

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-544-DB-2015

Reserved on : 10.09.2019

Date of decision : 16.09.2019

Baljit Singh @ Kala

... Appellant

Versus

State of Punjab

... Respondent

***CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU***

Present: Mr.Vivek K.Thakur, Advocate
for the appellant.

Mr.H.S.Grewal, Addl.A.G. Punjab.

RAJIV SHARMA, J.

This appeal is instituted against the judgment and order dated 04.03.2015 rendered by the learned Judge, Special Court, Jalandhar, in case no.29491 of 2013, whereby appellant along with co-accused Paramjit Kaur and Baljit Singh were charged with and tried for offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “NDPS Act”). The appellant has been convicted thereunder 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 of fine, to further undergo rigorous imprisonment for a period of two years.

2. The case of the prosecution in a nutshell is that on 18.08.2012, Inspector Surinder Pal Singh along with ASI Charanjit Singh and other police officials were present in the area of Parjian road in government vehicle in connection with checking of bad elements. When the patrolling

police party reached Parjian road, Bulandpur gate, a secret information was received by Inspector/SHO Surinder Pal Singh that one Baljit Singh alias Kala son of Darshan Singh resident of Chhote Bille along with his accomplices was in possession of huge quantity of poppy husk. He was actually engaged in the business of sale of said contraband to the people. In case the raid was conducted at *dera/behak*, a huge quantity of contraband, i.e. poppy husk could be recovered. He wrote ruqa and sent it to police station for registration of a case. In the meantime, he also informed Halqa DSP namely Sh.H.S. Hundal who was requested to reach the spot. The raid was conducted in a room meant for tethering cattle in the Haveli at Dera. Police recovered 35 bags of poppy husk. He made homogeneous two samples each of 500 grams. These were converted into separate parcels. Remaining contraband was put back into the bags. 34 bags weighed 35 kgs each and one bag weighed 34 kgs. These bags were sealed. On 19.08.2012 during investigation, Investigating Officer /SHO raided Behak/Dera. Accused Darshan Singh and Paramjit Kaur were arrested. Investigation was completed. Challan was put up after completing all the codal formalities.

3. Prosecution examined a number of witnesses. The statements of accused were recorded under Section 313 Cr.P.C. They had denied the case of the prosecution. Accused had also examined four witnesses in their defence. The appellant was convicted and sentenced as noticed hereinabove. However, co-accused Darshan Singh and Paramjit Kaur were acquitted of the charges framed against them by giving them the benefit of doubt. Hence the appeal.

4. Learned counsel appearing for the appellant has vehemently argued that the prosecution has failed to prove the case against the

appellant.

5. Learned counsel appearing on behalf of the State has supported the judgment and order of the learned trial Court.

6. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

7. PW-1 Inspector Surinder Pal Singh deposed that on 18.08.2012 he was posted as SHO of Police Station Mehatpur. He along with ASI Charanjit Singh, HC Chaman Lal and Inspector Angrej Singh along with his police party were present in the area of Parjian road in government vehicle. When the police party reached Parjian road, Bulandpur Gate, he received secret information that Baljit Singh alias Kala along with his companion was in possession of huge quantity of poppy husk. He scribed ruqa Ex.P1 and handed over the same to HC Chaman Lal. In the meantime, he also informed Halqa Gazetted Officer Sh.H.S.Hundal, DSP Sub Division Nakodar. He shared information with him. He also joined one Surinder Pal Singh Ex-Sarpanch. He reached the spot along with police party. The room was searched. The police recovered 35 bags of poppy husk. He arranged for weighing material. He separated poppy husk on tarpaulin and after homogeneous mixing of the same, he had drawn two samples of 500 grams each from the recovered poppy husk. The samples were made. Remaining poppy husk came to be 34 bags of 35 kgs each and one bag of 34 kgs. All the codal formalities were completed on the spot. He deposited the case property with MHC Jiwan Kumar. He withdrew the property from MHC and produced the same before the Court of Sh.R.S. Bajwa, JMIC (duty), Nakodar. Inventory was prepared. The learned Magistrate after breaking open the seals of bulk parcels took out one representative parcel and sealed

the same with his seal impression RS and passed orders Ex.P8. He again redeposited the case property with MHC. On 19.08.2012 he raided the behak/dera from where accused Darshan Singh and Paramjit Kaur were arrested. The chemical examiner's report was Ex.PZ. In his cross-examination, he deposed that about 15 bags of the case property produced in the Court were not having any seal. Other bags were not having legible seals. He admitted that he had not taken into possession any ownership proof of the property from where the recovery was effected. He did not remember if any seal was broken but the learned Magistrate put his seal on all the bags and samples taken out in the Court. The learned Magistrate had taken out one sample out of one bag. He was not aware if Baljit Singh son of Darshan Singh remained in Uttrakhand since 06.08.2012 to 28.08.2012.

