

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

Crl. Appeal No.D-522-DB of 2014 (O&M)
Date of Decision: February 26, 2018

Bhag Ram

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE A.B.CHAUDHARI
HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.N.S.Rapri, Advocate
for the appellant.

Ms.Ruchika Sabharwal, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant challenging the judgment of conviction and order of sentence dated 26.02.2014 passed by learned Judge, Special Court, SBS Nagar, whereby he was convicted and sentenced to undergo rigorous imprisonment for a period 12 years and to pay a fine of ₹1 lakh and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months under Section 15 of the NDPS Act.

The brief facts of the case are that on 05.02.2008, Inspector Hardeep Kumar, CIA Staff, Nawanshahr along with other police officials, received secret information that Bhag Ram alias Bhaga son of Som Nath is indulged in the business of poppy husk and he used to brought poppy husk

from other States and supply the same in the area of Nawanshahr and

Hoshiarpur. On that day, Bhag Ram alias Bhaga in Tata 407 bearing registration No.PB-08D-2025 along with Surinder Kumar alias Roshan, is bringing poppy husk from village Chuaharpur to Jabbowal. On this secret information, a naka was laid. In the meantime, Mohinder Singh alias Sodhi also joined the police party. At about 11.00 p.m., one vehicle came from village Bheen and the lights of the vehicle were on. The Investigating Officer gave the signal with search light to the driver to stop the vehicle and it was stopped. Two persons jumped out from the vehicle by opening both the doors and ran away. The person who jumped from the driver side was followed by Head Constable Phool Rai and Constable Amanjit Singh and the person, who jumped from the other side of the vehicle, was followed by Head Constable Jasvir Singh and Head Constable Sucha Singh. At that time, HC Phool Rai and HC Jasvir Singh were having torch light. After 15 minutes, HC Phool Rai and C. Amanjit Singh came back and told that they have identified the person who alighted from the driver side as Bhag Ram alias Bhaga in the torch light and he ran away from the spot. After 5 minutes, HC Jasvir Singh and HC Sucha Singh came back and told that they have identified the person in the torch light who ran away from left side of vehicle as Surinder Kumar alias Roshan. HC Jasvir Singh further told the Investigating Officer that he knew Surinder Kumar alias Roshan earlier. On searching the vehicle, four bags containing poppy husk were recovered. 250 grams specimen was separated from each bag and converted into separate parcels. On weightment, remaining poppy husk came to be 31 kgs. 750 grams in each bag. The Investigating Officer sealed all the parcels with seal 'HK' and sample seal parcel was also prepared. The case property was taken into police possession vide recovery memo. Ruqa was sent to the

police Station. FIR was registered. Rough site plan was prepared. Statements of the witnesses were recorded. On return to the police station, the case property along with sample seal, was produced before SHO Surinderpal Singh, who verified the investigation and affixed his seal bearing impression 'SS' on all the parcels and sample seal was also prepared. The case property was deposited with MHC. Thereafter, the case property was produced before the Court. On 12.02.2008, the Investigating Officer recorded the statement of Jaswinder Singh, who told him that he sold the vehicle bearing registration No.PB-08D-2025 to Bhag Singh alias Bhaga in the year 2005. The said statement is Ex.PA, which is signed by Jaswinder Singh. Accused were arrested. After necessary investigation, challan was presented against the accused-appellant and Surinder Kumar alias Roshan. However, during the trial, accused Surinder Kumar died and proceedings against him were abated.

On presentation of challan, copies of challan and other documents were supplied to the accused-appellant under Section 207 Cr.P.C. Finding prima facie case, the appellant was charge-sheeted under Section 15 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Jaswinder Singh, owner of the vehicle, who stated that he sold the vehicle bearing registration No.PB-08D-2025 to Bhag Ram and photocopy of the affidavit is mark-A. He also deposed regarding photocopy of RC mark-B. PW-2 Surinder Singh deposed regarding initial investigation and arrest of accused Bhag Ram. PW-3 ASI Prem Lal and PW-4 Head Constable Sohan

