

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

CRA-S-1730-SB-2003

Date of decision: 18.11.2015

Vinod

..... Appellant

Versus

State of Haryana

..... 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. Namit Sharma, Advocate for the appellant.

Mr. Ashok Muthreja, Deputy Advocate General
for the State of Haryana.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment of conviction dated 12.09.2003, passed by the learned Judge, Special Court, Faridabad, vide which accused-appellant Vinod 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 referred to as '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 two years and to pay a fine of ₹ 5000/-, in default of payment of fine to further undergo rigorous imprisonment for a period of six months.

2- As per the prosecution case, on 09.07.2001 PW2 Assistant Sub Inspector Deen Dayal, the Investigating Officer of the case, along with other police officials was present in the area of village Jaindapur in connection with patrolling. He saw that the accused-appellant was coming from the side of bus stand while carrying a plastic bag over his head. On seeing the police party, the accused-appellant tried to slip away. On suspicion, he was apprehended. The Investigating Officer asked the accused-appellant that he suspected some contraband in the bag carried by him. The accused was served with notice Ex.PA apprising him of his right to get his search conducted in presence of a magistrate or a gazetted officer. Vide memo Ex.PC, the accused opted to get his search conducted in the presence of some gazetted officer. The accused was taken to the office PW8 Om Parkash, Deputy Superintendent of Police. In his presence, search of the bag was conducted. It was found containing 10 kilograms of poppy husk. From the recovered poppy husk, one sample of 200 grams was separated. The sample and the residue were converted into two separate parcels and were sealed with seals bearing impressions 'DD' and 'OP' of the Investigating Officer and the DSP, respectively. The case property was taken into possession vide recovery memo Ex.PB. 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 Ex.PE of the place of recovery. Statements of the witnesses were recorded.

3- On return to the Police Station, the Investigating Officer produced the accused, witnesses and the case property before SHO Manjit Singh, who verified the case property and affixed his seal bearing impression 'VK' on the case property. The case property was deposited in the Malkhana. In due course, the sample parcel was sent to the Forensic Science Laboratory, Madhuban for examination. On receipt of the report of the Chemical Examiner Ex.PI and completion of formalities of the investigation, the report under Section 173 of Code of Criminal Procedure, 1973 (here-in-after referred to as '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 06.11.2001 by the learned trial Court, to which the accused-appellant pleaded not guilty and claimed trial.

5- In order to substantiate its case, prosecution examined as many as eight witnesses.

6- When examined under Section 313 Cr.P.C., the accused-appellant pleaded innocence and false implication.

7- In the defence evidence, accused examined Gopal as DW1, Pappan Tanwar as DW2 and Dharmender Singh as DW3.

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. Namit Sharma, Advocate, learned counsel for the appellant, Mr. Ashok Muthreja, learned Deputy Advocate General for the State of Haryana and have meticulously examined the record of the case.

11- Initiating the arguments, learned counsel for the appellant contended that the recovery is alleged to have been effected at a public road leading from Palwal to Sohna. The presence of the independent witnesses cannot be ruled out but no independent witness has been associated in the investigation of the case.

12- He further contended that the tampering with of the case property cannot be ruled out. As per the prosecution allegations, the articles of the case property were sealed with the seals bearing impressions 'DD' of the Investigating Officer, 'OP' of DSP Om Parkash and 'VK' of PW3 Manjit Singh SI, the then SHO, Police Station - Sadar Palwal. In the affidavit Ex.PG of the Mohrir Head Constable, there is no reference of seal 'VK'. It is also not mentioned in the affidavit Ex.PG that the sample seal was deposited in the Malkhana.

13- He further contended that the presence of PW1 HC Dharmender, the witness of recovery is extremely doubtful, as he has not

deposed anything about the production of the case property, accused and the witnesses before the SHO. He has also not been able to tell the correct distance between the place of recovery and the office of the Deputy Superintendent of Police, where the accused is alleged to have been taken for the purpose of search and seizure. He further contended that there are material contradictions in the statements of the prosecution witnesses, which renders their testimonies unreliable.

