

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

213

Criminal Appeal-S-4622-SB of 2018(O&M)

Date of Decision: February 14, 2020.

Gaurav

.....Appellant

versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR.JUSTICE VIVEK PURI.

Present: Mr.D.S.Virk, Advocate, for the appellant.

Mr.Parveen Aggarwal, DAG, Haryana.

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Vivek Puri, J.

[1] The present appeal has been preferred against the judgment of conviction and order of sentence dated 11.10.2018 passed by the learned Special Judge, Kaithal, vide which the appellant has been convicted for having committed the offence punishable under Section 21(b) read with Section 31 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act') and sentenced to undergo rigorous imprisonment for a period of three years and and nine months and to pay a fine of Rs.60,000/-, in default whereof to further undergo rigorous imprisonment for a period of six months.

[2] Briefly, the case as put-forth by the prosecution is to the effect that on 20.09.2016, the police party headed by ASI Krishan Kumar and consisting of ASI Rajinder Singh and fellow police officials were present in a government vehicle in front of Harsh Punjabi Dhaba on Rajound-Assandh

Road in the area of village Rajound. A secret information was received to

the effect that the appellant is coming towards Assandh on a motorcycle make Splender Plus Hero Honda bearing registration No.HR11D-0438 and is carrying illicit weapon with him. Accordingly, the police officials laid the barricade on Assandh Rajound Road. The appellant was apprehended; his search was conducted and on his search, it was found that he was carrying smack in a poethene bag in the right pocket of the jeans worn by him. On weighing the smack, it was found to be 16 grams which was converted into a parcel and sealed with the seal impression 'KK'. The incriminating articles were taken into possession vide a separate recovery memo. The further investigation was carried by ASI Joginder Singh. On 21.9.2016, the case property and the appellant was produced in the Court of learned Judicial Magistrate, 1st Class, Kaithal, where two samples of 3 grams each were drawn from the case property by the learned Judicial Magistrate, 1st Class. The case property and the samples were sealed with the seal impression 'B'.

[3] On completion of investigation and presentation of challan, *prima-facie* a case under Section 21(b) of the Act was made out against the appellant. Charge was accordingly framed to which the appellant pleaded not guilty and claimed trial.

[4] During the course of its evidence, the prosecution has examined as many as 11 witnesses, namely, PW-1 HC Rajesh Kumar; PW-2 Constable Krishan Kumar; PW-3 ASI Kashmir Singh; PW-4 Bijender Singh; PW-5 Inspector Mahabir Singh who was the Station House Officer of police station Rajound; PW-6 SI Ram Kumar; PW-7 HC Ram Niwas; PW-8 Moharir Head Constable Amit Kumar; PW-9 ASI Krishan Kumar; PW-10 ASI Joginder Singh and PW-11 Podhi.

[5] Statement of the appellant under Section 313 Cr.P.C. was recorded but no defence evidence has been led by him.

[6] Vide the impugned judgment and order the appellant was convicted and sentenced as mentioned in para No.1 of this judgment.

[7] Aggrieved by the aforesaid judgment of conviction and order of sentence, the instant appeal has been preferred by the appellant.

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

[9] The case of the prosecution primarily hinges upon the deposition of PW-9 ASI Krishan Kumar who apprehended the appellant on the basis of a secret information and recovery of incriminating articles was effected in the presence of PW-1 HC Rajesh Kumar. PW-10 ASI Joingder Singh had conducted the further investigation of the case. The case property was produced before PW-5 Inspector Mahabir Singh who was the Station House Officer of Police Station Rajound, who had verified the facts of the case. PW-2 Constable Krishan Kumar has registered the FIR. The case property was retained in the malkhana by PW-8 Moharir Head Constable Amit Kumar. PW-3 ASI Kashmir Singh had carried the sample parcel to FSL, Madhuban. PW-7 Head Constable Ram Niwas has taken the photographs of the case property. PW-4 Bijender Singh and PW11 Podhi have been examined to establish the ownership of the motorcycle. PW-6 SI Ram Kumar has presented the challan on completion of investigation.

[10] In the statement under Section 313 Cr.P.C., the appellant has denied the correctness of incriminating evidence appearing against him and has denied the fact of recovery of incriminating articles from his possession.

