

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

336

Criminal Appeal-S-1652-SB of 2005

Date of Decision: March 17, 2020.

Kailo

.....Appellant

versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR.JUSTICE VIVEK PURI.

Present: Mr.Manish Singh, Advocate, for the appellant.
Ms.Sakshi Bakshi, AAG, Punjab.

-. -

Vivek Puri, J.

[1] The present appeal has been preferred against the judgment of conviction and order of sentence dated 05.09.2005 passed by the learned Judge, Special Court, Sangrur, vide which the appellant has been convicted under Section 15 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act') and sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.25,000/-, in default whereof to further undergo rigorous imprisonment for a period of one year. It was further directed that the period of detention already undergone by the appellant during the course of trial, shall be set-off against the substantive sentence imposed upon her.

[12] The brief facts of the instant case are to the effect that on 06.09.2004, SI Jagjit Singh alongwith ASI Darshan Singh and fellow police officials were patrolling in a Government vehicle bearing registration No.PB-13-L-7209 and were present near the power house on the bridge of canal.

Binder Singh son of Bhagwant Singh met them and he was joined in the

police party. At about 6.00 p.m., the police party reached near the bridge of the canal minor in the area of village Uppali and the appellant was spotted near the edge of the bridge having two heavy bags with open mouth and a plastic tumbler of one litre capacity lying near her. On seeing the police party, the appellant tried to slip away and with the striking of her legs, both the bags spilled on the ground. The vehicle was stopped and with the help of LHC Sukhwant Kaur, the appellant was apprehended and her identity was verified. The bags were checked and the same were found to be containing poppy husk. Serial No.1 & 2 was marked on both the bags. Two samples of 250 grams each were separated from each bag. In each bag, the remaining poppy husk weighed 24 Kgs. 500 grams including the plastic bags. All the four samples and bulk parcels were sealed with the seal bearing impression 'JS'. Specimen seal was prepared and seal after use was handed over to ASI Darshan Singh. The incriminating articles were taken into possession vide separate recovery memo. Ruqa was recorded and dispatched to the police station, on the basis whereof the formal FIR was registered. Personal search of the appellant was got conducted through LHC Sukhwant Kaur. On reaching the police station, the appellant, witnesses and the case property were produced before Inspector Harjinder Pal Singh, Officer Incharge of the Police Station, who verified the facts of the case and put his counter seal bearing impression 'HPS' on the sample parcels and the specimen seal.

[3] On completion of the investigation, challan was presented in the Court. A prima-facie case under Section 15 of the Act was made out to which the appellant pleaded not guilty and claimed trial.

[4] In support of its allegations, the prosecution has examined as

many as five witnesses, namely, PW-1 SI Jagjit Singh, who had conducted the investigation of the case, PW-2 ASI Darshan Singh, who was the witness of recovery, PW-3 ASI Lachhman Dass, who partially conducted the investigation of the case, PW-4 Inspector Harjinder Pal Singh, who was Station House Officer of Police Station Kotwali Sangrur at the relevant time and PW-5 CII Gurtej Singh, who took the sample parcels to the office of the Chemical Examiner. The incriminating articles were taken into possession vide recovery memo exhibit P-1. Ruqa exhibit P-3 was recorded, on the basis where of the FIR exhibit P-4 was registered. Personal search of the appellant was got conducted vide personal search memo exhibit P-5. Her arrest was effected and grounds of arrest exhibit P-6 were served upon her. Exhibit P-7 is the site plan depicting the place of recovery. Exhibit P-13 & P-14 are the affidavits of Constable Gurtej Singh PW-5 and MHC Kartar Singh, respectively, with regard to safe custody of the case property. As per the report of the Chemical Examiner Exhibit P-8, the contents of the sample parcels were that of poppy head.

[5] In her statement under Section 313 Cr.P.C., the appellant has denied the correctness of the incriminating evidence appearing against her and pleaded her false implication. The defence version put forth is to the effect that she was brought from her house on 05.09.2004 and after her illegal confinement, this false case has been planted upon her. The signatures of Lady Constable were taken in the police line on blank papers and that of the private witness were also obtained on blank papers after calling him in the police station. However, no defence evidence was led by the appellant.

