

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-551-SB-2018(O&M)

Date of Order: 17.07.2019

Rajiv @ Rinku

..Appellant

Versus

State of Haryana

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.K.P.S.Virk, Advocate, for the appellant.
Ms. Harpreet Kaur, DAG, Haryana.

ANIL KSHETARPAL, J.

This appeal has been filed against the judgment convicting the appellant under Sections 15 of Narcotic Drugs and Psychotropic Substances Act, 1985(hereinafter referred to as the 'NDPS Act') and sentencing him to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1,00,000/-. In default of payment of fine he shall further undergo simple imprisonment for one year.

The case set up by the prosecution as contained in Ex.P69 was to the effect that on 30.07.2014, ASI Jug Lal while being posted as In-charge of Police Post Karah Sahib, Police Station Pehowa, District Kurukshetra, received a complaint from Sewa Ram on which FIR No.282 dated 30.07.2014, under Sections 279/336 IPC was registered. He reached at the place of occurrence situated at village Ishak on Rattangarh-Kakrali Road where he found a blue coloured tractor parked bearing registration no.HR-41-F-1642 (Sonalika make) and white coloured Skoda Octavia car bearing registration no. HR-26AM-0069. It was found that the said car after

having met with an accident was found struck in the fields of one Rameshwar son of Kali Ram, resident of the village. After inspecting the place of accident, said Jug Lal, Investigating Officer, checked the car and in the boot of the car 12 white coloured plastic bags were found, out of them 11 were sealed whereas one was open. Each bag had inscription “AHAARATTA WHOLEMEAL, MFD BY M/S KASH IND ROLLER FLOOR MILL. NAWAL BALA, JAMMU-180006”. On checking open bag, poppy straw was recovered. On suspicion remaining 11 bags were also opened and poppy straw were recovered. After arranging for computerized weighing machine and on weighment each sealed bag was found containing poppy straw of 20 kgs, whereas open bag was found having 16 kgs poppy straw. Two samples of 250 gram each of poppy straw were taken from each bag and converted into parcels. He sealed the above stated sample parcels and residue parcels. He then took above stated sample parcels as well as residue parcel in possession through a separate recovery memo which was signed by the witnesses mentioned therein. The above stated car was also taken into possession. The samples seal of each recovered parcel was also separately prepared. The seal, after use and after retaining specimen seal impression, was handed over to EASI Janpal, Sr. No.189. Information was sent through constable Pawan Kumar No.756 to Police Station, Pehowa for registration of case with a request that the number of FIR be intimated and further special reports be sent to higher officers. He also intimated about the said recovery to Station House Officer, Police Station, Pehowa and started conducting investigation. Police Station, Pehowa on receipt of the information registered an FIR and special reports were sent to concerned authorities. After registration of the FIR, a copy

thereof was sent to ASI Jug Lal. He thereafter got it photographed. Statements of the witnesses were also recorded. During investigation, proceedings under Section 55 of the NDPS Act were conducted, rough site plan of the occurrence was also prepared.

On completion of the investigation at the spot, ASI Jug Lal along with his companion employees, recovered case property as well as specimen seal impression and witnesses appeared before the Station House Officer, Police Station, Pehowa. He conducted investigation under Section 55 of the NDPS Act on that day itself. The facts mentioned by ASI Jug Lal in his report along with the case property were cross checked and found correct. He sealed each parcel of the case property with his seal and kept his seal with him and also attested the case property produced before him. On conclusion of attestation, he prepared his report in this regard and directed ASI Jug Lal to deposit the case property with MHC of the said police station which was complied with. He also prepared proceedings under Section 57 of the Act and forwarded to the Deputy Superintendent of Police, Pehowa, who on receipt thereof marked it as 'C' along with his signature.