affidavits. PW-5 Jatinder Singh, Clerk, DTO Office brought the summoned record and deposed that above-said vehicle was transferred in the name of Jaswinder Singh. PW-6 ASI Phool Rai, who was posted as Head Constable in CIA Staff on that day, deposed regarding the prosecution case. He stated that at about 11.00 p.m., one vehicle came from village Bheen and lights of the vehicle were on. SI Hardeep Singh gave signal with search light to the driver of the vehicle. When the vehicle was stopped, two persons came i.e. one from the side of driver and one from cleaner's side and they both ran on opposite sides. He further deposed that the person who alighted from driver side was chased by him and Constable Amanjit Singh and other person was chased by Head Constable Jasbir Singh and Head Constable Sucha Singh. At that time, he and Head Constable Jasbir Singh were having torch and they chased the accused with the help of torch light. This witness also deposed that he identified the person who ran away from the driver side as Bhag Ram @ Bhaga as he knew him earlier. He also stated that they chased the accused for 15 minutes and disclosed the name of the accused to the Investigating Officer, who fled away from the spot. PW-7 DSP Hardeep Singh, Investigating Officer, deposed regarding investigation conducted by him in the present case. PW-8 Inspector Surinderpal Singh mainly deposed regarding verification of the case property and putting his seal on the specimen, form No.29 etc. PW-9 Head Constable Jasvir Singh, who was also with the police party, deposed as per prosecution version. PW-10 Rashpal Singh, Junior Assistant, DTO Office mainly deposed that vehicle bearing registration No.PB-08D-2025 was transferred in the name of Bhaga Ram.

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. He further pleaded that no recovery was effected from him. He was not present at the spot. He was picked up from his house to falsely implicate him.

No witness was examined in defence.

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

Aggrieved from the above-said judgment of conviction and order of sentence, present appeal has been filed.

At the time of arguments, learned counsel for the appellant argued that in the present case, there is no cogent evidence on record to prove the identify of the accused to connect him with the crime. He next argued that as per prosecution version, ASI Phool Rai identified accused Bhag Ram. There was pitch dark at the time of recovery i.e. 11.00 p.m. and the accused ran away from the spot. He next contended that the version of the prosecution is improbable. At that time, the vehicle was at some distance and the driver fled away from the spot in dark and it is impossible to identify the accused in the torch light while chasing a person. Learned counsel for the appellant also argued that ASI Phool Rai could not give satisfactory explanation as to how he was knowing accused-appellant Bhag Ram earlier to the occurrence. He argued that no test identification parade was got conducted and the prosecution has failed to prove the guilt of the accused. Learned counsel for the appellant, therefore, argued that there being merit in the present appeal, the same should be allowed and accused-appellant should be acquitted.

On the other hand, learned State counsel argued that identity of the accused has been duly proved by ASI Phool Rai, who specifically deposed that he was knowing accused Bhag Ram before occurrence. Learned State counsel, therefore, argued that there being no merit in the present appeal, the same should be dismissed.

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

We have also gone through the statement of ASI Phool Rai. In the cross-examination, this witness stated that Bhag Ram is not related to him and he is also not a friend of him. He further stated that he has not arrested Bhag Ram earlier in any case prior to this case nor he has appeared as witness against Bhag Ram before this case. He also stated in cross-examination that entire police party consisted of 9 persons including private persons and all the officials were in uniform having weapons and all were physically fit. ASI Phool Rai further stated that he identified the accused from the distance of 15 yards. He also deposed that no identification parade was conducted. He further stated that they chased the accused upto 70-80 yards and he disappeared in the sugarcane fields. This cross-examination of the material witness, who identified the accused at that time, does not show that PW-6 ASI Phool Rai was knowing accused Bhag Ram. There is nothing in the evidence as to how he was knowing the accused before the occurrence. He has not arrested him in any case nor he is related to him. He never appeared as witness against the accused. There is no explanation of any type to show that ASI Phool Rai was knowing the accused earlier to the occurrence. It also looks improbable that at 11.00 p.m., a vehicle stops at

identified by a witness/person, who was chasing him with torch light, especially when, there is nothing to show that this witness/person was earlier knowing the accused-person. No test identification parade has been got conducted in the present case to prove the identity of the accused-appellant. The prosecution has failed to prove the identity of the accused by leading cogent evidence beyond reasonable doubt.

In view of the above discussion, we find that the impugned judgment of conviction and order of sentence dated 26.02.2014, passed by learned Judge, Special Court, SBS Nagar, are not as per evidence and law and the same are set aside. The accused-appellant Bhag Ram is acquitted of the charge levelled against him.

Therefore, finding merit in the appeal, the same is allowed.

Appellant Bhag Ram, who is stated to be in custody, be set at liberty forthwith, if his custody is not required in connection with any other case.

(A.B.CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

February 26, 2018
Vgulati

Whether speaking/reasoned
Whether reportable

Yes
No