

319

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

**CRA-S-3967-SB of 2016**

**Date of decision: December 16, 2017**

Mohd. Rashid

.....Appellant

Versus

State of Punjab

.....Respondent

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

**Present:** Mr. Virender Soni, Advocate for  
Mr. Swarn Singh Tiwana, Legal aid counsel  
for the appellant.

Mr. Ramandeep Sandhu, Sr. DAG Punjab.

\*\*\*\*

**A.B. CHAUDHARI, J**

Being aggrieved by the judgment and order dated 14.10.2005 passed by the Special Judge, Sangrur, in Sessions Case NDPS No.229 of 3.8.2013 by which the present appellant-Mohd. Rashid was convicted for offence under Section 22(c) of the Narcotic Drugs and Psychotropic Substance Act, 1985 (for short 'NDPS Act') and was sentenced to undergo Rigorous Imprisonment for 10 years and to pay fine in the sum of ₹1 lakh and in default of payment of fine, to further undergo Rigorous Imprisonment for 6 months, the present appeal was filed by him.

In support of the appeal, learned counsel for the appellant vehemently argued that the prosecution did not satisfactorily discharge its initial burden of proof about the appellant being the person who allegedly was in possession of the contraband. According to the

prosecution itself, the appellant had run away from the spot by throwing the plastic bag containing narcotic substance and that he was chased by the police party for half an hour but without success. He then contended that except the sole testimony of PW4-Head Constable Baljinder Singh, there is no evidence about the appellant as the same person running away from the spot. The prosecution chose to be satisfied with his identification for the first time in the Court without producing any corroborative evidence or material for proving the identity of the appellant as the person throwing the bag and running away from the spot. He, therefore, submitted that it was dangerous to rely upon the single testimony of the witness PW4-Head Constable Baljinder Singh. The next submission made by him was that the appellant had taken the plea of *alibi* on the basis of documentary evidence, namely Exhibit DA. The document is nothing but the Court record of the remand Court at Sangrur which on 10.03.2012, i.e. the date of incident, clearly indicates the presence of the appellant with his counsel in the Court of JSC at Sangrur. The counsel then contended that the trial Court has rejected the plea of *alibi*, though, the same was based on documentary evidence of the Court order sheet. The prosecution did not rebut the said evidence produced by the appellant-accused. The trial Court rejected the plea of *alibi* for flimsy reasons. He, therefore, prayed for acquittal of the accused.

Per contra, learned State counsel-Mr. Ramandeep Sandhu, Sr. DAG Punjab has vehemently opposed the appeal. Mr. Sandhu

argued that so far as identification of accused by PW4 is concerned,

the sole testimony of PW4-Head Constable Baljinder Singh is trustworthy. There is no reason for discarding the testimony of the said witness merely because he is official/police witness. The law is trite that it is not necessary to reject the evidence of police witness nor it is necessary that the independent witness should always be joined in the investigation. He further argued that PW4-HC Baljinder Singh had identified the appellant in the Court as the same person who had dropped the bag and run away from the spot. As regards the document Exhibit DA, he submitted that it is a fact and common knowledge that in the lower Courts, remand papers are dealt with at 11:00 AM and immediately orders on the remand papers are passed and thereafter, the accused are discharged from the Court immediately. The reason given by the trial Court to that effect cannot be said to be faulty. He, therefore, prayed for dismissal of the appeal.

### **CONSIDERATION**

I have heard learned counsel for the rival parties and have carefully perused the entire record as well as the evidence of the prosecution witnesses. The evidence of PW4-HC Baljinder Singh is that at 2:00 PM at Malerkotla, the police party found the appellant carrying a plastic bag in his hand and on seeing the police party, he dropped the bag and ran away from the spot. HC Baljinder Singh and others chased him for about half an hour but the police party could not succeed in nabbing the appellant and he ran away. PW4-Baljinder Singh does not claim that previously also, he knew the appellant-accused and that, therefore, he identified him at the time he ran away.

