

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.S-5277-SB of 2015 (O&M)

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Date of decision:18.2.2016

Vikas Sharma

...Appellant

v.

State of Punjab

...Respondent

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Amit Kumar Walia, Advocate for the appellant.

Mr. P.S. Grewal, Deputy Advocate General, Punjab
for the respondent-State.

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Inderjit Singh, J.

This criminal appeal has been filed by Vikas Sharma-appellant challenging the impugned judgment of conviction and order of sentence dated 1.12.2015 passed by learned Judge, Special Court, Sangrur, whereby the accused/appellant 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 four months and to pay a fine of ₹2,000/- and in default of payment of fine to further undergo rigorous imprisonment for one month for the offence under Section 15 of the Act.

The brief facts of the prosecution case are that on 28.4.2012, SI

Gurmail Singh along with police party apprehended the accused at “T” point Maniana road in the area of Village Ganota at 1.30 p.m., when he was carrying a plastic bag on his right shoulder and when he tried to escape on seeing the police party. ASI Gurmail Singh informed the accused of his legal right that the search can be conducted in the presence of a Gazetted Officer or a Magistrate. The accused reposed confidence in ASI Gurmail Singh and allowed him to conduct the search. Then the bag was searched and poppy husk weighing 10 Kgs. was recovered. Investigating Officer separated two samples of 250 grams each of poppy husk. The remaining poppy husk was weighed. The parcels were prepared and sealed with the seal bearing impression ‘GS’. Sample seals were also prepared. ‘Ruqa’ was sent to the Police Station, on the basis of which formal FIR was registered. The accused was arrested. Statements of witnesses were recorded. On return to the police station, accused, witnesses and case property were produced before SHO Bhinder Singh, who verified the facts and sealed the parcels with his seal bearing impression ‘BS’. After necessary investigation, the 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 HC Karnail Singh, PW-2 Inspector Bhinder Singh, HC Sukhwant Singh as PW-3, PW-4 Ravinder Kumar, Ahlmad, PW-5 Constable Paramjit Singh and

PW-6 SI Gurmail Singh. The PWs deposed as per the prosecution version.

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. He pleaded his false implication.

In defence, the accused produced copies of his school mark-sheet Ex.D.1 and Ex.D.2.

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 case.

Mr. P.S. Grewal, learned Deputy Advocate General, Punjab, has put in appearance on behalf of respondent-State and contested this appeal.

At the time of arguments, learned counsel for the appellant mainly argued only on one point that no independent witness was joined by the police party and the testimony of police officials cannot be relied upon. In the alternative, he also prayed for taking lenient view against the appellant.

On the other hand, learned State counsel argued that the case of the prosecution has been duly proved by the PWs. There are no material contradictions or improbabilities in the version of the prosecution. There are no material improvements in the version of the prosecution. The PWs have consistently deposed regarding the prosecution case. He argued that

there is no merit in this appeal and the same should be dismissed.

I have heard learned counsel for the appellant and learned Deputy Advocate General, Punjab appearing for the respondent-State and have gone through the record.

From the record, I find that first of all as regards the independent witness, it is settled law that testimony of Police officials is as good as of any other witness unless enmity or motive of the Police officials is alleged and proved. In the present case, no such enmity or motive of the Police officials has been alleged and proved by the accused. I have gone through the statements of the PWs. They have consistently deposed regarding the prosecution version and the recovery of 10 Kgs. of poppy husk from the accused/appellant. The link evidence is complete. The mandatory provisions of the Act have been complied with. No material contradictions or material improvements have been proved or pointed out by the learned counsel for the appellant at the time of arguments.

As regards the recovery from the accused/appellant is sudden and by chance, therefore, there was no opportunity with the Investigating Officer to join the independent witness. I have also gone through the cross-examination of the witnesses. There is nothing in the cross-examination which may make their statements unreliable.

Therefore, from the above discussions, I find that the judgment of conviction passed by the learned trial Court is correct as per evidence and law and no interference is required from this Court.

As regards the alternative argument, I find that the appellant

has been sentenced to undergo rigorous imprisonment for four months out of which he has already undergone sentence of three months and fifteen days.

Keeping in view the facts and circumstances of the present case and the fact that the accused/appellant is a poor person and suffering from the long protracted criminal trial for the last about four years and the recovery from the appellant is non-commercial quantity and he is the first offender, the sentence of imprisonment of the appellant is reduced to already undergone. The sentence of fine as well as the sentence in default of payment of fine will remain the same. As the sentence of appellant has been suspended and he is on bail, his bail/surety bonds stand discharged. He is directed to pay the fine within one month before the trial Court, if already not paid, otherwise, the trial Court will proceed against the accused/appellant as per law.

February 18, 2016.

(Inderjit Singh)
Judge

hsp