During investigation, the recovered property was produced before the concerned Area Magistrate and inventory was made. On directions of the concerned Area Magistrate case property was deposited with judicial malkhana, Kurukshetra. Sample parcels of the recovered case property with specimen seal impression were sent to Forensic Science Laboratory, Madhuban for chemical analysis. On 12.08.2014, accused Rajiv alias Rinku son of Subhash Chand, caste Khatri, resident of House No.148/10, Sirta Road, Kaithal, was arrested. After arrest, during

investigation in police custody, he made a disclosure statement and led the police to place of occurrence and on his identification demarcation memo was prepared. He also made a disclosure statement but later on retracted his earlier disclosure statement and made another disclosure statement. After completion of the investigation final report under Section 173 Cr.P.C was prepared and presented before the designated Court.

Copy of the challan was supplied to the convict-appellant Rajiv alias Rinku free of cost and after framing of the charge to which appellant pleaded not guilty, the prosecution was called upon to lead its evidence.

The prosecution has examined following witnesses:-

PW1-ASI Mool Chand (Mechanic)

PW2-Ravinder Kumar(witness of report under Section 57 of the NDPS Act)

PW3-Constable Gulshan(Witness of disclosure statement)

PW4-HC Daler Singh (Special report witness)

PW5-HC Mohinder Pal (MHC)

PW6-EASI Ranbir Singh (FIR witness)

PW7-SI Dalel Singh (witness of report u/s 55 of the NDPS Act)

PW8-ASI Jug Lal (Investigating Officer).

PW9-ASI Kamal Kumar(Investigation witness)

PW10-Inspector/SHO Chhotu Ram (witness of final report under Section 173 Cr.P.C.)

PW11-Shri Vivek Yadav, SDJM, Pehowa (Inventory report witness)

PW12-Navdeep Singh (owner of car)

PW13-ASI Janpal (recovery witness)

PW14-Constable Pawan Kumar (witness regarding deposit of parcel with FSL, Madhuban)

Apart from the oral evidence, the prosecution also produced and proved following documents:-

<i>Ex.P1</i>	<i>Mechanic Report</i>
Ex.P2	Recovery memo
Ex.P3	Insurance policy of Car No.HR-26AM-0069
Ex.P4	Car
Ex.P5	Report under Section 57 of the NDPS Act
Ex.P6	Carbon copy of report under Section 57 of the NDPS Act
Ex.P7	Disclosure statement of accused Rajiv alias Rinku
Ex.P8	Demarcation memo.
Ex.P9	Disclosure statement of accuse dRajiv alias Rinku
Ex.P10	Affidavit of Constable Mahinder Pal
Ex.P11	Copy of FIR
Ex.P12	Endorsement on rukka
Ex.P13	Recovery memo
Ex.P14	Report under section 55 of the NDPS Act
Ex.P15	Endorsement on report under Section 55 of the NDPS Act
Ex.P16 to 63	Case property, sample, impression sheet
Ex.P64 to 68	Photographs
Ex.P69	Rukka
Ex.P70	Site Plan
Ex.P71	Application under Section 52-A NDPS Act
Ex.P72 to 75	Photographs

Convict was examined under Section 313 of the Code of Criminal Procedure and incriminating circumstances/evidence was put to him, however, pleaded that he is innocent. In defence, the appellant examined following witnesses:-

DW1- Paras Soni

DW2-Sewa Ram

DW3-ASI Kamal

The defence also proved/produced the following documents:-

<i>Ex.DA</i>	<i>Attested copy of customer application form</i>
Ex.D2	Identify proof
Ex.D3	Photostat copy of FIR No.282 dated 30.07.2014

Learned special Judge convicted the appellant under Section 15

of the NDPS Act as noticed above.

This court has heard learned counsel for the parties at length and with their able assistance carefully perused the record.

Learned counsel for the appellant submitted that as per the case of the prosecution, it is Sunil Hans, who was found to be alleged owner of the car in question as per copy of the insurance policy Ex.P3 found under the seat of the driver on 02.08.2014. However, Sunil Hans was neither associated in the investigation nor he has been examined in prosecution evidence. No effort has been made by the prosecution to establish who is owner of the car in question. No effort was made by the prosecution to establish that who was the registered or actual owner of the vehicle in question by securing information from the registration authority.

