

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) Crl. Appeal No.S-3015-SB of 2015 (O&M)

Anwar Khan @ Chhota

...Appellant

VERSUS

State of Punjab

...Respondent

(ii) Crl. Appeal No.S-5128-SB of 2015 (O&M)

Lakhwinder Singh alias Lakhi

...Appellant

VERSUS

State of Punjab

...Respondent

Date of Decision: April 27, 2016

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Jasdeep Singh, Advocate
for the appellant (in CRA No.S-3015-SB of 2015).

Mr.Hoshiar Singh Jaswal, Advocate
for the appellant (in CRA No.S-5128-SB of 2015).

Mr.A.S.Klar, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

This judgment shall dispose of above-mentioned two
connected appeals being arisen from same judgment.

Both the appeals have been filed by the appellants Anwar
Khan @ Chhota and Lakhwinder Singh alias Lakhi against the

judgment of conviction and order of sentence dated 02.07.2015 passed by learned Judge, Special Court, SAS Nagar (Mohali), whereby they were held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of ₹5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month each under Section 15(b) of the NDPS Act.

The brief facts of the prosecution as noted down in the judgment passed by learned Judge, Special Court, SAS Nagar are under:-

“Prosecution story in brief is that on 30.12.2013, PW1 ASI Bimal Krishan, Investigating Officer of the case (hereinafter to be referred as the IO) along-with PW3 HC Paramjit Kumar and some other police officials was going from Village Kambala, Papri, Chacho Majra towards Village Bakarpur through link road on an official vehicle in connection with patrolling. When the police party reached near Airport road Chowk in the area of Village Bakarpur, Nakabandi was laid for checking of suspicious persons. At about 5:00 PM, one Ashoka Leyland tempo was spotted coming from Village Bakarpur side, which was got stopped. The driver of the vehicle disclosed his identity as accused Lakhwinder Singh alias Lakhi and the person sitting on co-driver seat disclosed his identity as accused Anwar Khan, as fully detailed and described herein above. On search of the vehicle, a plastic bag of white colour was found lying in between driver and co-driver seat, which on checking was found containing a polythene bag containing poppy-husk. Out of the said poppy husk, two samples weighing 250 grams were separated and on weighment remaining poppy-husk was found 13 Kilograms, which was converted into a separate parcel. The bulk parcel and sample parcels of poppy-husk were sealed by the IO with his seal bearing impression 'BK'. Sample of sample Ex.P1 was prepared and seal after use was handed over to PW3 HC Paramjit Kumar. CFSL form Ex.P2 was prepared. This case property was taken in police possession vide recovery memo Ex.P3, which was attested by the witnesses. Tempo vehicle bearing No.CH-01-TA-5987 was

taken in police possession vide separate recovery memo Ex.P6. Ruqa Ex.P4 was sent to the police station through HC Parveen Kumar, as an offence under Section 15 of NDPS Act was made out against the accused and on its basis F.I.R. Ex.P5 was recorded by PW6 ASI Paramjit Singh, who made endorsement Ex.P18 on the ruqa. Investigation was conducted at the spot. Site plan Ex.P7 of the place of recovery and arrest memos Ex.P8 and Ex.P9 and personal search memos Ex.P10 and Ex.P11 of the accused were prepared at the spot. Statements of the witnesses were recorded. On reaching the police station, the IO produced the case property and the accused before PW6 ASI Paramjit Singh, Officiating SHO and he affixed his seal bearing impression of words 'PS' on bulk parcel, sample parcels and sample of seal Ex.P1. Thereafter, the case property was deposited in Malkhana of the police station with PW5 Raj Kumar, MHC, who has furnished affidavit Ex.P17-A. On 30.12.2013, the IO produced the case property and the accused before the Area Magistrate and filed inventory Ex.P15, application Ex.P16 under Section 52-A of the NDPS Act and application Ex.P17 for obtaining certified copy of the order. The Area Magistrate certified the inventory to be correct and allowed the other applications, vide endorsement Ex.P12. PW2 HC Sandeep Kumar took the sample parcel to the Chemical Examiner on 3.01.2014 and he has furnished affidavit Ex.P14. PW4 Sunil Kumar, an official of the Secretary, State Transport Commissioner, Chandigarh was examined with respect to application Ex.P15-A filed by the IO on 15.5.2014 regarding verification of the vehicle in question and Ex.P16-A is screen report of the said vehicle and for getting the same released on sapurdari. Shabnam wife of accused Lakhwinder Singh filed application Ex.P18. Statements of remaining witnesses were recorded. On completion of investigation and on receipt of report of the Chemical Examiner, final report under Section 173 of the Code of Criminal Procedure against the accused was presented before the Court."

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(b) of the NDPS Act, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 ASI Bimal Kishan, Investigating Officer, who deposed regarding investigation conducted by him in the present case. PW-2 Head Constable Sandeep Kumar, formal witness, who tendered into evidence his affidavit Ex.P14. PW-3 Head Constable Paramjit Kumar, recovery witness, who deposed as per prosecution version and proved the recovery from the accused. The prosecution also examined PW-4 Sunil Kumar, PW-5 MHC Raj Kumar and PW-6 ASI Paramjit Singh, officiating SHO.

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. Accused Anwar Khan further stated that he is running an Auto Rickshaw which had a snag. He does not know accused Lakhwinder Singh. However, he took lift on vehicle of accused Lakhwinder Singh. He further stated that no recovery was effected from him and he has been falsely implicated and in this defence, he examined DW-1 Sartar Mohammad.

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 appellants did not dispute the findings regarding conviction and only prayed for reduction of sentence of the appellants.

On the other hand, learned State counsel argued that case

of the prosecution has been duly proved by the PWs. There is nothing on the record to show false implication of the accused in the present case. He next argued that PWs have consistently deposed regarding the recovery from the accused. Learned State counsel, therefore, argued that there being no merit, both the appeals should be dismissed.

I have heard learned counsel for the appellants as well as learned State counsel and have gone through the record.

From the record, I find that 13.5 kgs. of poppy husk has been recovered from the accused-appellants, which falls under non-commercial quantity. The appellants are suffering from protracted criminal proceedings since 2003. They are poor persons, first offenders and only bread earners of their respective families. Accused-appellant Anwar Khan @ Chhota has already undergone imprisonment of two months and one day and accused-appellant Lakhwinder Singh @ Lakhi has undergone imprisonment of four months and eleven days out of the total sentence.

In view of the above, the sentence imposed upon the appellants is reduced to the sentence already undergone by them. The sentence of fine is also reduced and they are directed to pay fine of ₹2500/- each and in default of payment of fine, to undergo rigorous imprisonment for a period of one month. The appellants are directed to pay the fine within one month from receiving the certified copy of the order, otherwise, the trial Court would take necessary action as per law.

Resultantly, the appeals stand partly allowed accordingly.

Since, appellants Anwar Khan @ Chhota and Lakhwinder Singh @ Lakhi are on bail, their bail/surety bonds stand discharged.

April 27, 2016
Vgulati

(INDERJIT SINGH)
JUDGE