

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-1138-SB of 2004
Date of Decision: February 17, 2016

Sukhbir Singh alias Lati

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Manish Verma, Advocate
for the appellant.

Mr.Sidakmeet Sandhu, Asstt. 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 29.04.2004 passed by learned Addl. Sessions Judge-cum-Special Judge, Amritsar, whereby he was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of ₹1 lacs and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months under Section 21 of the NDPS Act.

The brief facts of the prosecution case are that on 14.02.1996, SSP, Tarn Taran received a secret information that Sukhbir Singh @ Lati and Mohan Singh used to smuggle gold, opium, heroin etc. from Pakistan and sell in the area of Jhabal and they also

smuggle whisky from India to Pakistan and they also supply maps of India to Pakistan and if the raid is conducted then recovery could be effected from them. On the basis of this information, present case was registered against them. Then on 18.02.1996, SI Kulwinder Singh along with other police officials held nakabandi in the area of Thathgarh. Two independent witnesses namely Salwinder Singh and Baljit Singh @ Pappu were also joined in the police party. At about 2.00 P.M., Sukhbir Singh @ Lati came from Amritsar side on a bicycle and he was carrying a bag on his right shoulder. On suspicion, he was apprehended. The accused was apprised of his legal right to get the search conducted in the presence of any Gazetted Officer or Magistrate and the accused desired to get the search conducted before some Gazetted Officer. The Investigating Officer sent a message to Jaspal Singh, DSP, City Tam Taran, who came on the spot. Then search was made as per law and from the bag carried by the accused, two packets of heroin were recovered. One packet of heroin was bearing mark double tiger, Made in 'Thailand', heroin 100%, Heroin Special One, net weight one pond and the other packet was in simple envelop. Ten grams as sample from each packet was taken out. First packet when weighed, came to be 460 grams and second came to be 310 grams. The sample parcels and bulk parcels were prepared and sealed with the seal bearing impression 'JS' and 'KS'. Case property was taken into police possession vide recovery memo Ex.PB. Accused was arrested. Statements of witnesses were recorded. On return to the police station, case property was kept in

double lock and on the next date the case property was produced before the Illaqa Magistrate and on return to the police station, it was again kept by the Investigating Officer in his custody under double lock. After necessary investigation, 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 21 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Head Constable Sukhdev Singh, who mainly deposed that samples were delivered at FSL, Chandigarh. He also stated that sample seals which were also given, were also deposited and he did not tamper with the seals. PW-2 MHC Narinder Kumar, is the formal witness, who tendered into evidence his affidavit Ex.PA. PW-3 DSP Jaspal Singh, mainly deposed regarding the recovery from the accused. PW-4 SI Kulwinder Singh, is the Investigating Officer, who deposed regarding investigation conducted by him in the present case and deposed regarding the recovery from the accused.

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 on 09.02.1996, he was present in his shop. Then at

about 5.00 P.M., the police party came there and took him to police station Sadar, Tarn Taran, where he was kept in illegal custody for nine days and thereafter, he was taken to police station Jhabal, where the present case was planted upon him. Nothing was recovered from him.

In defence, accused-appellant examined DW-1 Santokh Singh, who mainly deposed that Sukhbir Singh accused is his wife's brother. The shop of the accused is near his shop. On 09.02.1996, at about 5.30 P.M., he was informed on phone by Chattar Singh to reach at the shop of the accused. He immediately went there. There were police officials with the police vehicle and Inspector Puran Singh and SI Satnam Singh was also present there. Many persons including Kuldeep Singh, Chattar Singh collected there. He further deposed that accused was made to sit in the police vehicle. Chattar Singh also took seat in the vehicle to resist taking away of the accused. Chattar Singh was forcibly removed from the vehicle. On their enquiry, they were told that accused was being taken to P.S. C Division, Amritsar. Nothing was recovered from the accused. They went to police station C Division and they also looked for the accused in all the other police stations of the city. They also moved applications. Ishar Singh, who has died now, has sent telegrams against the illegal detention of the accused. He also deposed that Ishar Singh was his father-in-law. DW-2 Kuldeep Singh deposed that accused is husband of his sister. The accused was his tenant and his shop is in his house under his roof. About 8 years back at about 5 or 5.30 P.M., he saw some

persons collected in front of shop of the accused. Police personnel number 10 were standing along with police gypsy. Police wanted to take the accused. His father also took seat in the jeep and was forcibly removed. Accused was made to sit in the jeep and was taken away. He further deposed that they moved an application Mark-'A', the original of which is Ex.DW2.A and it bears his signatures at point Mark-'C'. Ishar Singh, who has died, was father of the accused and he sent telegrams about the illegal detention of the accused. DW-3 Manjit Singh mainly brought the summoned record and proved application moved by Sukhbir Singh @ Lati dated 07.03.1996 registered in the Court of Session on 11.03.1996. he also proved the certified copy of the order dated 19.04.1996 passed by then Addl. Sessions Judge, Amritsar. He also proved the copy of the telegram dated 13.02.1996 Mark-'A' and similarly, proved photostat copy of representation of the people of the Illaqa signed by Chattar Singh, certified copy of which is Ex.DX.

