

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

CRA No. S-1922-SB of 2003 (O&M)

Date of decision : June 05, 2015

Pala Singh and another

.....Appellants

Versus

State of Haryana

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. K.P.S. Virk, Advocate
for the appellants.

Mr. Vivek Saini, AAG, Haryana.

LISA GILL, J.

Present appeal has been preferred by the appellants – Pala Singh and Angrej Singh challenging their conviction and sentence by the learned Judge, Special Court, Karnal vide impugned judgment and order dated 11.09.2003 and 15.09.2003 respectively. Both the appellants have been convicted for the offence punishable under Section 15 (c) of the Narcotic Drugs and Psychotropic Substance Act (for short 'NDPS Act'), 1985 and sentenced to undergo rigorous imprisonment for ten years besides to pay a fine of ₹ 1,00,000/- and in default thereof to undergo rigorous imprisonment for one year.

Brief facts are that secret information was received by PW7 Jai Singh, SI/SHO, Police Station Taraori on 21.07.2001 that

both the appellants along with one Balvinder Singh son of Pala Singh were coming from the side of village Bir Nidana towards village Nidana in a tractor trolley loaded with poppy husk. Tractor was disclosed to be driven by Angrej Singh. Pala Singh and Balwinder Singh were sitting in the trolley. Jai Singh, SI along with other police officials was going towards bridge of canal Nidana at that time in connection with patrolling checking and naka bandi.

On receipt of this information, SI Jai Singh reached the bridge of canal village Nidana and erected barricades. After some time at about 7.00 p.m. tractor trolley was seen coming from the side of village Bir Nidana towards the bridge. Tractor trolley was stopped with a signal of torch. Tractor was driven by Angrej Singh, who was duly identified by SI Jai Singh. On the bags, Pala Singh and Balvinder Singh were found sitting. Pala Singh was known to SI Jai Singh earlier. On seeing the police party, all the three made good their escape through paddy fields which were full of water. Thereafter, Tehsildar Sushil Kumar, PW6 was called. Scales and weights were arranged. Circumstances of the case were explained to the Tehsildar who came to the spot and on his direction case property was checked. Poppy husk was found in 12 bags (11 full and one bag with lesser quantity). 12 sample of 250 grams each, Exs. P1 to P12, were taken from each bag. 39 kg poppy husk was found in 11 bags and in the last bag 24 kg was present. In all 453 kg poppy husk was recovered. Samples were converted into separate parcels and sealed with seals 'JS' and 'SK' and were taken in possession vide memo Ex.

PD along with tractor trolley. Sample seal was prepared on a piece of

cloth. Rukka, Ex. PA, was sent through Constable Karam Singh on the basis of which formal FIR No. 92 dated 14.07.2001, Ex. PB, was registered by ASI Baldev Singh. Head Constable Surat Singh (PW2) delivered special report to Illaqa Magistrate as well as senior police officers. It was revealed by ASI Bhim Singh and ASI Raj Singh to Jai Singh, SI that the person who ran away with Pala Singh and Angrej Singh was Dalvinder Singh and not Balvinder Singh. Accused Pala Singh and Angrej Singh were arrested by SI Jai Singh on 15.07.2001. Samples were sent for analysis to Forensic Science Laboratory, Madhuban and were found to be poppy straw vide report Ex. PC. Initially report under Section 173 Cr.P.C. was presented against Pala Singh and Angrej Singh only as Dalvinder Singh could not be arrested. Dalvinder Singh was subsequently arrested on 30.11.2001 by SI Ishwar Singh and subsequently report was filed against him later. Charge was framed against all the accused on 06.05.2002 to which they pleaded innocence and claimed trial.

Prosecution examined as many as seven witnesses to prove its case. Accused while denying incriminating material put to them pleaded innocence and false implication in their statement under Section 313 Cr.P.C. However, no evidence was led in defence.

Learned trial Court on considering the facts and circumstances of the case concluded that the prosecution had successfully proved its case beyond reasonable doubt against accused Pala Singh and Angrej Singh but had failed to make out a case against the accused Dalvinder Singh, who was acquitted giving benefit of doubt.

