

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-4761-SB of 2015
Date of Decision: February 24, 2016

Matinder Singh alias Kaka alias Sonu

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Amit Mehta, Advocate
for the appellant.

Mr.P.S.Grewal, Deputy 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 17.10.2015 passed by learned Judge, Special Court, Jalandhar, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of three months and to pay a fine of ₹1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of fifteen days under Section 15 of the NDPS Act and to undergo rigorous imprisonment for a period of one year 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 under Section 18 of the NDPS Act

The brief facts of the prosecution case are that on

15.09.2012, SI Balwinder Singh along with other police officials was on patrol duty in connection with search of bad elements at Bus Stand. When the police party reached near Pathankot Counter, on seeing the police party, one person, who was carrying a black colour bag on his left shoulder, fled away from there and went outside. On suspicion, he was apprehended. The search was conducted as per law and on search, poppy husk and opium were recovered. Two samples of 250 grams each were taken out from the recovered poppy husk and converted into separate parcels and remaining poppy husk, on weighment, came to 3 kgs. and bulk parcel was prepared. Two samples of 10 grams each were taken out from the recovered opium and remaining opium, on weighment, came to 80 grams and put into separate parcel. The sample parcels and bulk parcels were sealed by Investigating Officer with seal impression 'BS'. Case property was taken into police possession. Ruqa was sent to the police station, on the basis of which FIR was registered. Accused was arrested. Statements of witnesses were recorded. On return to the police station, entire case property along with the accused was produced before Inspector/SHO Rajinder Kumar Sharma, who after verifying the contents affixed his seal bearing impression 'RK' on the case property. 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 Sections 15 and 18 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 MHC Malkiat Singh, PW-2 Constable Sharan Kumar, PW-3 ASI Kulwant Singh, recovery witness, who deposed as per prosecution version and also deposed regarding recovery from the accused. PW-4 SI Balwinder Singh, Investigating Officer, who deposed regarding investigation conducted by him in the present case. PW-5 Inspector Rajinder Kumar, SHO, who deposed that after verifying the contents, he also affixed his seal on the parcels.

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.

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

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 patrol duty 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

17.10.2015 passed by learned Judge, Special Court, Jalandhar, is correct, as per evidence and 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 has two children to look after. He further contended that appellant is first offender, poor person and only bread earner of the family. He also contended that the recovery from the accused-appellant falls under category of non-commercial quantity.

Keeping in view the facts and circumstances of the present case and in view of the fact that appellant has two children and he is suffering from long protracted criminal proceedings since 2012 and further in view of the fact that appellant has already undergone 2 months and 19 days out of the actual sentence, the sentence imposed upon the appellant is reduced to the sentence already undergone by him. However, the sentence of fine and default sentence shall remain the same. The appellant is directed to deposit the fine within a period of one month, if already not paid.

Accordingly, present criminal appeal stands partly allowed.

Since, the appellant Matinder Singh alias Kaka alias Sonu is on bail, his bail/surety bonds stand discharged.

February 24, 2016
Vgulati

(INDERJIT SINGH)
JUDGE