

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-4887-SB of 2015 (O&M)
Date of Decision: March 14, 2016

Boota Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.A.S.Sekhon, 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 21.10.2015 passed by learned Special Judge, Sri Muktsar Sahib, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months under Section 15 of the NDPS Act. However, co-accused Babbu Singh was acquitted of the charge framed against him.

The brief facts of the prosecution case as stated in the judgment passed by learned Special Judge, Sri Muktsar Sahib are as under:-

“2. Adumbrated facts of prosecution story are that a police party headed by ASI Gurmeet Singh was on patrol duty and checking of suspects on 10.11.2013 and was proceeding from village Madhir to village Rakhala via link road on a private vehicle. When the police party reached near the bridge of canal minor in the area of village Madhir, two persons were seen near the hand pump on the pavement of the canal minor, who were in possession of one plastic sack (gatta) of white colour. One of the person, had caught hold the mouth of the gatta by opening it and the other person was eating something after taking out from the gatta. On seeing the police party, the person who was holding the gatta plastic, ran away, but, the other person who was eating something and poppy husk was visible in his hand, was apprehended by the Investigating officer with the help of other co-officials. He disclosed his name as Boota Singh son of Balwant Singh resident of village Sher Singh Wala, P.S. Sadiq, District Faridkot. Poppy husk was recovered from the gatta plastic, mouth of which was already lying open. 250 grams of poppy husk was separated to serve as sample and the remaining poppy husk on weight came to be 09 kilograms and 750 grams, which was converted into bulk parcel and both the parcels were sealed with seal bearing impression 'GS'. I.O. sent ruqa to the police station, where formal FIR was registered on the basis of the same. The sample and the bulk parcel were taken into police possession. Specimen seal chit was prepared and affixed on CFSL form and seal after its use was handed over to HC Guriqbal Singh. Rough site plan of the place of recovery was prepared and accused Boota Singh was arrested and grounds of arrest memo in this regard was prepared. His personal search and intimation memo in regard to his arrest were also prepared at the spot. Statements of witnesses were recorded. On return to the police station, the case property was retained by the I.O. himself. On the next day, the Investigating Officer produced the entire case property alongwith accused in the Court of JMJC Gidderbaha through application and inventory report and the learned Court passed the order after withdrawing representative sample and sealed the representative sample and bulk parcel with seal bearing impression 'SK'. On return to the police station, the case property was deposited with MHC in an intact condition and I.O. sent detailed report to DSP Darshan Singh and the latter made his endorsement thereon.

3. As per further case of prosecution on 14.11.2013, the investigating officer also arrested Babbu Singh after disclosing him the grounds of his arrest and memo in this

regard was also prepared. I.O. also prepared his personal search memo and intimation memo. Statements of witnesses were recorded and during investigation sample was sent to the office of Chemical Examiner.”

After necessary investigation, the challan was presented against the accused-appellant and co-accused.

On presentation of challan against accused-appellant and co-accused, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant and co-accused 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 Head Constable Jagjit Singh, PW-2 Retd. Sub Inspector Gurmeet Singh, Investigating Officer, PW-3 Guriqbal Singh, recovery witness and PW-4 Rajwinder Singh, sample carrier.

At the close of prosecution evidence, the accused-appellant and co-accused were examined under Section 313 Cr.P.C. They were confronted with the evidence of the prosecution and they denied the correctness of the evidence and pleaded themselves as innocent and stated that nothing was recovered from them.

No witness was examined in defence.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant and acquitted co-accused Babbu Singh 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 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 21.10.2015 passed by learned Special Judge, Sri Muktsar Sahib, 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 a poor person and has wife and one child to look after. He further contended that appellant is first offender 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 is suffering from long protracted criminal proceedings since 2013 i.e. for the last about 2½ years and further in view of the fact that appellant has already undergone imprisonment of about 5 months out of the actual sentence and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 10 kgs. poppy husk, the sentence imposed upon the appellant is reduced to the sentence already undergone by him, subject to payment of fine. The appellant is directed to deposit the fine within a period of two months, if already not paid, otherwise, the trial Court would take necessary action as per

law.

Accordingly, present criminal appeal stands partly allowed.

Since, the appellant Boota Singh is on bail, his bail/surety bonds stand discharged.

March 14, 2016
Vgulati

(INDERJIT SINGH)
JUDGE