8. PW-6 Kulwant Singh ADCP (HQ) had conducted enquiry. During the enquiry, all the accused Darshan Singh, Paramjit Kaur and Baljit Singh alias Kala were found guilty in the present case. He proved enquiry report Ex.PW6/B.

9. PW-7 Paramjit Singh also deposed that during enquiry, all the accused Darshan Singh, Paramjit Kaur and Baljit Singh alias Kala were found guilty.

10. PW-8 Harmeet Singh Hundal deposed that he received telephonic call from SHO Surinder Pal Singh of Police Station Mehatpur on 18.08.2012. He shared information with him regarding accused persons. He reached the spot. Police party raided the behak /dera of Baljit Singh alias Kala. 35 bags of poppy husk were recovered. Poppy husk were poured and mixed on the tarpaulin. Two samples of 500 grams each were taken out by SHO Surinder Pal Singh. Remaining poppy husk was weighed which came

out to be 34 bags of 35 kg each and one bag of 34 kg poppy husk. He also put his seal impression HSH whereas Inspector Surinder Pal Singh also put his seal impression SS. He put his sample seal directly on form M-29 Ex.PX. The case property was taken into possession vide recovery memo Ex.P4. He remained at the spot for about four and half hours.

11. PW-9 Charanjit Singh deposed that the police party was on patrolling duty. Secret information was received that Baljit Singh alias Kala was in possession of huge quantity of poppy husk. Ruqa was scribed vide Ex.P1. It was handed over to HC Chaman Lal. Investigating Officer also informed Sh.H.S.Hundal, DSP, Sub Division Nakodar and requested him to reach the spot. He shared the information with him. Investigating Officer joined one Surinder Pal Singh Ex.Sarpanch. Police party raided the spot. Poppy husk was recovered. All the codal formalities were completed on the spot. In his cross-examination, he deposed that accused were not present at the spot when the recovery was effected at behak/dera.

12. PW-10 HC Jiwan Kumar led his evidence by filing affidavit Ex.PW10/A. In his affidavit, he averred that Inspector Surinder Pal Singh, SHO Police Station Mehatpur deposited the case property with him along with two parcels of poppy husk of 500/500 grams each and form M-29. He deposited the same in malkhana. On 19.08.2012 case property, i.e. 34 bags of poppy husk weighing 35 kg each and one bag of 34 kg. poppy husk and two parcels of 500/500 gams each were withdrawn from the malkhana for producing before the Illaqa Magistrate. These were handed over to Surinder Pal Singh. Surinder Pal Singh produced the case property on 19.08.2012 before the Illaqa Magistrate. These were examined by the learned Magistrate. He redeposited the same in Malkhana. Samples were handed

over to HC Naresh Kumar and the same were sent to the office of Chemical Examiner, Kharar for analysis vide road no.156/21 dated 21.08.2012.

13. PW-11 HC Naresh Kumar led his evidence by filing affidavit Ex.PW11/A. He averred in the affidavit Ex.PW11/A that he was handed over one parcel of poppy husk weighing 500 grams with seal impression SS, HSH along with form M-29 on 21.08.2012. He reached the office of Assistant Chemical Examiner, Kharar and deposited the same on 21.08.2012.

14. PW-12 SI Rupinder Singh deposed that he moved an application before Naib Tehsildar, Mehatpur regarding verification of ownership of house/haveli situated in the fields of village Akbarpura from where the bags of poppy husk were recovered vide Ex.PW12/A. Naib Tehsildar marked the application to Patwari /Kanungo Halqa for necessary action vide endorsement Ex.PW12/B. Patwari had given his report Ex.PW12/C. In his cross-examination, he deposed that Makhan Singh Patwari had gone to the spot for verification of ownership of house/haveli.

15. PW-13 Makhan Singh, Patwari deposed that at the spot possession and residence of Paramjit Kaur wife of Baljit Singh alias Kala was found. He had given the report Ex.PW12/A regarding ownership of house/ residence in connection with application of SH Mehatpur. As per report and verification, Paramjit Kaur wife of Baljit Singh alias Kala and her husband Baljit Singh son of Darshan Singh of village Akbarpur Kalan and Sarabjit Kaur wife of Darshan Singh and her husband Darshan Singh resident of Akbarpur Kalan were residing in that dera with their children.

16. DW-2 Dr.Mohinder Singh deposed that on 06.08.2012 he was posted in PHC Mena Jundi, PO Nakatpura, Tehsil Sitarganj, District Udham

Singh Nagar, Uttrakhand. He medically examined Baljit Singh son of Darshan Singh as outdoor patient from 06.08.2012 to 28.08.2012. His report as well as OPD register, which were duly signed by him, were Ex.D3 and D4. In the register at serial no.4 dated 06.08.2012 originally he had mentioned the name of Balbir Singh who had brought Baljit Singh but then he corrected it as Baljit Singh. In his cross-examination, he deposed that accused Baljit Singh was not known to him personally. He admitted that there was over writing on serial no. 1168 dated 13.08.2012 as well as dated 16.08.2012.

