

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

CRA-S-2250-SB-2004

Date of decision:-15.3.2018

Angrej Singh

...Appellant

Versus

State of Haryana

...Respondent

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

Present: Mr.Gaurav Saini, Advocate as
Legal Aid Counsel for the appellant.

Mr.Sulinder Kumar, AAG, Haryana.

H.S. MADAAN, J.

This appeal is directed against the judgment dated 27.9.2004 passed by Presiding Officer/Judge, Special Court, Kurukshetra vide which accused Angrej Singh was convicted for an offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '*the Act*') and vide order dated 28.9.2004 he was sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,00,000/- and in default thereof, to further undergo rigorous imprisonment for two years.

The accused-convict – Angrej Singh, 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 stated, the prosecution story is that on 16.12.1999 when a police party from Police Station Babain headed by SI/SHO Ranbir Singh was present in the area of village Bargat near Saraswati Bridge on Bargat-Babain road while travelling in a Government jeep having registration No.HR07C-1106 in connection with investigation of case bearing FIR No.114/99 under Section 15 of the Act, then the accused was spotted coming from the side of village Bargat supporting a bicycle carrying two gunny bags, one on its carrier and other on its frame; that he was apprehended on the basis of suspicion and on being inquired, he disclosed his particulars; that SI/SHO Ranbir Singh (hereinafter referred to as Investigating officer/I.O.) suspected that accused was carrying some narcotic substance in the gunny bags and accordingly, he served a notice under Section 50 of the Act upon the accused informing that he suspected the gunny bags to contain poppy husk and wanted to search the said bags and that search would be conducted either in presence of a Magistrate or a Gazetted Officer; that the accused replied that gunny bags contained poppy husk and SI/SHO could search the same; that thereafter both the gunny bags were taken down from the bicycle of accused and on being searched were found to contain poppy husk; that the contents of both the gunny bags were weighed and were found to contain 38 kgs. of poppy husk each; that a sample of 500 gms. each was drawn from both the gunny bags; that samples and residue were then converted into separate parcels and then sealed with seal of 'RS' after taking it from ASI Sat pal; that specimen seal was prepared; that the sealed parcels and specimen seal

impression were taken into possession vide seizure memo Ex.PF; that seal after use was again returned to ASI Sat Pal Singh; that Sukhdev Raj, Sarpanch was associated during such proceedings. Ruqa was sent to the police station through Constable Ved Parkash on the basis of which formal FIR was recorded. The accused was formally arrested in this case and grounds of arrest were served upon them. Rough site plan of the place of recovery was prepared. On return to the police station, the case property was deposited with MHC and accused was put up in lock up. During the course of investigation, sample parcels were sent to FSL, Madhuban and as per report received therefrom, they were found to be those of poppy husk.

After completion of investigation and other formalities, challan against accused Angrej Singh, who was arrested at the spot was prepared and filed in the Court of Judge, Special Court, Kurukshetra

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

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

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

PW1 Constable Shashi Pal deposed that on 17.12.1999 while he was posted as such with District Inspector Abey Singh, a report under Section 57 of the Act was received by him in the office and he had placed the same before District Inspector, who after perusing the same had signed it. This witness had brought the register in which entry regarding its receipt in the office was made at serial No.5-R-DI/17.12.1999.

PW2 MHC Ishwar Singh stated that on 16.12.1999, he was posted as MHC at Police Station Babain; that on that day he received ruqa Ex.PB and recorded formal FIR Ex.PB/1 on its basis making endorsement Ex.PB/2 on the ruqa Ex.PB. This witness also tendered in evidence his affidavit Ex.PC.

PW3 Constable Mehar Singh tendered in evidence his affidavit Ex.PD.

PW4 ASI Satpal Singh, who was a member of the police party headed by SI/SHO Ranbir Singh, which had apprehended the accused along with the contraband deposed in that regard in consonance with the prosecution story.

PW5 SI/SHO Ranbir Singh, who was leading the police party which had apprehended the accused along with the contraband in the form of poppy husk testified in that respect besides deposing regarding other investigation conducted by him.

With that the prosecution evidence stood closed.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to him but he denied the allegations contending that he is

innocent and had been falsely involved in this case. He further pleaded that SI Ranbir Singh remained posted at Police Station Sadar, Thanesar; that 5-6 years prior to the incident he was entered in the bad character register of Police Station Sadar, Thanesar; that SI Ranbir Singh had raided his house several times but nothing was recovered from his house; that at that time a quarrel had taken place between him and SI Ranbir Singh, who had threatened to see him in near future; that on 14.12.1999 he was picked up from his house at village Kishangarh and involved in the present case falsely after planting two bags of poppy husk, which were recovered along with 17 other bags from a godown of Babain.

During his defence, accused examined four DWs.

DW1 Sukhdev Raj stated that he does not know the accused and nothing was recovered from him in his presence and that he was never joined in investigation of this case by police of Police Station Babain.

