

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRA-S-1698-SB-2006 (O&M)  
Date of Decision: December 16, 2017

Pritam Singh

...Appellant

Versus

The State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Ms. Sumanjit Kaur, Advocate  
for the appellant.

Mr. Jasdeep Singh Walia, Sr. D.A.G., Punjab.

**ANITA CHAUDHRY, J.**

The appellant was convicted under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and was sentenced to 10 years rigorous imprisonment along with a fine of Rs.1 lac. In default of payment of fine, he was to further undergo sentence for 6 months.

The prosecution story is detailed in para 2 of the judgment and it reads as under:-

*“Briefly stated, it is the prosecution case that ASI Sikandar Singh accompanied by Gurmail Singh a public man, PW HC Sarwan Singh and possess of police officials was on patrolling and checking of the crime and he was going from Nahianwala to village Chittian Chhaprian through Kacha passage and reached in the area of village Mehma Sarja. He found two persons were sitting on the bag and one man was sitting near*

*the bag and they were waiting for a vehicle for transporting the bags. A scooter make Bajaj Chetak was found stationed near them. On seeking the police party all of them had escaped on the scooter. However, HC Sarwan Singh had identified Pritam Singh son of Massa Singh of village Goniana and Rampal and Sukhpal Singh son of Jit Singh resident of Lakhisar Mehmsa Sarja as HC Sarwan Singh had been knowing them prior to the occurrence. Further name of third person could not be ascertained at the spot but subsequently it was found that he was Sukhpal Singh. The police spotted four bags having some material and it was suspected that it contained contraband. Therefore, a message was sent to police Control Room for sending a Gazetted Officer at the spot. In pursuance thereof Sh. Sukhdev Singh Chehal DSP(R) came at the spot. Photographer was also arranged as per instructions of DSP, the Investigating Officer opened the bags and found that all the bags containing poppy husk. Thereafter, each bag was given serial number 1 to 4. A sample of 100 grams poppy husk was taken out from each bag and samples were also given serial number 1 to 4 denoting the bag from which the same were drawn. Residue poppy husk came to be 34 Kg. 900 grams in each bag. All the samples and bag containing bulk poppy husk were converted into separate parcels and were sealed with the seal having impression SS. Seal after use was handed over to independent witness Gurmail Singh. Photographer has snapped the photographs at the spot. Ruqa Ex.PC was sent to the Police Station, on its basis formal FIR Ex. PC/1 was registered against the accused. At about 12:40 PM copy*

*of the FIR was sent to the Area Magistrate on the same day, at Bathinda. Rough site plan Ex.PD of the place of recovery was prepared.*

The police arrested the appellant two days later i.e. on 27.07.2004. The case property recovered from the accused was produced before the Magistrate. A sample was drawn and the samples were sent to the FSL while the remaining was deposited with the Malkhana. The police had drawn 8 samples and 4 of which were at the spot and 4 samples were drawn before the Magistrate were sent to the Chemical Examiner, Patiala through Constable Gurmail Singh on 28.07.2004. After completion of investigation, the challan was presented.

The prosecution examined eight witnesses. The sole independent witness was given up as unnecessary.

At the trial, the accused pleaded false implication. It was pleaded that the actual culprits had made good their escape and he was cited as a witness as they were chasing the culprits and while chasing, the police party opened fire and some pellets struck him and to avoid prosecution he was falsely implicated. He had deposed that he was a prosecution witness in a case registered by the police titled 'State Vs. Dara Singh'.

In defence, the accused examined the independent witness Gurmail Singh. He deposed that the police had taken him to a field where 2 – 3 bags which were tied were stacked and no-one was around.

He admitted that photographs were taken. The accused examined Krishan Lal DW2 working in the Telegraph Office, Bathinda. He testified that some telegrams were given on 25/26 July 2004 but stated that the record had been destroyed. He proved some documents and admitted that the telegrams were given on behalf of Pritam Singh.

Devinder Singh, Senior Assistant, Punjab State Human Rights Commission testified that a complaint had been received that Pritam Singh had been illegally detained and that two days later a false case had been registered. He tendered in evidence the copy of the statement Ex. DX & Ex. DY, the statement made in a case registered in the year 2000.

