

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

**CRA-S-2380-SB-2011 (O&M)
Date of decision : February 26, 2015**

Shingara Singh

.....Appellant

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE GURMIT RAM

1. To be referred to the Reporters or not? No / Yes
2. Whether the judgment should be reported in the Digest? No / Yes

Present : Mr. Sanjay Gupta, Advocate,
for the appellant.

Mr. Dilsher Singh Mann, AAG, Punjab.

GURMIT RAM, J.

1. This appeal is preferred by the appellant-Shingara Singh against the Judgment and order dated 02.09.2011 passed by the learned Judge, Special Court, Jalandhar vide which he was convicted for the offence under Section 15 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("Act" in short) in case bearing FIR No.3 dated 03.01.2003 Police Station Goraya, Jalandhar and sentenced thereunder.

2. The case of the prosecution in brief was that on 03.01.2003, the

Police party of SI/SHO Gurmit Singh, Police Station Goraya consisting of ASI Surinderpal Singh, ASI Subhash Bath and other police officials was present in the area of turning point of village Kot Grewal in connection with *Nakka-Bandi* on a private vehicle. One Varinder Singh s/o Jit Singh reached there per chance and he was consciated with the Police party. During checking one truck bearing registration No.PIB-7937 came from the side of Kot Grewal, which was signalled to stop. Upon this, truck driver applied the brake at once and four persons namely Shingara Singh resident of Dhadda Khurd, Gian resident of Samrari, Pappu resident of Saifabad and Onkar Singh alias Omi resident of Garha ran away towards the fields through the conductor window. The said absconding persons were identified by ASI Subhash Bath. The person sitting on the driver seat and the person sitting on the rear seat in the vehicle were apprehended by the Police party, who on interrogation told their names as Jasbir Singh alias Sheera son of Madho Singh, resident of Jajja Khurd, Police Station Phillaur and Hardeep Singh alias Deepa son of Harbhajan Singh resident of Mehngrowal Police Station Mahilpur District Hoshiarpur. SI/SHO asked both of them turn by turn that there is some intoxicant substance lying in the truck, as to whether they wanted to get the search of the truck conducted from any Gazetted Officer or any Magistrate. On this they expressed their desire for conducting search of the truck from any Gazetted Officer. Accordingly, their dissenting memos were prepared. Through wireless Sh.K.S.Dhillon, D.S.P. Phillaur was informed to reach at the spot, who after some time reached there. He disclosed his identity and status to both the

accused and asked them as to whether they are willing for the search of their truck bearing No.PIB-7937 from him or from any Magistrate. Both of them reposed confidence in him and agreed for the search of the truck from him. Then in accordance thereof, the memos with regard to their consent were prepared which were signed by them and attested by witnesses. Thereafter the search of the truck of the accused was conducted as per the direction of the DSP and during search, 9 bags containing poppy husk covered under the tarpaulin were recovered from the body of truck. Two samples of 250 grams each were separated from each of the recovered bags. On weighment, the remaining contents of each bag came out to be 35 kilograms. The sample parcels and the 9 bags containing remaining poppy husk were sealed by the IO with his seal bearing impressions 'GS' as well as with the seal of the DSP bearing impressions 'KJS'. Separate sample seal was also prepared. Thereafter, all the 18 sample parcels and the 9 bags duly sealed along with abovesaid truck and tarpaulin were taken into police possession vide a memo. The Investigating Officer handed over the seal after its use to ASI Surinder Pal Singh. Accused could not produce any license for keeping abovesaid bags of poppy husk in his possession. Accordingly ruqa was sent to Police Station on the basis of which, the instant case under Section 15 of the Act was recorded. During search of accused Jasbir Singh, Smack was recovered from the right pocket of his trouser (*Paijama*) regarding which separate proceedings were initiated. Site plan of the place of recovery was prepared. Statements of witnesses were recorded. Sample parcels were sent to the office of Chemical Examiner,

Punjab, Chandigarh. On completion of investigation as well as on receipt of Chemical Examiner Report, challan was presented in the Court of learned Judge Special Court, Jalandhar against the abovesaid accused who were apprehended at the spot.

3. Accused Shingara Singh was initially declared as proclaimed offender (proclaimed person). He was arrested in this case on 08.08.2009, and as such, supplementary challan against him was presented in the Court of learned Judge Special Court, Jalandhar.

4. Compliance of provision of Section 207 Cr.P.C. was duly made and finding a prima facie case under the 15(c) of the Act, accused was charge-sheeted accordingly, to which he pleaded not guilty and claimed trial.

5. During trial of the case, the prosecution examined as many as six witnesses in total in order to establish its case against the accused.

