

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-1727-SB of 2015
Date of Decision: January 05, 2016

Gurdeep Singh alias Raj

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Jashandeep Sandhu, Advocate
for the appellant.

Mr.Kirat Singh Sidhu, 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 and order of sentence dated 12.03.2015 passed by learned Judge, Special Court, Fazilka, whereby he was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of eight months and to pay a fine of ₹5,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of one month under Section 18 of the NDPS Act.

Notice of motion was issued and learned State counsel appeared and contested the appeal.

The brief facts of the case are that on 03.08.2013, ASI Hardev Singh along with other police officials was going from village

Chak Janisar, Kanniyan Wali, Ratta Ther. When the police party reached at the bridge of Gung Canal, then one person was seen coming carrying a khundi and a plastic bag, who on seeing the police party got nervous and sat towards his left hand on the pretext of urination. On suspicion, he was apprehended. Then he was informed about his right to get himself searched in the presence of some gazetted officer or Magistrate. The accused reposed confidence in the Investigating officer ASI Hardev Singh. The Investigating Officer tried to join an independent witness. Then the Investigating Officer conducted search of plastic bag and opium wrapped in a polythene envelop was recovered. One sample of 10 grams of opium from the recovered opium was separated and remaining opium, on weighment, came to 190 grams. The bulk parcel was sealed separately and sample parcels were sealed with seal bearing impression 'HS'. Form No.29 was prepared at the spot. Ruqa was sent to the police station. Investigation was initiated. Site plan was prepared. Statement 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 18 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 ASI Joginder Singh, PW-2 Head Constable Harmeet Lal, PW-3 Constable

Gurmej Singh and PW-4 ASI Hardev Singh.

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 only argued on quantum of sentence and nothing has been argued regarding conviction of the appellant.

After hearing learned counsel for the appellant as well as learned State counsel and after going through the record, I find that PWs have consistently deposed regarding the recovery of 200 grams of opium from the present appellant. The mandatory provisions of NDPS have been complied with. Link evidence is complete. Even, effort for joining independent witness was made. No material contradictions or improvements have been pointed out in the statements of the PWs. Nothing has been argued regarding conviction of the appellant.

In view of the evidence produced by the prosecution, I find that the findings given by learned Judge, Special Court, Fazilka are correct, as per law and evidence. Therefore, the judgment of conviction dated 12.03.2015 passed by learned Judge, Special Court, Fazilka, is upheld.

As regarding quantum of sentence, learned counsel for the appellant contended that accused-appellant is first offender and the recovery from him falls under non-commercial quantity. He further contended that appellant is suffering from the criminal proceedings since 03.08.2013 and he is a poor person and only bread earner of the family.

Keeping in view the facts and circumstances of the present case and the fact that recovery from the accused-appellant falls under non-commercial quantity and further appellant is stated to be of 50 years of age, poor person and only bread earner of the family and in view of the fact that he is suffering from long protracted criminal trial for the last more than two years and five months and further, he has already undergone 5 months and 7 days out of the total sentence of 8 months, a lenient view is taken and the sentence of the appellant is reduced to the period already undergone by him. It is stated that fine has already been deposited by the accused-appellant.

Resultantly, the present appeal stands partly allowed accordingly. Since, appellant Gurdeep Singh alias Raj is on bail, his bail bonds stands discharged.

January 05, 2016
Vgulati

(INDERJIT SINGH)
JUDGE