

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-589-SB of 2009
Date of Decision: February 11, 2016

Kewal Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Hitesh Sammi and Mr.N.L.Sammi, Advocates
for the appellant.

Mr.T.N.Sarup, Addl. 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 12.02.2009 passed by learned Judge, Special Court, Muktsar, whereby he was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of ₹1 lac and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year under Section 15 of the NDPS Act.

The brief facts of the prosecution case are that on 15.04.2000, SI/SHO Rajan Parminder Singh along with other police officials was holding nakabandi at the crossing in village Roranwali by making two parties. At about 9.30 A.M., Major Singh came on bicycle from the side of village Bhitiwala, who was joined in the police party.

During checking, at about 10.00 A.M., one Maruti car of green colour came from the side of village Bhitiwala, which was signalled to stop by ASI Balour Singh. The car driver tried to run away with the car but it was stopped and accused were apprehended. Accused Ganesh Singh was driving the car and accused Kewal Singh was sitting on the rear seat of the car. Two bags were lying on the rear seat of the car. The accused were apprised of their legal right to get the search conducted in the presence of any Gazetted Officer or Magistrate and the accused desired to get the search conducted before some Gazetted Officer. The Investigating Officer requested Karamjit Singh Sandhu, DSP(D), Muktsar, who reached at the spot and disclosed his identity to the accused. On search, as per rules, poppy husk was recovered from the gunny bags. Out of the recovered poppy husk, a sample of 250 grams poppy husk was separated from each bag and the remaining poppy husk, on weighment, came to 34¼ kgs. in each bag. The sample parcels and bulk parcels were prepared and sealed with the seal of Investigating Officer bearing impression 'KPS'. The case property was taken into police possession. Ruqa was sent to the police station, on the basis of which FIR was registered. Accused were arrested. Statements of witnesses were recorded. After necessary investigation, the challan was presented against the accused-appellant and co-accused.

On presentation of challan against accused-appellant and co-accused, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the

accused-appellant and co-accused were charge-sheeted under Section 15 of the NDPS Act, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Head Constable Kabal Singh, formal witness, who tendered into evidence his affidavit Ex.PA. PW-2 ASI Balour Singh, recovery witness, who deposed as per prosecution version and regarding the recovery from the accused. PW-3 LC Suresh Kumar, formal witness, who tendered into evidence his affidavit Ex.PH. PW-4 SHO Rajan Parminder Singh Investigating Officer, who deposed regarding investigation conducted by him in the present case. PW-5 Retd. SP Karamjit Singh, who deposed regarding recovery from the accused at the spot. The report Ex.PS of the FSL was tendered into evidence.

During the pendency of the trial, accused Ganesh Singh died and proceedings were abated against him.

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 has been falsely implicated due to party faction and was picked up from the village by the police in the presence of panchayat.

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 that independent witness Major Singh, who was joined in the police party, has not been examined, which creates reasonable doubt in the prosecution version. He further argued that seal was not handed over to the independent witness. He next argued that present appellant Kehar Singh was neither owner nor driver of the vehicle and therefore, it is not proved that he was in conscious possession of the poppy husk, which was recovered from the car. Learned counsel for the appellant contended that case property produced before the Court at the time of trial, was quite defective and there were no particulars of the case on the bags, therefore, the case property cannot be connected with the present case. He next contended that the CFSL form was not prepared at the spot. Learned counsel for the appellant, therefore, argued that there being merit in the appeal it should be allowed and accused-appellant should be acquitted.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by the PWs and they have consistently deposed regarding the prosecution version. There is no material discrepancy in the statements of the witnesses and there is no improbability in the version of the prosecution. Link evidence is complete. He further argued that all the mandatory provisions of the NDPS Act have been complied with. 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.

First of all, I find that it is settled law 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 has been proved by the accused-appellant. No defence evidence has been led by the accused-appellant. Therefore, there is no ground to disbelieve the statements of the PWs.

Secondly, the mere fact that present appellant was neither owner nor driver of the car, is no ground to acquit him. Present appellant Kewal Singh was sitting on the rear seat and two gunny bags containing poppy husk were recovered from the back seat of the car. There is no explanation by the appellant nor any defence was led as to how he was in conscious possession. The prosecution has duly proved the recovery of two gunny bags from the rear seat of the car, where present appellant was sitting. He was found in possession of the poppy husk and in no way, it can be held that gunny bags were not in his conscious possession. There is no evidence or circumstance to show that he was not knowing regarding the poppy husk in the gunny bags which were lying on the back seat along with him. Therefore, this argument of learned counsel for the appellant has not merit.

The mere fact that seal was not handed over to the independent witness, is also no ground to create doubt in the prosecution version. PWs including the Gazetted Officer have deposed regarding the recovery of poppy husk from the accused-

appellant. The perusal of the cross-examinations of PWs nowhere shows that there is anything which may make their statements unreliable. No material contradictions or material improvements have been pointed in the statements of the PWs at the time of arguments. It is in the cross-examination of the Investigating Officer that CFSL form was prepared at the spot but was not taken into police possession vide recovery memo. In my view, there was no necessity to take the CFSL form into police possession through recovery memo which was prepared during the investigation by the Investigating Officer himself.

As regarding the defective case property, I find that it is settled law that case property is only a corroborative piece of evidence and is not substantive piece of evidence. The case property was produced before the Illaqa Magistrate after the recovery. If at the time of trial, the slip containing particulars of case etc. were not found on case property, then it will also not create any reasonable doubt in the prosecution version.

In the present case, link evidence is complete. The mandatory provisions of NDPS Act have been complied with. PWs have consistently deposed regarding the prosecution version. There is nothing on the record to show that accused-appellant has been falsely implicated in the present case. The prosecution has duly proved its case by leading cogent evidence beyond reasonable doubt.

In view of the above discussion, I find that impugned judgment of conviction and order of sentence dated 12.02.2009

passed by learned Judge, Special Court, Muktsar, are correct, as per law and do not require any interference from this Court.

Therefore, finding no merit in the present appeal, the same dismissed.

February 11, 2016
Vgulati

(INDERJIT SINGH)
JUDGE