14- He further contended that the accused-appellant was resident of Gopi Colony, Old Faridabad. He is alleged to have been apprehended in the area of village Jaindapur, Police Station - Sadar Palwal, which falls at a distance of more than 32 kilometres from Old Faridabad. It is not believable that the appellant would have gone from such a distance from his house empty pocket and without boarding any vehicle. Thus, he contended that the prosecution has failed to prove its case. The accused-appellant has been falsely implicated and his conviction has been wrongly recorded by the learned trial Court.

15- On the other hand, the learned State counsel contended that from the testimonies of PW1 HC Dharambir, PW2 ASI Din Dayal, it is established that 10 kilograms poppy husk has been recovered from the possession of the appellant. The search and seizure was conducted in the presence of PW8 Om Parkash, the then DSP Palwal. The case of the prosecution is also corroborated from the testimony of DW3 SI Manjit Singh, the then SHO, Police Station - Sadar, Palwal before whom the

accused, case property and witnesses were produced immediately after the recovery. He further contended that the minor contradictions are bound to occur in the statements of the witnesses with the passage of time. He further contended that the case property had remained intact and there is no omission in the link evidence. He further contended that there is no reason to disbelieve the statements of the police officials. He further contended that no independent person was available at the spot, so the non-joining of the independent witness is no ground to disbelieve the statement of the official witnesses. Thus, he contended that there is no legal infirmity in the conviction of the appellant as recorded by the learned trial Court.

16- I have duly considered the aforesaid contentions.

17- The entire story of the prosecution is based on the testimonies of the official witnesses. No independent witness has been associated at any stage of the investigation. The place of recovery is a public road leading from Palwal to Sohna. It is not believable that no public person will be available at such a public road. The Investigating Officer has clearly admitted that there were number of shops nearby. The explanation given by the Investigating Officer that no public man was available stands contradicted from his own statement. Moreover, as per the prosecution story the accused-appellant was taken to the Office of the DSP, Palwal for the purpose of the search and seizure. The said office is situated in city Palwal. The Investigating Officer had admitted that

Tehsil Office has also situated nearby the DSP Office. That was again a public office and the presence of independent persons therein cannot be ruled out. But no effort at all has been made by the Investigating Officer to associate any independent witness in the investigation of the case. Thus, the Court is required to scrutinise the prosecution evidence carefully, consciously and minutely. Even the minor circumstances will assume significance.

18- As per the prosecution version, the case property was sealed with the seals bearing impressions 'DD', 'OP' and 'VK'. Ex.PG is the affidavit of HC Kanwar Chand the then MHC Police Station - Sadar Palwal, with whom the case property was deposited on the date of recovery itself i.e. 09.07.2001. In his affidavit, he has categorically mentioned that the articles of the case property deposited with him were bearing the seal impressions 'DD' and 'OP'. He has not mentioned anywhere in his affidavit that the residue and sample parcel were also having the seal bearing impression 'VK', whereas in the report of the FSL Ex.PI it is mentioned that sample parcel was bearing seal impression 'VK' 'DD' and 'OP'. So, there appears to be some manipulation in affixing the seals on the sample parcel. PW5 HC Kanwar Chand has admitted in the cross-examination that in Register No.19, the seal impressions are mentioned as 'DD', 'OP' and 'NK'. In the affidavit of PW5 HC Kanwar Chand Ex.PG it is also nowhere mentioned that specimen seal impressions was also deposited by the Investigating Officer along with

the case property. Thus, the preparation of the specimen seal impressions is also rendered doubtful because if the specimen seal impressions would have been prepared, those must have been deposited with the Moharir Head Constable along with the case property. In these circumstances, the possibility of tampering with the sample parcels cannot be ruled out.

