

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-1578-SB of 2004
Date of Decision: January 13, 2016

Sandeep Kumar

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Karanjeet Singh Brar, 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 dated 02.08.2004 and order of sentence dated 03.08.2004 passed by learned Special Judge, Moga, whereby he was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of ₹75,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year under Section 18 of the NDPS Act.

The brief facts of the prosecution case are that on 02.04.1999, Inspector Balvir Singh along with other police officials was going towards Katcha Dosanj in connection with patrolling and cheking of suspected persons. When police party reached ½ km.

ahead from G.T. Road, a person was seen coming from opposite side, who on seeing the police party, tried to slip away. On suspicion, he was apprehended. Kuldeep Singh, independent witness, in the meantime came to the spot and he was joined in the police party. An offer was made to the accused to get his search conducted in the presence of a gazetted officer. Jarnail Singh, SP(D), Moga, came at the spot. On search, as per rules, opium wrapped in a polythene, tied around the waist of the accused in a piece of cloth was recovered. On weighment, opium came to be 2 kgs., out of which, a sample of 10 grams was separated and put into a match box and sealed parcel was prepared with the seal bearing impression 'BS'. SP Jarnail Singh Dhaliwal, also put his seal bearing impression 'JSD' on the sample and bulk parcel. The case property was taken into police possession. 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. 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 18 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Head Constable Balraj Masih, who was posted as MHC and deposed

regarding depositing of case property etc. and sending the sample and also the fact that the case property remained intact so long as it remained with him. He also deposed regarding sending the Special Report. PW-2 Constable Netarpal Singh deposed regarding depositing of sample parcel in the office of FSL, Chandigarh. PW-3 ASI Balwant Singh deposed regarding producing of case property before the Illaqa Magistrate etc. PW-4 Inspector Balbir Singh, Investigating Officer, deposed regarding the investigation conducted by him in the present case. PW-5 ASI Balwinder Singh deposed regarding the registration of FIR on receiving ruqa. PW-6 SI Jasvir Singh, is the recovery witness, who deposed regarding the recovery from the accused. PW-7 Natha Singh, formal witness, tendered into evidence his affidavit Ex.PJ. PW-8 Gurwaryam Singh deposed that he personally knew the accused, who is his neighbour and he is known by two names i.e. Sandeep Kumar and Sunil Kumar. PW-9 SP(D) Jarnail Singh Dhaliwal, mainly 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 he has been falsely implicated in the present case. He was busy in carrying the wheat from Dhale-ke to Railway Station on truck bearing registration No.PAR-9088. He had gone to his house to take meal, from where he was taken up by the police in the presence of Dharam Paul, Balwinder Singh and Amarjit Singh and later on

falsely implicated in this case.

In defence, accused-appellant examined DW-1 Dharampal, who mainly deposed that on 02.04.1999, the police took away the accused from house. He and father of the accused went to the police station. No other person was with them. They were told by the police that opium has been recovered from the accused.

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 the independent witness joined by the police, has not been examined. The statements of police officials have been not corroborated by any other independent person. 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 alleged. As regarding the defence witness, he has not made any complaint/representation to the higher authorities regarding false implication of the accused. Such type of evidence can be produced at any time. Furthermore, it is not fatal to the prosecution case, if the independent witness has not been examined by the prosecution. Kuldeep Singh was given up being won over by the accused.

As regarding false implication, there is nothing on the record which may show that accused-appellant has been falsely implicated. 2Kgs. of opium has been recovered and it cannot be falsely planted upon the accused-appellant. 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 opium from the 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 02.08.2004 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 the

accused-appellant is first offender. There is no other conviction against him. He is suffering from long protracted criminal proceedings since 1999 i.e. for the last more than 16 years. He is a poor person and only bread earner of the family. The appellant has already undergone 3 years 4 months and 2 days out of the total sentence of seven years, as per the custody certificate.

Keeping in view the above facts and circumstances of the case, the sentence imposed upon the appellant is reduced to already undergone by him. Further, the fine is also reduced to ₹15,000/- from ₹75,000/- and in default of payment of fine, the appellant is to undergo rigorous imprisonment for a period of three months instead of one year. 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 Sandeep Kumar is on bail, his bail/surety bonds stand discharged.

January 13, 2016
Vgulati

(INDERJIT SINGH)
JUDGE