

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1)

Crl. Appeal No.S-3192-SB of 2013

Rajinder Singh @ Jinder

...Appellant

VERSUS

State of Punjab

...Respondent

(2)

Crl. Appeal No.S-3589-SB of 2013

Devinder Singh

...Appellant

VERSUS

State of Punjab

...Respondent

Date of Decision: January 11, 2016

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present: Mr.P.S.Sekhon, Advocate
for the appellant (in CRA No.S-3192-SB of 2013).

Mr.Randeep Singh Rana, Advocate
for the appellant (in CRA No.S-3589-SB of 2013).

Ms.Shivali, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

By this common judgment, two connected cases i.e. CRA
No.S-3192-SB of 2013 and CRA No.3589-SB of 2013 arising out of
the same judgment, are being decided.

Accused-appellants Rajinder Singh @ Jinder and Devinder

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Singh have filed the appeals against the judgment of conviction and order of sentence dated 13.09.2013 passed by learned Addl. Sessions Judge-cum-Judge, Special Court, Patiala, whereby they were held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of three years each and to pay a fine of ₹3000/- each and in default of payment of fine to further undergo rigorous imprisonment for a period of three months each under Section 15 of the NDPS Act and they were further convicted and sentenced to undergo rigorous imprisonment for a period of six months each and to pay a fine of ₹500/- each and in default of payment of fine to further undergo rigorous imprisonment for a period of two months each under Section 489 IPC. Both the sentences were ordered to run concurrently.

The brief facts of the prosecution case are that on 24.05.2010, SI Gurcharan Singh along with other police officials was present at the bridge of drain in the area of village Langroi in connection with nakabandi, where one Nirbhai Singh came present and he was joined in the police party. At about 9.00 A.M., one car bearing registration No.HR-26Y-0143 was seen coming, which was signalled to stop but instead of stopping it, the driver of the car tried to accelerate the speed and hit the bridge and got stopped. Both the persons sitting in the said car were apprehended and driver of the car disclosed his name as Devinder Singh whereas other person told his name as Rajinder Singh. An offer was made to the accused to get the search conducted in the presence of a gazetted officer. Accused reposed confidence in SI Gurcharan Singh. On search of car, as per

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rules, two bags containing poppy husk were found, out of which two samples of 100 grams each were separated from each bag and on weighment, remaining poppy husk was found to be 18kgs. 800 grams in each bag. Sample parcels and bulk parcels were prepared and sealed with the seal of Investigating Officer Gurcharan Singh bearing impression 'GS'. The case property was taken into police possession. Ruqa was sent to the police station, on the basis of which, formal FIR was recorded. Accused was arrested. Statements of witnesses were recorded. Rough site plan was prepared. On return to the police station, case property along with accused were produced before officiating SHO/SI Thura Ram, who verified the factum of recovery and affixed his seal on the parcels. After necessary investigation and after receiving the report from chemical examiner, the challan was presented against the accused-appellants.

On presentation of challan against accused-appellants, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the accused-appellants 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 Hans Raj, who was with the police party. He deposed regarding the recovery from the accused as per prosecution version. PW-2 SI Thura Ram deposed regarding verification of the case property which was produced before him and also deposed regarding putting his seal on the parcels. PW-3 Head Constable Surinder

Kumar, is formal witness, who tendered into evidence his affidavit Ex.P1. PW-4 SI Gurcharan Singh, Investigating Officer, deposed regarding the investigation conducted by him in the present case. PW-5 ASI Harminder Singh, is also formal witness, who tendered into evidence his affidavit Ex.PM. PW-6 Satish Kumar, Clerk, office of SDM, Gurgaon mainly brought the record pertaining to registration of vehicle and stated that as per the record, the number which was on the car, was actually allotted for a motorcycle and registered in the name of Sandeep Sharma.

At the close of prosecution evidence, the accused-appellants were examined under Section 313 Cr.P.C. They were confronted with the evidence of the prosecution and they denied the correctness of the evidence and pleaded themselves 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 Rajinder Singh @ Jinder argued that appellant Rajinder Singh @ Jinder was neither driver nor owner of the vehicle and his conscious possession is not proved. Learned counsel for both the appellants argued that no independent witness has been examined in this case and the testimony of only police officials cannot be relied upon. Learned counsel for the appellants, in the alternative, prayed for reduction of the sentence imposed upon the appellants.

On the other hand, learned State counsel argued that

prosecution has duly proved its case by leading cogent evidence. The mandatory provisions of NDPS Act have been complied with. Link evidence is complete. On the ground that independent witness was not examined by the prosecution, the accused-appellants cannot be acquitted. Learned State counsel, therefore, argued that there being no merit in the appeal, the same should be dismissed.

After hearing learned counsel for the appellants as well as learned State counsel and after going through the record, I find that 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 of the police official against the accused-appellants has been alleged and proved. No witness in defence has been examined in this case. Mere non-examination of independent witness cannot be held as fatal to the prosecution case. In the present case, the independent witness has been given up by learned Public Prosecutor being won over by the accused. The mere fact that appellant Rajinder Singh @ Jinder is not the driver nor owner of the vehicle, itself will not prove that he was not in the possession of the poppy husk which was recovered from the dicky of the car. Rather, the facts of this case, show that when the police party signalled the car to stop, the driver of the car tried to ran way but the car hit the side of the bridge and accused-appellants were apprehended. There is nothing in the statements under Section 313 Cr.P.C. nor any document has been produced to show as to how appellant Rajinder Singh @ Jinder, sitting

along with the driver Devinder Singh was not knowing regarding the poppy husk in the car. Both of them were travelling together and both tried to fled away on seeing the police party.

Furthermore, the prosecution is to prove the possession of the accused and conscious possession is to be proved by the accused but there is no such evidence to show that appellant Rajinder Singh @ Jinder was not in conscious possession of the poppy husk. No plea has been taken by him to show that he has boarded the car on the way or anything else. So, the argument of learned counsel for the appellant Rajinder Singh @ Jinder, has also no merit.

I have gone through the evidence on record. The PWs have consistently deposed regarding the prosecution version. No material contradictions or material improvements have been pointed out by learned counsel for the appellants, which may go to the root of the case. There is nothing in the cross-examination of the PWs, which may make their statements unreliable. The PWs have duly proved the recovery of poppy husk from the accused-appellants. All 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 beyond any reasonable doubt. Therefore, the judgment of conviction dated 13.09.2013 passed by learned trial Court is correct, as per law and does not require any interference from this Court and the same is upheld.

As regarding, quantum of sentence, as argued, I find that this case is of the year 2010 and for the last more than five years, the

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appellants are suffering from long protracted criminal proceedings. The appellants, at the time of occurrence, were young man. They are poor person and only bread earner of the family. The recovery from the appellants falls under non-commercial quantity.

Keeping in view the above facts and circumstances of the case, the sentence imposed upon the appellants is reduced and they are directed to undergo rigorous imprisonment for a period of two years under Section 15 of the NDPS Act instead of three years. However, the other sentence under Section 489 IPC and sentence of fine shall remain the same. Both the sentences shall run concurrently.

With the above-said modification in the sentence, both the appeals i.e. CRA No.S-3192-SB of 2013 and CRA No.S-3589-SB of 2013 stand dismissed.

Appellant Devinder Singh, be set at liberty on completion of two years' sentence in this case, if he is not required in connection with any other case, subject to payment of fine.

As appellant Rajinder Singh @ Jinder is on bail, his bail bonds stand cancelled and he is directed to surrender himself before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against him in accordance with law.

January 11, 2016
Vgulati

(INDERJIT SINGH)
JUDGE