punishable under Section 15 of the Act and was awarded the sentence as mentioned in the upper part of the judgment.

8- Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

9- I have heard Ms. Divya Sharma, Advocate, learned Legal Aid 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.

10- Initiating the arguments, learned counsel for the appellant contended that as per the prosecution version, Parduman Singh, an independent witness was associated in the investigation of the case but he has not been examined by the prosecution. So, there is no independent corroboration to the statements of the official witnesses. She further contended that the recovery in this case has been allegedly effected on 15.09.2001 but the sample parcel has been received in the Forensic Science Laboratory, Punjab (Chandigarh) on 18.09.2001. So, there is delay of three days in sending the sample, which has not been explained and thus, the tampering with of the cause property is also not ruled out. Thus, she contended that this delay has rendered the prosecution case doubtful.

11- On the other hand, learned State counsel pleaded that prosecution witness Parduman Singh was given up as having been won over by the accused vide statement dated 18.08.2003. Giving up of PW Parduman Singh, as having been won over by the accused, is no ground to create any dent in the consistent statement of official witness. He further contended that there is no material on record to show that the case property was tampered with at any stage. So, mere delay of three days in sending the sample to the FSL is of no legal consequence. Thus, he pleaded that there is no infirmity in the conviction of the appellant recorded by learned trial Court.

12- I have given my thoughtful consideration to the aforesaid contentions.

13- No doubt, as per the prosecution version Parduman Singh was associated as an independent witness in the present case but he has been given up by the learned Public Prosecutor vide his separate statement dated 18.08.2003 as having been won over by the accused. The Hon'ble Supreme Court in case ***Banti alias Guddu Vs. State of Madhya Pradesh 2003(4) RCR (Criminal) 911*** has laid down that there is no illegality if the Public Prosecutor has given up the witness who was not likely to support the prosecution case. In case ***Masalti Vs. State of Uttar Pradesh, AIR 1965 SC 202***, it was held that it is, undoubtedly the duty of the prosecution to lay before the Court all material witnesses, available to it, whose evidence is necessary for unfolding the case, it would be unsound to lay down it as a general rule that every witness must be

examined even though his evidence may not be material or even if it is known that he has been won over or terrorised. In ***Roop Singh Vs. State of Punjab 1996 (1) RCR (Criminal) 146***, the Division Bench of this Court held that no adverse inference can be drawn, when the only independent witness was given up by the prosecution, as won over by the accused. It was further laid down that the panch witnesses, being human beings, are quite exposed and vulnerable to human feelings of yielding, browbeating, threats and inducements and giving up of the public witnesses as won over, is fully justified in the present day situation, prevailing in the society. The same rule of law has been reiterated by another Division Bench of this Court in case ***Karnail Singh Vs. State of Punjab 1983 Criminal Law Journal, 1218***.

14- In view of the consistent rule of law laid down in the cases referred above, the non-examination of Parduman Singh as having been won over by the accused is no ground to reject the prosecution version.

15- The recovery in this case has been effected on 15.09.2001. As per the report of the F.S.L., the sample parcel has been received in the laboratory on 18.09.2001. So, there is delay of three days in sending the sample to the laboratory. In case ***Mohan Singh Vs. State of Punjab 2007(4) RCR (Criminal) 705***, there was delay of 10 days in sending the sample to the F.S.L. The Division Bench of this Court held that mere delay in sending the sample to the laboratory is not fatal where there is evidence that the seized articles were kept in proper and safe

custody. The Hon'ble Apex Court also in case *State of Orrisa Vs. Kanduri Sahoo 2004(1) RCR (Criminal) 196* has also laid down that mere delay in sending the sample to the laboratory is not fatal where there is evidence that the case property was kept in proper and safe custody. In case *Baggar Singh alias Gaggi Vs. State of Haryana 2009(4) RCR (Criminal) 183*, there was delay of 18 days in sending the sample to the F.S.L. and the another Division Bench of this Court held that it would not render the case of the prosecution doubtful if the seals remain intact when the sample reached to the F.S.L. In the instant case also, there is no material on record to establish that the sealed articles were tampered with. Rather, from the evidence on record it comes out that the sealed articles were kept in proper and safe custody and reached the F.S.L. in intact condition. PW4 ASI Tek Singh, the Investigating Officer of the case, has stated that the case property was deposited with M.H.C. Lakhbir Singh. On the next day, the Investigating Officer produced the case property before learned Illaqa Magistrate vide application Ex.PK and the learned Magistrate passed his order Ex.PK/1. Then the prosecution examined the then M.H.C. Lakhbir Singh as PW-3, who has filed his affidavit Ex.PD and deposed that the case property remained intact in the Malkhana. PW2 HC Faquir Chand, who had carried the sample parcels to the Chemical Examiner, has filed his affidavit Ex.PC mentioning therein that the sample parcels remained intact. Ex.PL is the report of the F.S.L., which also depicts that the sample parcel was properly sealed and seals tallied with the specimen seal impression. Thus, from the aforesaid

evidence, it is established that the sample parcel remained intact and was not tampered with at all at any stage of the proceedings. So, mere delay of three days in sending the sample will not create any dent in the prosecution case.

16- PW4 ASI Tek Singh, the Investigating Officer of the case, has consistently deposed about the manner in which the accused-appellant was apprehended and the recovery of the bag containing chura poppy heads from the possession of the appellant. Statement of PW4 Tek Singh is further corroborated from the statement of PW1 DSP Harminder Pal Singh on the point of recovery. Learned counsel for the appellant has not been able to point out any serious discrepancy/contradiction in their statements. The statement of PW4 ASI Tek Singh qua apprehension and statements of PW4 ASI Tek Singh and PW1 DSP Harminder Pal Singh qua search, seizure and recovery of the contraband from the possession of the appellant are cogent, consistent and reliable. The plea raised by learned counsel for the appellant that accused has been falsely implicated is not supported from any material on record. The accused appellant has not alleged and proved any ill-will or motive on the part of PW4 ASI Tek Singh the Investigating Officer of the case to falsely implicate the appellant in the instant case. There was also no reason for PW1 DSP Harminder Pal Singh, a Gazetted Police Officer, to falsely depose against the appellant. It is also the settled principle of law by this time that the testimonies of police officials cannot be discarded simply on account of their official designation. In the absence of any animosity towards the

accused, there is no absolute rule that their depositions should be treated with suspicion. The police witnesses cannot be viewed with distrust every time. Reliance can be placed on cases *Ram Swaroop Vs. State (Government of NCT of Delhi) (2013) 14, Supreme Court Cases 235* and *Kashmiri Lal Vs. State of Haryana 2013 (6) Supreme Court Cases 595*.

17- Thus, from the cogent, convincing and reliable evidence adduced by the prosecution, it is established beyond shadow of reasonable doubt that the accused-appellant was found in conscious possession of 26 kilograms chura poppy heads. So, there is no legal infirmity in the conviction of the appellant recorded by learned trial Court and the sentence awarded to him. The same are hereby maintained and upheld.

18- Consequently, present appeal has no merits and the same is hereby dismissed. The accused-appellant is on bail. His bail stand cancelled. He shall surrender within 15 days from the date of this judgment before the learned Chief Judicial Magistrate, Patiala, who shall send him to jail to undergo the remaining part of his sentence. If, he fails to surrender, the learned Chief Judicial Magistrate, Patiala, shall take coercive steps to secure his presence and send him to jail to undergo the remaining part of the sentence.

Dated: 17.08.2015
sunil yadav

(DARSHAN SINGH)
JUDGE