He does not claim that he knew him previously. The testimony of the sole witness PW4 will have to be examined in juxtaposition with the documentary evidence about plea of *alibi* raised by the appellant-accused. The exhibited document DA produced by the appellant-accused shows the following remark made by the learned JSC at Sangrur, a place at a distance of 30-40 kms. from the place of incident:-

*“Present: Sh. N.P. Singh, Addl. PP for the State  
Accused on interim bail with counsel*

---

*The challan has not presented. Same be now  
awaited till 20.4.2012.*

*Signed  
(M.S. Grewal)  
JSC/10.3.2012”*

Perusal of the said remark shows that the present appellant was already on interim bail and was present in the Court of JSC at Sangrur, on 10.03.2012 along with his counsel. The incident of Malerkotla is stated to have taken place at 2:00 PM according to the prosecution. It is clear from the above remark made by JSC that the proceedings before him were adjourned to 20.04.2012. The said remarks nowhere shows the time at which the accused had appeared before JSC, Sangrur to buttress the reasons given by the trial Court that ordinarily at 11:00 AM the remand work is done and immediately, the accused persons are discharged. It will be appropriate to quote the reason given by the learned trial Judge in Para 27 of the impugned judgment:-

*“..... Perusal of the order dated 10.3.2012 brought on*

*file reveals that in case FIR No.115 dated 22.10.2011 under Section 22 of ND&PS Act Police Station City-II, Malerkotla, remand papers were fixed for awaiting challan and presence of accused was marked merely in remand papers which were not fixed any substantive work. Remand papers are always taken by the Courts prior to any other judicial work and accused in remand paper are free maximum up to 11.00 A.M. Recovery in the present case has been shown to be effected in the area of Malerkotla at about 2.00 P.M. It is admitted fact that Malerkotla, in the area of which recovery was effected is falling at a distance of 35-40 Kilometer from Sangrur and by once own vehicle, one can reach at the place of recovery is easily within one hour. In the given circumstances it can be safely concluded that device adopted by the accused for showing his absence at the time of recovery can not be accepted and no benefit of regarding his presence in a criminal case before a court, can be extended. Accordingly this argument is rejected.”*

If at all prosecution wanted to contend that after appearing before the Court of JSC at Sangrur, the appellant was free at 11:00 AM and had left Sangrur at 11:00 AM for Malerkotla, it ought to have led the evidence accordingly, either from the concerned advocate or the Court staff of JSC at Sangrur or any other the witness. To repeat, in the absence of any time mentioned in the order made by JSC at Sangrur, it would be dangerous to presume that the appellant appeared at 11:00 AM in the Court of JSC at Sangrur and he became free from that Court immediately thereafter, and hence could commit offence at 2:00 PM at Malerkotla. The prosecution did not bring any evidence before the

Court to rebut the said document Exhibit DA. These reasons given by the trial Court in Para 27 of the impugned judgment are not based on any evidence, but are based on the alleged practice followed by the remand Court which practice was also not proved or established by the prosecution by any rebuttal evidence.

The appellant who was under an obligation to prove his plea of *alibi*, thus proved his plea by producing certified copy of the document showing his presence on the date of incident before the Court at Sangrur.

Section 80 of the Evidence Act, 1872 (for short 'Evidence Act') reads thus:-

***“80. Presumption as to documents produced as record of evidence.—Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume —***

*that the document is genuine; that any statement as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.”*

This Court finds in the light of Section 80 of the Evidence Act that the document Exhibit DA that was produced before the trial

Court in the form of certified copy of Court proceedings showing the appellant present before the Court of JSC at Sangrur must be presumed to be as genuine with the contents thereof as correct without any addition or subtraction. The trial Court has erred in a way adding time of 11:00 AM in the said zimini order dated 10.03.2012 of the JSC at Sangrur which is wholly impermissible in law.

The upshot of the above discussion is that the appellant clearly proved his plea of *alibi* on the basis of documentary evidence Exhibit DA and it is in this context, the evidence of PW4-HC Baljinder Singh cannot be accepted. In the result, the appeal must be allowed. Hence, I make the following order:-

**ORDER**

- (i) CRA-S-3967-SB of 2016 is allowed;
- (ii) Impugned judgment and order dated 14.10.2005 passed by the Special Judge, Sangrur, in Sessions Case NDPS No.229 of 3.8.2013, is quashed and set aside;
- (iii) Appellant-Mohd. Rashid is acquitted of the charge framed against him;
- (iv) The amount of fine, if any paid, shall be refunded to him;
- (v) He be released, if not required in any other case.

**(A.B. CHAUDHARI)**  
**JUDGE**

**December 16, 2017**

mahavir

Whether speaking/ reasoned: **Yes**

Whether Reportable: **Yes**