According to the Investigating Officer FIR No.282 was registered on the information of Sewa Ram, who had reported a motor vehicular accident between tractor being driven by him and the car in question and as per the case of the prosecution, the Investigating Officer Jug Lal went to the spot along with Sewa Ram and Sewa Ram remained present during entire proceedings, however, it is not corroborated by Sewa Ram when appeared in evidence. The appellant was apprehended on 12.08.2014 as Sewa Ram had identified him to be alleged driver of the car, however, prosecution has neither joined Sewa Ram in investigation nor he has been examined by the prosecution. It may be noted here that Sewa Ram has been examined by the defence who has not recognized the appellant-convict as the person who was driving the car which had caused the accident in question. Even the farmer in whose field the car was found has not been associated.

The prosecution has further failed to connect the appellant-convict with the car in question. No effort has been made to know that who was the registered owner of the car in question. The prosecution has set up Navdeep Singh PW12 as owner of the car in question. He has stated that car was purchased from Kabul Singh his own uncle through affidavit. However, ownership of Kabul Singh has not been established.

While drawing attention of the court to the statement of Navdeep Singh wherein he claims that he came to know of the accident on the day occurrence took place i.e. On 30.07.2014, however, for the first time he had come to the police after a period of 39 days on 07.09.2014. The deposition of Navdeep Singh is not believable. He claims that he had purchased the car in question from his uncle Kabul Singh in 2014 and employed appellant as a driver to drive the car. However, neither any evidence of employment nor any evidence of ownership of the car has been produced except two affidavits, one by Kabul Singh and second by Navdeep Singh. He does not remember on which date Rajiv appellant took away the vehicle. He admitted that, thereafter, car was never brought back and he never moved any application to the police regarding the car having gone missing, although, he admit that he came to know when the car was caught by the police in an accident case at noon time itself on same day. The reaction of Navdeep Singh on coming to know about his car having been involved in accident is highly improbable.

Still further there are material contradictions which have been overlooked by the learned trial court. First material contradiction is that Investigating Officer PW8 ASI Jug Lal has stated that Sewa Ram had come to the police post and reported accident which resulted into registration of

FIR No.282 of 2014 and thereafter police officials along with Sewa Ram reached at the spot. However, Sewa Ram, who has appeared as DW1 has stated that he never informed the police regarding accident and it is the police who came at the spot on its own at 3.30 PM. In the statement, he has stated that he had not seen the driver of the car which had caused accident with the tractor driven by him at the time of accident. Still further, appellant was apprehended as per the case of Investigating Officer on being identified by Sewa Ram, whereas Sewa Ram does not admit this position. Prosecution has not even given suggestion to Sewa Ram when he appeared as DW1 that on his identification police has arrested the appellant.

It is the case of the prosecution that police team which was present at bus stop on 12.08.2014, Jug Lal, the Investigating Officer received information that the person alighting from the bus is habitual of poppy husk and he was the person who was driving the car on 30.07.2014 from where poppy straw was recovered. However, no evidence has been produced to prove that appellant is habitual of poppy husk.

On the other hand, learned counsel for the State has tried to defend the judgment by submitting that the appellant has committed heinous crime and therefore, he should not be acquitted. She further submitted that the prosecution has successfully linked the appellant with the poppy husk recovered.

