

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Criminal Appeal No.S-1762 of 2019 (O&M)
Date of Decision: December 16, 2019**

Rinku @ Tinku

.....APPELLANT(s).

VERSUS

State of Haryana

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Kulvir Narwal, Advocate
for the appellant (s).

Ms. Dimple Jain, A.A.G. Haryana.

SURINDER GUPTA, J.

This is appeal against the judgment of conviction dated 02.04.2019 and order of sentence dated 12.04.2019, whereby the appellant has been convicted for the offence punishable under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short-NDPS Act) and sentenced to undergo rigorous imprisonment for six years and to pay a fine of ₹75,000/- and in default of payment of fine, to further undergo rigorous imprisonment for three months.

Case of the prosecution, in brief, is that on 21.03.2017, SI Subhash Chander of CIA Staff, Kurukshetra along with his police party was present opposite Police Post Sector-7, Kurukshetra when a secret information was received that appellant Rinku @ Tinku used to sell narcotic

and can be apprehended with narcotics in his possession. He informed other police official about secret information and sent a notice under Section 42 NDPS Act to DSP Raj Singh. A *nakabandi* was held and appellant was seen coming on his scooty and was apprehended . A white coloured plastic bag was found lying on the scooty near his feet. SI Subhash Chander apprised the appellant of his intention to search the bag and gave him option to get the same searched from a Gazetted Officer or Magistrate. He (appellant) opted for the search to be conducted before a Gazetted Officer. DSP Raj Singh was called to the spot and in his presence, search of the bag was conducted. Plastic bag was found containing 'Ganja', which on weighment came to be 15 Kg. A parcel of the bag was prepared and sealed with two seals of SI Subhash Chander bearing impression 'SC'. Two sample seals were also prepared. Thereafter, DSP Raj Singh affixed his two seals bearing impression 'RS' on the parcel, which along with scooty were taken into possession vide recovery memo Ex.P12. On sending ruqa Ex.P16 to the police station, formal FIR was registered. Thereafter, second Investigating Officer ASI Pawan Kumar reached at the spot to whom the entire case file and case property was entrusted. The appellant was formally arrested. Case property was then produced before SI Rakesh Kumar, the then SHO, Police Station Thanesar, who verified the facts from the appellant and from witnesses and affixed his two seals on the parcel of narcotic. Under the direction of SHO, case property was deposited with MHC at the police station. On the next day, case property along with appellant were produced before the Area Magistrate. Photographs of the case property Ex.P1 to P4 were taken. Learned Magistrate got separated

two representative samples of 100 grams each from the case property and affixed two seals bearing impression 'DS' on the samples, residual parcel, sample seal impression sheet and form No.29. Thereafter, entire case property and samples were handed over to ASI Pawan Kumar. Sample was sent to Forensic Science Laboratory and vide report Ex.P5, it was found to be that of '*Ganja*'. After completion of investigation, final report under Section 173 Cr.P.C. was prepared and presented before the Court.

Copies of final report and the documents relied by the prosecution were supplied to the appellant. He was charge-sheeted for the offence punishable under Section 20 of NDPS Act to which he did not plead guilty and claimed trial.

In order to prove its case, prosecution examined PW1 EHC Dalbir Singh, PW2 ASI Jagdish Chander, PW3 ASI Richhpal Singh, PW4 Constable Mukesh, PW5 Kewal Singh, PW6 Constable Sushil Kumar, PW7 Head Constable Rajesh Kumar, PW8 SI Subhash Chander First Investigating Officer, PW9 ASI Pawan Kumar Second Investigating Officer, PW10 DSP Raj Singh and PW11 P/SI Rakesh Kumar.

Entire incriminating evidence was put to the appellant while recording his statement under Section 313 Cr.P.C., which he denied and pleaded his false implication.

In defence evidence, appellant examined Raman son of Satish as DW1 and closed his evidence.

Learned counsel for the appellant has argued that the case of the prosecution is based on testimony of official witnesses only and no independent witness was joined despite secret information. As per case of

the prosecution, recovery was affected at about 8.00 p.m. on 21.03.2017. PW3 ASI Richhpal Singh, who was posted as MHC at Police Station Thanesar has stated that case property was deposited with him by ASI Pawan Kumar (second Investigating Officer) on 21.03.2017 at 6.30 pm. PW8 Subhash Chander (first Investigating Officer) has stated that he did not fill up form No.29 at the spot, while PW7 HC Rajesh Kumar, witness of recovery, PW9 ASI Pawan Kumar (second Investigating Officer) and PW10 DSP Raj Singh, in whose presence recovery was effected, have stated that form No.29 was filled up by SI Subhash Chander at the spot. He has referred to the statement of SI Subhash Chander, who has stated that *Ganja* recovered from the appellant was in the shape of dried leaves having no flower or fruit in the bag except *Ganja*. He has argued that as per definition of *Ganja* given in Section 2(iii) (b), '*Ganja*' is flowering or fruit tops of the cannabis plant. Mere recovery of dried leaves does not fall in the definition of '*Ganja*'.

Learned State counsel has argued that as per report of Forensic Science Laboratory, sample of cannabis recovered from the appellant was found to be that of '*Ganja*'. From the statement of PW8 SI Subhash Chander that "there was no flowers or fruits in the bag", it cannot be inferred that cannabis recovered were only dried leaves. The discrepancies pointed out by learned counsel for the appellant are quite minor in nature. It appears that PW3 ASI Richhpal Singh stated due to slip of tongue that case property was deposited with him at 6.30 p.m. on 21.03.2017. It is consistent case of PW7 Head Constable Rajesh Kumar, PW8 SI Subhash Chander, PW9 ASI Pawan Kumar and PW10 DSP Raj Singh that recovery

was effected at about 08.00 p.m. on 21.03.2017. In the same manner, statement of SI Subhash Chander that he did not fill up form No.29 at the spot, is also no reason to discard the case of the prosecution. Human memory has a tendency of fading with the passage of time. SI Subhash Chander PW8 has deposed in this case after about two years of the recovery and due to passage of time, this type of discrepancies are bound to occur.

Section 2 (iii) (b) of NDPS Act defines '*Ganja*' as follows:-

“(b) ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated.”

SI Subhash Chander PW8 while describing the recovery effected from the appellant, has stated as follows:-

“Ganja in the shape of dried leaves was recovered. There was no flower or fruits in the bag except ganja.”

The sample drawn from the cannabis recovered from the appellant was sent to the Forensic Science Laboratory and vide report Ex.P5, it was found to be that of '*Ganja*'. The observations about samples in the aforesaid report is as follows:-

“Observations:-

A- The tests were positive for the presence of Tetrahydrocannabinol, Cannabinol and Cannabidiol in the sample.

B- Characteristics trichomes of Ganja were present in the sample.

C- The tests were positive for the presence of Ganja in the sample.

Opinion: The sample was identified as **Ganja.**”

SI Subhash Chander PW8 has stated that *Ganja* was recovered

from the appellant, which was in the shape of dried leaves. He has further stated that there was no flower or fruit in the bag except *Ganja*. It appears that he intended to point out towards the flowers and fruits and not the flowering and fruit tops of cannabis while saying that there was nothing in the bag of appellant except *Ganja*. In view of the report of Forensic Science Laboratory, which certifies that the type of cannabis recovered from the appellant was *Ganja*, this argument of learned counsel for the appellant has no merits.

The discrepancies pointed out by learned counsel for the appellant are minor in nature. SI Subhash Chander PW8 stated that he received the secret information at about 7.00 p.m., sent notice under Section 42 of NDPS Act at about 7.05 p.m., accused was spotted at 7.20 p.m., his consent memo was prepared at about 7.35 p.m., DSP Raj Singh came to the spot at 8.00 p.m. and Second Investigating Officer came to the spot at 9.00 p.m. DSP Raj Singh has also stated that he came to the spot at around 8.00 p.m. In view of this statement of PW3 ASI Richhpal Singh that case property was deposited by ASI Pawan Kumar at about 6.30 p.m. on 21.03.2017 appears to be a slip of tongue and is not material to discard the testimony of all the prosecution witnesses.

PW8 SI Subhash Chander stated that he tried to join the independent witness after receipt of secret information but nobody was ready to join and left after expressing their inability. It is usually found that independent witness avoid joining the police party for variety of reasons.

It is a settled proposition of law that testimony of an official witness is not to be doubted or discarded merely on the ground that he

happens to be an official. A Division Bench of this Court in the case of **Ramesh Kumar vs State of Punjab, 2013 (4) RCR (Criminal) 320**, has observed that the testimony of official witnesses cannot be discarded until it is proved that they have any animus or hostility against the accused for his false implication. While discussing the question of non-joining of the independent witnesses, it was observed that they are averse to join the police and depose in favour of prosecution as they are afraid of the fact that joining the police and deposing in favour of the prosecution may expose them to serious consequences. Hon'ble Division Bench in para 21 of the judgment has observed as follows:

*“21. It was held by the Hon'ble Supreme Court of India in **Ajmer Singh v. State of Haryana, 2012(2) RCR (Criminal) 132: 2010(2) Recent Apex Judgments (R.A.J.) 13: 2010(2) JT 175**; though in cases like the case in hand, independent evidence is required, but accused cannot be acquitted merely because no independent witness produced. Hence conviction was upheld inter alia on said ground. So, the contention raised by the learned counsel for the appellant to the effect that evidence of PW-5 (HC Sham Lal) and PW-7 (ASI Jai Kishan) cannot be relied upon for want of corroboration by the evidence of independent witness, is repelled, in view of the judgment (supra).”*

In the case of **Sumit Tomar vs State of Punjab, 2013(1) SCC**

395, Hon'ble Supreme Court on the point of non-examination of

independence witness joined by the police, has observed as follows:

“In view of the above discussion, we hold that though it is desirable to examine independent witness, however, in the absence of any such witness, if the statements of police officers are reliable and when there is no animosity established against them by the accused, conviction based on their statement cannot be faulted with. On the other hand, the procedure adopted by the prosecution is acceptable and permissible, particularly, in respect of the offences under the Narcotic Drugs and Psychotropic Substances Act.”

The case of the prosecution is fully supported by testimony of PW7 Head Constable Rajesh Kumar, PW8 SI Subhash Chander, PW9 ASI Pawan Kumar and PW10 DSP Raj Singh and their testimonies are without any material contradiction and were rightly found as reliable by the learned trial Court. I find no reason to discard their testimonies for the reason that it is not supported by any independent corroboration. Moreover, appellant has not alleged any motive or enmity of these witnesses against him for his false implication.

No other point has been argued by learned counsel for the appellant.

As a sequel of my above discussion, I am of the considered opinion that learned trial Court has committed no error of law or facts while convicting the appellant for the offence punishable under Section 20 of NDPS Act. Consequently, the conviction of appellant for the offence punishable under Section 20 of NDPS Act is upheld.

The appellant is a young boy of 25 years of age (as mentioned in his custody certificate). He is not a previous convict. Learned trial Court has awarded him sentence of rigorous imprisonment for six years with fine of ₹75,000/-. I am of the considered opinion that keeping in view the antecedents of the appellant, the sentence awarded to him is on higher side. The interest of justice will be fully met if the sentence of appellant is reduced from rigorous imprisonment for six years to rigorous imprisonment for 15 months and the sentence of fine is reduced from ₹75,000/- to ₹25,000/- with default clause for non-payment of fine as intact.

Consequently, this appeal is partly accepted. Conviction of appellant for the offence punishable under Section 20 of NDPS Act is upheld. However, sentence awarded to him by the trial Court is reduced from rigorous imprisonment for six years to rigorous imprisonment for 15 months. The amount of fine is also reduced from ₹75,000/- to ₹25,000/- with default clause for non-payment of fine as intact.

Copy of this judgment be sent to Superintendent, District Prison, Kurukshetra, trial Court and Chief Judicial Magistrate, Kurukshetra for information and necessary action.

December 16, 2019
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***