17. DW-3 Baljit Singh proved enquiry report Ex.DW3/A.

18. DW-4 Surinder Pal Singh, Ex. Sarpanch deposed that on 18.08.2012 due to some urgent work, he went to Police Station Mehatpur. In the evening, Inspector Surinder Pal Singh along with ASI Charanjit Singh told him that he has to give evidence as public witness in which 35 bags of poppy husk were recovered. His signatures were taken on blank papers and later on the same was converted into his statement. In his cross-examination, he admitted his signatures on Ex.P4.

19. The chemical examiner's report is Ex.PZ. According to which, the contents of samples were of Chura Poppy Heads.

20. PW-1 Inspector Surinder Pal Singh received secret information. Ruqa was sent to the police station. Information was also sent to DSP H.S. Hundal. 35 bags were recovered from the spot. Each bag was weighed. 34 bags were of 35 kgs each and one bag was of 34 kg. All the codal formalities were completed on the spot including seizure and sealing of samples. Form M-29 was filled up. Case property was deposited in the Malkhana. Thereafter, it was produced before Illaqa Magistrate. Illaqa

Magistrate examined the same and thereafter it was again deposited in Malkhana by PW-10 Jiwan Kumar. The case property was taken for chemical examination by PW-11 Naresh Kumar.

21. Statement of PW-1 Inspector Surinder Pal Singh has been duly corroborated by PW-8 Harmeet Singh Hundal as well as PW-9 Charanjit Singh. PW-1 Surinder Pal Singh had informed the senior officer, i.e. PW-8 DSP Harmeet Singh Hundal. He also reached the spot. PW-12 SI Rupinder Singh had moved an application before the Naib Tehsildar for verification of possession of the appellant. The application was endorsed to Patwari by Naib Tehsildar. PW-13 Makhan Singh, Patwari had prepared the report Ex.PW12/C. According to it, the appellant was in possession of property from which contraband was recovered. The appellant had taken the plea of *alibi*. He had produced DW-2 Dr.Mohinder Singh, Medical Officer. According to him, the appellant was under his treatment as outdoor patient from 06.08.2012 to 28.08.2012. We have seen the record Ex.D4. There is over writing at serial no.1160 of 4.8.2012. The name of one person was struck and name of Baljit Singh was added. Similarly there is over writing at serial no.1168 of 6.8.2012. DW-2 Dr.Mohinder Singh had admitted that there was over writing at serial no.1168 dated 13.08.2012 as well as dated 16.08.2012. The appellant though had taken the plea of *alibi* but has failed to prove the same. It is settled law that if the person takes the plea of *alibi* but fails to prove the same, his presence on the spot and area would be presumed. There is no violation of Section 42 of the NDPS Act.

22. Learned counsel for the appellant has vehemently argued that the appellant has been falsely implicated. 35 bags of poppy husk could not be planted in the house of the appellant by the police. The prosecution has

proved the case against the appellant beyond reasonable doubt.

23. Accordingly, there is no merit in the appeal and the same is dismissed.

24. However, before parting with the judgment, we would like to observe that this Court has passed mandatory directions from time to time in CRM No. 13484 of 2019 in CRA-D-917-DB of 2011, titled “Baljinder Singh Vs. State of Punjab” to curb the drug menace in the State of Punjab. The State of Punjab has taken positive steps to curb the menace.

25. The State of Punjab must have a toll free number to enable the law abiding citizens to inform the police about the presence of smugglers, peddlers, couriers, without disclosing their identity, on the analogy of the State of Haryana, within a period of two weeks from today.

26. The State of Punjab is also directed to consider the opening of de-addiction centers in the hospitals itself for proper treatment/care of drug addicts.

27. We are of the considered view that in order to wean away the youth from drugs, sports/games activities must be given top priority, at all levels, i.e. District, Sub Division, Tehsil, Block and Panchayat. The Deputy Commissioners of the Districts in the State of Punjab are requested to prepare blue prints for sports/games activities in their respective districts, by holding tournaments periodically. It shall be the responsibility of the Deputy Commissioners to ensure proper infrastructure, wherewithal and equipment for the sportsmen in their territorial jurisdiction. The State of Punjab may consider to make budgetary provisions for these purposes within a period of three months.

28. The other modus operandi adopted by the kingpins involved in

drug business is also to send the drugs by couriers. We make it clear that the Managing Director, Directors of the courier companies, owners of the firms, servants and agents of the companies and firms involved in courier business shall also be liable to be dealt with under the NDPS Act. The police shall register cases against them under various provisions read with Section 29 of the NDPS Act. We also direct that all the courier services shall use drug narcotics detection kits at the places, where the courier is booked and also at the point of delivery. It shall be open to the police / other agency to intercepts / seize the contraband if sent through courier. The police shall also scrupulously follow the safeguard provided in the Act at the time of recovery and seizure of the contraband sent through the courier.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

September 16, 2019.

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No