Learned counsel for the appellants submits that conviction of the appellants is not sustainable in any manner. First and foremost identity of the appellants has not been fixed. It is submitted that it was a pitch dark night and head lights of the tractor would blind the police party. There is no occasion to identify anybody in the light of torch. There is nothing to suggest as to how the appellants were known to SI Jai Singh, PW7. Furthermore, there is non compliance of the mandatory provisions of Section 42 of the NDPS Act. It is further pleaded that there is delay of 12 days in sending the sample for chemical analysis i.e. recovery was allegedly effected on 14.07.2001 whereas sample is sent for chemical examination on 26.07.2001.

Learned counsel for the appellants submits that recovery has not been effected in the presence of any independent witness despite there having been prior information as alleged by the prosecution. It is also pleaded that conscious possession of the accused over the contraband is not proved in any manner. It is strongly urged that no question regarding conscious possession was put to the accused, therefore, they could not be convicted in this case. Furthermore, link evidence is averred to be missing as sample has not been taken from all the bags. No effort was made by the prosecution to seek the proof of ownership of the tractor trolley. It is also submitted that only few of the bags were weighed and not all, thereby vitiating the proceedings against the accused. Therefore, it is submitted that conviction of the appellants is illegal and unsustainable, especially in view of the fact that on the same

evidence co-accused Dalvinder singh has been afforded the benefit of doubt.

Per contra learned counsel for the State while denying above said pleas submits that there is sufficient and cogent evidence on record to prove the culpability of the accused. Heavy quantity of contraband has been recovered from the accused persons. Fact that they managed to flee from the spot cannot improve their case. There is no reason for false implication of the accused. He, thus, prays for upholding the conviction and sentence imposed upon the appellants.

I have heard learned counsel for the parties and gone through the record with their able assistance.

It is specifically stated by SI Jai Singh that both the appellants were known to him earlier. Both the accused i.e. Pala Singh and his son Angrej Singh are residents of village Pakhana which falls within police Station Taraori itself. There is nothing on record to doubt the testimony of PW7 SI Jai Singh in this respect or cast a suspicion on the credibility of this witness. It is to be noted that tractor trolley driven by Angrej Singh was intercepted at about 7 p.m. on 14.07.2001. It is a matter of common knowledge that sunset in July is at such a time that at about 7 p.m. it could not be pitch dark. Therefore, no benefit can be derived from a reference to the cross examination of PW7, SI Jai Singh that it was pitch dark. Thus, in the facts of this case, it cannot be said that identity of the accused is not proved on the record.

Recovery was effected in the presence of Tehsildar Sushil Kumar, PW6, who has corroborated the prosecution version.

Argument of learned counsel for the appellant that all the bags were not weighed by referring to the cross examination of Sushil Kumar, PW6 to the effect that only two or three bags were completely emptied and the remaining bags were kept intact is absolutely misconceived. A complete and proper reading of the statement of the PW6 Sushil Kumar as well as the other witnesses on the spot reveals that weighment of all the bags was done, however, it was two or three only which were completely emptied and thereafter weighed. Remaining bags were not emptied completely but nonetheless all of them were undoubtedly weighed. This cannot in any manner mean that weighment of all the bags was not effected just because contents of all bags were not emptied. It is not the case of the appellants that the said bags contained any other substance.

It is proved on record that 12 samples were taken from each bag, which are Exs. P1 to P12. Sample seals were found intact. As per FSL report Ex. PC, 12 sealed parcels with two seals of 'JS' and one of 'SK' were received. It is further specified in Ex. PC that seals were intact and they tallied with specimen seal as per the official forwarding letter. Therefore, contention of learned counsel for the appellant that separate samples were not taken is not borne out from the record.

Learned counsel for the appellants has vehemently urged that secret information in this case was not reduced into writing and no copy was sent to the higher official thereby vitiating the trial. It is a matter of record that the secret information was received by SI Jai Singh at about 6.30 p.m. and he made an entry in this regard in the

roznamcha. Tractor trolley was intercepted at about 7.00 p.m. Thereafter, intimation was sent to the Tehsildar immediately, who arrived at the spot. Rukka was sent as well as information to the higher official conveyed. In the facts and circumstances of the case, it cannot be said that there is non-compliance of Section 42 of the NDPS Act to the extent that it would vitiate the proceedings thereby entitling the accused to acquittal.

