

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-1609-DB-2013(O&M)

Date of Decision: 19.12.2018

Alexius Udyike

.. Appellant

vs.

Devendra Singh, Intelligence Officer and anr.

....Respondents

Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Harinder Singh Sidhu

Present:- Mr. Hoshier Singh Jaswal, Advocate
for the appellant.

Mr. D.D. Sharma, Advocate
for respondent No.1.

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Rajiv Sharma, J.

This appeal is instituted against the judgment and order dated 25.03.2013 and 01.04.2003 rendered by learned Special Judge, Chandigarh, in a Complaint Case No. 40 of 2009 dated 07.08.2009/27.05.2010 whereby the appellant was charged with and tried for offence punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the Act'). He was convicted under Section 21(c) of the Act and sentenced to undergo rigorous imprisonment for a period of 11 years and to pay a fine of Rs.1,50,000/- and in default of payment thereof to undergo rigorous imprisonment for a period of three years.

The case of the prosecution in a nutshell is that at about 1945 hrs on 5.3.2009, an African origin person was spotted with a black carry bag near the shop. He was intercepted. He disclosed his identity as Alexius Uduike. He also produced his passport in support of his identity. He was asked whether he was carrying any contraband goods/narcotic drugs with

him in his black carry bag. Initially he denied about any contraband. Thereafter, notice under Section 50 of the Act was served upon him. FIR was registered. Statements of the witnesses were recorded. The accused was arrested. The challan was put up after completing all the codal formalities.

The prosecution examined number of witnesses in support of its case. Statement of the appellant was recorded under Section 313 Cr.P.C. He denied the case of the prosecution.

Learned trial Court after appreciation of statement of PW1 Atul Handa, Deputy Director, PW-2 Alkesh Rao, Intelligence Officer, PW-3 Lakhi Ram, Inspector, PW-4 Anju Singh, PW-5 Nilank Kumar, Assistant Director, PW-6 Tassime Sultan, Appraiser, DRI, and PW-8 Devinder Singh, who was posted as Intelligence Officer, convicted and sentenced the appellant as noticed hereinabove. Hence this appeal.

There was compliance of Section 50 of the Act in the present case. The samples, which were taken out from the contraband, being recovered from the possession of the appellant, sent to the FSL, were found to contain 'diacetylmorphine (Heroin) quantitatively. Test memos Ex.PW7/14 to Ex.PW7/16 were duly proved by PW-10 S.C. Mathur, Chemical Examiner Grade-I, C.R.C.L. New Delhi.

Learned counsel appearing for the appellant has not argued the appeal on merits, however, he prayed for lenient view while awarding the sentence. He has submitted that the appellant has already undergone 09 years and 9-1/2 months out of 11 years of sentence imposed upon him by learned trial Court. He has further submitted that the appellant belongs

to African region, a young man of 39 years when he was apprehended and no case is pending against him.

We have heard learned counsel for the parties.

In view of the above, judgment of conviction is upheld and the order of sentence is modified to the extent that the appellant is sentenced to undergo rigorous imprisonment for a period of 10 years, which is minimum prescribed under the Act. The fine imposed upon him by the trial court is also reduced to Rs.1,00,000/- from 1,50,000/-. It is made clear that in case, the fine modified by us is not deposited, he will further undergo rigorous imprisonment for a period of six months.

The appeal stands disposed of accordingly.

(Rajiv Sharma)
Judge

(Harinder Singh Sidhu)
Judge

19.12.2018
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Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No