

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

Crl. Appeal No.S-5205-SB of 2015 (O&M)

Date of Decision: July 25, 2017

Bittu

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Akshay Jain, Legal Aid Counsel
for the appellant.

Mr.Gaurav Garg Dhuriwala, Sr.DAG, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against State of Punjab, challenging the judgment of conviction and order of sentence dated 17.11.2015 passed by learned Judge, Special Court, Patiala, 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 one month under Section 20 of the NDPS Act.

The brief facts of the prosecution case as noted down in the judgment passed by learned Judge, Special Court, Patiala, are as under:-

“2. In brief the facts of the case are that on 26.10.2012 ASI Rohi Ram along with HC Devinder Singh, HC Jagdeep Singh and HC Gurmeet Singh on private vehicle in connection with patrolling and checking of bad elements were going from

Nabha road Patiala towards Ablowal. When the police party reached at the minor bridge of Ablowal then from the left side of the minor bridge, one mulla fashion person was seen who was carrying a polythene lifafa in his right hand. He on seeing the police party suddenly turned his back side towards the road. On suspicion ASI Rohi Ram with the help of other police officials apprehended him. The identity of the accused was verified and accused told his name as Bittu son of Pritam resident of Dhiru ki Majri, Patiala. ASI Rohi Ram disclosed his identity to the accused and further told him that it is suspected that some narcotics is in the possession of the accused and the accused has got right that search can be conducted in the presence of some Gazetted Officer or a Magistrate and told that they can be called at the spot. But the accused reposed faith upon ASI Rohi Ram. The consent statement of accused Ex.PA was recorded which was thumb marked by accused and witnessed by HC Davinder Singh and HC Jagdeep Singh. From the search of the accused, charas was recovered from the polythene lifafa being carried by the accused. Then two samples of 10 grams each were separated from the bulk and the remaining on weighing came to be 280 grams. The bulk and samples were converted into parcels and all the parcels were sealed by ASI Rohi Ram with his seal bearing impression RR. Specimen seal Ex.P1 was prepared and seal after its use handed over to HC Davinder Singh. The incriminating articles were taken into possession vide memo Ex.PB witnessed by HC Davinder Singh and HC Jagdeep Singh. Ruqa Ex.PD was sent to police station through HC Gurmeet Singh and FIR Ex.PE was registered. Rough site plan Ex.PF of the place of recovery was prepared. The accused was arrested vide memo Ex.PG and personal search was conducted vide memo Ex.PC. 3. After completing the investigation at the spot, Investigating Officer ASI Rohi Ram produced the accused along with case property, specimen seal, articles recovered during the personal search of accused and witnesses before SI Ranbir Singh, SHO of P.S.Civil Lines, Patiala. He verified the facts of the case and sealed the case property with his seal bearing impression RS. Specimen seals including Ex.P1 was prepared and same was also attested by SHO. Thereafter, SHO deposited the case property with MHC Devi Ram with seals intact. 4. On the following day i.e., on 27.10.2012 ASI Rohi Ram took the case property from MHC Devi Ram and produced the accused along with case property before learned Ilaqa Magistrate, Patiala along with application for remand EXPJ, application for inventory EXPK and application for depositing the case property with Judicial Malkhana Ex.PL. The learned Magistrate saw and signed the bulk and the samples. The Investigating Officer was directed to deposit the bulk and one sample in the judicial malkhana and he was further directed to deposit one sample with the MHC so that the same can be sent to the office of chemical examiner vide order Ex.PL/1. The

sample was sent to the laboratory on 9.11.2012 through HC Ranjit Singh and after the receipt of the report of chemical examiner EX.PM the report under section 173(2) CrPC was presented against the accused.”

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

In support of its case, prosecution examined PW-1 ASI Rohi Ram, PW-2 Head Constable Devinder Singh, PW-3 Head Constable Ranjit Singh, PW-4 Head Constable Jagdeep Singh, PW-5 ASI Devi Ram and PW-6 SI Ranbir Singh.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. He was confronted with the evidence of the prosecution and he denied the correctness of the evidence and pleaded himself as innocent and his false implication.

No witness was examined in defence.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant as stated above.

At the time of arguments, learned counsel for the appellant argued that in the present case, Investigating Officer Rohi Ram could not be examined completely due to this death, therefore, investigation of the case is not proved. He further argued that in the present case, case property was sealed by the Investigating Officer and it was also taken by Investigating Officer on 27.10.2012 from MHC Devi Ram and produced the accused

along with case property before Illaqa Magistrate but there is no evidence

on the record due to death of Investigating Officer that neither the Investigating Officer has tampered with the sample seals and the case property nor he allowed anyone to tamper with the case property. Therefore, he argued that link evidence is missing. He next argued that no independent witness has been examined also in support of the prosecution case. Learned counsel for the appellant, therefore, argued that there being merit in the present appeal, the same should be allowed and the accused-appellant should be acquitted.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by the recovery witness. The statements of the witnesses have been duly proved. Link evidence is complete. He further argued that seals were found intact by the Chemical Examiner, therefore, in no way, it can be held that seals on the sample or case property have been tampered with. Learned State counsel, therefore, argued that there being no merit in the present appeal, the same should be dismissed.

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

From the record, I find that due to the death of Investigating Officer ASI Rohi Ram, the link evidence in the present case is missing. The case property was in the possession of ASI Rohi Ram and during that period, there is no evidence to show whether the case property and seals were tampered with or not. The valuable right of cross-examining the Investigating Officer could not be availed by the accused. There is no doubt that ASI Rohi Ram could not be examined due to his death but even then, the prosecution is to prove its case beyond reasonable doubt and also to

prove that seals of the case property and sample seals were never tampered with by anybody till it reached to the office of Chemical Examiner. Therefore, a reasonable doubt exists in the prosecution case.

Furthermore, due to death of Investigating Officer, the investigation of the case is also not proved beyond reasonable doubt. As already discussed, the accused could not cross-examine the Investigating Officer and in the absence of cross-examination of the Investigating Officer, a prejudice has been caused to the accused.

In view of the above discussion, I find that the prosecution has not proved its case beyond reasonable doubt and link evidence is missing. Therefore, by giving benefit of doubt, the accused-appellant is acquitted of the charge framed against him. The judgment of conviction and order of sentence dated 17.11.2015 passed by learned Judge, Special Court, Patiala, is set aside.

Accordingly, present criminal appeal stands allowed.

Since, appellant Bittu is on bail, his bail/surety bonds stand discharged.

July 25, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No