

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S- 2248-SB of 2004 (O&M)

Date of decision : 14.3.2018

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Satpal

.....Appellant

vs.

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

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

Mr. Rakeshinder Singh Sidhu, Assistant Advocate General,
Punjab.

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H. S. Madaan, J.

This appeal is directed against judgment dated 28.9.2004 passed by the then Judge, Special Court, Kapurthala, vide which she had convicted accused Satpal for an offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as 'the NDPS Act'), and order of the even date sentencing him to undergo rigorous imprisonment for 10 years and to pay fine of Rs. 1 lac, in default of payment of fine to undergo further rigorous imprisonment for two years.

Briefly stated, the facts of the case as per prosecution story are that on 4.10.2001, a Police Party from Police Station Sultanpur Lodhi, led by Inspector /SHO Tarlochan Singh, was present at the T-

point at village Bussowal, in connection with checking and patrolling, where Inspector Tarlochan Singh, received a secret information that Satpal s/o Ishar Dass r/o village Sardulapur, was engaged in drug trafficking with respect of poppy husk and on that day a huge quantity of poppy husk was there in his house and if a raid was conducted, the same could be recovered. Information being reliable one, Inspector Tarlochan Singh sent a ruqa to the Police Station, on the basis of which formal FIR was recorded. He had also requested for sending a Gazetted Officer or a Magistrate to the house of the accused, which was to be raided. Then the Police Party proceeded towards the house of the accused and while it had reached near *phirni* of the village Sardulapur, Hazari Lal, Chowkidar of the village, came across the police party and he was joined therewith. The raid was conducted at the house of Satpal. He was found standing outside his house. However on seeing the Police Party, he ran away but he was identified by ASI Iqbal Singh and PW Hazari Lal. After some time, Naib Tehsildar, Sultanpur Lodhi, Bakshish Singh, reached at the spot. Then the Police Party alongwith Naib Tehsildar, Sultanpur Lodhi and Hazari Lal Chowkidar, went inside the house of Satpal accused, which was searched and from the room on the left side of *deori*, 21 bags were recovered, which were lying towards the western wall of the room. Those bags, on opening, were found to be containing poppy husk. A sample of 250 grams each was drawn from each of the bag, which were then converted into a sealed parcels. On being weighed, the remaining poppy husk in each bag came out to be 39 kgs 750

grams. Those bags containing remaining poppy husk were converted into parcels and duly sealed with the seal of Naib Tehsildar Bakshish Singh, bearing impressions 'BS' and that of Inspector Tarlochan Singh, bearing impressions 'TS'. Specimen impressions of the seals were also prepared and all such articles were taken into possession vide recovery memo.

During the course of investigation the accused was arrested. The samples were sent to the office of Chemical Examiner, Jalandhar and report therefrom was received that those were of poppy head chura.

After completion of the investigation and other formalities, challan against the accused was prepared and filed in the Court.

On presentation of challan copies of documents relied upon therein were supplied to the accused free of cost, as provided under Section 207 Cr.P.C. Then the accused was charge sheeted for the offence under Section 15 of the NDPS act, to which he pleaded not guilty and claimed trial.

During the course of prosecution evidence, the prosecution examined PW-1 HC Gian Singh, who on 4.10.2001 was posted as MHC at Police Station Sultanpur Lodhi, deposed that on receipt of *ruqa* Exhibit PA from Inspector Tarlochan Singh, he recorded the formal FIR Exhibit PA-1 and sent special reports through Constable Sukhdev Singh to the Illaqa Magistrate and higher police officers. He further deposed that after producing of the case property in the court, case property alongwith seal impressions were deposited with him by

the SHO. He submitted his affidavit Exhibit PB stating that it be read as a part of his statement.

PW-2 Constable Harjinder Singh, a formal witness submitted his affidavit Exhibit PL.

PW-3 ASI Iqbal Singh, who was a member of the Police Party on 4.10.2001, which had conducted a raid at the house of the accused and got the recovery effected, supported the prosecution story on material aspects. He stated that he and Hazari Lal Chowkidar, had identified the accused, since he was known to them earlier.

PW-4 Inspector Tarlochan Singh, who was heading the Police Party on 4.10.2001, which had conducted the raid at the house of accused, effecting recovery, testified in that regard, besides deposing regarding the other investigation conducted by him. He stated that on return to the Police Station the case property alongwith seal impressions were kept in a double lock under his supervision in the Malkhana and on 5.10.2001 he had produced the case property before the Illaqa Magistrate moving application Exhibit PF and the case property was signed by the Illaqa Magistrate, who had passed order Exhibit PF/1. He further stated that on 5.10.2001, after producing the case property before the Illaqa Magistrate, he deposited that case property with the seals intact with MHC Gian Singh alongwith seal impressions. Going further, he had stated that accused Satpal was arrested on 8.10.2001 by him vide memo Exhibit PG. He recorded statements of witnesses and after receiving report from the

Chemical Examiner Exhibit PJ, prepared the challan and filed it in the Court.

PW-5 Sh. Bakshish Singh, Naib Tehsildar, in whose presence the house had been searched and recovery effected, testified in that regard.

PW-6 Bachan Singh stated that in the year 2011, he was Sarpanch of the village and he knows Satpal accused, who is resident of his village; that accused are three brothers, all married. He stated that he does not know if they had separate ration cards or have separate portions for living. He was declared a hostile witness at the instance of learned Public Prosecutor and learned Public Prosecutor was allowed to put questions to him in the form of cross examination. With that the prosecution evidence got concluded.

Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused were put to him, but he denied the same contending that he was innocent and has been falsely involved in this case. He took up the plea that he has two brothers, namely, Ram Lubhaya and Yashpal; that all the three brothers have got two sons each, who are major; that the entire family is residing in the same house, without their being any partition; that about three years earlier, DSP Ravicharan Singh Brar quarreled with him during the elections, as such he developed enmity with him and warned him several times that he would involve him in some false case; that he had left the house about three years earlier and occasionally goes there to see his

children and parents and that no recovery was effected from him; that the present case has been planted upon him at the instance of DSP Ravicharan Singh Brar. During his defence evidence, he examined DW-1 Hazari Lal, Chowkidar, who sated that accused alongwith his brothers and sons resides in the joint house; that no partition had taken place; that about three years earlier, during elections a dispute took place between Satpal and DSP Ravicharan Singh Brar, and in order to teach him a lesson DSP Ravicharan Singh Brar, tried many times to implicate Satpal in a case and out of fear Satpal had left the village. He stated that on 4.10.2001, he never joined the Police Party and nothing incriminating/poppy husk was recovered by the police from the house of Satpal in his presence; that being Chowkidar, he has to go to the Police Station for giving information regarding deaths and births and the police officials might have obtained his signatures on some blank papers, in fact no recovery was effected from the house of Satpal in his presence.

DW-2 Constable Sukhwinder Singh, Police Station Sultanpur Lodhi, had brought register No. 19 and register Roznamcha and deposed therefrom.

DW-3 Mohinder Singh a resident of the village Safdulapur, had supported the defence version of the accused, so did DW-4 Surinder Singh, an agriculturist of village Sabdullapur.

DW-5 Prabhu Ram, Assistant Inspector, Weights and Measure Department, Kapurthala, stated that there is a lot of difference between Farshi kanda and Takkar/beam scale; that beam scale is having three bamboo legs and two spans, that if the weight is

to be done on the Farshi Kanda, the weight of 10 kgs has to be put on the scale and the remaining weight is measured on the scale, while for weighing it in the beam scale, the weight is to be put according to the quantity. He further stated that weight of 35 kgs quantity cannot be weighed by putting the weight of 50 kgs in Farshi Kanda.

DW-6 Sadhu Singh also supported the defence evidence. With this the defence evidence was closed.

After hearing arguments, the trial Court convicted and sentenced the accused as mentioned above, which left him aggrieved and he has filed the present appeal, notice of which was given to the State, who has put in appearance through State counsel.

I have heard learned counsel for the appellant, learned State counsel, besides going through the record and I find that there is absolutely no merit in the appeal.

In this case, PW-3 ASI Iqbal Singh, PW-4 Inspector Tarlochan Singh and PW-5 Bakshish Singh, Naib Tehsildar, fully supported the prosecution story, as regards recovery of contraband from the house of he accused. They were cross examined at length on behalf of the accused, but they could not be shattered on any material point. No reason has been suggested or proved, prompted by which they might have involved the accused in this case wrongly. Though according to the defence version DSP Ravicharan Singh Brar, was annoyed with the accused and who has planted a false case upon him but this plea does not seems convincing. The DSP is not an officer of such rank that he could wield so much influence, so as to make the other police officials dance to his tunes and act as per his wishes.

He could not possibly have made Bakshish Singh, Naib Tehsildar, a Gazetted Officer, depose falsely against the accused. There is nothing on record to show that the accused had submitted in writing any representation to the higher police officers earlier to this case that Ravicharan Singh Brar was threatening to involve him in some criminal case falsely or after the case that he has been implicated in this case at the instance of Ravicharan Singh Brar. Further more, if it was a case of false implication, then so much heavy quantity of contraband would not have been planted, since the contraband of very less quantity would have achieved the desired purpose.

Learned counsel for the appellant has raised a plea that the house was not in exclusive possession of the accused and he has pointed towards the evidence led by him in defence. But I do not feel convinced by such contention. The accused has merely led oral evidence in support of such plea. The witnesses examined by him are his co-villagers, obviously having a soft corner for him who could even make wrong depositions to save the accused from conviction. No documentary evidence has been brought on record to show that in fact the possession of the house was with some other person and not with the accused. According to the prosecution story, the accused was standing outside the house, when the Police Party had conducted a raid and he was earlier known to ASI Iqbal Singh who appearing as PW-3 has categorically stated so. He is stated to have been identified by village Chowkidar Hazari Lal, accompanying the Police Party. Though Hazari Lal rather has appeared as defence witness and supported the defence version, but then I feel that accused could

manage Hazari Lal village Chowkidar, so as not to support the prosecution story and rather support his defence version. It stands established on the record that accused was standing outside the house and on seeing the Police Party, he ran away. If he was not of guilty mind, then where was the necessity for him to run away. The prosecution has successfully proved that the place from where the contraband was recovered belongs to the petitioner and the contraband so recovered is to be taken as having been recovered from his possession.

Learned counsel for the appellant raised certain pleas but those have already been dealt with at length by the trial Court in a cogent and convincing manner and I do not find it necessary to discuss the same again.

The judgment passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law and there is nothing to hold that such order suffers from any illegality or infirmity. I do not see any reason to interfere with the same, as regards the conviction or sentence. The appeal is found to be without any merit and is accordingly, dismissed.

14.3.2018
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(H.S. Madaan)
Judge

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No