

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-986-SB-2016

Date of Decision:02.02.2018

Rafeeq and others

...Appellants

Versus

State of Punjab

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms.Vaishali Singla, Advocate for the appellants.
Mr.Ayush Sarna, AAG, Punjab.

ANIL KSHETARPAL, J.

Apellants are in the appeal against the judgment, convicting the appellants under Section 15 of the Narcotic Drugs and Psychotrpic Substances Act, 1985 ('the NDPS Act' for short) and sentencing them to undergo rigorous imprisonment for a period of 10 years each and also a fine of Rs.1 lac upon each of the appellant. In default of payment of fine, the appellants would further undergo rigorous imprisonment for a period of 2 years.

The case set up by the prosecution is that on 12.5.2012, Sub Inspector Jagdish Kumar, Incharge, CIA Staff Mansa along with other police officials had set up a checking point (Naka) to check bad elements and narcotic substances near Canal Bridge of Ghaghar River on the main road of Village Bhagwanpur Hingna-Lohgarh. Jagdev Singh Panch, son of Jangir Singh, resident of Village Narinderpura, per chance reached there and started talking to Sub Inspector Jagdish Kumar. During this time, one white coloured Bolero vehicle was seen, coming from the side of Lohgarh

and on suspicion, was given signal to stop. The vehicle was having registration number MP-14-GB-0533. The vehicle appeared to be loaded with something which was covered with mattresses and two young men were found sitting upon the mattresses. On enquiry, Driver disclosed his name as Rafeeq, whereas two persons sitting on the mattresses disclosed their names as Suresh Kumar and Farooq. Jagdish Kumar, Sub Inspector, informed all the three persons that he suspects that they were carrying some contraband and he intends to conduct search. He apprised all of them of their right to get the search conducted in the presence of a Gazetted Officer or a Magistrate, who can be called at the spot or they can be taken along with the vehicle. However, the appellants expressed their desire to get the search conducted in the presence of a gazetted officer, upon which Sub Inspector Jagdish Kumar prepared a non consent memos and got them signed.

A message via wireless was given to Deputy Superintendent of Police Sardulgarh, namely Satnam Singh requesting him to come on the spot. DSP Satnam Singh had reached there and apprised all of three appellants respectively about his identity, place of posting and being gazetted officer. He also apprised all of them that police party suspects some narcotic substance in their possession and intends to conduct their personal search as well as search of their vehicle. All the three appellants reposed confidence in the DSP and expressed their desire to get themselves searched from DSP. Their consent memos were prepared and got signed.

On the directions of the DSP, Satnam Singh, Sub Inspector Jagdish Kumar got unloaded the gunny bags lying in the Bolero vehicle, concealed underneath the mattresses and checked the same. There were 25

gunny bags which upon checking were found to contain poppy husk. Sub Inspector Jagdish Kumar assigned Sr. Nos.1 to 25 to the gunny bags found. 100 gms. poppy husk from each bag was separated as samples. Residue poppy husk, in each bag, was weighed to be 30 Kg. Separate parcels of samples and residue poppy husk were prepared. Sample parcels were assigned Sr.Nos 1-A to 25-Y. All the aforesaid parcels namely sample parcels as well as residue poppy husk were sealed by Sub Inspector Jagdish Kumar with his seal bearing impressions 'JK'. Sample seal was separately prepared. Seal after use was handed over to Jagdev Singh Panch. On checking the vehicle bearing No.MP-14GB-0533, fitness certificate of the vehicle, issued by RTO Mandsoor, was recovered from the dashboard of the vehicle. All the aforesaid parcels along with vehicle and fitness certificate were taken into possession, vide separate memo. Ruqa was sent to the Police Station for registration of the case and FIR was registered. Other proceedings were conducted at the spot. Appellants were also taken into custody.

On return to the Police Station, the case property and other documents were produced before Station House Officer, Davinder Singh, Inspector, who had verified the facts and counter-sealed the case property, with his seal bearing impressions 'DS' and retained the property in his possession. On the next day, i.e. 13.5.2012, appellants were produced before the Judicial Magistrate along with sample parcels. During the investigation, samples were sent to the Chemical Examiner, Kharar and report was received that samples are of Chura Poppy husk.

Prosecution in order to prove its case, examined eight witnesses namely Inspector Davinder Singh, as PW-1, Constable Simarpreet Singh, as

PW-2, HC Kuldeep Singh, as PW-3, -- ASI Gurnam Singh, as PW-5, DSP Satnam Singh, as PW-6, Ravinder Birbal, as PW-7 and Ankit Sharma as PW-8.

In defence, accused examined Constable Balkar Singh as DW-1.

