

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1) Crl. Appeal No.S-38-SB of 2016 (O&M)

Sandeep Singh alias Sippa

...Appellant

VERSUS

State of Punjab

...Respondent

(2) Crl. Appeal No.S-5174-SB of 2015 (O&M)

Harpal Singh alias Gorla

...Appellant

VERSUS

State of Punjab

...Respondent

Date of Decision: November 21, 2016

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Madan Sandhu, Advocate
 for the appellant (in CRA No.S-38-SB of 2016) and
 Legal Aid counsel for the appellant
 (in CRA No.S-5174-SB of 2016).

Mr.Varun Sharma, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

Both the above mentioned appeals are taken up together being
arisen from same judgment.

Since, none has appeared on behalf of appellant Harpal Singh
alias Gorla, therefore, Mr.Madan Sandhu, Advocate, who is already

appearing on behalf of appellant Sandeep Singh alias Sippa in the connected appeal, is hereby appointed as Legal Aid Counsel on behalf of appellant Harpal Singh alias Gorla.

Both the appeals have been filed by the appellants against the judgment of conviction and order of sentence dated 23.10.2015 passed by learned Judge, Special Court, Mansa, whereby the appellants were held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹2,500/- and in default of payment of fine, to further undergo imprisonment for a period of two months each under Section 15 of the NDPS Act.

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

“2. The material facts, as are unfolded in the report under Section 173 Cr.P.C, fall within a short compass and are, herein, given:-

That, on 22.04.2013, ASI Harbhajan Singh, along with his police companions, in connection with patrolling duty and checking of bad elements, was proceeding from village Khokhar Kalan to Khokhar Khurd. When the police party had reached the main road Mansa to Talwandi, on the turning of Khokhar Kalan, near Petrol Pump Ramdittewala, Gurdeep Singh, son of Bawa Singh had met the police party, who was associated in the police party. When the police party further from village Ramdittewala had reached the main road of village Khokhar Kalan, at the turning of Khokhar Kalan, from the side of Khokhar Kalan, one motorcycle, bearing No.PB-04J-7006, make Discovery, was spotted coming, with two occupants. On seeing the police party, the occupants of the motorcycle got perplexed and tried to turn towards their left side. In the process, the motorcycle had slipped and the plastic bag from the motorcycle had fallen on the ground and the persons, sitting on the motorcycle, also fell on the same. Mouth of the bag had opened and poppy husk lay scattered. ASI Harbhajan Singh, with the help of his companions, intercepted the aforesaid persons. On inquiry, the person, who was driving the motorcycle, disclosed his name as “Harpal Singh” and also disclosed his other particulars and the pillion rider, who was holding the plastic bag, disclosed his name as “Sandeep

Singh” and also disclosed his other particulars. ASI Harbhajan Singh had, then, collected the scattered poppy husk and put the same in the same plastic bag. One sample of 100 grams was drawn from the plastic bag and the residue poppy husk, weighed to be 20 Kg. Separate parcels of the sample and the residue poppy husk were prepared, which were sealed with the seal bearing impression 'HS'. Sample seal was separately prepared. Seal after use, was handed over to Gurdeep Singh, independent witness. Then, checking of the motorcycle, bearing No.PB-04J-7006, was conducted, but however, no papers relating to the same were found. Then, all the aforesaid articles along with motorcycle were taken into possession vide separate memo. Ruqa was sent to the police station, on the basis whereof, case was registered against the aforesaid persons. On personal search of accused Harpal Singh, from the pocket of shirt, which he was wearing, Rs.100/- were recovered and from the side pocket of the shirt, one affidavit of the motorcycle, bearing No.PB-04J-7006, relating to the sale of the same by Jasvir Singh, in favour of Harpal Singh, was found, which was taken into possession vide separate memo. On personal search of accused Sandeep Singh, Rs.50/- were recovered, which were taken into possession vide separate memo. On return to the police station, the accused and the case property were produced before SHO, SI Jaskaran Singh, who had verified the fact of recovery and counter-sealed the case property with his seal bearing impressions 'JS' and taken into possession the entire case property. During the course of investigation, sample parcel was sent to the office of the Chemical Examiner and the latter, vide its report, opined the sample to be “Chura poppy heads”. ”

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 ASI Harbhajan Singh, Investigating Officer, PW-2 Constable Sukhpreet Singh, PW-3 Head Constable Gani Mohammad and PW-4 SI Jaskaran Singh.

At the close of prosecution evidence, the accused-appellants

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-appellants , as stated above.

At the time of arguments, learned counsel for the appellants argued only on one point that the independent witness has not been examined and testimonies of police officials alone cannot be believed and reasonable doubt exists in the prosecution version. Learned counsel for the appellants, in the alternative, prayed for reduction of sentence imposed upon the appellants and contended that appellant Sandeep Singh alias Sipra has already undergone actual sentence of 10 months and 3 days and appellant Harpal Singh alias Gorla has already undergone actual sentence of 4 months and 19 days out of the total sentence. He next contended that the appellants are only bread earner of the family, first offenders, poor persons and are suffering from criminal proceedings since 2013. Learned counsel for the appellants further contended that 20 kgs. 100 grams of poppy husk has been recovered from the accused-appellants, which falls under non-commercial quantity.

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.

After hearing learned counsel for the appellants as well as

learned State counsel, 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 to falsely implicate the accused is alleged and proved. In the present case, no such enmity or motive of the police officials is alleged and proved on the record. There is no ground to disbelieve the statements of the police officials. The PWs have deposed consistently regarding the prosecution version. There are no material contradictions or material improvements in the statements of the witnesses. No material discrepancies have been pointed by learned counsel for the appellants. There is nothing in the cross-examinations of the PWs which may make their statements unreliable. All the mandatory provisions of the NDPS Act have been complied with. Link evidence is complete. Moreover, the police party joined the independent witness but he was given up by learned Public Prosecutor being won over by the accused. In no way, it can be held that no attempt was made to examine the independent witness.

In view of the evidence, I find that the prosecution has duly proved its case by leading cogent evidence beyond reasonable doubt. Therefore, the judgment of conviction dated 23.10.2015 passed by learned Judge, Special Court, Mansa is correct, as per law and does not require any interference from this Court.

However, keeping in view the facts and circumstances of the present case and in view of the fact that appellants are first offender, only bread earners of the family and are suffering from long protracted criminal proceedings since 2013 i.e. for the last about 3 years and further in view of the fact that appellant Sandeep Singh alias Sippa has already undergone

Goria has already undergone actual sentence of 4 months and 19 days out of the total sentence and keeping in view the fact the recovery from the accused-appellants falls under non-commercial quantity i.e. 20 kgs. 100 grams of poppy husk, the sentence imposed upon the appellants is reduced to the sentence already undergone by them. However, the sentence of fine and in default thereof shall remain the same. The appellants are directed to pay the fine within one month from the date of receiving the certified copy of the order, if already not paid, otherwise, the trial Court is directed to take necessary action as per law.

Accordingly, both the criminal appeals stand partly allowed.

Since, appellants Sandeep Singh alias Sippa and Harpal Singh alias Goria are on bail, their bail/surety bonds stand discharged.

November 21, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No