Similarly in the facts and circumstances of the case delay in sending the samples for analysis cannot improve the appellants' case. There is cogent and proper evidence on record that seals on the samples of recovered contraband were found to be intact as mentioned above. Case property along with samples were handed over by Jai Singh, SI to PW4, Dalip Singh, who was posted as MHC on 14.07.2001. He has specifically deposed that on 26.07.2001, he had taken out twelve (12) sample parcels for depositing the same with FSL and they were handed over to the Head Constable Dharampal alongwith sample seal. He deposed that no tampering was effected by him or allowed to be effected with the case property or the sample seals. PW5, Dharampal deposed that he deposited the samples handed over to him on 26.07.2001 in the office of Director, FSL on the same day itself and handed over the receipt to the MHC on 26.07.2001. He never tampered with the sample nor allowed anyone do the same till the same remained in his possession. Parcels received by the FSL were found to be intact. Seals were tallied with the specimen seals. Therefore, delay in sending the sample by itself cannot be fatal to the prosecution case as has been

held by the Hon'ble Supreme Court in **Hardip Singh versus State of Punjab** 2008 (8) SCC 557.

Similarly contention of learned counsel for the appellants that there is no evidence on record to show that the tractor trolley belongs to the accused is rejected. PW7, SI Jai Singh has deposed that one Dalip Singh is a registered owner of this tractor. Thereafter corrected as Darshan Singh. Dalip Singh had sold the tractor to accused Pala Singh. He had received part payment but the tractor was not transferred in the name of Pala Singh due to non receipt of the complete payment.

Plea of the appellants that in the absence of independent witness the proceedings are vitiated is not justified. Apart from absence of any evidence on record, there not even a whisper that the official witnesses hold any malice towards the accused persons or they have any axe to grind against them. There is no reason for false implication of the accused by the official witnesses. PW6 is admittedly a Tehsildar and not a police official. Recovery was effected in his presence. Therefore, it would be incorrect to suggest that such a heavy recovery has been planted at the instance of the official witnesses and said recovery would be vitiated in the absence of an independent witness. It is a settled position that testimony of the official witnesses cannot be discarded until and unless there is any mala fide on their part. In the absence of an independent witness their testimony would, however, be subject to closer scrutiny by the Court. In the present case, there is nothing to doubt the veracity of the official witnesses or create a dent on the prosecution version.

Therefore, non association of an independent witness in this case is not fatal to the prosecution case.

Argument of learned counsel for the appellant that entire facts and incriminating material has not been put to the accused while recording their statements under Section 313 Cr.P.C. is also not borne out of the record.

I have gone through the statements of the accused under Section 313 Cr.P.C. and do not find any irregularity therein. Entire incriminating material has been put to the accused and they are not entitled to acquittal on this ground. It has been held by the Hon'ble Supreme Court in **Dharampal Singh versus State of Punjab 2010** (4) RCR (Criminal) 504 that,

“..... as part of fair trial, Section 313 of the Code of Criminal Procedure requires giving opportunity to the accused to give his explanation regarding the circumstance appearing against him in the evidence adduced by the prosecution. The purpose behind it is to enable the accused to explain those circumstances. It is not necessary to put entire prosecution evidence and elicit answer but only those circumstances which are adverse to the accused and his explanation would help the court in evaluating the evidence properly. The circumstances are to be put and not the conclusion. It is not an idle formality and questioning must be fair and couched in a form intelligible to the accused. But it does not follow that omission will necessarily vitiate the trial. The trial would be vitiated on this score only when on fact it is found that it had occasioned a failure of justice.”

Thus, trial does not stand vitiated on this score.

Similarly, submission that acquittal of the co-accused on the basis of the same evidence would entitle the present accused to the same benefit is untenable. It is a settled position of law as held by the Hon'ble Supreme Court in **Israr v. State of U.P., 2005(2) RCR(Criminal) 40** that acquittal of one of the co-accused would not lead to rejection of the entire evidence qua the other accused as well. Other accused can be convicted on the basis of the same evidence if found credible qua them.

In view of the discussion above, I find no infirmity or illegality in the conviction and sentence imposed upon the appellants for the offence punishable under Section 15 (c) of the NDPS Act.

Consequently, this appeal is dismissed.

(Lisa Gill)
Judge

June 05, 2015
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