

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-1361-SB of 2004 (O&M)
Date of Decision: March 16, 2016

Deva Ram

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Subhash Godara, Legal Aid counsel
for the appellant.

Mr.Varun Sharma, 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 12.05.2004 passed by learned Judge, Special Court, Sangrur, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months under Section 18 of the NDPS Act.

The brief facts of the prosecution case are that on 08.12.2000, ASI Harwinder Singh along with other police officials on private vehicle was present on the bridge of canal minor at Jawandha in the vicinity of City Sunam. From the side of village Jawandha, one

cyclist Sikander Singh son of Surjit Singh resident of Sunam, came there. ASI was talking with him. Meanwhile, a jeep bearing registration No.RJ-13C-5384, which was coming from the side of Jawandha, was signalled to stop. The driver disclosed his name as Deva Ram. ASI asked him that he, his jeep and the bag which he was carrying on his shoulder, were to be searched. An offer was given apprising the accused of his legal right to get the search conducted in the presence of any Gazetted Officer or Magistrate and the accused reposed confidence in the Investigating Officer. On search as per law, opium was recovered from the bag. Two samples of 10 grams each were separated and converted into sealed parcel and remaining opium, on weighment, came to 1 kgs. 900 grams, which was converted into bulk parcel. The sample parcels and bulk parcels were sealed and the seal after use, was handed over to Sikander Singh. The jeep and the case property were taken into police possession. Ruqa was sent to the police station, on the basis of which FIR was registered. Accused was arrested. Statements of witnesses were recorded. On return to the police station, the case property along with the accused was produced before SI/SHO Rajwinder Singh, who after verifying the investigation, affixed his seal on the case property. 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 18 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 ASI Kashmir Singh, who was along with the police party and witness of recovery. He deposed as per prosecution version. PW-2 Constable Kuldeep Singh, is the formal witness, who tendered into evidence his affidavit Ex.PE. PW-3 SI Harwinder Singh, is the Investigating Officer, who deposed regarding investigation conducted by him in the present case. PW-4 Sumer Singh, DTO Office, mainly brought the record of Jeep No.RJ-13-C-5384 and proved that it is registered in the name of Sushil Kumar. PW-5 Deepa Ram mainly proved the driving licence. PW-6 SI Rajwinder Singh deposed regarding the verification of the case property etc. and also stated he was posted as SHO at Police Station Sunam. PW-7 MHC Jaswinder Singh, is also formal witness, who tendered into evidence his affidavit Ex.PH.

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 further pleaded that he is innocent and was arrested from the bus stand Sunam and ₹6,000/- was snatched from him and false case was planted against him.

In defence, accused-appellant examined DW-1 Head Constable Jasmail Singh, who mainly brought the summoned record and DW-2 Bhag Singh, Contractor of Cycle Stand.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant as stated above.

Notice of motion was issued and learned State counsel appeared and contested the appeal.

At the time of arguments, learned counsel for the appellant argued that independent witness has not been examined in the present case. He further argued that the independent witness Sikander Singh was the stock witness, which fact has been duly proved by the accused-appellant. He next argued that joining of stock witness in the police proceedings itself creates reasonable doubt. The defence version has been duly proved and accused-appellant has been falsely implicated. 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, I find that as per prosecution version, Sikander Singh came on cycle at the spot of his own and was talking

with ASI Harwinder Singh, when the jeep in question driven by accused-appellant reached there. It is in the cross-examination of PW-3 ASI Harwinder Singh, Investigating Officer that he did not know if Sikander Singh is the stock witness of Police Station Sunam. In the cross-examination, even the Investigating Officer has not denied this fact that Sikander Singh is not a stock witness. SI Rajwinder Singh, who was the SHO of Police Station Sunam at that time, also stated in cross-examination that he does not know if Sikander Singh is a prosecution witness in police station Sunam in 15-20 cases, which means that SHO has also not denied the fact that Sikander Singh is the stock witness.

The accused-appellant examined DW-1 Head Constable Jasmail Singh, who brought the summoned record regarding FIR No.113 dated 22.04.1997, FIR No.182 dated 22.06.1997, FIR No.59 dated 27.03.1997, FIR No.22 dated 02.07.1999, FIR No.228 dated 03.07.1999 and FIR No.110 dated 04.04.1998 and deposed that in the above-stated FIRs, Sikander Singh has been cited as prosecution witness. The photocopies of the same are placed on record as Ex.D1 to Ex.D6. The cross-examination of the Investigating Officer and the SHO not denying the fact that Sikander Singh is the stock witness and the statement of DW-1 HC Jasmail Singh that Sikander Singh has been shown in six FIRs as independent witness, proves on record that Sikander Singh is the stock witness of police station City Sunam. Joining of stock witness in the recovery itself creates reasonable doubt in the prosecution version. The recovery has taken place in the

vicinity of Sunam town, as is the case of the prosecution. Non-joining of any other independent witness, not making any attempt to join any other independent witness by the police party and joining of stock witness, creates reasonable doubt in the prosecution version. DW-2 Bhag Singh, Contractor of the Cycle Stand has further deposed as per defence version.

It is settled law that if reasonable doubt exists in the prosecution version, then benefit of doubt is to go to the accused. In the present case, as reasonable doubt exists, therefore, the prosecution has not proved the case beyond reasonable doubt.

Furthermore, the police party was on private jeep and in cross-examination PW-1 ASI Kashmir Singh failed to tell the registration number and owner of the jeep. He also stated that Sikander Singh might be witness in 4-5 cases in police station Sunam.

As already discussed, the recovery is stated to be in the vicinity of Sunam town, the statement of PW-1 that nobody passed through during the stay at the spot, also looks doubtful. The consent memo was recorded at 11.00 A.M. and the police party remained there till 3.30 P.M., so it looks improbable that nobody passed nearby them at the spot during the proceedings. It is in the cross-examination of the Investigating Officer that private jeep in which the police party came, was having registration number PAI-8290 and he was the owner of the said jeep. He also stated that he has not mentioned the RC No. of the said private jeep in the roznamcha. No copy of ground of arrest, in writing, was supplied to the accused. No

special report was sent from the spot to higher officers.

Furthermore, as it is proved on the record that Sikander Singh is the stock witness, therefore, handing over the seal to the stock witness also creates doubt as the samples and the case property can be tampered with.

In view of the above discussion, I find that prosecution has failed to prove its case beyond reasonable doubt against the accused-appellant. Therefore, the judgment of conviction and order of sentence dated 12.05.2004 passed by learned Judge, Special Court, Sangrur, are set aside and the accused-appellant is acquitted.

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

As appellant Deva Ram is on bail, his bail/surety bonds stand discharged.

March 16, 2016
Vgulati

(INDERJIT SINGH)
JUDGE