

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

CRA S-4020-SB of 2015.

Decided on: 21.07.2016.

Guddi ... Appellant

Versus

State of Punjab ... Respondent

CORAM : **Hon'ble Mr. Justice Jitendra Chauhan**

Present : Mr. P.S. Sekhon, Advocate,
 for the appellant.

Ms. Harsimrat Rai, DAG, Punjab.

JITENDRA CHAUHAN.J.(ORAL)

This appeal is directed against the judgment and order dated 20.08.2015, passed by learned Judge, Special Court, Sangrur vide which the accused-appellant was convicted under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short “the Act”) and sentenced to undergo RI for one and a half years and to pay fine of Rs.5000/- with default stipulation.

2. The case of the prosecution is that on 18.08.2013, SI Surinder Singh along with other police officials was present at Bus-Stand Hariau. A secret information was received by him that Guddi, the accused-appellant was engaged in selling of poppy husk. She procures poppy husk from village Kishnagarh and sells it to the persons using katcha path leading to village Kishangarh. If raid was conducted, she could be apprehended with huge quantity of the contraband. On the basis of information, ruqa was sent and formal FIR was registered. SI

Surinder Pal Singh along with other police officials visited the site and a raid was conducted on the katcha path near her field. The appellant was seen sitting there. One open plastic bag containing poppy husk was lying near her. On inquiry, the accused disclosed her name and address. SI Surinder Pal disclosed his identity to the accused and told her that he suspected some contraband in the plastic bag. He wanted to conduct search of the same and apprised the accused of her right to get her search conducted in the presence of a gazetted Officer or a Magistrate but the accused reposed confidence in SI Surinder Pal. Consent memo of the accused was recorded. Thereafter, SI Surinder Pal conducted search of the bag from which 25 kgs of poppy husk was recovered. Out of the recovered poppy husk, two samples of 250 gms each were separated and the same were converted into two parcels. The remaining poppy husk was also converted into a separate parcel. All the parcels were sealed by the Investigating Officer with his seal. Seal after use was handed over to HC Gurtej Singh. The case property was taken into possession. Rough site plan was prepared. The accused was arrested. On completion of investigation and on receipt of report of Chemical Examiner, the challan/report under Section 173 Cr.P.C was presented before the Court.

3. Copies of documents as envisaged under Section 207 Cr.P.C were supplied to the accused, free of costs.

4. Charge under Section 15 of the Act was framed against the accused to which she denied and pleaded false implication.

5. In order to prove its case, the prosecution examined the following witnesses:-

6. PW-1, SI Surinder Pal Singh, the IO of the case deposed that on 18.08.2013 he along with other police officials was present at Bus Stand Hariau. He received a secret information that the accused-appellant was habitual of selling poppy husk and she took poppy husk to Kishangarh and sold the same to the villagers. If raid was conducted, she could be apprehended with huge quantity of the contraband. On the basis of information, ruqa was sent and formal FIR was registered. He along with other police officials visited the site and conducted a raid on the katcha path near her field. The appellant was seen sitting there. One open plastic bag containing poppy husk was lying near her. On inquiry, the accused disclosed her name and address. He disclosed his identity to the accused and told her that he suspected some contraband in the plastic bag. He wanted to conduct search of the same and apprised the accused of her right to get her search conducted in the presence of a gazetted Officer or a Magistrate but the accused reposed confidence in him. Consent memo of the accused was recorded. Thereafter, SI Surinder Pal conducted search of the bag from which 25 kgs of poppy husk was recovered. Out of the recovered poppy husk, two samples of 250 gms each were separated and the same were converted into two parcels. The remaining poppy husk was also converted into a separate parcel. All the parcels were sealed by the Investigating Officer with his seal. Seal after use was handed over to

HC Gurtej Singh. The case property was taken into possession. Rough site plan was prepared. The accused was arrested.

7. PW-2, HC Gurtej Singh deposed that he was accompanying the IO SI Surinder Pal Singh at the time of seizure of contraband. In his presence the entire proceedings were conducted.

8. PW-3, HC Major Singh deposed that the case property was deposited with him by SI Surinder Pal Singh and the same was handed over by him to Constable Baljinder Singh for carrying it to Central Forensic Science Laboratory, Mohali.

9. PW-4, Jai Vardhan Sharma deposed that the case property was deposited by SI Surinder Pal Singh in the Judicial Malkhana.

10. PW-5, Inspector Tejapal Singh deposed that on 18.08.2013, he was posted as SHO in Police Station Dharamgarh. He deposed about the production of accused as well as parcels and sample seals along with witnesses. He sealed the case property with his seal bearing impression 'TS'.

11. PW-6, Constable Baljinder Singh deposed that samples of contraband recovered from the accused were carried by him to CFSL, Mohali and they remained intact in his custody.

12. After closure of the prosecution evidence, the statement of accused was recorded under Section 313 Cr.P.C and all the incriminating circumstances appearing in the prosecution evidence were put to her. However, the accused denied all those allegations and

pleaded innocence and false implication.

13. No defence evidence was led by the accused.

14. After appraisal of the evidence, the learned trial Court, vide impugned judgment and order dated 20.08.2015, convicted the accused under Section 15 of the Act and sentenced her to undergo imprisonment as narrated above.

15. The judgment and order dated 20.08.2015, passed by the trial Court have been assailed by filing the present appeal.

16. Learned counsel for the appellant contends that the recovery was effected from the fields of one Banta Singh who was not challaned. The recovery was effected at 4.00 pm. However, no independent witness was joined. He further states that the appellant had suffered a paralytic stroke and she was totally immobile at the time of alleged recovery. The appellant at the time of registration of the FIR was 70 years of age, suffering from various ailments and it was not physically possible for the appellant to lift the contraband and carry it to the fields of Banta Singh.

17. On the other hand, the learned State counsel submits that the appellant is not 70 years old rather, from her admission, it is proved that she is 50 years of age.

18. I have heard learned counsel for the parties and have gone through the record of the case.

19. The foundation of the instant case is the secret information received by I.O. SI Surinder Singh that the accused-

appellant is habitual in selling poppy husk. However, in the custody certificate, there is nothing on record to suggest that she was involved in any other case. That being so, the very foundation of the case of the prosecution falls to the ground. The fact that Banta Singh, the owner of the field from where the alleged recovery was effected, was neither joined as accused nor as witness which creates doubt in the case of the prosecution. Not only that, it has come in the judgment of the trial Court that the accused was 70 years old at the time of alleged recovery. The source from which the appellant allegedly procured the contraband has also not come on record. The recovery is stated to have been effected at 4.00 p.m, but no independent witness was joined. In the statement of the IO, there is not even a whisper as to whether any effort was made to join any independent witness.

20. The cumulative effect of all what has been observed is that the prosecution has failed to prove its case beyond reasonable shadow of doubt. Consequently, the present appeal is allowed and the judgment and order passed by the trial Court are set aside. The accused-appellant is acquitted of the charges framed against her. The bail bonds and surety bonds stand discharged.

21.07.2016
SN

(JITENDRA CHAUHAN)
JUDGE