

In the High Court of Punjab and Haryana at Chandigarh

Criminal Appeal No. S-2576-SB-2016
Date of Decision:15.03.2018

Roshan Lal

.....Appellant

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Argued by: Ms. Vaishali Singla, Legal Aid Counsel
for the appellant.

Mr. Dhruv Dayal, Sr. DAG, Punjab.

ANITA CHAUDHRY, J

This appeal is directed against the order of conviction and sentence dated 23.5.2016 vide which the appellant was sentenced to ten years rigorous imprisonment under Section 20 (b) of Narcotic Drugs and Psychotropic Substances Act, 1985 ('Act' for short) along with fine of Rs. 1,00,000/-. In default of payment of fine, he was to further undergo rigorous imprisonment for three years.

The case of the prosecution is that on 13.10.2013, ASI Satbir Singh along with the police party were on patrol duty and were going to CIA Chowk near the truck union turning in private vehicles. When they reached near Simbal chowk, secret information was received that Roshan Lal who was habitual in selling intoxicants was going from Simbal Chowk towards Chakki bridge. *Naka* was laid and checking was started. After about 10 minutes, the accused was seen coming carrying a polythene bag in

suddenly tried to turn back and was apprehended. The investigating officer disclosed his identity and designation and that they suspected him to be carrying intoxicant material. The investigating officer apprised him of his right to be searched before a gazetted officer or a Magistrate. The accused reposed confidence in the investigating officer. The investigating officer made an attempt to join independent witness but no one was ready. The polythene bag was checked. Two samples of 10 grams each were recovered which were put in two small plastic containers. The remaining residue was weighed which was 980 grams. The samples and the remaining contraband was sealed bearing seal impression 'SS'. On receipt of chemical examiner's report and after completing the formalities, challan was presented.

Charge was framed against the accused under Section 20 (b) of the Act to which he pleaded not guilty.

The prosecution examined nine witnesses.

PW1 ASI Parmod Kumar was the officiating SHO and the accused along with the case property and sample parcels was produced before him on 13.10.2013 and after verification he affixed his seal PK on each parcel. The sample parcels were retained by him and on 16.10.2013 it was sent to the Chemical Examiner for analysis and on joining of regular SHO he handed over the case property to him.

PW2 ASI Satbir Singh was the investigating officer.

PW3 PHC Dilawar Singh, PW4 Const. Lakhbir Singh and PW5 PHC Rajinder Singh tendered their respective affidavits.

PW6 ASI Harpreet Singh had partly investigated the matter relating to sending of second sample to the Chemical Examiner.

PW7 Sho Sukhjinder Singh deposed about sending of second

sample parcel to the Chemical Examiner, on the directions of Court, which was in his custody, as the sample parcel sent earlier had been misplaced by the office of Chemical Examiner.

PW8 HC Narinder Pal Singh was one of the recovery witnesses and deposed that the police party recovered contraband from the accused.

PW9 Ms. Veer Pal Kaur, Lab Technician deposed that first sample was misplaced from the custody of Analyst and received the second parcel for analysis.

In the statement of the accused under Section 313 Cr.P.C., he pleaded false implication and had examined one witness. The DDR register was summoned for the relevant period and its copies Ex. DW1/A to Ex. DW1/D were introduced in evidence.

The trial Court convicted the accused to the sentence mentioned hereinbefore.

I have heard Ms. Vaishali Singla, legal aid counsel and the State counsel and with their assistance, have gone through the evidence.

The first and the foremost submission made on behalf of the appellant was that there are serious discrepancies in the statements of the witnesses with respect to the time they left the police station and the time of arrest of the accused. It was urged that it appears that Narinder was not present on the spot and he had not signed the different memos prepared on the spot and on one memo, the signatures are Narinder Singh while in the other he has signed it as Narinderpal Singh. It was urged that in one document his signatures are in Punjabi. It was contended that Narinder could not say whether the police party was on motor cycle or car and according to him, the police party had reached the spot at 2.40 P.M. and

according to him the accused was arrested after 4.00 P.M. and he could not even give the colour of the polythene bag and therefore, his presence on the spot is doubtful. It was urged that no information was sent to the police station nor any independent witness was called though, the checking was done on a thoroughfare. It was urged that if the official could be sent to get a weighing machine then the police could have also called an independent person. Lastly, the submission was that there is a variance in the seals which were appended as the order passed by the Magistrate would show that the seal that was used bore the impression 'DK' whereas according to the prosecution the seal appended along with seal impression 'SS' was 'PK'. The counsel also submits that the sample had been lost in this case and second sample was sent and the analysis was got done after a year.

