

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

Crl. Appeal No.S-1374-SB of 2016 (O&M)

Date of Decision: July 05, 2017

Suraj and others

...Appellants

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.K.Dhiman, Advocate
for the appellant.

Mr.B.S.Virk, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against State of Haryana, challenging the judgment of conviction dated 09.03.2016 and order of sentence dated 10.03.2016 passed by learned Addl. Sessions Judge, Gurgaon, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of ₹10,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of three months each under Section 20 of the NDPS Act.

The brief facts of the prosecution case as noted down in the judgment passed by learned Addl. Sessions Judge, Gurgaon, are as under:-

“2. The prosecution story, in brief, is that on 11.3.2013 PW8 ASI Murari Lal alongwith EHC Suresh Kumar 497, EHC Vijay

Kumar 1585, Constable Balwinder 1775, Constable Dharambir 1021, constable Rampal 1751, constable Sudhir 2900 driver EHC Subhash Chand in government vehicle No. HR-55F-5590 was present on patrolling and crime detection duty at Subhash Chowk. In the meantime, a secret informer came and informed ASI Murari Lal that Suraj @ Bablu, Kallu, Sanjay and Sonu, residents of Dokhar ki Dhani, village Jharsa Fatehpur Gurgaon who are engaged in the business of selling narcotic drugs were present near Dokhar ki Dhani Sabji Mandi with narcotics and if an immediate raid is conducted, they could be apprehended alongwith contraband. On relying upon this information, ASI Murari Lal disclosed about the facts of the secret information to the accompanying police officials and prepared a raiding party. Notice U/s 42 NDPS Act (Ex.PC) was prepared and same was sent to ACP Sadar, Gurgaon through constable Dharambir 1021. ASI Murari Lal alongwith other police officials reached Dokhar ki Dhani Sabji Mandi Sector-47, Gurgaon where four persons were found standing carrying polythene in their hands. On suspicion, they were apprehended by ASI Murari Lal with the help of other police officials. On enquiry, they disclosed their names as Suraj @ Bablu S/o Amar Singh, resident of Dokhar Ki Dhani, village Jharsa Fatehpur, Gurgaon, Kallu son of Ram Sharan, resident of village Khjurka, P.S. Sadar Palwal, District Palwal, at present Dokhar Ki Dhani, village Jharsa Fatehpur, Gurgaon, Sanjay son of Shri Rattan Lal, resident of village Manka, District Alwar, Rajasthan at present Dokhar Ki Dhani, village Jharsa Fatehpur, Gurgaon and Sonu son of Suresh Kumar, resident of Dokhar Ki Dhani, village Fatehpur Jharsa, Gurgaon. On suspicion that there was some narcotic substance in the polythene carried by them, notice U/s 50 of NDPS Act (Ex.PE) was served upon the accused. Above said Suraj, Kallu, Sanjay and Sonu replied to the notice that they wanted them to be personally searched in the presence of gazetted officer. Notice U/s 50 of NDPS Act (Ex.PE) was served upon the accused. They replied to the notice vide Ex.PF, which were signed by the accused and witnesses. At that time, (PW7) Sh. Rajiv Kumar ACP Sadar, Gurgaon alongwith his staff reached at the spot. He was apprised of the facts. ACP inquired from those four persons. After conducting personal search of (PW8) ASI Murari Lal and other police officials, (PW8) ASI Murari Lal was directed by ACP to conduct the personal search of accused persons. On the direction of ACP, ASI Murari Lal conducted the personal search of accused. On search, 1 Kg 200 grams of Ganja was recovered from the possession of accused Suraj, 1 Kg 400 grams of Ganja was recovered from the possession of accused Kallu, 1 Kg 300 grams of Ganja was recovered from the possession of accused Sanjay and 1 Kg 100 grams of contraband, namely, Ganja was recovered from the possession of accused Sonu. 50/50 grams Ganja from each polythene was separated as sample. Remaining Ganja

