

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.S-5042-SB of 2015 (O&M)

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Date of decision:10.2.2016

Gurmeet Singh alias Geetu

...Appellant

v.

State of Punjab

...Respondent

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Digvijay Nagpal, Advocate for the appellant.

Ms. Shivali, Assistant Advocate General, Punjab for the
respondent-State.

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Inderjit Singh, J.

This criminal appeal has been filed by Gurmeet Singh alias Geetu-appellant challenging the impugned judgment of conviction and order of sentence dated 9.11.2015 passed by learned Judge, Special Court, Sri Muktsar Sahib, whereby he has been held guilty and convicted for the offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act'). He has been sentenced to undergo rigorous imprisonment for two years and to pay a fine of ₹10,000/- and in default of payment of fine to further undergo rigorous imprisonment for six months for the offence under Section 15 of the Act.

The brief facts of the prosecution case are that on 29.7.2012, a

Police party headed by ASI Sham Sunder was proceeding from Village Mehna towards Village Lohara in connection with patrolling and checking of suspects on Government vehicle. When the police party reached two kilometers ahead of Village Mehna, one scooter Bajaj Chetak being driven by the accused Gurmeet Singh was seen coming. A gunny bag was lying on the back seat of the scooter. The accused on seeing the police party got perplexed and tried to retreat, but was apprehended, on suspicion. Offer was given to the accused whether he wants to get his search from the a Gazetted Officer or Magistrate, but he opted for search in the presence of some Gazetted Officer. On search 40 Kgs. poppy husk was recovered from a bag out of which 250 Grams of poppy husk was separated as sample. The sample and the bag containing the remaining poppy husk were converted into parcels, duly sealed and taken into possession vide recovery memo. 'Ruqa' was sent to the Police Station, on the basis of which formal FIR was registered. Rough site plan was prepared. The accused was arrested. The statements of the witnesses were recorded. On return to the Police Station, the accused along with the case property was produced before ASI Ajmer Singh, SHO, who further sealed the case property with his own seal bearing impressions 'AS' and took the case property in his possession. On the same day, the accused along with the entire case property was produced in the Court of learned Sub Divisional Judicial Magistrate, Malout. On return to the Police Station, the case property was deposited with MHC Surjit Singh with seals intact. On receipt of report of Chemical Examiner and completion of necessary investigation, challan was presented in the Court.

On presentation of challan, the trial Court finding *prima facie* case against the accused-appellant framed charge for the offence under Sections 15 of the Act, to which the accused pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 ASI Gurjant Singh, a member of the police party. He deposed regarding the recovery from the accused. PW-2 ASI Ajmer Singh, the then SHO of Police Station Lambi mainly deposed regarding the verification of the investigation and also deposed that he also sealed the case property with his seal. PW-3 HC Rajvir Singh is a formal witness, who tendered in evidence his affidavit Ex.P.20. PW-4 ASI Sham Sunder, Investigating Officer, mainly deposed regarding the conducting of investigation by him in this case. PW-5 MHC Surjit Singh is a formal witness, who tendered in evidence his affidavit Ex.PW.5/A.

At the close of prosecution evidence, the accused was examined under Section 313 Cr.P.C. and was confronted with the evidence of the prosecution, but he denied the correctness of the evidence and pleaded himself as innocent.

After going through the evidence on record, the learned trial Court vide its impugned judgment and order convicted and sentenced the accused-appellant for the offence as mentioned above. Aggrieved against the judgment, the present appeal has been filed.

Notice of motion was issued in this appeal.

Ms. Shivali, learned Assistant Advocate General, Punjab, has

put in appearance on behalf of the respondent-State and contested this appeal.

At the time of arguments, learned counsel for the appellant mainly argued on one point that no independent witness was joined in the police party in the present case and the testimony of Police officials alone is insufficient to convict the accused-appellant and a reasonable doubt exists in the prosecution version.

On the other hand, learned Assistant Advocate General, Punjab, argued that the case of the prosecution has been duly proved beyond any reasonable doubt. The PWs have consistently deposed regarding the recovery from the appellant. The mandatory provisions of the Act have been complied with. Link evidence is complete. She, therefore, argued that there is no merit in this appeal and the same should be dismissed.

After hearing learned counsel for the appellant as well as learned Assistant Advocate General, Punjab appearing for the respondent-State and going through the record, I find that it is well settled law that testimony of the Police officials is as good as of any other witness unless some enmity or motive of the officials is alleged and proved. In the present case, no enmity or motive of the Police officials against the accused-appellant has been alleged and proved. Therefore, there is no reason or ground to disbelieve the statements of the PWs. The PWs have consistently deposed regarding the recovery from the accused. A perusal of the cross-examination also shows that there is nothing in their cross-examination to make their statements unreliable. No material contradictions or material

improvements have been pointed out at the time of arguments. The recovery from the accused-appellant is sudden and by chance and there was no opportunity with the police party to join an independent witness. The mandatory provisions of the Act have been complied with. The link evidence is complete. The PWs have deposed consistently regarding the prosecution case. The prosecution has duly proved its case by leading cogent evidence beyond any reasonable doubt. Therefore, the judgment of conviction and the order of sentence passed by the learned Judge, Special Court, Sri Muktsar Sahib, is correct as per evidence and law and do not require any interference from this Court.

As per custody certificate placed on the record, the appellant has already undergone one year four months and 24 days of sentence upto 4.1.2016, which means that till now he has almost undergone more than one and a half years of sentence. It is stated that the appellant is the first offender and is a poor person and only bread earner of his family. Learned counsel also argued that he is suffering from the criminal proceedings since 2012 i.e. for the last more than three years.

Keeping in view the facts and circumstances of the present case, the sentence of imprisonment of the appellant is reduced to already undergone. However, the sentence of fine and in default of fine will remain the same. The appellant is directed to pay the fine within two months, if not already paid, otherwise the competent Court will take action as per law.

February 10, 2016.

(Inderjit Singh)
Judge

hsp