It would not be appropriate to repeat contentions of learned counsel for the appellant in detail. However, it is apparent that prosecution has miserably failed to prove its case “what to talk of proved beyond reasonable doubt”. There are many reasons for such conclusion, however, significant are following:-

- (1) On the one hand, Investigating Officer has stated that Sewa Ram came to police station to report an accident, whereas Sewa Ram when appeared in evidence has stated that it is the Investigating Officer who had come to the village (place of occurrence) after the accident and he never went to police station.
- (2) Sewa Ram was neither associated during search of the car on 13.07.2014 when admittedly Sewa Ram was present at the spot i.e place of occurrence nor he was associated later on. Still further it is the case of the prosecution that Sewa Ram had identified appellant on 12.08.2014 when he was present along with the Investigating Officer at Bus Stand, Pehowa. However, Sewa Ram when appeared in evidence does not support the case of the prosecution. Sewa Ram when appeared as defence witness has submitted that he never identified appellant at bus stop and he has seen him for the first time in Court.
- (3) As per the case of the prosecution, the accidental car was thoroughly searched on 30.07.2014, however, no evidence of ownership of the car was found. However, on 02.08.2014, it is stated that a copy of the Insurance Policy, Ex.P3 was found by PW1, police official who mechanically inspected the car. Whereas, Jug Lal when appeared as PW8, he has stated that he recovered the Insurance policy underneath the driver's seat.

- (4) Jug Lal has stated that Navdeep Singh was joined in investigation at Pehowa Chowk, Pehowa, on 07.09.2014. However, when we read the evidence of Navdeep Singh, he has stated that police had contacted him to bring registration certificate. It is not clear how Investigating Officer came to know of Navdeep Singh as his name is not there in the Insurance Policy, Ex.P3.
- (5) The Investigating Officer never made any attempt to know who was the registered owner of the car. Sunil Hans, the alleged owner as per Ex.P3 was also not associated or joined investigation.
- (6) Statement of Navdeep Singh is really strange. He admits that his driver Rajiv had taken away the vehicle and never brought it back. Still Navdeep Singh did not move any application to the police regarding car having gone missing along with the driver for a period of 39 days, although, he claims that he came to know of the same day that his car has met with an accident. He is a young boy of 23 years old. No effort has been made to prove ownership of Kabul Singh. Kabul Singh has also not been joined investigation.

Apart therefrom, there are material contradictions in the evidence of the prosecution. Some of them have already been noticed. Investigating Officer when appeared in evidence as PW8 has stated that 11 bags containing 12 kgs poppy husk each and one open bag containing 16 kgs poppy husk were recovered. Whereas the case of the prosecution is that

11 bags containing 20 kgs of poppy husk each and one bag containing 12 kgs poppy husk were recovered. Investigating Officer has stated that appellant was interrogated at Police Station. However, when we read the statement of PW13-ASI Jan Pal Singh, he has stated that appellant was interrogated at the Bus Stand , Pehowa itself.

Learned trial court has committed material error on the face of the record to convict the appellant on the basis of presumption under Sections 35 and 54 of NDPS Act. Section 35 and 54 are extracted as under:-

35. Presumption of culpable mental state.

(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. Explanation. In this section culpable mental state includes intention, motive knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.

54. Presumption from possession of illicit articles.

In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of:-

(a) any narcotic drug or psychotropic substance or

controlled substance;

(b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;

(c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or

(d) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured, for the possession of which he fails to account satisfactorily.”

On careful reading of Section 54, it is apparent that the Act provides for a statutory presumption with regard to accused having committed an offence in case he is found in possession of narcotic drug or psychotropic substance or controlled substance. Such presumption is not available as no recovery was made from the possession of appellant. Efforts of the prosecution to link appellant with the car in question were not successful. Prosecution has utterly failed in its attempt.

From the discussion made above, it is apparent that in the present case either the case set up by the prosecution is false or the prosecution has not investigated the case properly. It appears that Investigating Officer was either not competent or he intentionally did not investigate the case to save the real culprit. Even cell phone locations of the appellant were not checked to know his location. No independent witness

was joined in the investigation.

Accordingly for the reasons stated above, the present appeal is allowed. Superintendent of Police, Kurukshetra, is called upon to examine the entire file and thereafter take a call whether any departmental action is required to be taken against Investigating Officer.

17th July, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No