State counsel supported the judgment and it was urged that the witness had deposed in the Court after about 2½ years and the police officials are engaged in a number of raids and they are not expected to recall minor details and it is difficult for human memory to recall colour of the bag or may be the time. It was urged that the first sample had been lost in the office of chemical examiner and an enquiry was ordered and permission was taken from the Special Court and the second sample was sent and the application moved by the investigating officer was allowed by the Court on 15.7.2015. It was urged that the sample was tested and it was found to be *charas*.

The police in this case had received secret information while they were on patrol duty. Within few minutes the accused was seen coming and the investigating officer had disclosed his identity and had apprised the accused of his right to be searched before a gazetted officer or a Magistrate.

The consent memo is Ex. P6 which bears the signature of the accused. It is not the case of the accused that his signatures were taken on blank papers. He had been apprised of his right to be searched before a gazetted officer or a Magistrate. He reposed confidence in the police party and subsequently search was carried out and contraband was recovered.

The prosecution case was supported by PW2 ASI Satbir Singh, the investigating officer and PW8 HC Narinder Pal Singh who deposed about the manner in which the recovery was effected from the appellant. Their testimonies were corroborated by PW1 ASI Parmodh Kumar, the officiating SHO, before whom the accused and the case property was produced. He categorically deposed that the sample parcels were bearing the seal impression SS and he also affixed his seals bearing impression PK. The witnesses were examined after more than two and a half years of the recovery and minor variation in the mode and manner of recovery and time of arrest of accused

It has come in the statement of PW2 ASI Satbir Singh that the accused was intercepted just after 15-20 minutes of the secret information. In such a short span, it was not possible to reduce the secret information in writing and their first effort was to make arrangements to apprehend the accused.

According to the investigating officer, they started from the police station at 1:25 p.m. and reached the place of recovery at about 2:00 p.m. The accused was apprehended at 2:05 PM. Ruqa was sent at 2:40 p.m. through PHG Ramesh Kumar, who returned to the spot at 4:00 p.m. PW8 HC Narinder Pal Singh though did not give the exact time when they had left the police station, but categorically deposed that it was prior to 2:00

p.m. and the secret information was also received prior to that time. He corroborated the investigating officer with respect to the time when ruqa was sent i.e. at 2:40 p.m. Admittedly, ruqa was sent after the accused was nabbed with the contraband. Accused had been apprehended and the arrest of the accused was effected at 4:00 p.m. Due to efflux of time, certain discrepancies like non-disclosure of description of vehicle in which the police party had travelled and the color of bag from which the contraband was recovered, as in the present case, cannot be termed as a weakness to the extent of diminishing the case of prosecution in its entirety. The statements of the official witnesses in the instant case seems to be genuine and does not suffer from any serious infirmity.

The police had made an attempt to join independent witness but no one was ready and the reasons are obvious. No one wants to get himself arrayed as a witness in police cases. We have, thus, only the statements of official witnesses. It is settled that the case of the prosecution cannot be rejected solely on the ground independent witness had not been associated when the Court finds that the case put forth by the prosecution is trustworthy. When the evidence of the official witnesses are trustworthy and credible, there is no reason not to rest the conviction on the basis of their evidence. It is the quality of evidence that matters and not the quantity. In **State (Govt. of NCT of Delhi) v. Sunil, 2001(1) RCR(Criminal) 56: (2001) 1 SCC 652**, the Hon'ble Apex Court held as follows:-

“We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust. We are aware that such a notion was lavishly entertained during British period and policemen also knew about it. Its hang over persisted during post-independent years but it is time

now to start placing at least initial trust on the actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions.”

The case of the prosecution cannot be thrown on the plea that the testimonies of official witnesses cannot be believed only on account of their status, especially when they inspire confidence and are worthy of reliance.

The case property was produced before the Magistrate and application Ex.P4 was moved, whereupon order Ex.P5 was passed. In the application, Ex.P4 it was mentioned that the parcels were bearing seal impressions SS and PK. In the initial paragraph of application, the word PK

gives the impression of DK, in the first instance, due to the extension in the curve of the alphabet P and for this reason, a typographical error crept into order Ex.P5. It was the case of the prosecution that the sample parcels were sealed with the seal SS and PK. The statements of prosecution witnesses as also the report of FSL strengthened this fact. The accused cannot derive any help from this typographical error in the Court records, especially when there was overwhelming evidence on record to prove that the sample parcels were bearing seal impressions SS and PK. The statements of the investigating officer and the SHO and PW7 SHO Sukhjinder Singh with whom the sample parcels were deposited, clearly suggest that the sample parcels, including the second sample parcel, which was sent later, were not tampered with till it reached the hands of Chemical Examiner.

The inevitable conclusion of the aforesaid discussion is that the evidence of prosecution witnesses had been correctly appreciated by the trial Court while recording conviction. There is no reason to take a different view.

The appeal is dismissed.

(ANITA CHAUDHRY)
JUDGE

March 15, 2018

Jiten

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No