DW2 Hoshier Singh son of Hazara Singh, Ex-Sarpanch of village Kishangarh stated that Angrej Singh belongs to his village; that SI Ranbir Singh is known to him as he was posted as SI in Police Station Sadar, Thanesar 7-8 years ago(statement of this witness was recorded on 19.2.2002); that Angrej Singh accused is a bad character of Police Station Sadar, Thanesar and in his presence 2-3 times, the police raided his house; that no recovery was effected from the accused in his presence; that during the raid a quarrel ensued between the accused and SI Ranbir Singh in village Kishangarh and said SI Ranbir Singh threatened Angrej Singh to see him in future and that out of that grudge, the case has been

planted upon the accused.

DW3 MHC Mahabir Singh , MHC Police Station Babain, who brought the summoned record stated that according to entry No.15 of daily diary dated 16.12.1999, SI Ranbir Singh left police station at 4:15 p.m. for patrolling in the Illaqa and as per entry No.20 of 16.12.1999, FIR No.114, under Section 15 of the Act was registered at 6:35 p.m. against Jit Singh son of Sher Singh, Majbi Sikh, resident of village Babain, whereas FIR No.115 against Angrej Singh son of Jagat Singh, resident of Kishangarh was registered at 8:55 p.m.; that Jit Singh and Angrej Singh were lodged in police lock-up at 11:55 p.m.; that case properties of both the cases were deposited on the same day vide entries No.136 and 137, however, no time is mentioned in register Malkhana.

DW4 Jeet Singh son of Sher Singh, aged 75 years, resident of village Babain stated that he does not know Angrej Singh accused and in the year 1999 Angrej Singh was made to sit in the police station when he was taken there in the evening; that he does not know name of SHO but he was known as Rana; that he did not see Angrej Singh accused apprehending by the police having two gunny bags on his bicycle nor recovery of any poppy husk was effected from him in his presence.

With that defence evidence was closed.

After hearing arguments, learned Presiding Officer/Judge, Special Court, Kurukshetra convicted and sentenced the accused as mentioned supra, which left appellant – accused Angrej Singh 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 Haryana besides going through the record.

Learned counsel for the appellant has contended that no independent witness was examined; that Sukhdev Raj said to have been joined with the police party was not examined as a prosecution witness, rather he stepped into the witness-box as a defence witness and denied that any recovery had been effected by the police from the accused in his presence, which seriously affects the prosecution story.

However, learned State counsel has contended that Sukhdev Raj being a co-villager of the accused had obviously a soft corner for him and for that reason, he rather than supporting the prosecution story appeared as a witness for the accused.

Furthermore, it was a chance recovery and non-joining of independent witness does not make any difference. Though the accused has taken up a plea that SI Ranbir Singh was inimical towards him but he has not been able to show that. There is nothing on record to show that accused had given in writing to the higher police officers that accused having animosity with him was threatening to involve him in wrong cases or had in fact done so. Therefore, statements of official witnesses are taken at par with the independent witness. Furthermore, independent corroboration is a rule of prudence and not requirement of law. It is nowhere provided that in absence of independent corroboration, the account given by the official witnesses is to be discarded outrightly. Therefore, this contention of learned counsel for the appellant lacks merit.

Learned counsel for the appellant has further contended that

there has been violation of Section 57 of the Act in this case but this aspect has been dealt with by learned trial Court at length in para No.9 of the judgment finding that Section 57 was not applicable in this case since recovery was not effected from the person of accused but from bicycle, which he was supporting.

Furthermore, as regards the contention that link evidence in this case is missing, verification of affidavits Ex.PC and Ex.PD has not been made in terms of law, again this contention lacks merit since MHC Ishwar Singh had appeared as PW2 and Constable Mehar Singh as PW3 and they were subjected to cross-examination, therefore, defect, if any, in the verification does not make any difference.

As regards the delay in sending samples to FSL, Madhuban, this aspect has been dealt with by learned trial Court in para No.14 of the judgment finding that since it stands proved on the record that no tampering of seals had taken place with the sample parcels from time those were prepared till they reached FSL, Madhuban with seals intact, the delay, if any, does not make any difference. Furthermore, poppy husk is not such type of material which experiences a change in its composition with passage of time. Therefore, this arguments also lack merit. All the contentions now raised by learned counsel for the appellant have been discussed by the trial Court in detail finding those to be without any merit.

The impugned judgment of conviction and order of sentence passed by the trial Court are well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no

illegality or infirmity therein. The said judgment of conviction and order of sentence are upheld whereas the appeal is found to be without any merit and the same is dismissed accordingly.

Angrej Singh appellant – accused is stated to be on bail granted to him by this Court while suspending his sentence. His bail is cancelled. Chief Judicial Magistrate, Kurukshetra is directed to issue arrest warrant to get him arrested so as to make him undergo the remaining sentence.

15.3.2018

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No