The Special Court convicted and sentenced the appellant to the punishment mentioned here-in-before.

Aggrieved with the conviction and sentence, this appeal has been filed.

The Amicus Curiae initiating the arguments urged that the police party was armed and were on cycles and the case set up by them was that two persons were sitting on bags and there was a scooter nearby and the police noted the registration number of the scooter and on seeing the police party, those people fled on the scooter leaving the bags behind. It was urged that according to the police, they had not fired to scare them and no-one was arrested on the spot and in the report, it was mentioned that Head Constable Sarwan Singh had identified and had given their name and parentage and the name of

their village but surprisingly they did not visit their house to nab them.

It was urged that the none of the other police party knew the accused and HC Sarwan Singh had been posted in that police station only a year ago and he was to explain how he knew the accused and no identification parade had been held and the identity of the accused had not been established and no recovery was effected from the accused. It was urged that even while appearing as a prosecution witness, Sarwan did not explain how he knew the accused. It was urged that the Malkhana Register shows that the recovery has been effected from other person and the entry was proved by DW4. It was urged that the appellant was a witness for the police in a case registered in the same police station but four years earlier and was given up and he appeared as a defence witness. It was urged that the police did not make any effort to find the owner of the scooter nor the registration certificate was produced to prove the ownership or connect them to the crime. It was urged that there was delay of 7 days in sending the samples.

The State counsel supported the judgment and urged that when HC Sarwan Singh had appeared as a prosecution witness and no question was put to him and the trial Court has dealt with each aspect and a false plea has been taken by the accused that he was hit by pellets as the medical evidence does not support that fact. It was urged that in the telegram also the accused had taken the plea that he had been fired at and that has been found to be false and the accused had taken contradictory pleas before the trial.

The trial Court noticed the arguments and the statement given by HC Sarwan Singh and held that he had no enmity with the accused and there was an admission that the accused had earlier appeared as a prosecution witness, therefore, the statement made by PW-7 established that he was the one who had run away from the spot. It also noted that no suggestion was put to the witness that he did not know the accused prior to the occurrence. In the paragraph 17 & 18, the trial Court concluded that the identity of the accused had been established.

None of the police officials had stated that they knew any of the accused. No-one had been arrested on the spot. No recovery was effected from any of the accused. If the police has spotted them when they were close, there was no reason why they could not nab them. If they could note the registration number of the scooter then they would have been close enough and would have opened fire at least to scare them. The police did not care to find who owned the scooter and if they collected that evidence there was no reason why that evidence has been kept away. They were expected to offer some explanation. The police did not make any effort to raid the house of any of the accused that evening or the next day. It is a serious flaw in the prosecution case. The only independent witness Gurmail Singh was given up. The seal had been handed over to him and he was a witness to the link in the chain of evidence.

The appellant was a prosecution witness in a case registered in the same police station few years earlier. The facts of that case were almost similar to this case. The accused in that case had managed to run away. It was the independent witness i.e. the appellant who had been named as he had identified the accused. But later he (appellant) was given up as won over. He was produced as a defence witness, he refused to support the police case.

No case had been registered against the accused earlier. There was no evidence that he was indulging in drugs. None of the official witnesses had given an explanation as to how they knew the accused. Sarwan Singh was expected to disclose how he knew him. All the accused who were named in the FIR belonged to different villages. Sarwan Singh did not say that any case had been registered against either of them or that they were known drug peddlers. It would be easy to name anyone in the manner it has been done. When the crime is serious, the prosecution has to lead its evidence to the hilt. The punishment for cases under the NDPS Act is very stringent. The Courts have to see that there is no possibility of implication. The manner in which the police has proceeded post recovery casts a doubt on their case. The prosecution had been unable to prove the case beyond the reasonable doubt and the trial Court has not given cogent reasons for accepting the statement of Sarwan Singh. The identity of the accused had not been proved. The police officials who were part of the team were expected to disclose that they knew the accused. The statements

are silent. A routine and bald statement was given and should not have been accepted. The finding recorded against the appellant is set aside. The appeal is accepted and the accused-appellant is acquitted of the charges.

(ANITA CHAUDHRY)  
JUDGE

November 16, 2017  
sunil

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No