

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

CRA-S-1657-SB-2004
Date of decision:-9.1.2020

Kesar Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Ms.Sushma Verma, Advocate
for the appellant.

Rana Harjasdeep Singh, DAG, Punjab.

H.S. MADAAN, J.

This appeal has been preferred against judgment dated 5.8.2004 passed by Judge, Special Court, Patiala vide which accused was convicted for offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**') and sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹2,500/- and in default thereof to further undergo rigorous imprisonment for three months.

The accused - convict – Kesar Singh, who is appellant before this Court prays, that the appeal be accepted, the impugned judgment of

his conviction and sentence be set aside and he be acquitted of the charge framed against him.

Briefly summed up, the prosecution story is that on 7.9.2001, a police party from Police Station Patran headed by ASI Kuljit Singh was present near *Smadh* of *Peer Baba* in the area of village Deogarh; an independent witness, namely, Punjab Singh had also been associated with that police party; accused Kesar Singh carrying a gunny bag on his head was spotted coming, who on seeing the police party turned towards his left hand side but he was apprehended on the basis of suspicion; the bag being carried by the accused on his head was searched as per law and it was found to contain poppy-husk; two samples of 250 gms. each were drawn therefrom and remaining poppy-husk came to be weighing 29 ½ kgs.; the samples and the bag containing remaining poppy husk were converted into parcels, sealed with the seal of ASI Kuljit Singh having inscription 'KS' and those were taken into possession vide recovery memo. Ruqa was sent to the police station on the basis of which formal FIR was recorded. The case property was taken into possession. Accused was formally arrested in this case. The site plan of the place of recovery was prepared. Statements of witnesses were recorded. On return to the police station, the case property, PWs and accused were produced before SHO Amarjit Singh, who after verifying factum of recovery put his own seal having impressions 'AS' on the case property and sample seal chit Ex.P1. On the next day, the case property was produced before the Illaqa Magistrate. The sample was sent to the Chemical Examiner from where report Ex.PK was received and it was of Churra poppy heads.

After completion of investigation and on receipt of report of Chemical Examiner, challan against the accused was presented.

On presentation of challan in the Court of Judge, Special Court, Patiala, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C.

Learned Judge, Special Court, Patiala finding that charge for an offence under Section 15 of the Act was disclosed against the accused, charge-sheeted the accused for the said offence, to which, the accused pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

To bring home guilt to the accused, the prosecution examined as many as five witnesses, namely, PW1 ASI Kuljit Singh, PW2 SI Amarjit Singh, PW3 HC Gurmit Singh, PW4 Constable Harbans Singh and PW5 ASI Nirmal Singh.

Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to him but the accused denied the allegations contending that he is innocent and had been falsely involved in this case.

During the course of defence evidence, accused examined Constable Bhola Singh as DW1 and Lakhwinder Singh as DW2.

With that the defence evidence got concluded.

After hearing arguments, learned Judge, Special Court, Patiala convicted and sentenced the accused as mentioned above, which left him aggrieved and he has filed the present appeal.

I have heard learned counsel for the appellant-accused-

convict and learned Deputy Advocate General for the State of Punjab, besides going through the record.

In this case the prosecution by leading oral and documentary evidence has successfully proved its charge against the accused. Though learned counsel for the appellant has raised certain contentions but those do not effect the veracity of the prosecution story.

The first contention put forward by learned counsel for the appellant was that no independent witness had been examined, therefore, the prosecution story becomes doubtful.

However, I do not find any merit in the contention. As per the prosecution story, Punjab Singh PW was associated with the police party, which had apprehended the accused and got the recovery effected from him. There is nothing on record to show that the Investigating Officer or other witness including witnesses of recovery had any previous enmity with the accused prompted by which they might have come forward to depose falsely against the accused. The statements of official witnesses are to be treated at par with the independent witness unless some motive for false implication or false deposition is found to be there. Therefore, non-examination of independent witness does not have any effect.

Another argument advanced by learned counsel for the appellant was that there is no entry in register No.19 with regard to taking the case property to the Court on 8.9.2001, therefore, casting a doubt over the truthfulness of the prosecution story.

However, I do not find this small omission to be such so as to

discard the prosecution story for that reason otherwise there is overwhelming evidence on the file to show the involvement of the accused in the crime and he having been found to be in conscious possession of 30 kgs of the poppy-husk.

Learned counsel for the appellant has further contended that there are certain contradictions between the statements of the recovery witnesses with regard to who had brought the weight and scales etc.

Again, I do not find much merit in this contention. Forgetfulness is one of the basic human traits. With the passage of time, the memory fades and sometimes it is difficult to recapitulate the exact details of an event, which had happened earlier. All these points have been dealt at length by the trial Court and I do not see any reason to disagree with such Court on any point.

The judgment passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. The accused has been sentenced to rigorous imprisonment for one year only. The trial Court has been very lenient with the accused. No further reduction in the sentence is found to be desirable keeping in view the quantum of recovery effected from the accused. There is no illegality or infirmity in the judgment, as such, the same is upheld.

The appeal is found to be without merit, hence it stands dismissed.

Appellant – Kesar Singh is stated to be on bail granted to him by this Court while suspending his sentence. His bail is cancelled. Chief

Judicial Magistrate, Patiala is directed to issue arrest warrant to get him arrested so as to make him undergo the remaining sentence.

9.1.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes