

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Crl. Appeal No.S-1638-SB of 2009(O&M)

Date of Decision: 28.10.2017

Balbir Singh @ Babbu

.. Appellant

Vs.

State of Punjab

.. Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Argued by:- Mr. Tarundeep Kumar, Advocate -
Amicus Curiae for the appellant.**

Mr. Dhruv Dayal, Sr. DAG Punjab.

ANITA CHAUDHRY, J.

The appellant has laid challenge to the judgment of conviction and sentence passed by the Special Court, Mansa dated 05.05.2009 vide which he was held guilty under Section 15 of the Narcotic Drugs & Psychotropic Substances Act(for brevity, 'the Act') and sentenced to undergo rigorous imprisonment for ten years and pay a fine of Rs. One lac. In default of payment of fine, he was sentenced to further undergo rigorous imprisonment for one year

The prosecution case, in nutshell, is that on 21.08.2007 a police party headed by ASI Major Singh of CIA Staff was patrolling in the area of village Jawaharke. It was about 9:30 a.m. a Qualis Jeep bearing registration No. HR62-1685 was seen coming from Ramdittewala Chowk. On being signalled to stop, the driver of the Qualis tried to flee and in the process the vehicle dashed on the side of the bridge. One person managed to escape, the driver was apprehended. He disclosed his name as Balbir Singh @ Babbu (appellant). Four gunny bags were noticed in the vehicle. The police

suspected that it contained some contraband. One Binder Singh also came at the spot and was associated in the investigation. The accused was given option for search before the Gazetted Officer. Accused opted to be searched before a Gazetted Officer, upon which DSP(D) Manjinder Singh was called to the spot. Search was carried out in the presence of DSP Manjinder Singh and public witness Binder Singh and poppy husk was recovered. A sample of 100 grams was separated from each bag and the remainder on weighment was found to be 29 Kgs and 900 grams each. Sample parcels and bags were sealed with the seal impression 'MS' and were taken into possession vide separate memo. The seal after use was handed over to ASI Sukhdev Singh.

The police party returned from the spot. Accused along with case property were produced before SI/ SHO Paramjit Singh, who verified the facts. Samples were sent to FSL and on receipt of examination report and on completion of investigation, final report was laid.

The accused was charged under Section 15 of the Act, to which he pleaded not guilty and claimed trial.

The prosecution produced 5 witnesses, namely, PW1 ASI Major Singh, the investigating officer of the case and deposed about the prosecution case; PW2 HC Karnail Singh tendered his affidavit Ex.P10, PW3 SI Paramjit Singh, was the SHO and the accused was produced before him after recovery; PW4 R.K. Jangra deposed about notarizing the affidavit Ex.P13 while PW5 DSP Manjinder Singh also supported the prosecution case.

In his statement under Section 313 Cr.P.C., the accused denied any recovery from him. He took the stand that in order to save Pannu Ram,

the owner of the Qualis, he was falsely implicated.

In defence, he examined DW1 HC Darshan Singh and Binder Singh as DW2.

The trial Court held the appellant guilty under Section 15 of the Act and sentenced him to the imprisonment noticed above. Dis-satisfied with the same, the instant appeal.

I have heard learned counsel for the parties and have gone through the record carefully.

Learned amicus curiae appearing for the appellant urged that the prosecution case rests solely on the testimony of official witnesses and the only independent and disinterested person associated in the investigation i.e. Binder Singh was not examined by the prosecution and he had appeared as defence witness and had denied recovery from the accused in his presence. According to learned counsel, in absence of any independent corroboration, no reliance could be placed on the testimony of official witnesses as Binder Singh had denied the recovery.

The next plank of argument of learned amicus curiae is that the story was cooked up by the police only to save Pannu Ram who was the registered owner of the vehicle and the police had failed to prove his connection with the vehicle in question.

Learned State counsel had supported the judgment of conviction.

The case of the prosecution was that Binder Singh, an independent person had come and search was carried out in his presence as well as in presence of DSP Manjinder Singh and poppy husk was recovered.

The FSL report shows the contents of the contraband. The prosecution case

is sought to be rejected on the ground that Binder Singh was not examined by the prosecution and had appeared as a defence witness and was categorical that no recovery was effected from the appellant therefore the version should have been disbelieved.

A perusal of record reveals that on 26.02.2008 Binder Singh was given up by the learned State counsel as won over by the accused. It is for this reason that he was given up. Interestingly, he appeared before the Court as a defence witness and denied the recovery. He, however, admitted his signatures on recovery memo etc. but deposed that earlier he was posted as SPO in the Police Department and ASI Major Singh had obtained his signatures on blank papers. It appears that he succumbed to the pressure exerted by the accused and reasons for change of heart can be several. He admitted that he did not file any complaint against ASI Major Singh for obtaining signatures on blank papers. Silence on his part speaks volume about the veracity of his version. It was because of his shift that he was given up by the prosecution. The case of the prosecution cannot be rejected solely on the ground that the independent witness was not examined. The statements of official witnesses are trustworthy and credible, there is no reason not to rest the conviction on their evidence. It is the quality of evidence that matters and not the quantity. In **State (Govt. of NCT of Delhi) v. Sunil, 2001(1) RCR(Criminal) 56: (2001) 1 SCC 652**, the Hon'ble Apex Court held as follows:-

“We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust. We are aware that such a notion was lavishly entertained during British period and policemen also knew about it. Its hang over persisted during post-independent years but it is time now to start placing at least initial trust on the actions and

the documents made by the police. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case.”

There is no reason to doubt the testimonies of PW1 ASI Major Singh, PW3 SI Paramjit Singh and PW5 DSP Manjinder Singh. No ill-will or motive had been attributed to them. The testimonies of all these witnesses are consistent so far as recovery of poppy husk is concerned. Their testimonies cannot be discarded on the ground as the private witness chose to support the accused.

The defence made a strange argument that the police framed him to save Pannu Ram, the owner of the Qualis. There is no reason why he would be implicated. The trial Court rejected the argument and observed as under:-

“15..... I have carefully considered this contention advanced by learned defence counsel. The question of saving Pannu Ram would only arise if some incriminating or contraband article was recovered from the above said Qualis. In case no poppy husk has been recovered from the gunny bag lying in the Qualis then question of saving Pannu Ram would not arise. In

the present case we are to see if four gunny bags containing poppy husk were recovered from the possession of the accused while he was transporting the same in the abovesaid Qualis. In defence, learned defence counsel has tendered copy of letter/ complaint Mark X sent by Amarjit Kaur, mother of the accused to Home Minister, Government of India, New Delhi, alleging false implication of his son. In this letter/ complaint it is mentioned that one Jaspal Singh and Gora called her son to Mansa on 18.8.2007 and his soon went to them with his Indica car and on the pretext of getting him good price for India car No. HR70-3695, model 2002 kept the same with them and gave Rs.10,000/- as earnest money to her son and told him to take the remaining amount of Rs.1,30,000/- on next day. It is further alleged in this letter/ complaint that her son i.e. accused without telling her along with his one companion borrowed Qualis No. HR62-1685 from some person of Patran and went to Mansa to take back the remaining amount but did not return for 3/4 days. So from the contents of this letter/ complaint mark-X produced by learned defence counsel the presence of accused in the above said Qualis is admitted. Four gunny bags containing poppy husk were found lying in this Qualis. Moreover, this fact stand proved from the testimony of PW1 ASI Major Singh, IO and PW5 DSP Manjinder Singh Chauhan. A suggestion was put to PW3 SI Paramjit Singh that accused was illegally picked up from his house regarding some dispute of Indica Car and thereafter he was implicated in this case. On the other hand, as per contents of letter/ complaint mark-X sent by mother of the accused to Home Minister, accused along with his one companion had gone to Mansa in abovesaid Qualist. Learned defence counsel has failed to point out any material discrepancy appearing in the statement of PW1 ASI Major Singh and PW5 DSP Manjinder Singh Chauhan. I find no convincing reason to disbelieve their testimony regarding the recovery of four gunny bags containing poppy husk from possession of the accused while he was transporting the same

in the abovesaid Qualis. Their testimony further find corroboration from the statement of PW3 SI Paramjit Singh before whom the accused and case property were produced by the Investigating Officer after reaching in police station City Mansa and further sealed by him with his seal bearing impression PS and taken into possession by him vide memo Ex.P9. PW3 SI Paramjit Singh also produced the accused and case property in the Court of Illaqa Magistrate on next day with seals intact. The link evidence is also complete. Sample parcels were sent to the office of FSL through PW2 HC Karnail Singh and reached there with seals intact. Further from the report of FSL Ex.PX it is also evident that the material recovered from the possession of the accused was infact poppy husk.”

The contention of the appellant is that the affidavit Ex.P13 vide which Pannu Ram claimed that he had sold the vehicle to him on 17.08.2007, was ante dated and the affidavit was not entered in the register as admitted by PW4 R.K. Dogra, Notary Public. No doubt, PW4 R.K. Dogra admitted about non-entry of affidavit in the register, but only because of this fact, the appellant cannot be absolved of his liability. As per own case of the appellant and mentioned in complaint mark-X sent by the mother of the appellant, the Qualis was in possession of the appellant. It was for the appellant to prove that how poppy husk came in the vehicle which was recovered by the police.

Another submission raised by the appellant was regarding delay in sending the sample and handing of seal to ASI Sukhdev Singh, who was not examined. This argument was considered and rightly rejected. Non examination of the witness did not cause any prejudice to the accused. The inevitable conclusion of the aforesaid discussion is that the evidence of

prosecution witnesses had been correctly appreciated by the trial Court.

There is no reason to take a different view.

The appeal is dismissed. The conviction and sentence of the appellant is maintained. His bail bonds and surety bonds stand cancelled. The appellant is directed to surrender before the Court of CJM concerned within two months from today to undergo the remaining part of the sentence. In case he fails to surrender before the Court within the stipulated time, the CJM concerned would take appropriate steps to procure his presence. A copy of this order be sent to the CJM concerned for compliance.

October 28, 2017

Jiten

(ANITA CHAUDHRY)

JUDGE

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No