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 has been falsely implicated in this case. No independent witness was joined by the police party. He further argued that accused-appellant has produced DWs to prove his defence version that a false case has been planted against him. He next argued that statements of DWs have been duly supported by documentary evidence and there is nothing on the record to disbelieve

the statements of the DWs. Learned counsel for the appellants next contended that no statement of DSP under Section 161 Cr.P.C. was recorded by the Investigating Officer, who reached the spot and in whose presence, the recovery was effected. He also argued that after seeing the record, even no statement was found in the police file also, which creates doubt that DSP was summoned on the spot. Learned counsel for the appellant further argued that even the DSP has stated in his statement in the Court that statement of Investigating Officer under Section 161 Cr.P.C. has been recorded by his Reader at his dictation, whose name he does not remember. He next argued that no memo was prepared regarding giving of offer by the DSP to the accused. There is no mentioned regarding the offer, even in the recovery memo. The DSP further stated that the Investigating Officer did not show him any memo regarding consent or non-consent of the accused. Learned counsel for the petitioner also contended that SI Kulwinder Singh, who is the Investigating Officer, stated that when the DSP reached the spot, he told the accused that he was DSP and wanted to search and accused reposed confidence in him. The Investigating Officer also stated that he does not remember as to who recorded his statement under Section 161 Cr.P.C. It is also argued that the Investigating Officer, in the cross-examination, admitted that telegrams regarding false implication of the accused were received in this case. Learned counsel for the appellant, therefore, argued that there being merit in the appeal, the same should be allowed and appellant should be acquitted.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by the PWs by leading cogent evidence. There are no material contradictions or material improvements in the statements of the PWs. He next argued that such a heavy recovery cannot be falsely planted. Learned State counsel, therefore, argued that there being no merit in the appeal, the same should be dismissed.

I have heard learned counsel for the appellant as well as learned State counsel and have gone through the record.

From the record, first of all, I find that Investigating Officer has stated that he received secret information and the FIR was registered on 14.02.1996. As per the Investigating Officer, on 18.02.1996, the accused was apprehended when the police party was on nakabandi and as per prosecution version, two independent witnesses i.e. Salwinder Singh and Pappu were also with the police party but none of these independent witnesses has been examined in the Court to support the prosecution version, especially in view of the defence version that accused has been picked up on 09.02.1996. The Investigating Officer in cross-examination himself has admitted that telegrams have been received in this case regarding false implication of the accused-appellant. DW-3 has duly proved the copy of telegram dated 13.02.1996. He is official witness i.e. record keeper of Sessions Court and has brought the file. In this regard, he has also proved the application dated 07.03.1996 filed by the accused. DW-3 also brought on the record the order dated 19.04.1996, having the

reference of above-said application. All these facts support the defence version. DW-1 Santokh Singh and DW-2 Kuldip Singh have deposed that accused has been taken away on 09.02.1996 from this shop and their statements have been duly supported by the telegrams. The telegram was sent even before the registration of the FIR as the FIR is stated to have been registered on 14.02.1996. The telegram was sent on 13.02.1996 and the accused was shown to be arrested on 18.02.1996. This defence evidence, which is duly supported by oral as well as documentary evidence creates reasonable doubt in the prosecution version, especially when there is no independent corroboration to the statements of the PWs.

Otherwise also, there is no consent memo to show that the DSP has given an offer to the accused or he reposed confidence in the DSP. The version of the DSP that at his dictation, his Reader got recorded the statement of the Investigating Officer, is also not supported and corroboration by any document. There was no need to record the statement of the Investigating Officer under Section 161 Cr.P.C. by the DSP. Furthermore, the statement of DSP recorded under Section 161 Cr.P.C. is not available on the judicial file as well as on the police file, which further creates doubt regarding the presence of DSP on the spot and these facts become more material in view of the defence version. The arguments of learned counsel for the petition have merits.

In view of the above discussion, I find that a reasonable doubt exists in the prosecution version and prosecution has failed to

prove its case beyond reasonable doubt. The benefit of doubt is always to go to the accused. Therefore, the accused-appellant is acquitted of the charge framed against him. The judgment of conviction and order of sentence dated 29.04.2004 passed by learned Addl. Sessions Judge-cum-Special Judge, Amritsar, are not as per law and the same are set aside.

Resultantly, finding merit in the appeal, the same is allowed.

Since appellant Sukhbir Singh alias Lati, is on bail, his bail/surety bonds stand discharged.

February 17, 2016
Vgulati

(INDERJIT SINGH)
JUDGE