

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-1810-SB of 2003
Date of Decision: January 13, 2016

Sohan Singh alias Pappu

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Harsh Manocha, Advocate
for the appellant.

Ms.Simsi Dhir Malhotra, Deputy Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the judgment of conviction and order of sentence dated 19.09.2003 passed by learned Judge, Special Court, Sangrur, whereby he was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of 1½ years and to pay a fine of ₹3,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months under Section 15 of the NDPS Act.

The brief facts of the prosecution case are that on 28.04.1998, ASI Sunil Kumar along with other police officials was present on the bridge in connection with nakabandi. One Fiat car bearing registration No.PJO-1155 came from the side of village

Bakhora Kalan, which was got stopped. The car was being driven by Sohan Singh @ Pappu. The dicky of the car was searched and a gunny bag was found. The accused opted for the search of the gunny bag in the presence of some gazetted officer. A request was made to DSP Moonak Amarjit Singh, who came at the spot. On search as per rules, poppy husk was found contained in the gunny bag. Two samples of 250 grams each were separated and converted into separate parcels. The remaining poppy husk came to 29 kg. 500 grams on weighment. The case property was taken into police possession. Sample chit was prepared. Ruqa was sent to the police station, on the basis of which, formal FIR was recorded. Accused was arrested. Statements of witnesses were recorded. Rough site plan was prepared. On return to the police station, the case property along with accused was produced before SI/SHO Sukhminder Singh, who after verifying the case property, also put his seal on the parcels bearing impression 'SS'. The case property was also produced before the Judicial Magistrate Ist Class, Sunam. After necessary investigation and after receiving the report from chemical examiner, the challan was presented against the accused-appellant.

On presentation of challan against accused-appellant, copies of challan and other documents were supplied to him under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant was charge-sheeted under Section 15 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 SI

Sukhminder Singh, who was posted as SI/SHO. He deposed regarding verification of the case property which was produced before him and also deposed regarding putting his seal on the parcels. PW-2 Sudesh Kumar, Reader, prove the order Ex.PA passed by learned JMIC, Sunam. PW-3 MHC Jaswinder Singh, who is formal witness, tendered into evidence his affidavit Ex.PB. PW-4 ASI Sunil Kumar, Investigating Officer, deposed regarding the investigation conducted by him in the present case. PW-5 SP Amarjit Singh, who was posted as DSP at that time, deposed as per prosecution version and recovery from the accused. PW-6 Constable Major Singh, who is also formal witness, tendered into evidence his affidavit Ex.PM. PW-7 Jagdeep Singh, Tehsildar deposed regarding affidavits Ex.PL and PM attested by him. PW-8 Sanjiv Kumar, DTO Office, proved the Registration Certificate of the car. PW-9 Sudershan Kumar, also deposed regarding affidavit Ex.PL and PM.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. He was confronted with the evidence of the prosecution and he denied the correctness of the evidence and pleaded himself as innocent. He also pleaded that he has been falsely implicated in the present case. There was dispute with regard to RC of the car with the Head Constable and he rebuked him and took him to the police station and a false case was foisted upon him.

No witness was examined in defence.

The learned trial Court, after appreciation of the evidence,

convicted and sentenced the accused-appellant as stated above.

At the time of arguments, learned counsel for the appellant argued that accused-appellant is innocent and has been falsely implicated in the present case. He further argued that no independent witness has been examined in the present case. Therefore, appellant deserves to be acquitted. Learned counsel for the appellant, in the alternative, prayed for reduction of the sentence imposed upon the appellant.

On the other hand, learned State counsel argued that prosecution has duly proved its case by leading cogent evidence and there is nothing on the record that the appellant is innocent and has been falsely implicated. Learned State counsel, therefore, argued that there being no merit in the appeal, the same should be dismissed.

After hearing learned counsel for the appellant as well as learned State counsel and after going through the record, I find that the testimony of police official is as good as of any other witness unless some enmity or motive of the police official against the accused is alleged and proved. In the present case, no such enmity or motive of the police official against the accused has been proved. No representation was given to higher authorities for the false implication of the accused-appellant. No person has come as defence witness to prove that there is any dispute of the accused-appellant with the Head Constable regarding car. Furthermore, the recovery from the appellant is by chance and sudden and there was

no opportunity with the police party to join an independent witness at that time.

As regarding false implication of the accused-appellant, I find that as already discussed, no evidence in defence has been produced by the accused-appellant for his false implication. I have gone through the statements of witnesses. There is nothing in the cross-examination of the PWs, which may make their statements unreliable. No material contradictions or material improvements have been pointed out by learned counsel for the appellant, which may go to the root of the case. PWs have consistently deposed regarding the recovery of 30 kgs. of poppy husk from the dicky of the car driven by present appellant. All the mandatory provisions of the NDPS Act have been complied with. Link evidence is complete. The prosecution has duly proved its case by leading cogent evidence beyond any reasonable doubt. Therefore, the judgment of conviction dated 19.09.2003 passed by learned trial Court is correct, as per law and does not require any interference from this Court and the same is upheld.

As regarding, quantum of sentence, I find that at the time of conviction in the year 2003, the appellant was 50 years of age, which means that, he is more than 62 years of age now and is an old person. He is suffering from long protracted criminal proceedings since 1998 i.e. for the last more than 17 years. The recovery from the appellant falls under non-commercial quantity i.e. 30 kgs. poppy husk.

The appellant has already undergone 9 months and 23 days out of the

total sentence of 1½ years. The appellant is first offender and there is no other conviction against him.

Keeping in view the above facts and circumstances of the case, the sentence imposed upon the appellant is reduced to already undergone by him, subject to payment of fine. The appellant is directed to pay the fine within two months from today, otherwise, the trial Court would take necessary action as per law.

Resultantly, the present appeal stands partly allowed accordingly. Since, appellant Sohan Singh alias Pappu is on bail, his bail/surety bonds stand discharged.

January 13, 2016
Vgulati

(INDERJIT SINGH)
JUDGE