

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-4694-SB of 2015
Date of Decision: February 08, 2016

Ram Lal

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Sanamjeet Kaur, Advocate
for the appellant.

Ms.Shivali, 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 04.09.2015 passed by learned Judge, Special Court, Mansa, whereby he was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of ₹2,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month under Section 15 of the NDPS Act.

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

The brief facts of the case are that on 01.09.2013, ASI Gurtej Singh along with police officials, was going on patrol duty.

When they reached about two kilometers ahead of Sardulewala towards Rori side, then from the side of Rori, one person, who was carrying a plastic bag on his head, was spotted coming on foot. On seeing the police party, he got perplexed and after throwing the bag on the ground, he tried to flee away towards the fields. On suspicion, he was apprehended. He was taken near the plastic bag, whose mouth was opened and poppy husk was visible. One sample of 100 grams poppy husk was separated and remaining poppy husk, on weighment, came to 9 kgs. 900 grams. The bulk parcel and sample parcel were sealed with seal bearing impression 'GS'. Ruqa was sent to the police station, on the basis of which, FIR was registered. After necessary investigation, the challan was presented against the accused-appellant.

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 15 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 ASI Gurtej Singh, Investigating Officer, who mainly deposed regarding the investigation conducted by him in the present case. He also stated that on return to the police station, he retained the case property in his possession and accused was locked in the police lock up. He also stated that on the next day, he produced the accused and case property before the Illaqa Magistrate and then application for

depositing the case property and sample seal in the judicial malkhana was given and bulk parcel was deposited in judicial malkhana and sample parcel was retained by him, which was sent on 04.09.2013 through Constable Pushipinder Singh, who deposited the same on 05.09.2013 in the office of Chemical Examiner, Kharar. PW-2 Head Constable Gurtej Singh, is the recovery witness, who was with the police party. He also deposed regarding the recovery of 10 kgs. of poppy husk from the accused. He further stated that seal after use was handed over to him. In cross-examination, he stated that seal was handed over to him at about 4.50 P.M. and he returned the seal to the Investigating Officer on the next day at about 12/1.00 P.M. PW-3 Constable Pushpinder Singh is the formal witness, who tendered into evidence his affidavit Ex.PL. In the cross-examination, he stated that sample parcel was handed over to him at about 10.00 A.M. after taking it out from malkhana. He further deposed that he did not know who was posted as MHC at that time.

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 that in the present case, link evidence is not complete. A

reasonable doubt exists in the prosecution version regarding tampering of the sample parcel as the sample parcel and seal were with the Investigating Officer upto 04.09.2013. He next argued that version of the prosecution is also contradictory as the Investigating Officer stated that sample parcel remained with him upto 04.09.2013 whereas Constable Pushpinder Singh stated that sample parcel was handed over to him after withdrawing it from the malkhana and no MHC/Incharge Malkhana has been examined. Learned counsel for the appellant, therefore, argued that there being merit in the appeal, it should be allowed and the appellant should be acquitted.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by the PWs. Link evidence is complete. The PWs have consistently deposed regarding the prosecution version. There are no material contradictions or material improvements in the statements of the PWs. 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, I find that sample parcel was given to Constable Pushpinder Singh on 04.09.2013. It is in the evidence of the Investigating Officer that the sample parcel was retained by him. He nowhere stated that it was deposited with MHC in the malkhana. No MHC has been examined nor there is any evidence that at that time, the Investigating Officer was also Incharge of the malkhana. As per PW-3 Constable Pushpinder Singh, the sample parcel was given

to him after withdrawing it from malkhana. There is no affidavit of MHC/Incharge malkhana that the sample parcel remained in intact condition till it remained in the malkhana.

Further, from the evidence on record, I find that it is in the evidence that sample seal was handed over to PW-2 Head Constable Gurtej Singh, who stated in cross-examination that sample seal was given to him at about 4.15 P.M. on that day by the Investigating Officer and he returned the same at 12.00-1.00 P.M. on the next day to the Investigating Officer. But as already discussed the sample parcel, as per the Investigating Officer, remained with him upto 04.09.2013, therefore, the sample parcel and seal, both remained with the Investigating Officer and there is every possibility of tampering with the evidence.

Furthermore, the Investigating Officer in his statement, nowhere stated that the sample remained in intact condition till it remained with him. Otherwise also, there is contradictory version as the Investigating Officer states that sample parcel remained with him upto 04.09.2013 when it was handed over to Constable Pushpinder Singh whereas PW-3 Pushpinder Singh states that the sample parcel was handed over to him after withdrawing it from the malkhana.

In view of the above facts and circumstances, I find that link evidence in the present case is not complete and reasonable doubt exists in the prosecution case on the ground that there was every possibility of tampering with the sample. Therefore, the prosecution has not been able to prove its case beyond reasonable

doubt. Hence, giving benefit of doubt to the accused, he is acquitted of the charges framed against him and the judgment of conviction and order of sentence dated 04.09.2015 passed by learned Judge, Special Court, Mansa, is set aside.

Therefore, finding merit in the present appeal, the same is allowed. Since, appellant Ram Lal is on bail, his bail/surety bonds stand discharged.

February 08, 2016
Vgulati

(INDERJIT SINGH)
JUDGE