

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1958-SB-2004 (O&M) &
CRA-S-2522-SB-2004 (O&M)
Date of decision: February 13, 2017.

Subeg Singh
Binder Singh

... **Appellants**

v.

State of Punjab

... **Respondent**

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: None for the appellants.

Shri Abhishek Chautala, Assistant Advocate General, Punjab.

A.B. Chaudhari, J. (Oral):

Being aggrieved by judgment and order dated 20.9.2004 in Sessions Case No.03 of 10.06.2003 arising out of FIR No.31 dated 18.3.2003, under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985, registered at Police Station Sadar, Faridkot, rendered by the learned trial court by which both the accused-appellants Subeg Singh and Binder Singh were convicted for offence under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 and sentenced them to undergo RI for 5 years and to pay fine of Rs.50,000/-, in default one more year, the present two appeals were separately filed by the two appellants.

Heard Learned Counsel for the State. None appears for the appellants.

It is the case of the prosecution that on 18.3.2003, the police

party from Police Station Sadar Faridkot headed by SI Mal Singh found at about 11 A.M., that two persons i.e., the appellants were coming on scooter from the opposite side and were asked to stop. They stopped the scooter and ran away into the wheat fields but they were identified as Binder Singh and Subeg Singh. Procedure contemplated under Section 50 of the Act was followed and on the personal search poppy husk weighing 4 kilograms and 250 grams was seized from them out of which 250 grams was sent for examination. They were put on trial and ultimately found guilty by the trial judge and as such sentenced accordingly.

I have perused the impugned judgment and order carefully. I find that the learned trial Judge has discussed the evidence regarding recovery etc. I find that the procedure has been correctly followed that was contemplated by the law and there was no fault which could be found out. The learned trial judge has made discussions of evidence under para 8 of the judgment which I quote hereunder:-

“8. On the other hand Shri Kiranjit Singh Advocate, learned counsel for Binder Singh accused and Shri A.S. Dhillon, Advocate, counsel for Subeg Singh accused have submitted that the very identity of the accused Binder Singh has never been proved successfully and argued that even cross examination of PW4 HC Nirmal Singh underlines that this witness of the prosecution has deposed merely because he is a police official and has no such personal relations with the accused, which could have been accounted for nailing his identity submitting that no identification parade has been established to prove the identity of the accused Binder Singh. It was further submitted by the defence that there has been no due compliance of the provisions of section 50 of the Act and the very wording of the alleged consent sought from the accused is only partial in nature and

thus submitting that in view of the violation of this mandatory provisions of the Act goes against the prosecution especially when there has been no due compliance of the provisions of Section 52-A of the Act arguing that neither the inventory and photographs have been prepared nor the same have ever been certified by the Magistrate as required under these provisions and argued that in view of non compliance certainly goes to the root of the prosecution story and lastly it was submitted by the learned defence counsel that the alleged recovery has been made on 18.03.2003 and sample parcel has reached the office of the chemical examiner on 21.3.2003 after three days and submitted that in view of the same this is certainly fatal for the prosecution and on the strength of these arguments sought acquittal of the accused.”

I concur with the finding of the trial judge recorded above and thus hold that the conviction of the appellants is legal, correct and proper.

The next question is about the award of sentence. As per the custody certificate, Binder Singh has already undergone sentence of 2 years and 25 days whereas the other accused namely Subeg Singh has undergone 3 months and 15 days. The prosecution case itself shows that Subeg Singh was a pillion rider and it was Binder Singh who was holding the contraband and also driving the scooter.

The quantity of poppy husk that was seized was only 2 kilograms and 250 grams which is admittedly non commercial. In my opinion, the quantity of poppy husk is too low and the award of sentence as aforesaid imposed by the trial judge is on a very higher side. In my opinion, Binder Singh being the principal accused, who was carrier, and Subeg Singh being the pillion rider, I think the mitigating circumstance do exist in the instant case for extending the benefit of reduction of sentence of both the

appellants, more so when the incident had taken place in the year 2003 and it will be wholly unjust to push them in jail again. In that view of the matter, I think the following order would sub-serve the interest of justice:-

ORDER

- (i) CRA-S-1958-SB-2004 and CRA-S-2522-SB-2004 are partly allowed;
- (ii) judgment of conviction and order of sentence dated 20.9.2004 is confirmed;
- (iii) however, the judgment and order regarding sentence is set aside and modified to the extent which the appellants have already undergone.

[**A.B. Chaudhari**]
Judge

February 13, 2017.
kadyan

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No