In his defence, the appellant has pleaded that he has been falsely implicated

in the case on account of a dispute with his uncle. However, no defence evidence has been led by the appellant.

[11] Assailing the judgment of conviction passed by the learned trial Court, it has been primarily argued that the recovery of incriminating articles has been effected at a Dabha but no public witness has been joined at the time of recovery. The mandatory provisions of Section 50 of the Act have not been complied with and that there are discrepancies in the statements of the witnesses.

[12] 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 deposition of the official witnesses only. The link evidence in the instant case is complete and the discrepancies are inconsequential in nature. The provisions of Section 50 of the Act will come in the play in the event there was specific information that narcotic or psychotropic substance was with the appellant. The discrepancies pointed out are inconsequential and do not in any manner effect the genuineness and veracity of the prosecution version against the appellant.

[13] It is no doubt true that no public witness was joined at the time of recovery but it can not be termed to be a circumstance to discard the genuineness of the version of the prosecution. The case of the prosecution hinges upon the deposition of the official witnesses only. The deposition of official witnesses cannot be viewed with distrust 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 independent witness at the time of search of a suspect and the recovery proceedings cannot be termed to be unreliable merely on the score that no

independent witness was opted to be joined at the time of recovery. Furthermore, the testimony of the police officials has to be considered in the same manner as that of any other witness and there is no principle of law that without corroboration of independent witness their testimony cannot be relied upon.

[14] In the instant case, secret information was to the effect that the appellant was carrying some illegal weapon with him. There was no information to the effect that the appellant was carrying narcotic substance with him. Consequently, it was a case of chance recovery and in such circumstances, the provisions of Section 50 of the Act do not come into play.

[15] The discrepancy pointed out is to the effect that PW-1 HC Rajesh Kumar has deposed to the effect that writing work was done by putting the papers on the bonnet of the official vehicle, whereas PW-9 ASI Krishan Kumar has deposed to the effect that writing work was done while putting the papers on the table and sitting on the chair. The discrepancy as appearing in the statements of the witnesses is inconsequential which is bound to appear in the statements of the witnesses due to lapse of time. Moreover, it cannot be expected from the witnesses to remember even the minute facts with mathematical certainty after a lapse of time. Consequently, the discrepancy pointed out does not in any manner effect the genuineness of the version as put-forth by the prosecution.

[16] In the case in hand, the recovery has been effected by PW-9 ASI Krishan Kumar in the presence of PW-1 Rajesh Kumar. The witnesses to the recovery have given a fairly satisfactory count with regard to the sequence of events leading to the recovery of incriminating articles from the

possession of the appellant. Once the material fact of recovery of incriminating articles from the conscious possession of the appellant is proved and established by satisfactory and reliable evidence, the inconsequential infirmities and unimportant flaws in the case of prosecution tend to pale into insignificance.

[17] In this set of circumstance, the prosecution has successfully proved and established 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, findings of conviction, as recorded by the trial Court, are affirmed.

[18] With regard to quantum of sentence, the learned trial Court has observed that the appellant was a previous convict and liable for enhanced punishment as per the provisions of Section 31 of the Act. It has been pointed out that the appellant was convicted in a case arising out of FIR No.29 dated 03.03.2016, police station Rajound, District Kaithal, for the commission of offence punishable under Section 21 of the Act, vide judgment dated 21.09.2018 and sentenced vide order dated 25.09.2018 to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.10,000/-, in default whereof to further undergo rigorous imprisonment for a period of four months. A perusal of the said judgment exhibit P-18 indicates that it was a case of recovery of 12 grams smack. Furthermore, the conviction was recorded subsequent to the registration of the present FIR. Moreover, the sentence has to be commensurate with the guilt of the appellant. It appears that the sentence imposed by the learned trial Court is

on the higher side. In these circumstances, the substantive sentence of imprisonment of three years and nine months imposed upon the appellant is reduced to rigorous imprisonment for a period of two years and to pay a fine of Rs.10,000/-, in default whereof, to further undergo rigorous imprisonment for a period of four months.

[19] With the aforesaid partial modification with regard to quantum of sentence, the appeal being devoid of any merit is dismissed.

February 14, 2020

mohinder

(VIVEK PURI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No