recovered from the possession of accused was kept in a plastic bag and sealed with the seal of 'ML' and 'RK' . Seal after use was handed over to constable Rampal 1751. The recovered Ganja and parcels were taken into police possession vide memo (Ex.PD). It was stated that accused Suraj @ Ballu, Kallu, Sanjay and Sonu committed an offence punishable U/s 20-61-85 of NDPS Act by keeping Ganja in their possession without any permit and licence. On the basis of which FIR (Ex.PA) was registered. Investigation commenced. During investigation, accused were arrested on 11.3.2013 from the spot itself and were produced in the court on 12.3.2013. After completion of investigation, report under section 173 of Cr.P.C. was filed against the accused persons.”

On presentation of challan against accused-appellants, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the accused-appellants were charge-sheeted under Section 20 of the NDPS Act, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 SI Balwant Singh, PW-2 Naresh Kumar Draftsman, PW-3 ASI Kavar Singh, PW-4 EHC Ram Niwas, PW-5 Inspector Tarun, PW-6 Inspector Sajjan Kumar, PW-7 Rajeev Kumar, HPS, PW-8 ASI Murari Lal, PW-9 Head Constable Rampal, PW-10 Manoj Kumar, Addl. Ahlmad, PW-11 Arvind Yadav and PW-12 Constable Balvinder.

At the close of prosecution evidence, the accused-appellants were examined under Section 313 Cr.P.C. They were confronted with the evidence of the prosecution and they denied the correctness of the evidence and pleaded themselves as innocent and their false implication in the present case.

No witness was examined in defence.

The learned trial Court, after appreciation of the evidence,

convicted and sentenced the accused-appellants as stated above.

At the time of arguments, learned counsel for the appellants did not dispute the findings regarding conviction and only prayed for reduction of sentence of the appellants. Learned counsel for the appellants contended that ganja weighing 1 kg. 200 grams, 1 kg. 400 grams, 1 kg. 200 grams and 1 kg. 100 grams has been recovered from the accused-appellants Suraj, Kallu, Sanjay and Sonu respectively, which falls under non-commercial quantity. He also contended that the appellants are poor persons, first offenders and suffering from criminal proceedings since 2013. Learned counsel for the appellants next contended that appellants Sonu, Kallu and Sanjay have already undergone more than 1 month of actual sentence and appellant Suraj has already undergone 25 days of actual sentence.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by the PWs. There is nothing on the record to show false implication of the accused in the present case. He next argued that PWs have consistently deposed regarding the recovery from the accused. Learned State counsel, therefore, argued that there being no merit, the present appeal should be dismissed.

I have heard learned counsel for the appellant as well as learned State counsel and have gone through the record.

In view of the evidence, I find that the prosecution has duly proved its case by leading cogent evidence beyond reasonable doubt. Therefore, the judgment of conviction dated 09.03.2016 passed by learned Addl. Sessions Judge, Gurgaon, is correct, as per law and does not require any interference from this Court.

However, keeping in view the facts and circumstances of the

present case and in view of the fact that appellants are stated to be a poor persons, first offenders and suffering from long protracted criminal proceedings since 2013 i.e. for the last about 4 years and further in view of the fact that appellants Sonu, Kallu and Sanjay have already undergone actual sentence of more than 1 month and appellant Suraj has already undergone actual sentence of 25 days and keeping in view the fact the recovery from the accused-appellants falls under non-commercial quantity, the sentence imposed upon the appellants is reduced to the sentence already undergone by them. The sentence of fine imposed upon the appellants is also reduced and they are is directed to pay a fine of ₹2,000/- each instead of ₹10,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of 15 days each instead of three months. The appellants are directed to pay the fine within one month from the date of receiving the certified copy of the order, if already not paid, otherwise, the trial Court is directed to take necessary action as per law.

Accordingly, the present criminal appeal stands partly allowed.

Since, appellants Suraj, Kallu, Sanjay and Sonu, are on bail, their bail/surety bonds stand discharged.

July 05, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No