

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRA-276-SB of 2005 (O&M)

Date of decision: 03.02.2016

Ishwar Singh

.....Applicant

versus

State of Punjab

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.S.S.Gill, Advocate for the appellant
Mr.A.P.S.Gill, AAG Punjab

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J.

This appeal is directed against the judgment of conviction and order or sentence dated 27.1.2005, passed by the Judge, Special Court, Patiala, vide which, the present appellant was convicted for commission of offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act') and sentenced to undergo Rigorous Imprisonment for ten years and to pay a fine of Rs.one lac. In default thereof, undergo further Rigorous Imprisonment for two years for allegedly, keeping in his possession 3 kgs. of opium without any licence or permit.

As per the prosecution case, on 6.12.2002 SI Virsa Singh SHO Police Station Samana was present at bus stand village Retgarh along with other police officials, where one Joginder Singh

independent witness joined the police party. Sub Inspector Virsa Singh received secret information that accused Ishwar Singh resident of village Patran, District Patiala, who is in the habit of selling opium in Samana area, is coming towards Samana on a bus along with heavy quantity of opium. If the buses coming from Samana side are checked, the said accused along with opium can be apprehended. Informer further informed that Ishwar Singh is wearing a pant and shirt and that his upper tooth is broken. Since the information was found to be credible, Ruqa (Ex.PG) was sent to the police station, where formal FIR (Ex.PG/1) was registered. Thereafter, Sub Inspector Virsa Singh held picketing at T point Retgarh, where the accused was found sitting on the earth. He was carrying a bag in his right hand. He was informed that there is suspicion of contraband in the said bag and his search is to be conducted and that he has option of the search of his bag to be conducted before a Magistrate or a Gazetted Officer. Accused opted for search before a gazetted officer. Dissent memo (Ex.PH) was prepared. Thereafter, DSP, Circle Samana, Jaspreet Singh Sidhu was called at the spot. He also gave an option to the accused to get himself searched before Magistrate or a Gazetted Officer but accused through consent memo (Ex.PC) opted for search before DSP. Thereafter, search of the bag was conducted which yielded 3 kg opium. Two samples of 10 gram each were taken out and the samples and the bulk case property was taken into possession through recovery memo (EX.PD). The personal search of the accused led to recovery of Rs.50 from his pocket along with a wrist watch.

Accused was charge sheeted under Section 18 of the NDPS Act. In support of its case, the prosecution examined Constable Narinder Singh (PW1), HC Ajit Singh (PW2), DSP Jaspreet Singh Sidhu (PW3), SI Virsa Singh (PW4). Joginder Singh independent witness was given up as won over. When examined under Section 313 Cr.P.C., the accused claimed that SI Virsa Singh was having good relations with one Sadhu Ram, resident of Village Khumharian, Tehsil Fatehabad, District Hisar. He further stated that his sister was earlier married to said Sadhu Ram and on account of maltreatment and demand of dowry, she died and FIR No.195 dated 25.11.1993 was registered at PS Agroha. Sadhu Ram was convicted on 27.2.1996. It was on account of this grudge that he has been falsely implicated in this case. Accused examined Bharpur Singh (DW1), Ran Singh (DW2) and Joginder Singh, independent witness as DW3.

I have heard learned counsel for the parties and have also carefully gone through the file.

All the witnesses have stated on the line of the prosecution case. Learned counsel for the appellant has vehemently argued that in this case, presence of DSP at the spot is doubtful. According to SI Virsa Singh Jaspreet Singh Sidhu, DSP was called at the spot. However, DSP did not seal the case property with his seal and merely signed some memos, including recovery memo 'as attested'. I am of the view that this is a material discrepancy. If DSP had joined the investigation and claimed that the recovery was effected in his presence, then he should have sealed the case

property with his seal. The excuse that he had not been issued any official seal is not acceptable. Therefore, presence of one of the recovery witness at the spot i.e. DSP is doubtful.

Moreover, the prosecution story itself is not convincing. SI Virsa Singh had received secret information that accused is coming from Samana side in a bus. His description was also given by the secret informer. However, when SI Virsa Singh held picketing at T point Retgarh, the accused was found sitting on the earth with a bag. This is very strange. SI Virsa Singh has admitted in his cross-examination that he did not search any bus. It is strange that when a specific information was received that accused is traveling in a bus, no bus was searched and accused was found sitting at a place where picket was set up by the police. Site plan of place of recovery shows that it is on Samana -Patran road, where there is no abadi nearby. Therefore, it cannot be believed that accused who was stated to be coming from Samana side will get down from a bus and sit on the side of the road at a place where the police is to hold the picketing.

Moreover, it also comes out that case property was packed in cloth bags. In cross-examination, SI Virsa Singh claimed that he himself had purchased the cloth from the shop and the bags were stitched by him with his own hands. He denied that these were sewed with sewing machine. However, when the bags were shown to the witness, he admitted that the bags are stitched on a sewing machine. He cannot tell the name of tailor by whom these bags were got stitched. The fact whether the bags were prepared at the spot by hand stitching or these were got stitched from a tailor before effecting

recovery, is very material and could be easily recalled by the investigating officer even after a lapse of time as usually the police officers themselves never stitch the bags.

There is another discrepancy in the statement of witnesses. Section 55 of the NDPS provides as under:-

“55. Police to take charge of articles seized and delivered

An officer-in-charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the office-in-charge of the police station.”

In this case, SI Virsa Singh himself was SHO. When after the recovery he reached the police station, he did not produce the case property, accused and witnesses before the officer incharge of the police station. The officer incharge of the police station is defined in Section 2(o) of the Criminal Procedure Code as under:-

“2(o) officer in charge of a police station” includes, when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present.”

Therefore, it would mean that when SHO was out on a patrol duty, the next senior most officer available at the police station

above the rank of Constable was to act as officer incharge and when SI Virsa Singh returned to police station, he should have produced the accused, case property and witnesses before the officer incharge of the police station for verification. And then the case property should have been deposited with MHC by the officer incharge of the police station. However, in this case, SI Virsa Singh assuming that he himself is SHO as well as the officer incharge did not produce the case property before the officer incharge of the police station who was working as such at that time. This fact along with other facts make the prosecution case doubtful.

As such, I am of the view that the prosecution case is not proved beyond all reasonable doubts. Accordingly, I grant benefit of doubt to the accused and acquit him of the charges framed against him. Accused is already on bail. His bail bonds and surety bonds are discharged.

Appeal is accordingly allowed.

03.02.2016

gk

(Kuldip Singh)
Judge