[6] Vide the impugned judgment of conviction and order of

sentence, the appellant has been convicted and sentenced as aforesaid.

[7] Aggrieved by the aforesaid judgment, the present appeal has been preferred.

[8] I have heard learned counsel for the parties and perused the record.

[9] While assailing the judgment of the learned trial Court, it has been contended by learned counsel for the appellant that the entire case of the prosecution hinges upon the deposition of official witnesses only. Binder Singh, a public witness, was joined at the time of recovery but he was not examined at the time of trial. Furthermore, the mandatory provisions of Section 50 of the Act have not been complied with as the appellant was not apprised of her legal right to get the search conducted in the presence of a gazetted officer or a Magistrate. The Lady Constable who was associated during the course of investigation, has not been examined during trial. There is a delay of seven days in sending the sample parcels to the office of the Chemical Examiner. Moreover, there is lack of material on record to establish that the appellant was in conscious possession of the contraband and there are discrepancies in the statements of the witnesses which renders the case of the prosecution to be doubtful and consequently, the appellant is entitled to acquittal.

[10] On the contrary, while supporting the judgment of the learned trial Court, it has been argued by the learned State counsel that there cannot be any bar to base the conviction on the statements of the official witnesses only. Merely because Binder Singh, a public witness, was joined at the time of recovery and has been given up having been won over by the appellant, it cannot be termed to be a circumstance to disbelieve the version of the

prosecution. The provisions of Section 50 of the Act are not attracted in the instant case. Non-examination of the Lady Constable does not render the version of the prosecution to be doubtful. There is sufficient material on record to establish that the appellant was in conscious possession of the contraband. The discrepancies are inconsequential and no reason is made out to interfere in the well reasoned judgment passed by the learned trial Court.

[11] At the time of recovery, Binder Singh, a public witness, was joined but during the course of trial, he was given up being won over by the accused-appellant. The entire case of the prosecution hinges upon the deposition of official witnesses only. The deposition of the official witnesses cannot be viewed with dis-trust or suspicion merely because of their official status, unless and until there are cogent grounds therefor. There is no provision of law which requires the presence of an independent witness at the time of search of the suspect. The case of the prosecution cannot be discarded merely on the ground that no independent witness was joined at the time of recovery and if joined, has not been examined during the course of trial. Furthermore, the recovery has been effected from the conscious possession of the appellant, her arrest was effected at the spot and non-examination of independent witness on the score that he has been won over does not tend to raise any doubt in the version of the prosecution. By no stretch of imagination, it can be said that the case of the prosecution is liable to be disbelieved solely on the score that it hinges upon the deposition of official witnesses only. At best, it can be a circumstance, which will cast stringent duty upon the Court to scrutinize the evidence with more care and caution. In In Surinder Kumar versus State of Punjab, 2020(1) RCR

(Criminal) 576, (Supreme Court), it has been held as follows:-

“14. Further, it is contended by learned senior counsel appearing for the appellant that no independent witness was examined, despite the fact they were available. In this regard, it is to be noticed from the deposition of Devi Lal, Head Constable (PW-1), during the course of cross-examination, has stated that efforts were made to join independent witnesses, but none were available. The mere fact that the case of the prosecution is based on the evidence of official witnesses, does not mean that same should not be believed.

15. The judgment in the case of *Jarnail Singh v. State of Punjab*, (2011) 3 SCC 521: 2011(1) R.C.R. (Criminal) 925, relied on by the counsel for the respondent-State also supports the case of the prosecution. In the aforesaid judgment, this Court has held that merely because prosecution did not examine any independent witness, would not necessarily lead to conclusion that accused was falsely implicated. The evidence of official witnesses cannot be distrusted and disbelieved, merely on account of their official status. In the case of *State, Govt. of NCT of Delhi v. Sunil & Anr.*, (2001) 1 SCC 652: 2001(1) R.C.R.(Criminal) 56, it was held as under:-

“It is an archaic notion that actions of the Police Officer, should be approached with initial distrust. It is time now to start placing at least initial trust on the actions and the documents made by the Police. At any rate, the Courts cannot start with the presumption that the police records are untrustworthy. As a presumption of law, the presumption would be the other way round. The official acts of the Police have been regularly performed is a wise principle of presumption and recognized even by the Legislature”.

Kaur cannot be termed to be a circumstance to render the case of the prosecution to be doubtful. The contraband has been recovered by PW-1 SI Jagjit Singh in the presence of PW-2 ASI Darshan Singh. Lady Constable Sukhwant Kaur is also witness to the recovery. Personal search of the appellant was got conducted through her. It is not the quantity but quality of evidence that has to be looked into to settle the controversy. In the instant case, two witnesses of the recovery and the proceedings conducted at the spot, have been examined by the prosecution and non-examination of Lady Constable Sukhwant Kaur does not cast any dent in the genuineness of version of the prosecution.

[13] It is significant to note that it is a case of chance recovery. The police party was on routine patrol duty, when the appellant was spotted alongwith two bags containing poppy husk. The mandatory provisions of Section 50 of the Act are confined to personal search only and non-compliance of the said provision will not in any manner vitiate the recovery in the instant case. In this regard, reliance can be placed upon the judgment of the Supreme Court of India in **State of Punjab versus Baljinder Singh and another, 2020(1) (Criminal) 58 (SC).** wherein it has been laid down as following:-

“As regards applicability of the requirements under Section 50 of the Act are concerned, it is well settled that the mandate of Section 50 of the Act is confined to “personal search” and not to search of a vehicle or a container or premises.”

of seven days in sending the sample parcels to the office of Chemical Examiner which is fatal to the prosecution case. It may be mentioned here that the delay in sending the sample parcels to the office of Chemical Examiner will render the case of the prosecution to be doubtful in the event the material on record indicates that the case property was tampered with or any prejudice has been caused to the appellant. In this regard, reference can be made to a decision of the Supreme Court of India in Hardip Singh versus State of Punjab, 2008(4) R.C.R. (Criminal) 97, wherein it has been held that the delay of 40 days in sending the sample parcels was inconsequential as it had not caused any prejudice to the accused. Moreover, in a case reported as Jarnail Singh v. State of Punjab, (2011) 3 SCC 521, there was 12 days delay in sending the samples of narcotic substance for chemical examination, it was held that mere delay in sending the sample parcels for chemical examination would not be a sufficient ground to conclude that the sample was tampered with.

[15] In the case in hand, there is sufficient and reliable material to indicate that the sample was not tampered with at any point of time. Affidavit exhibit P-14 of MHC Kashmir Singh has been tendered in evidence with no objection of the appellant. Furthermore, all the witnesses who had handled the case property testified to the effect that the same was not tampered with during the time it remained in their custody. On the following day of recovery, the case property was also produced before the Court of learned Chief Judicial Magistrate and a perusal of the order dated 07.09.2004 indicates that the seals on all the parcels were found intact. Even report of the Chemical Examiner exhibit P-8 indicates that the seals on the samples were intact and agreed with the specimen seal. In these

circumstances, it cannot be said that the case property was tampered with at any point of time and no prejudice has occurred to the appellant on account of delay of seven days in sending the sample parcels to the office of Chemical Examiner.

[16] Much emphasis has been laid by learned counsel for the appellant on the aspect that there is lack of sufficient material to indicate that the appellant was in conscious possession of the contraband. The appellant was found near the bags and on seeing the police party, she tried to slip away. In this regard, reference can be made to the decision of the Supreme Court in Madan Lal and another versus State of Himachal Pradesh, 2003 (4) RCR (Criminal 100 (SC)), wherein it has been laid down as following:-

“Once possession is established, the person who claims that it was not a conscious possession, has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles.”

