

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-202-SB of 2004 (O&M)
Date of Decision: February 08, 2016

Shiv Kumar

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Sonal Datta, Advocate
for the appellant.

Ms.Shivali, 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 25.11.2003 passed by learned Special Judge, Fatehgarh Sahib, whereby he was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹2,000/- 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 the police party headed by ASI Sahejpal Singh was on duty of checking suspicious elements. At about 4.00 P.M., when the police party reached near a deserted village Matton, then one person was spotted

sitting underneath a pipal tree on a plastic sheet besides a plastic bag which was open from one end. A plastic container was also lying besides him. On seeing the police party, he became perplexed and tried to slip away towards fields. He was apprehended and he was asked about contents of the bag. Efforts were made to join independent witness and one passerby Balbir Singh was joined in the police party. From the plastic container, poppy husk was recovered. Two samples of 250 grams each were separated and prepared into parcels. The remaining poppy husk on weightment came to 21kgs. 500 grams. The sample parcels and bulk parcel were sealed with the seal bearing impression 'SS' and 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. 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 15 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 ASI Sahejpal Singh, Investigating Officer, who deposed regarding investigation conducted by him in the present case. PW-2 Head Constable Malkiat Singh, is the recovery witness, who was with the police party. PW-3 SI Surjit Singh, who was posted as SHO,

Khamanon, deposed that after verifying the facts of the case, he affixed his own seal on case property. PW-4 Head Constable Balwinder Singh and PW-6 Head Constable Gurmail Singh, are formal witnesses, who tendered into evidence their affidavits Ex.P11 and P12 respectively. PW-5 ASI Sukhdev Singh, deposed regarding partial investigation in this case. Balbir Singh, independent witness and other formal witnesses were given up by learned Public Prosecutor.

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.

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 only on one point that independent witness has not been examined, which creates reasonable doubt in the prosecution version and therefore, the appellant is entitled to acquittal.

On the other hand, learned State counsel argued that prosecution has duly proved its case by leading cogent evidence. Link evidence is complete. All the mandatory provisions have been complied with. He further argued that independent witness has been given up by learned Public Prosecutor being won over. Learned State counsel, therefore, argued that there being no merit in the appeal, the same is liable to be dismissed.

After hearing learned counsel for the appellant as well as learned State counsel and after going through the record, I find that it is settled law that 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 has been alleged and proved against the police officials. No representation has been filed regarding false implication of the accused. Neither the gram panchayat was informed nor any resolution was passed by the gram panchayat regarding false implication. There is nothing on the record to show that accused was falsely implicated. The independent witness was joined by the police party but he was given up by learned Public Prosecutor being won over. No material contradictions or improvements have been pointed out by learned counsel for the appellant. I have gone through the statements of the witnesses. There is nothing in their cross-examination, which may make their statements unreliable. Mere non-examination of independent witness, in no way, can be held as fatal to the prosecution case. 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 against the accused beyond reasonable doubt.

In view of the above discussion, I find that the judgment of conviction and order of sentence dated 25.11.2003 passed by learned Special Judge, Fatehgarh Sahib is correct, as per law and do not require any interference from this Court.

The appellant has already completed the sentence and has deposited the fine and has already been released.

Appeal stands dismissed accordingly.

February 08, 2016
Vgulati

(INDERJIT SINGH)
JUDGE