

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

CRA-S-1565-SB-2003
Date of decision:4.9.2017

Balwinder Singh @ Bhinder Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr. Gurcharan Singh, Advocate
for the appellant.

Ms. Jaspreet Kaur, AAG, Punjab.

H.S. MADAAN, J.

This appeal has been preferred against judgment dated 14.7.2003 passed by Judge, Special Court, Fatehgarh Sahib vide which accused was convicted for offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**') and sentenced to undergo rigorous imprisonment for three years and to pay a fine of ₹3,000/- and in default thereof to further undergo rigorous imprisonment for three months.

The accused - convict – Balwinder Singh alias Bhinder, who is appellant before this Court prays that the appeal be accepted, the

impugned judgment of his conviction and sentence be set aside and he be acquitted of the charge framed against him.

Briefly summed up, the prosecution story is that on 23.2.2001, a police party from Police Station Sirhind headed by ASI Surjit Singh (hereinafter referred to as IO/Investigating Officer) travelling in private vehicles was on patrol duty; that when the vehicles carrying the police party were going from Floating Restaurant towards Saunda Head along side bank of Bhakra river and were near the siphon adjoining village Mander, then a person was spotted sitting beneath a black berry tree and said person was sitting on evenly spread straw; that a jute bag was lying near him which was open from one end; that a plastic container of one litre capacity was also lying nearby; that on observing the police party, the person tried to escape but was apprehended; that in the meantime Kashmiri Ram son of Bhani Ram, Bajigar reached at the spot; that he was joined with the police party, the apprehended person on being inquired disclosed his name as Balwinder Singh alias Binder son of Piara Singh Caste Ramdasia, resident of village Saholi, Police Station Sudhar, District Ludhiana; that poppy husk was found lying spilled by the side of the jute bag; that the jute bag was containing poppy husk; that the Investigating Officer took two samples of 250 gms. each from the jute bag, which were converted into parcels; the remaining poppy husk in the jute bag on weighment was found to be 18 kgs. 500 gms.; that the samples and the jute bag containing remaining poppy husk were converted into parcels sealed with the seal of Investigating Officer having inscription 'SS' and those were taken into possession vide recovery memo;

that a specimen seal was separately prepared and seal after use was entrusted to ASI Gulzar Ram. Finding that an offence under Section 15 of the Act was disclosed, the Investigating Officer sent ruqa Ex.PF to police station through PHC Avtar Singh on the basis of which formal FIR Ex.PG was registered. The accused was formally arrested in this case. The Investigating Officer prepared rough site-plan of the place of recovery as Ex.PH. He recorded statements of witnesses. A sample parcel was sent for chemical examination to the office of Chemical Examiner, Patiala and as per report received therefrom, the sample was found to be of poppy husk.

After completion of investigation and on receipt of report of Chemical Examiner, challan against the accused was presented.

On presentation of challan in the Court of Judge, Special Court, Fatehgarh Sahib, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C.

Learned Judge, Special Court, Fatehgarh Sahib finding that charge for offence under Section 15 of the Act was disclosed against the accused, charge-sheeted the accused for the said offence, to which, accused pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

To bring home guilt to the accused, the prosecution examined as many as five witnesses as per details below:-

PW1 Inspector Harpreet Singh, who on 22.2.2001 was posted as SHO at Police Station Sirhind deposed that on that day, ASI Surjit

Singh had produced before him accused Balwinder Singh along with the case property and that he after verifying the facts affixed his seal thereon directing ASI Surjit Singh to deposit the case property with MHC Baldev Singh.

PW2 Constable Rakesh Kumar, a formal witness tendered in evidence his affidavit Ex.PA contending therein that on 26.2.2001, MHC Baldev Singh had handed over to him a sample parcel duly sealed directing him to deposit the same in the office of Chemical Examiner, Patiala; that he accordingly did so and that during the period the sample parcel remained in his possession, neither he tampered with the same nor allowed any body to do so.

PW3 ASI Gulzar Ram, who was associated with the police party headed by ASI Surjit Singh, which had apprehended the accused and effected recovery from him deposed in that regard supporting the prosecution story on material aspects.

PW4 HC Baldev Singh, who was working as MHC at Police Station Sirhind at the relevant time and a formal witness also tendered his affidavit Ex.PE submitting therein that on 23.2.2001, ASI Surjit Singh had deposited with him case property duly sealed and on 24.2.2001, he had given the case property to ASI Surjit Singh for being produced before the Illaqa Magistrate, who had then returned it back to him on the same day. In the affidavit, the witness has contended that on 26.2.2001, a sample parcel was handed over to Constable Rakesh Kumar for depositing the same in the office of Chemical Examiner, Patiala.

Constable Rakesh Kumar accordingly did so and that so long as the case

property remained in possession of this witness (HC Baldev Singh) it was not tampered with.

PW5 SI Surjit Singh, the Investigating Officer of this case deposed regarding the investigation conducted by him including apprehending the accused, affecting recovery from him, preparing documents etc.

The Public Prosecutor gave up SI Kashmira Singh as being unnecessary and Kashmiri Ram cited as an independent witness as having been won over by the accused while closing the prosecution evidence.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to him but accused denied the allegations contending that he is innocent and had been falsely involved in this case.

During the course of defence evidence, accused tendered copy of report under Section 173 Cr.P.C. in case FIR No.7 dated 2.1.2002 as Ex.D1.

With that the defence evidence got concluded.

After hearing arguments, learned Judge, Special Court, Fatehgarh Sahib convicted and sentenced the accused as mentioned above, which left him aggrieved and he has filed the present appeal.

I have heard learned counsel for the appellant-accused-convict and learned Assistant Advocate General for the State of Punjab, besides going through the record.