6. Then during examination of the accused as envisaged under Section 313 Cr.P.C., entire incriminating evidence as brought on the file against him was put to him, which was denied by him in toto. He also took the plea that neither he was present at the spot nor the alleged contraband was recovered from him. He is innocent and that he has been involved in this case falsely. Then in defence, the accused also examined three DWs.

7. Learned trial Court after hearing the learned counsel for both the parties held the appellant-accused guilty for the offence under Section 15(c) of the Act and sentenced him accordingly vide the impugned judgment and order.

8. The appellant feeling aggrieved from this judgment and order of sentence has come up in the instant appeal. Notice of appeal was given to the respondent, record of the learned trial Court was also requisitioned and perused.

9. Learned counsel for both the parties were heard and record was also scanned with their able assistance.

10. PW-2, Inspector Gurmit Singh, who was Investigating Officer in this case deposed with regard to the prosecution version that on 03.01.2003 he was posted as SHO Police Station Goraya and on that day, he along with some police officials, including ASI Surinder Singh was holding *Nakka* at turning point of Kot Grewal, where one truck bearing registration No.PIB No.7937 came from the side of village Kot Grewal, which was stopped by giving a signal by the Police party. Four persons jumped from the Conductor side door and ran away who were identified by ASI Subhash Bath as Shingara Singh, Gian Singh, Pappu and Om Parkash alias Omi. Jasbir Singh alias Sheera was sitting on the driver seat and whereas Hardeep Singh was sitting on the rear seat, who were got down from the vehicle. He told them that he suspects some contraband in their truck and, as such, he intended to search the same by apprising them that they can opt for the search either from him or from any Gazetted Officer or any Magistrate. Both of them opted for the search from any Gazetted Officer and accordingly their non-consent memo Ex.P1 and Ex.P2 were prepared. Then on the request of this witness Kamaljit Singh Dhillon, DSP, Sub-Division Phillaur reached at the spot, who disclosed his identity to both of the

accused by saying that he is DSP Sub-Division Phillaur, a Gazetted Officer of Punjab Government. He further disclosed them about the search of their truck by giving them an offer that they had a right that they can opt for search either from him or from any other Gazetted Officer or any Magistrate. Both of them reposed confidence in him and accordingly their consent memos Ex.P3 and Ex.P4 were prepared. Thereafter the search of the truck was conducted as per the instruction of the DSP, which led to recovery of 9 bags of poppy husk beneath a *Tripal*. Two samples of 250 grams each were separated from each of the bags and the remaining contents of each bag were found to be 35 kilograms on weighment. All 18 sample parcels along with 9 bags were sealed by this witness with his seal of 'GS' as well as with the seal of DSP bearing impressions 'KJS'. Sample seals Ex.P4 and Ex.P5 were also prepared and the same were affixed on Form No.M29, Ex.P6. After use of seal, this witness handed over his seal to ASI Surinder Pal. Thereafter the abovesaid entire case property was taken into police possession vide memo Ex.P7 attested by ASI Surinder Pal Singh and Varinder Singh as well as DSP Kamaljit Singh Dhillon. The said sample parcels and the bulk case property were produced in the Court during trial and proved as M01 to M09 and M010 to M018 respectively. Both the accused Hardeep Singh and Jasbir Singh were arrested in this case vide their respective arrest-cum-intimation memos Ex.P13 and Ex.P14. Further this witness also proved the ruqa Ex.P8, FIR Ex.P9 and site plan Ex.P10. On returning to Police Station, case property was deposited with MHC in an intact condition.

It is also in his statement that on 04.01.2003 ASI Subhash Bath got the case property from MHC Raghbir Singh and produced the same before Sub-Divisional Judicial Magistrate, Phillaur along with the accused. Ex.PX is the report of Chemical Examiner.

11. PW-5 SI Surinder Pal was one of the members of the Police party headed by PW-2, Inspector Gurmit Singh, Investigating Officer on 03.01.2003. At the time of alleged recovery even seal after use was handed over to him by the IO/SI Gurmit Singh. He also corroborated with the above discussed statement of PW-2 Inspector Gurmit Singh qua the prosecution version.

12. PW-3 ASI Subhash Bath was also present at the spot along with PW-2 Inspector Gurmit Singh, IO. He had identified the four accused persons namely Shingara Singh (present appellant), Gian Singh, Pappu and Om Parkash alias Omi who had succeeded to flee away from the spot, when the vehicle in which they were travelling was intercepted by the Police. He also corroborated the version of prosecution and supported the fact that alleged recovery of contraband was made from the truck of the accused during its search. Then it is also in his statement that on 04.01.2003 he produced the case property along with the accused before the SDJM, Phillaur as per the instructions of the SHO after obtaining the same from the MHC. Thereafter he re-deposited the same with MHC on returning to Police Station.

13. PW-6 SP Kamaljit Singh Dhillon was posted as DSP Sub-Division, Phillaur on the date of alleged recovery. He reached at the spot on

receiving a wireless message from SI Gurmit Singh. He was the Gazetted Officer before whom the alleged search of the truck of the accused was conducted, which resulted into recovery of contraband in question. He also corroborated the above discussed testimony of PW-2 Inspector Gurmit Singh, PW-5 SI Surinder Pal and PW-3 ASI Subhash Bath and supported the version of prosecution entirely with regard to the recovery of 9 bags of poppy husk from the truck of the accused during its search.

14. PW-1 HC Raghbir Singh and PW-4 HC Om Parkash were the formal witnesses in this case and had tendered their duly sworn affidavit Ex.P1 and Ex.PA as a part of their respective statements.

15. On the other hand in the defence version Bakhtarwar Singh who was the Lamberdar and Ex Block Samiti Member appeared as DW-1. His testimony is to the effect that there was some land dispute of Shingara Singh accused and a case under Section 302 IPC was got recorded against him. He was acquitted in that case. About 5 / 6 years ago, Police used to visit the house of Shingara Singh after the decision of said murder case without explaining as to why they are visiting his house. This witness along with some respectables enquired in this regard from the Police. He along with some respectable produced Shingara Singh before the Police in the year 2009 since the Police wanted to investigate some matter from him. Thereafter he was involved in several NDPS cases falsely at the instance of Kuldeep Singh, who was having enmity with him due to land dispute and said murder case. They also met higher police officers regarding the false implication of accused in said NDPS cases.

16. DW-2 Gurmit Singh, was the Ex Member Panchayat of the village of the accused and his statement is also on the same lines as that of DW-1 Bakhtarwar Singh.

17. Learned counsel for the appellant has contended that it is admitted case of prosecution that present appellant was not arrested at the spot and that he was arrested later on in this case on 08.08.2009. In this connection it is his submission that no test identification parade in order to ascertain the identity of the appellant was got done by the prosecution after his arrest in this case. His identification in the Court for the first time is meaningless since it carries no value in the eyes of law. But on the other hand, the learned State Counsel has contended that it is not the case in which the appellant was not identified at the spot by any witness of the prosecution. Here he has submitted that as per the case of prosecution the present appellant was identified at the spot while running away along with his three other co-accused by ASI Subhash Bath, who was one of the members of the Police Party at that time and was also present at the spot. The said ASI Subhash Bath appeared during trial of the case after arrest of the accused as PW-3. He had stated categorically that he identified the present appellant, while he was fleeing away from the spot along with his three other co-accused. In the cross-examination of this witness, no specific question was put to him as to how he was knowing earlier to this present appellant and what was his sources. In his cross-examination only a simple suggestion had been put to him that he did not disclose in his statement under Section 161 of the Cr.P.C., the sources vide which he was knowing

the present appellant prior to this case. So in the light of these circumstances, there was no need for the prosecution to conduct any test identification parade in order to establish identity of the present appellant for proving his involvement in this case. Moreover the local police knows about all the bad elements operating in that area indulging in unlawful activities. So the accused had failed to dislodge the statement of PW-3 ASI Subhash Bath with regard to his identification made by him at the spot while fleeing away along with his three other accused as well as in the Court.

18. The principle with regard to the test identification has been laid down by Hon'ble Apex Court in case law titled as ***Sheo Shankar Singh vs. State of Jharkhand and another, 2011(3) SCC 654***, relevant part of which is as under:-

“The Code of Criminal Procedure does not oblige the investigating agency to necessarily hold a test identification parade nor is there any provision under which the accused may claim a right to the holding of a test identification parade. The failure of the investigating agency to hold a test identification parade does not, in that view, have the effect of weakening the evidence of identification in the Court. As to what should be the weight attached to such an identification is a matter which the Court will determine in the peculiar facts and circumstances of each case. In appropriate cases the Court may accept the evidence of identification in the Court even without insisting on corroboration.”

Moreover in the present case as abovesaid the present appellant was identified by ASI Subhash Bath who was one of the members of the

Police Party and as such there was no need to hold any identification parade for establishing his identity. So as a result thereof, the above contention of learned counsel for the appellant is held to be not tenable and same is declined accordingly.

