

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2075-SB-2004 (O&M)
Date of decision: December 14, 2016.

Gurdev Singh

... **Appellant**

v.

State of Haryana

... **Respondent**

CORAM: **HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Shri G.S. Sidhu, Advocate for the appellant.

Shri Arjun Singh Yadav, Assistant Advocate General, Haryana.

A.B. Chaudhari, J. (Oral):

This appeal is directed against the judgment of conviction and the order of sentence dated 3.9.2004 made by learned Additional Sessions Judge, Sirsa by which the appellant was found guilty for the offence under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 and was sentenced to undergo RI for 5 years and to pay fine of Rs.10,000/- and in default of payment of fine to undergo further RI for one year.

In support of the appeal, Counsel for the appellant vehemently argued that the police patrolling party had taken the help of one Hakam Singh, the chowkidar of the concerned village, for carrying out the search, seizure and for identification of the appellant as the person in possession of the contraband namely 40 kilograms of poppy husk. He submitted that Hakam Singh was not examined before the court as the prosecution witness and PW2 and PW3 i.e., HC Chhaju Ram and ASI Rattan Singh were

examined in October 2003. Admittedly, both of them did not know the appellant and therefore it was very risky to convict the appellant on the basis of their testimony in the absence of proper identification, that too when the appellant was allegedly seen throwing the contraband article in the bag and running away at about 5.30 p.m. He therefore submitted that the benefit of doubt was required to be extended to the accused and conviction recorded by the court below is clearly illegal.

Per contra, Learned Counsel for the State supported the impugned judgment and order of conviction and sentence and submitted that the trial court has relied on testimony of PW2 and PW3 since the testimony of the police witnesses cannot be brushed aside merely because they are police witnesses and even in the absence of any independent witness and therefore, prayed for dismissal of the appeal.

I have perused the judgment and the reasons recorded by the trial court and have heard Learned Counsel for the rival parties. I have also perused the original record to find out the nature of evidence that was adduced against the appellant.

It is a fact that Hakam Singh was not examined by the prosecution before the trial court. That was essential as it was only Hakam Singh, chowkidar of the village who was taken by the police party to act as a witness, obviously for identification of the person, i.e., the accused who admittedly had thrown the bag and ran away from the spot. It is true that the police witnesses can also be believed by the court and there is no requirement in law that independent witness must be examined. But then, in

the present case what is seen is that in the last week of October, 2002 at 5.30 p.m., the incident is said to have occurred and PW2 and PW3 did not claim that they were previously knowing the appellant. It is for the first time, they identified the appellant before the court after one year as the same person who had run away from the spot. In the absence of earlier identification and the deposition for the first time in court and the appellant having admittedly not arrested by them but had run away, it was risky to rely on the testimony of PW2 and PW3. In the light of the attending circumstances discussed above, Hakam Singh would have been the best witness who could have been brought by the prosecution. But then, there is no explanation tendered by the prosecution as to why he was not brought before the court. That apart, the second reason given by the learned Additional Sessions Judge, that sending of sample to the FSL without co-relating the seals impressions with the sample seal and proper proof of forwarding of the same sample or non preservation thereof is not fatal to the prosecution case, does not appear to be a sound reason. It is well settled position that in such cases, the seal impressions, seizure etc. is required to be made and proved with proper and satisfactory evidence and it cannot be left to imagination. Thus, on both the counts, I find that the trial court had committed an error in not extending the benefit of doubt to the appellant who was admittedly not caught on the spot but had run away.

In that view of the matter, I think present appeal will have to be allowed in the light of the above discussion and the strong discrepancies and inconsistencies in the prosecution case. In the result, I make the

following order:-

ORDER

- (i) CRA-S-2075-SB-2004 is allowed;
- (ii) the judgment and order of conviction and sentence dated 3.9.2004 is quashed and set aside;
- (iii) the amount of fine, if already paid by the appellant, be refunded to him.

December 14, 2016.

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[A.B. Chaudhari]
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No