The first and foremost argument advanced by learned

counsel for the appellant was that PW Kashmiri Ram, an independent witness said to have been joined with the police party while apprehending the accused and effecting recovery from him was not examined, rather he was given up by Public Prosecutor, which goes to show that he was not present at the spot at the relevant time.

Other arguments put forward by learned counsel for the appellant was that recovery was not effected in presence of a gazetted officer; that sample seal was given to ASI Gulzar Ram and not Kashmiri Ram, an independent witness; that no option was given to the accused to carry out the search in presence of gazetted officer or a Magistrate, which was in violation of Section 50/55 of the Act; that contents of consent memo Ex.PA were not explained to the accused; that there is delay of four days in sending the sample to the office of Chemical Examiner, which has been left unexplained, rather vital link evidence is missing; that there are contradictions and variations in the statements of witnesses of recovery.

In support of his arguments, learned counsel for the appellant has referred to *Jaswant Singh Versus State of Punjab, 1998(2) R.C.R.(Criminal)760* by a Co-ordinate Bench of this Court as per facts of that case registered under Section 15 of the Act relating to recovery of poppy husk, an independent witness was joined but not examined then it was observed that the same affects the prosecution story since it may be that official witnesses can be believed under normal circumstances but where an independent witness was associated, he should have been examined. Accused had been acquitted on that very ground.

The next authority referred to was Sarabjit Singh alias Sarba Versus State of Punjab, 1998(1) R.C.R.(Criminal) 348. It was a case when recovery of poppy husk had been effected from the field at the instance of accused. The said field was jointly possessed by accused, his brothers and father and it was accessible to all the sundry. Observing that there was no evidence that poppy husk was lying concealed in the field, under the circumstances the accused was acquitted.

The next citation relied upon by learned counsel for the appellant was Gurmit Singh Versus State of Punjab, 1998(2) R.C.R.(Criminal) 613 by a Co-ordinate Bench of this Court. It was a case relating to recovery of poppy husk, where the contention of the police was that accused gave consent in writing that he desired to be searched by the Investigating Officer, the memo of consent was not attested by the independent witness, who was joined. Under the circumstances, it was held that provisions of Section 50 of the Act were not complied with and accused was acquitted. It was further observed in the authority that the police officer, who conducted the search and seizure himself conducted the investigation, in that way the investigation was not impartial and effect goes against the prosecution. Another observation made in this authority was that when no independent witness is joined from nearby villages and one witness joined who had already appeared before the police in another case, even that witness was not examined, the accused was acquitted for that reason.

The next authority referred to by learned counsel for the appellant happened to Surjit Singh Versus State of Punjab, 1997(3)

R.C.R.(Criminal) 351 by a Co-ordinate Bench of this Court which while dealing with a case under Section 15 of the Act where recovery of contraband had been effected. The case property had been sealed but sample seal given to ASI of the police despite the fact that the independent witness was present. Moreover, property was damaged before decision of appeal/revision. No explanation was there as to how the property was damaged, the accused was acquitted of the charge giving benefit of doubt to him.

As regards the first contention put forward by learned counsel for the appellant regarding non-examination of Kashmiri Lal, an independent witness, I do not find any merit in the same. The statements of official witnesses are at par with those of the independent witnesses though situation is a little bit different if the official witnesses are shown to have any previous enmity with the accused. In the instant case, it is neither alleged nor proved on the file. Furthermore, it is quality of the evidence and not the quantity which matters. There is no provision of law that independent corroboration is a must to prove case of the prosecution. It is only a rule of prudence. It is nowhere provided that in absence of independent corroboration, the prosecution story is to be rejected outrightly. In the instant case, non-examination of independent witness does not affect the prosecution case adversely. Furthermore, handing over of seal to the independent witness is not required by any provision of law. As a matter of fact Kashmiri Lal had been given up by the prosecution as having been won over by the accused. The trial Court has dealt with such aspects in a detailed manner in para Nos.12, 13 and 14 of the judgment.

Thus, I find that there is no merit in such argument.

As regards the next argument that recovery was not effected in presence of a gazetted officer that aspect has also been dealt with at length by the trial Court in para Nos.15 and 16 of the judgment observing that since it was a chance recovery and police party did not have prior information regarding the accused being in possession of the contraband and it was per chance that police party came across the accused with poppy husk spilled nearby with bag containing poppy husk open; there was no occasion to give an offer to the accused in terms of Section 50 of the Act or for calling gazetted officer or Magistrate for the purpose of search and that a ASI of police department is authorized to conduct search. In that way, recovery cannot be termed as doubtful.

As regards the aspect of delay of four days in sending the sample to the office of Chemical Examiner that also does not render the prosecution case doubtful since the prosecution has led sufficient evidence to show that no tampering of seals had taken place during that period the sample parcel was deposited with MHC of the police station till it reached office of Chemical Examiner and was analyzed there. The poppy husk is not such stuff which gets degenerated or its composition changes with passage of time say within short duration of four days. Therefore, I am not in agreement with such contention of learned counsel for the appellant.

As regards the authorities referred to by learned counsel for the appellant, those do not find application to the present case due to different facts and circumstances and the context in which such

observations have been made.

The judgment passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity in the judgment, as such, the same is upheld.

The appeal is found to be without merit, hence it stands dismissed.

Appellant – Balwinder Singh @ Bhinder is stated to be on bail granted to him by this Court vide order dated 29.8.2003 while suspending his sentence. His bail is cancelled. Chief Judicial Magistrate, Fatehgarh Sahib is directed to issue arrest warrant to get him arrested so as to make him undergo the remaining sentence.

4.9.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes