

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-470-SB of 2016 (O&M)
Date of Decision: April 29, 2016

Sarabjit Singh alias Sabhi

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Deepika Bawa, Advocate
for the appellant.

Mr.A.S.Kler, Asstt. 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 03.10.2015 passed by learned Judge, Special Court, SBS Nagar, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹30,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months under Section 21 of the NDPS Act.

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

“In brief, the case of the prosecution is that on 22.05.2014,

when ASI Satnam Singh alongwith other police officials was present in the area of village Begampur, in connection with checking of suspected persons, then at about 4:15 pm, a person was seen coming on foot from the opposite side, who was apprehended by the police party on suspicion and his whereabouts were inquired. Thereafter, ASI Satnam Singh disclosed his identity to the accused about his name, rank and posting and also told the accused that it is suspected that there is a contraband material in his possession and his search is to be conducted. He also told the accused that he has a legal right to get his search conducted in the presence of any Gazetted Officer or a Magistrate and accused reposed confidence in him and consent statement of the accused was recorded. Efforts were made to join a witness from the public, but nobody met them. Thereafter, search of the accused was conducted, which led into recovery of intoxicant powder, out of which 2 gm was separated as sample and remaining on weighing came to be 48 gm. The parcel of sample was prepared and was sealed with seal 'SS', which were taken into police possession vide separate recovery memo. Accused was arrested in this case and on receipt of the report of chemical examiner and after completion of necessary investigation, challan against the accused was prepared and presented before the court for trial of the accused."

On presentation of challan against accused-appellant, copies of challan and other documents were supplied to him under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant was charge-sheeted under Section 21 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Head Constable Kirpal Singh, PW-2 ASI Satnam Singh, Investigating Officer, PW-3 Constable Manpreet Singh, PW-4 Inspector Raj Kumar and PW-5 Head Constable Balbir Singh.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. He was

confronted with the evidence of the prosecution and he denied the correctness of the evidence and pleaded himself 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 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 patrolling 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 03.10.2015 passed by learned Judge, Special Court, SBS Nagar, is correct, as per 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 is first offender, only bread earner of the family and the recovery from the appellant falls under non-commercial quantity.

Keeping in view the facts and circumstances of the present case and in view of the fact that appellant is suffering from long protracted criminal proceedings since 2012 i.e. for the last about 2 years and further in view of the fact that appellant has already undergone imprisonment of one year and twenty days out of the actual sentence and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 50 grams

of intoxicant powder (Alprazolam), the sentence imposed upon the appellant is reduced to the sentence already undergone by him. The sentence of fine is also reduced to ₹10,000/- from ₹30,000/- and in default of payment of fine, the appellant is directed to undergo rigorous imprisonment for a period of one month instead of two months.

Accordingly, present criminal appeal stands partly allowed.

Appellant, Sarabjit Singh alias Sabhi, who is in custody, be set at liberty forthwith, if his custody is not required in connection with any other case, subject to payment of fine.

April 29, 2016
Vgulati

(INDERJIT SINGH)
JUDGE