

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-982-DB-2016
Reserved on : 13.03.2019
Date of decision : 19.03.2019

Angrej Singh @ Geja

... Appellant

Versus

State of Punjab

... Respondent

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

Present: Mr.M.L.Saini, Advocate
for the appellant.

Mr.S.P.S.Tinna, Addl.A.G. Punjab.

RAJIV SHARMA, J.

This appeal is instituted against the judgment and order dated 24.08.2016 rendered by the learned Judge, Special Court, Bathinda, in Case No.300 dated 11.07.2014 whereby appellant, who was charged with and tried for offence punishable under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "NDPS Act") has been convicted thereunder and sentenced to undergo rigorous imprisonment for a period of 12 years and to pay a fine of Rs.1,00,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year.

2. The case of the prosecution in a nutshell is that on 26.08.2013 ASI Paramjit Singh along with police officials was present at Badal-Miyan Road in the area of village Naruana in connection with Nakabandi. It was

03.00 P.M. In the meantime, a Maruti car bearing registration No.HR23B-5790 was intercepted. The accused tried to run away. He was apprehended. Accused disclosed his name as Angrej Singh @ Geja. In the meantime, Kuldeep Singh son of Chanan Singh, resident of Amarpura Basti, Bathinda, joined the police party. Thereafter accused Angrej Singh was apprised of the fact that search of the car was to be conducted and he had a legal right to get the search of the car conducted either before a gazetted officer or a Magistrate. However accused reposed confidence in ASI Paramjit Singh. His consent memo was prepared. From the search of car, two cans of 5 liters each containing intoxicant mixture were recovered. A sample of 100 ml each was separated from both the cans and were converted into sample parcels. Both the cans containing intoxicant mixture to the tune of 4 litres 900 ml and 3 litres 400 ml were also converted into sample parcels. These were duly sealed. Ruqa was sent to the police station for registration of FIR. Investigation was commenced. Accused was arrested. Case property was produced before the SHO. Challan was put up after receiving the report of Chemical Examiner.

3. The prosecution examined as many as four witnesses. Statement of appellant was recorded under Section 313 Cr.P.C. Appellant also examined four witnesses in support of his case. The appellant was convicted and sentenced, as noticed hereinabove. Hence this appeal.

4. Learned counsel appearing on behalf of the appellant has vehemently argued that the prosecution has failed to prove the case against the appellants.

5. Learned counsel appearing on behalf of the State has supported the prosecution case.

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

7. PW-1 ASI Paramjit Singh deposed that on 26.08.2013 he along with ASI Jagsir Singh and other police officials was going on private vehicle. At about 03.00 P.M. one Maruti car of white colour No.HR23B-5790 came from Naruana side. The driver tried to flee away. The driver was apprehended. The driver disclosed his identity. He gave an option to the accused that he had suspicion of some contraband in his possession. Search of two cans were to be conducted and he had legal right to be searched in the presence of a gazetted officer or a Magistrate. However accused reposed faith in him. Consent memo Ex.P1 was prepared. On checking of plastic cans, intoxicated mixture was recovered from both the plastic cans. One sample of 100 ml each of intoxicated mixture was separated from each plastic can and the remaining was found to be 4 litre 900 ml in the plastic can of round shape and 3 litre 400 ml intoxicated mixture was recovered from the second plastic can. All the codal formalities were completed on the spot. Form No.29 was filled up on the spot partially. Ruqa was sent through HC Hoshiar Singh. He produced the case property along with Form No.29 before the SI/SHO Amritpal Singh. He attested and verified the facts. As long as the case property remained with him, neither he tampered the same nor he allowed anybody to tamper the same. In his cross-examination he deposed that seal after use was handed over to ASI Jagsir Singh at 05.00 P.M. They had left the police station Sadar at 02.00 P.M. They stopped only at the crossing near Gurudwara Sahib for 4 to 5 minutes.

8. PW-2 Constable Dharminder Singh led his evidence by filing

his affidavit Ex.PW2/A. He had deposited the parcels in the office of Chemical Examiner, Kharar, on 30.08.2013.

9. PW-3 Inspector Amritpal Singh deposed that the case property was produced before him along with Form No.29 Ex.P4. He verified the facts. He also put his seal impression. He produced the accused along with entire case property before Illaqa Magistrate and moved inventory report Ex.PW3/A. He deposited the bulk parcel in NDPS godown and sample parcels remained with him. On 29.08.2013 he handed over the sealed sample parcels along with Form No.29 to Constable Dharaminder Singh. He deposited the same in the office of Chemical Examiner, Kharar. These were returned with some objections. He removed the objections and thereafter the same were deposited in the office of Chemical Examiner, Kharar. The reports of Chemical Examiner are Ex.P15 and Ex.P16.

10. PW-4 ASI Jagsir Singh has corroborated the statement of PW-1 ASI Paramjit Singh. He also deposed the manner in which the accused was apprehended and samples were drawn. FIR Ex.P8 was registered.

11. DW-1 HC Jasvir Singh had brought the summoned record. In his cross-examination he admitted that application moved by Gurtej Singh was filed after inquiry by DSP (R), Bathinda.

12. DW-2 Constable Tarsem Singh had brought the summoned record Ex.DW2/A, Ex.DW2/B and Ex.DW2/C.

13. DW-3 Birbal Singh deposed that statement of account from the period 01.08.2013 to 01.09.2013 of account number 65163813508 was brought by him. This was in the name of Angrej Singh. He also produced the attested copy of record regarding ATM issued in the name of Angrej

Singh. On 26.08.2013 as per record, Rs.10,000/- was withdrawn from the aforesaid account by using the aforesaid ATM on four occasions from the ATM located in State Bank of Patiala ATM, Grain Market, Bathinda. In his cross-examination, he deposed that ATM holder had not withdrawn the amount in his presence.

14. DW-4 Gurtej Singh deposed that on 26.08.2013 he along with family and accused were present in their house at village Teona. At about 07.30/08.00 A.M., police party came to their house. On seeing the police party, Bhola Singh, Ranjit Singh, Kashmir Singh Panch and other villagers came to their house. Angrej Singh was taken away by the police at about 09.00 A.M. Police took away one car, motorcycle, two mobile phones, ATM cards and Rs.50,000/- in cash. ATM was misused by the police and forty/fifty thousand rupees was withdrawn by the police. In his cross-examination, he admitted that the appellant was his elder brother.

15. The prosecution has proved the case against the appellant beyond reasonable doubt. He was apprehended. He was apprised of his legal right to be searched before a gazetted officer or a Magistrate. He reposed faith in PW-1 ASI Paramjit Singh. All the codal formalities were completed on the spot. Form No.29 was also filled up. The case property was produced before PW-3 Inspector Amritpal Singh. He sealed the same and produced before the Illaqa Magistrate. The case property was sent to the Chemical Examiner. According to Chemical Examiner's reports Ex.P15 and Ex.P16, samples contained Chlorpheniramine Maleate & Codeine Phosphate.

16. Learned counsel for the appellant has argued that there is delay in sending the samples. However the fact of the matter is that samples

reached in the office of Chemical Examiner safe and sound. PW-1 ASI Paramjit Singh has also deposed that samples were in safe custody. He did not tamper the same nor he allowed anybody to tamper with the same. Statements made by the official witnesses inspire confidence. Statements made by the police officials can be relied upon if these inspire confidence. The appellant has not led any evidence how the police had withdrawn the amount from his ATM account. We can take judicial notice that in every ATM, CCTV cameras are installed. The appellant could get the CCTV footage which he failed to do.

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

(RAJIV SHARMA)
JUDGE

(KULDIP SINGH)
JUDGE

March 19, 2019.
Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No