

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

CRA-S-463-SB-2010 (O&M)
Date of Decision: November 11, 2017

Ram Pal Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

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

Mr. H.S. Grewal, Addl. A.G., Punjab.

ANITA CHAUDHRY, J.

This appeal is against the conviction recorded by the Special Court, Bathinda under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (here-in-after referred to as the NDPS Act) .

The case of the prosecution as detailed in the judgment is that a police party headed by ASI Sikander Singh was on general checking. They had taken along with them Gurmail Singh resident of village Jeeda. When the patrol party reached village Mehma Sarja, they found two persons sitting on gunny bags whereas another person was standing close-by. On seeing the police party, who were on cycles, all three persons fled on scooter bearing registration no. PB-03-E-9168, which was parked at a distance of 25–30 Karams. One of the Constable namely HC Sarwan Singh identified two of those persons, one of

whom was Pritam Singh resident of Goniana and Rampal resident of Lakhisar. It was claimed that Sarwan Singh, HC knew both of them. The third person who was standing close-by was wearing a 'kurta payjama' and was in the age group of 30 – 35 years having medium height. The police suspected that the gunny bags contained some contraband. A message was sent for sending a Gazetted Officer. Sukhdev Singh, DSP reached the spot after some time. A photographer was also called and in their presence ASI Sikander Singh opened the bags and found the bags containing poppy husk. 100 Grams of poppy husk was taken out as sample. Photographs were taken and the samples of the gunny bags were sealed using seal BS. The seal after use was handed over to the independent witness Gurmail Singh. Recovery memo was prepared and Ruka was sent to the police station. The necessary formalities were then completed and the sample and the poppy husk was produced before the Magistrate on the next day.

Accused Pritam Singh was arrested the next day. Ram Pal Singh (appellant) could not be arrested and was declared proclaimed offender. He was tried subsequently after his arrest in 2007.

At the trial, the prosecution examined the Investigating Officer ASI Sikander Singh, Sarwan Singh and DSP Sukhdev Singh, Constable Gurmail Singh. The prosecution had given up Gurmail Singh, the independent witness as won-over by the accused.

The report of the Chemical Examiner Ex. P-14 was tendered in evidence.

In the statement recorded under Section 313 Cr.P.C., the accused pleaded false implication and abjured the trial.

Vide judgment and order of sentence dated 23.12.2009, the Special Court convicted and sentenced the appellant to 10 years' rigorous imprisonment along with a fine of Rs.1 lac. In default of payment of fine, he was to further undergo rigorous imprisonment for a year.

Feeling aggrieved from the conviction and sentence awarded to him, the appellant is before this Court.

The learned counsel for the appellant has assailed the conviction of the appellant primarily on the ground that the only independent witness was not examined and the identity of the accused had not been established and there was no evidence to support the case of the prosecution that H.C. Sarwan Singh had identified them and no identification parade was held. It was urged that there was delay in deposit of samples and the CFSL form was not filled in as required under the rules and there was no evidence to show that any of the accused owned the scooter. It was also submitted that no evidence had been produced to show that any raid was conducted on the same day on the house of the accused.

Supporting the judgment, the counsel representing the State submits that it was for the defence counsel to put the questions regarding the identity but they did not put any question to them and there was no reason to discard the statement of the official witnesses

and the statement of police officials are reliable and no animosity was established against them and the conviction based on their statements cannot be faulted with. It was urged that the independent witness had been won-over by the accused and therefore, was given up and that would not be fatal for the prosecution case.

It is settled that the burden of proof in serious crimes is stricter and the Courts need to be more cautious when the independent witness is not examined. It is true that non-examination of independent witness is not fatal to the case but rule of prudence demands that there should be some corroboration through independent source to the statement of the official witnesses as the testimony of official witnesses is considered at par with the testimony of non-official witnesses but in the case in hand, the evidence of the official witnesses cannot be taken as that of sterling quality for the reasons given hereinafter.

No one was arrested on the spot. No recovery was effected from any accused. The prosecution case is that they found two people sitting on the gunny bags. A third person was seen standing close by. The scooter was parked at a distance of 25 – 30 karams. The police party was on cycles and spotted those persons who fled on seeing them. The prosecution case is that one of the constable knew two of the persons and identified them and they also noted the registration number of the vehicle. The police party was not armed but they gave a chase but the accused managed to flee.

There is no evidence that the police made any effort to conduct a raid at the house of the accused. This is a serious flaw in the prosecution case. The only independent witness Gurmail Singh was given up. He was the person to whom the seal was handed over. The prosecution also failed to produce the registration certificate of the scooter to show that it was owned by one of the accused.

Interestingly, Sarwan Singh made a casual statement in the examination-in-chief when he said that he knew the accused and had identified them. He was expected to disclose how he knew them. The accused were of different villages. He did not say that any case had been registered against either of them earlier. Such kind of statement could not have been accepted by the trial Court. The prosecution had been unable to prove its case beyond all reasonable doubts and the trial Court had not given cogent reasons for accepting the statement of H.C. Sarwan Singh. The findings recorded by the Court below are set aside. The appeal is accepted. The accused is acquitted of the charges.

(ANITA CHAUDHRY)
JUDGE

November 11, 2017

sunil

Whether speaking/reasoned : Yes/No
0Whether reportable : Yes/No