19. Then learned counsel for the appellant has further argued that the CFSL form No.M-29 was not filled at the spot and as such, possibility of the tampering of the sample seals could not be ruled out. Link evidence of the prosecution is also incomplete one. Now let us see the evidence brought on the file by the prosecution on this point during trial. In this regard PW-3 ASI Subhash Bath stated that form No.M29 was prepared at the spot in original. PW-6 SP Kawaljit Singh Dhillon in this regard also stated that CFSL form was prepared at the spot by the IO in duplicate. Then PW-1 HC Raghbir Singh in this regard had also deposed that said form was got filled from him by the IO on 03.01.2003. Then from the perusal of the report of the Chemical Examiner Ex.PX, it is found that seals of the IO as well as of the DSP bearing impressions of 'GS' and 'KJS' were affixed on it. Then there is also an endorsement on the back of this report that seals of the exhibits were intact and agreed with the specific seals sent. So in the light of the above discussed prosecution evidence, it is difficult to say that CFSL Form No.M-29 was not prepared at the spot or the link evidence in this case is incomplete one.

20. Then it is the case of the prosecution that ASI Surinder Pal was present at the spot with the Police party of SI Gurmit Singh. He was one of the witnesses to the recovery of contraband and seal of the IO was handed

over to him after its use. He narrated about the prosecution story tooth and nail. In his cross-examination only few questions in the form of suggestions were put to him. For instance that accused was admitted in some hospital at Mahilpur, District Hoshiarpur from 01.01.2003 to 07.01.2003 and that he was not present at the spot, which were denied by this witness. No question was put to him regarding the alleged recovery. So as such the accused had admitted a major part of the statement as made by him as PW-3 since the same was not assailed in his cross-examination.

21. Then it is also submission of learned counsel for the appellant that as per statement of PW-2 Inspector Gurmit Singh, the present appellant was identified by ASI Kewal Singh in this case and the prosecution did not examine this material witness during the trial of the case and on this ground also, the case of the prosecution as alleged is not free from suspicion. The relevant portion of cross-examination of this witness from which the learned counsel for the appellant has made his above submission is as under:-

xxxx "I saw the accused on the day of arrest and I identified him from his hulia. It is correct that on 11.01.2003 an other FIR against this accused was registered in which I was the I.O. In that case, I have deposed that accused Shingara Singh was identified by ASI Kewal Singh".

From this cross-examination of this witness, it is crystal clear that this witness is talking of another case dated 11.01.2003 registered against this appellant and not of the present case. So this contention of learned counsel for the appellant is held to be misconceived and the same is disposed of accordingly.

22. Then it is also contended by the learned counsel for the appellant that the investigation in this case is quite defective since the owner of the truck involving in this case was neither interrogated nor was tried as an accused in this case. It is a fact that the owner of the vehicle was not challaned in this case, but due to this reason the alleged recovery of contraband in this case could not be treated either planted or manufactured. It is a lapse on the part of the IO, the benefit of which could not be accrued in favour of the present appellant.

23. Then in the case in hand the alleged recovery of the contraband was made from the vehicle and as such there was no need to make any strict compliance of the provisions of Section 50 of the Act.

24. Then the accused also took the plea of alibi by placing on record a medical certificate Ex.DW3/A in the statement of DW-3 Dr. Manmeet Kaur. From the perusal of this medical certificate it is found that the present appellant did not remain as an indoor patient under the supervision of Dr.Manmeet Kaur-DW3. Moreover, no other record supporting this medical certificate on the basis of which it was issued was produced in the Court despite the opportunity granted to this witness. This witness had rightly been ignored by the learned trial Court.

25. Then it is also the plea of the accused that he had been involved in this case falsely at the instance of Kuldeep Singh, father of Sadhu Singh (since deceased). Then it is also his plea that he was involved as an accused in the murder of said Sadhu in which he was ultimately acquitted. But the appellant did not bring on the record the copy of the judgment vide which

he was acquitted in the said murder case in order to hold as to how this judgment is relevant to cause any effect on the merits of the present case. Only from the copy of judgment it could be ascertained as to why said Kuldeep Singh was after this appellant to involve him in one case or the other falsely. Even DW-2 Gurmit Singh had stated that Shingara Singh-appellant has no concern with Kuldeep Singh whose son was murdered due to land dispute.

26. Statements of DW-1 Bakhtarwar Singh and DW-2 Gurmit Singh are also not found upto the mark to conclude that the appellant was involved in this case falsely, since they are co-villagers of the appellant.

27. In the light of the above discussion, this appeal is held to be devoid of any merit and stands dismissed. Judgment and order of sentence under appeal stands affirmed.

Since the main appeal has been disposed of, hence pending criminal miscellaneous application, if any, stands disposed of being rendered infructuous.

Copy of this judgment be sent to the quarter concerned for compliance.

February 26, 2015
Gaurav Sorot

(GURMIT RAM)
JUDGE