19- As per the prosecution version, the accused, case property and the witnesses were produced before PW3 SI Manjit Singh the then SHO Police Station - Sadar, Palwal. But PW1 HC Dharmender the only witness of recovery examined by the prosecution is totally silent about this aspect of the case. He has nowhere stated that he accompanied the Investigating Officer along with the accused and the case property and was produced before the SHO for verification of the facts. The omission of this facts in his testimonies further renders the prosecution case doubtful as to either the case property, accused and witnesses were never produced before PW3 SI Manjit Singh or PW1 Dharmender was not the witness of recovery in this case. In any eventuality the version of the prosecution is rendered doubtful.

20- There are various contradictions in the statements of the official witnesses. PW1 HC Dharmender stated that they started from Police Post at about 01:20 P.M. But PW2 ASI Devi Dayal stated that they started from the Police Post at about 02:00/02:30 P.M. As per PW1 they were all joint and had gone on the private vehicle but PW2 states that they were on foot and they were altogether. According to PW1 number of

persons from the public had also collected there. But PW2 ASI Devi Dayal stated that none from the public assembled when the accused was apprehended. PW1 deposed that the contraband was weighed five times, whereas PW2 ASI Devi Dayal stated that weightment was done in one go and PW8 DSP Om Parkash stated that the remaining contents were weighted twice. As per the statement of PW1 the Office of the DSP was at a distance of 12 kilometres from the place of recovery but PW2 ASI Devi Dayal stated that the Office of DSP was about 7/8 kilometres from the spot. According to PW1 the writing work was done while sitting on the chairs in the office of the DSP, whereas PW2 ASI Devi Dayal stated that they set outside the office of the DSP near the boundary wall and completed the usual formalities that took around two hours. They were sitting on the ground in the park while completing the formalities. According to PW1 the sample was put in a polythene brought by Constable Indraj Singh from the shop which was of white colour and was brought subsequently after weighting the contents. But PW2 ASI Devi Dayal stated that the sample was put in a polythene which was further sealed in the cloth. The polythene and the cloth were available in his investigating bag. PW8 DSP Om Parkash stated that the sample was put in the cloth which was with the Investigating Officer. He has not mentioned about the polythene. According to PW1 the weighing scale was brought from the adjoining shop by Constable Inderaj Singh, whereas PW8 DSP Om Parkash stated that the Investigating Officer has

brought the scale and weights with him. The prosecution witnesses are also discrepant about the shape of the weighing scale.

21- Thus, there are number of discrepancies in the testimonies of the official witnesses, the cumulative effect thereof is sufficient to render their testimonies unworthy of credence particularly in the absence of any independent corroboration.

22- This fact has not been disputed that appellant is resident of Gopi Colony, Old Faridabad but he is alleged to have been apprehended in the area of village Jaindapur, which falls in Police Station Sadar Palwal, a far away place. The Investigating Officer has stated that nothing was recovered from the personal search of the accused. The memo of personal search (*Jamatalashi*) also shows that no article was recovered from the personal search of the appellant. It is not believable that a person will go to such a distance from his house without having even a single penny in his pocket. Thus, the non-recovery of any article from the personal search of the appellant renders the prosecution version doubtful about the alleged apprehension of the accused-appellant along with the contraband in the area of village Jaindapur.

23- Thus, keeping in view my aforesaid discussion and the totally of the circumstances narrated above, the prosecution has not been able to establish its case beyond shadow of reasonable doubt and accused-appellant deserves the benefit of doubt.

24- Consequently, the present appeal is hereby allowed. The

conviction of the appellant recorded by the learned trial Court and the sentence awarded to him is hereby set aside. As a result of benefit of doubt, the accused-appellant is hereby acquitted of the charges. The amount of fine, if deposited by him, be refunded to him as per rules.

Dated: 18.11.2015.
sunil yadav

(DARSHAN SINGH)
JUDGE