

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-1376-SB of 2005 (O&M)
Date of Decision: 25.11.2019

Ninder Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. S.S. Gill, Advocate
for the appellant.

Mr. Rakeshinder Singh Sidhu, A.A.G. Punjab.

SURINDER GUPTA, J.

This is appeal filed by the appellant against judgment of conviction and order of sentence both dated 06.08.2005 passed by Judge, Special Court, Sangrur, whereby he was convicted and sentenced to undergo rigorous imprisonment for two years and to pay a fine of ₹10000/- and in default of payment of fine to further undergo rigorous imprisonment for three month, for offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (later referred to as 'the NDPS Act').

2. Case of the prosecution, in brief, is that on 16.05.2001, ASI Sukhram Singh of Police Station Kotwali, Sangrur with his police party was coming from the electricity grid, Ubhawal road towards Sangrur City. On reaching the gate of cremation ground, they witnessed a person coming from the main gate carrying a plastic bag on his head, who on seeing the police party threw the plastic bag and ran away and was identified by one Jagdev Singh, who was standing on the gate of cremation ground and ASI Gurbhajan Singh, member of police party, as Ninder Singh. The plastic bag was checked and found containing 27 kgs. of poppy-husk. Two samples of 250 gms. each were separated

and separate parcels of samples and remaining poppy-husk were prepared and sealed with seal of investigating officer ASI Sukhram Singh bearing impression 'SS'. The case property was taken into possession. Samples were sent to Chemical Examiner and found to be that of poppy-husk. The appellant was later on arrested on 05.01.2002, when he was produced by Municipal Councilor Sajjan Ram. After completion of investigation challan against him was presented in Court.

3. On presentation of challan, copies of documents as relied upon by the prosecution were supplied to the appellant in compliance of provisions of Section 207 Cr.P.C. He was charge-sheeted for offence punishable under Section 15 of the NPDS Act to which he pleaded not guilty and claimed trial.

4. In support of its case, the prosecution examined Constable Gurtej Singh as PW-1, ASI Megh Raj as PW-2, SI Sukhram Singh as PW-3, MHC Bhupinder Singh as PW-4, ASI Gurbhajan Singh as PW-5 and Inspector Rattan Singh as PW-6.

5. After completion of prosecution evidence, statement of appellant under Section 313 Cr.P.C. was recorded in which he denied the allegations against him and pleaded his false implication.

6. Relying on the evidence produced by the prosecution, learned trial Court held the appellant guilty of offence punishable under Section 15 of the NDPS Act and sentenced him to undergo rigorous imprisonment as mentioned in para 1 above.

7. I have heard learned counsel for the appellant, learned State counsel and have perused the lower Court record with their assistance.

8. Learned counsel for the appellant has argued that as per case of prosecution, the appellant ran away from the spot after throwing the plastic bag.

The prosecution has failed to establish the identity of person, who had thrown the plastic bag. Jagdev Singh, who was allegedly present near the cremation ground and identified that person has not be examined. Sole testimony of ASI Gurbhajan Singh, identifying the appellant cannot be relied upon in the absence of any corroboration. There is five days delay in sending the samples to Chemical Examiner, which has not been explained. The appellant was picked up from his house and falsely implicated in this case.

9. Learned State counsel has argued that identity of the person, who threw the plastic bag while running away from the spot is duly established from the unrebutted testimony of ASI Gurbhajan Singh, who has stated that he knew the appellant and had identified him at the spot. No suggestion was given in his cross-examination to shatter his testimony. The appellant has not alleged any reason, motive or enmity against this witness or the prosecution witnesses for his false implication. The delay in sending the sample to Chemical Examiner is immaterial as the seal on samples was found intact when analyzed.

10. The first question raised by learned counsel for the appellant is as to whether identity of the appellant as the person, who had thrown the bag containing poppy-husk and ran away from the spot, is duly proved?

11. As per case of prosecution, the appellant was identified by one Jagdev Singh, who was standing in front of cremation ground and by ASI Gurbhajan Singh (PW-5). Jagdev Singh was cited as prosecution witness, but was given up as having been won over by the appellant. It is usually found that the independent witnesses either avoid joining the police party and even if they are cited as witness they refrain from appearing in Court for several reasons including the influence of accused, apprehension of security of their families and to avoid creating enmity with accused. PW-5 ASI Gurbhajan Singh in his cross-

examination has categorically stated that the appellant was already known to him. His statement to this effect has gone unrebutted as no suggestion was given to him in cross-examination that he was deposing falsely on this score.

12. Learned trial Court has committed no error while observing that non-examination of independent witness does not affect the case of prosecution. In this case, the appellant has not alleged any reason, motive or enmity with ASI Gurbhajan Singh (PW-5) and other prosecution witnesses for his false implication. On appraisal of evidence on file, learned trial Court has committed no error while drawing the inference that identity of the appellant as the person, who ran away from the spot after throwing the bag containing poppy-husk, is duly proved. I find no reason to differ with observation of learned trial Court on this score.

13. The second point raised by learned counsel for the appellant is about the delay of five days in sending the samples to Chemical Examiner.

14. Samples were sent to Chemical Examiner, Punjab on 21.05.2001. PW-1 Gurtej Singh in his affidavit has stated that he delivered the duly sealed parcels of samples in the office of Chemical Examiner on 22.05.2001 and during the period it remained in his possession, he had not tampered with the same. PW-3 SI Sukhram Singh has stated that he deposited the case property with MHC Bhupinder Singh with the seals intact. While appearing as PW-4 MHC Bhupinder Singh has stated that during the period the case property remained in his possession he had neither tampered with the same nor allowed anybody to do so. As per report of Chemical Examiner (Ex. P-8), seals on the samples were intact and agreed with the specimen seal when it was opened for analysis. From the above it is evident that samples remained intact till it reached the office of Chemical Examiner, as such, delay of five days in sending the samples to the

office of Chemical Examiner is not material.

15. There is no evidence on record to support submission of learned counsel for the appellant that the appellant was picked up from his house and has been falsely implicated in this case. No evidence in defence was produced in this regard. The mere suggestion to investigating officer SI Sukhram Singh that the appellant was arrested from his house without any corroborating evidence is not sufficient to prove the plea raised by the appellant.

16. As a sequel of my above discussion, I find no reason to interfere with the well reasoned judgment of learned trial Court holding the appellant guilty of offence punishable under Section 15 of the NDPS Act. However, keeping in view the quantum of recovery of poppy-husk and that the appellant was in prime of his youth (32 years of age) at the time of commission of offence, sentence of rigorous imprisonment for two years awarded to him by learned trial Court is reduced to rigorous imprisonment for one year. The sentence of fine as awarded to him is, however, kept intact.

17. The appeal filed by the appellant challenging his conviction for offence punishable under Section 15 of the NDPS Act is dismissed. However, the sentence as awarded to him is reduced from rigorous imprisonment for two years to rigorous imprisonment for one year. The sentence of fine as awarded by the trial Court is maintained.

18. Copy of this order be sent to Chief Judicial Magistrate, Sangrur to take the appellant in custody and send him to jail to undergo the sentence awarded to him and also for recovery of fine as imposed by learned trial Court.

November 25, 2019
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No