On appreciation of evidence, the Special Court held that the prosecution was successful in bringing home the prosecution case. Hence, the appellants were ordered to be convicted and sentenced.

I have heard the learned counsel for the parties at length and with their able assistance gone through the judgment passed by the Special Court as well as the record .

Learned counsel for the appellants has submitted that Jagdev Singh Panch, an independent witness, who had joined and seals were handed over to him, has not been examined. She, therefore, submitted that in the absence of any independent evidence, the case of the prosecution cannot be said to have been proved. She has further submitted that an adverse inference must be drawn and the appellants be given the benefit of doubt. She has next submitted that there is a major discrepancy with respect to place of recovery of the narcotics, because Jagdish Kumar, Sub-Inspector, in his examination-in-chief stated that the recovery took place in Village Bhagwanpur, whereas in cross-examination, he stated that recovery took place within the territorial jurisdiction of Village Ahlupur. She has also submitted that Rafeeq, one of the appellants, was only driving the vehicle and therefore, he could not be said to be in conscious possession of narcotics. She has also submitted that there was four days' delay in sending the samples to Forensic Science Laboratory, which gave ample opportunity

to the prosecution to temper with the samples.

On the other hand, learned counsel for the State of Punjab supported the judgment passed by the Special Court, Mansa, and has submitted that it was a case of huge recovery of 752 Kgs.500 grams of poppy husk which was stored in 25 bags. He further submitted that merely because an independent witness has not been examined, the case of the prosecution would not fail particularly when prosecution has led sufficient evidence to bring home the guilt of the accused. He has further submitted that the discrepancy being pointed out by the appellants are minor variations which does not go to the root of the case and are bound to happen with the passage of time. He has also submitted that Rafeeq cannot plead that he was not in the conscious possession as he was driving the vehicle. He further submitted that the appellants along with the case property and the samples were produced before the Judicial Magistrate on the next day, i.e. 13.5.2012 and thereafter samples were sent to the Forensic Science Laboratory for chemical examination.

No doubt, the independent witness Jagdev Singh, Panch, has not been examined by the prosecution. However, non examination of independent witness solely cannot be fatal to the case set up by the prosecution. It is well settled that in the event of non-examination of the independent witness, the Court has to scrutinize the evidence with more care and caution.

In the present case, the learned Special Court was conscious of this fact and scrutinize the evidence with more care and caution. This Court has also reappreciated the evidence led by the prosecution and have carefully scrutinized the arguments of the learned counsel for the appellants.

In the considered opinion of this Court, prosecution has been successful in proving its case beyond any reasonable doubt. Discrepancy pointed out by the learned counsel for the appellants with regard to place of recovery is minor. It is the case of the prosecution that they had laid a Nakabandi near Canal Bridge of Ghaghar River on the main road of Village Bhagwanpur Hingna-Lohgarh. The variation in the statement of investigating officer in the chief and cross-examination is only minor and does not create any dent in the case set up by the prosecution.

Next argument of the learned counsel for the appellants that Rafeeq was not in the conscious possession of the narcotics. Rafeeq is not claiming that he was merely a driver. He is also not claiming that some one had hired the vehicle for transportation. In the absence thereof, it cannot be said that Rafeeq was not in conscious possession of the narcotics. It has been noticed that Rafeeq and Farooq are residents of Village Baj Kheri, Tehsil and District Mandsoor, Madhya Pradesh, whereas they were caught in the territorial jurisdiction of Mansa (Punjab). In the facts of this case, this Court is not impressed with the argument of the learned counsel for the appellants that Rafeeq was not in conscious possession of the narcotics.

Last argument of the learned counsel for the appellants is that there is a delay of 4 days in forwarding the samples to the Forensic Science Laboratory. It is not the case of the appellants that the seals on the samples were found tempered or samples when received in the laboratory were not intact. In absence thereof, the samples were forwarded to the Forensic Science Laboratory and prosecution has examined Constable Simarpreet Singh as PW-2, who deposed about the safe transit and safe deposit of the sample parcels to the office of Chemical Examiner.

Learned counsel for the appellants has argued that the appellants are the first time offenders and they have suffered a lot.

The recovery from the appellants is huge and the NDPS Act is a special legislation to curb menace of narcotic drugs and prevent smuggling. The intention of the Legislature is to prevent damage being caused in the society by use of Narcotics. Hence the Courts should not be swayed with the emotions of the accused/appellants. As per the custody certificate produced by the State of Punjab, accused Rafeeq is also involved in other case.

In view of the discussion made above, this Court does not find any good ground to interfere with the judgment passed by the learned Special Court.

Appeal is dismissed.

02.02.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No