

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-33-SB of 2016
Date of Decision: February 17, 2016

Murti Kaur

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Parminder Singh Sekhon, Advocate
for the appellant.

Mr.P.S.Grewal, 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 17.09.2015 passed by learned Judge, Special Court, Barnala, whereby the appellant and co-accused Bheemo alias Gurmail Kaur were held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹4,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of four months each under Section 22(b) of the NDPS Act.

The brief facts of the prosecution case are that on 10.12.2012, ASI Kuldeep along with other police officials was going from Bajakhana Road towards Bus Stand road in connection with patrolling duty and at about 4.15 P.M., when they reached near vegetable market, two ladies were seen while sitting in deserted place along with plastic jhola. One lady was holding the plastic jhola and

another was mingling her hand in the same. On suspicion, both the accused were apprehended. The mouth of the plastic jhola was lying open and on conducting search, intoxicant tablets of white colour and vials of intoxicant liquid Rexcof were recovered. Two samples of 25 intoxicant tablets each were separated and remaining tablets, on counting, came out to be 1000, which were converted into parcels. Out of the recovered vials, two vials of Rexcof were separated as samples and converted into parcels. The remaining 6 vials also converted into parcel. All the sample parcels and bulk parcels were sealed with the seal of Investigating Officer bearing impression 'KS'. 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. On return to the police station, entire case property along with the accused was produced before SI Sardara Singh, SHO, who verified the facts of the case and put his seal bearing impression 'SS' on the case property. 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 22(C) of the NDPS Act, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Head

Constable Rajinder Kumar, formal witness, who tendered into evidence his affidavit Ex.PW1/A. PW-2 ASI Randhir Singh, recovery witness, who was with the police party. He consistently deposed regarding prosecution version and recovery from the accused. PW-3 MHC Sarwan Singh, is also formal witness, who tendered into evidence his affidavit Ex.PW3/A. PW-4 SI Sardara Singh, who mainly deposed that he verified the facts of the case and affixed his seal on the case property. PW-5 ASI Kuldeep Singh, is the Investigating Officer, who deposed regarding investigation conducted by him in the present case.

At the close of prosecution evidence, the accused-appellant and co-accused 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 and co-accused as stated above. However, the present appeal has only been filed by accused-appellant Murti Kaur.

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

At the time of arguments, learned counsel for the appellant argued mainly on one point that no independent witness was joined by the police party and there are only testimonies of police officials,

which cannot be believed. In the alternative, learned counsel for the appellant, prayed for reduction of sentence.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by the PWs. The PWs have consistently deposed regarding the prosecution version. 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.

After hearing learned counsel for the appellant as well as learned State counsel and after going through the record, I find that it is settled law that the testimony of police official is as good as of any other witness unless some enmity or motive of the police official to falsely implicate the accused is alleged and proved. In the present case, no such enmity of the police officials against the accused has been alleged. No defence evidence has been produced by the accused. The police party was on patrol duty and the recovery from the accused is sudden and by chance. There was no opportunity with the police party to join the independent witness. No material contradictions or discrepancies have been pointed out in the statements of the PWs at the time of arguments. The PWs have consistently deposed regarding the prosecution version. Even, there is nothing in their cross-examinations, which may make their statements unreliable. All the mandatory provisions of the NDPS Act have been complied with. Link evidence is also complete.

In view of the above discussion, I find that the prosecution has duly proved its case by leading cogent evidence beyond reasonable doubt. Therefore, the judgment of conviction dated 17.09.2015 passed by learned Judge, Special Court, Barnala, is correct, as per evidence and law and does not require any interference from this Court.

As regarding the alternative prayer for reducing the sentence, learned counsel for the appellant contended that appellant has two children and there is no male member in the family to look after her family. He also contended that appellant is suffering from criminal proceedings since 2012.

Keeping in view the facts and circumstances of the present case and in view of the fact that appellant has two children and there is no male member to look after her family and she is suffering from long protracted criminal proceedings since 2012 and further in view of the fact that appellant has already undergone 8 months and 7 days out of the actual sentence, the sentence imposed upon the appellant is reduced to the sentence already undergone by her. However, the sentence of fine and default sentence shall remain the same. Appellant Murti Kaur, who is in custody, be released forthwith, if her custody is not required in connection with any other case, subject to payment of fine, if already not paid.

Accordingly, present criminal appeal stands partly allowed.

February 17, 2016
Vgulati

(INDERJIT SINGH)
JUDGE