[17] In the instant case, on seeing the police party, the appellant had tried to slip away. Her legs struck with the bags and poppy husk spilled out. It implies that the appellant was conscious of the fact that poppy husk was being carried in the bags. Furthermore, there is nothing on record to suggest that there was any other person present at the place of recovery.

Consequently, it has to be assumed that the appellant was in conscious

possession of the bags and was aware of the contents of the bags. Moreover, the appellant has put-forth a case of total denial. In her statement under Section 313 Cr.P.C., she has denied the fact of recovery of incriminating articles from her possession. It is not the case of the appellant that she was innocently present near the bags without having the knowledge about the contraband. No ill-will, bias or animosity is made out against the appellant by the police officials and no reason is made out for her false implication. The material on record proves and establishes the fact that the appellant was found in conscious possession of two bags containing the contraband.

[18] Learned counsel for the appellant has pointed out discrepancies appearing in the statements of the witnesses. PW-1 SI Jagjit Singh has given the time of arrest of the appellant as 6.00 p.m. and leaving the spot as 9.00 p.m. He has also deposed that the writing work was done while sitting in the jeep. On the contrary, PW-2 ASI Darshan Singh has given the time of arrest of the appellant as 8.30 p.m., and leaving the spot as 11.00 p.m. He has further deposed that the writing work was done while sitting on the pavement under the head light of the vehicle. The discrepancies are inconsequential and do not in any manner render the case of the prosecution to be doubtful. A few minor discrepancies bound to appear in the statements of the witnesses due to lapse of time. A person is not expected to remember even minute facts with mathematical certainty after a lapse of time. Moreover, the discrepancies, as pointed out, are inconsequential and does not tend to falsify the version of the prosecution.

[19] In the instant case, the recovery has been effected by PW-1 SI Jagjit Singh in the presence of PW-2 ASI Darshan Singh. Both these

witnesses have given a detailed and satisfactory count with regard to recovery and sequence of events leading to the recovery of incriminating articles from the possession of the appellant. No ill-will, bias or animosity is made out against the appellant by the police officials and no reason is made out for her false implication. All witnesses to the recovery have deposed in a fairly satisfactory manner with regard to all the material aspects of the case. Their deposition inspires confidence and forms valid ground for founding the conviction of the appellant. No reason is made out for false implication of the appellant. The prosecution has successfully proved and established the guilt of the appellant beyond the shadow of any reasonable doubt. The trial Court has recorded the findings of conviction on the basis of reliable and satisfactory evidence establishing the guilt of the appellant beyond the shadow of any reasonable doubt. The judgment of conviction, as recorded by the learned trial Court is on the basis of satisfactory and reliable evidence and the same does not suffer from any illegality or irregularity which may call for any interference by this Court. As such, the findings of conviction, as recorded by the trial Court, are affirmed.

[20] With regard to quantum of sentence, it may be mentioned here that two bags containing contraband weighing 50 Kgs. (including weight of the bag) were recovered from the appellant and as such the trial Court came to the conclusion that quantity of the contraband recovered falls in the category of less than commercial quantity and consequently, the aforesaid sentence has been imposed on her. However, the order with regard to sentence passed by the learned trial Court indicates that at that point of time, the appellant was old lady aged about 70 years. The recovery effected as back as in the year 2004. The quantity of the contraband recovered falls in

the category of less than commercial category. Keeping in view the entire circumstances of the case, some more leniency can be afforded to the appellant in this case. Accordingly, the sentence imposed upon her is reduced to rigorous imprisonment for a period of three years with a fine of Rs.5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months. However, the period of detention already undergone by the appellant shall be set off towards substantive sentence of imprisonment imposed upon her.

[21] With the aforesaid partial modification in the quantum of sentence, the appeal being devoid of merits is dismissed.

[22] The appellant is on bail and necessary steps be initiated for effecting her re-arrest so that she may undergo the sentence imposed upon her

.

March 17, 2020

mohinder

(VIVEK PURI)

JUDGE

Whether speaking/reasoned

:

Yes

Whether Reportable

:

Yes