

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

CRA-S-1895-SB-2005(O&M)

Date of decision:-16.3.2020

Baggar Singh

...Appellant

Versus

State of Haryana

...Respondent

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

Present: Mr.Siddharth Gupta, Advocate
for the appellant.

Ms.Harpreet Kaur, AAG, Haryana.

H.S. MADAAN, J.

This appeal is directed against the judgment of conviction dated 4.7.2005 and order of sentence dated 6.7.2005 passed by learned Additional Sessions Judge, Sirsa vide which accused Baggar Singh was convicted for an offence under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the Act) and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.25,000/- and in default thereof, to further undergo rigorous imprisonment for a period of one year.

The accused-convict – Baggar 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 stated, the facts of the case as per the prosecution story are that on 27.6.2002, a police party from Police Station Badagudha, District Sirsa headed by SI Ramesh Kumar (hereinafter referred to as the Investigating Officer/I.O.), SHO of the said police station travelling in an official vehicle was on patrol and crime detection duty and when such vehicle carrying the police party reached at bridge on metaled road in the area of village Daulatpur Khera, accused Baggar Singh was spotted coming from village Lakrawali side on a bicycle with a gunny bag placed on its carrier; on seeing the police party, he stopped the bicycle and tried to escape; he was apprehended on the basis of suspicion; his identity was verified; the Investigating Officer suspected some contraband in the gunny bag placed on the carrier of bicycle of accused, as such he served notice under Section 50 of the Act upon the accused apprising him of his right of search before a gazetted officer or a Magistrate; the accused however reposed faith in the Investigating Officer; thereafter the Investigating Officer opened the gunny bag and found that it was containing poppy straw; he took out two samples of 100 gms. each therefrom and weighed the residue, which came out to 40 kgs. 800 gms.; the sample and residue were converted into parcels, sealed with the seal of Investigating Officer having inscription 'RK'; such articles were taken into police possession; the bicycle of accused make Atlas was also seized; the Investigating Officer handed over his seal after use to ASI Jagdish Chander; he had prepared a ruqa and sent the same to police station Badagudha through Constable Jaideep, on the basis of which formal FIR

No.58 dated 27.6.2002 for the offence under Section 15 of the Act was registered by MHC Ramesh Kumar; the Investigating Officer prepared rough site plan of the place of recovery and recorded statements of witnesses; he prepared a report under Section 57 of the Act; on return to the police station, the accused was put in the lock up, whereas the case property was entrusted to MHC of the said police station; report under Section 57 of the Act was sent to DSP, Headquarter, Sirsa. Sample parcel was sent to Director, FSL, Madhuban.

After receipt of report from FSL, Madhuban, on completion of investigation and other formalities, challan against the accused was prepared and filed in the Court. It was assigned to Additional Sessions Judge, Sirsa.

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

Learned Additional Sessions Judge, Sirsa, finding that prima-facie charge for the offence under Section 15 of the Act was disclosed against the accused, charge-sheeted him accordingly, to which, he 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 in as many as five witnesses as per details below:

PW1 Ramesh Kumar, MHC, a formal witness tendered in evidence his affidavit Ex.PA.

PW2 SI Phool Kumar had testified that on completion of

investigation in this case, he had prepared challan on 20.9.2002 and filed it in the Court.

PW3 Constable Mohan Lal, again a formal witness submitted his affidavit Ex.PB.

PW4 SI Ramesh Kumar, the Investigating Officer of the case testified with regard to apprehension of the accused, effecting recovery of contraband from him and subsequent proceedings in that regard as well as the investigation conducted by him in this case.

PW5 ASI Jagdish Chander, a witness of recovery deposed in that regard.

The prosecution tendered in evidence FSL report as Ex.PJ.

With that the prosecution evidence stood closed.

Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to him but he denied the allegations contending that he was innocent and had been falsely involved in this case at the instance of Gura Singh, Lambardar of village Lakkrawali because of the fact that he was working with said Gura Singh as a menial labourer and there was some dispute between them regarding payment of labour charges and for that reason he has been involved in the instant case.

Accused did not lead any evidence in defence.

After hearing arguments, Additional Sessions Judge, Sirsa convicted and sentenced the accused for the offence under Section 15 of the Act as mentioned supra, which left him aggrieved and he has filed the present appeal.

I have heard learned counsel for the appellant-accused-convict and learned Assistant Advocate General for the State of Haryana besides going through the record.

The cardinal principles of criminal jurisprudence are that the prosecution must prove its charge against the accused beyond a shadow of reasonable doubt. Such onus to prove guilt of the accused to the hilt is stationary on the prosecution and it never shifts. The accused is not expected to prove his defence with some exactness and rigor, with which the prosecution is required to prove guilt of the accused. The accused is required to render only a reasonable and plausible explanation, which may cast a doubt in the mind about the truthfulness of the prosecution story. Furthermore, as per our jurisprudence, hundreds of guilty persons may go scot-free but even one innocent should not be punished.

As per the prosecution story, the recovery had been effected on 27.6.2002. However, if we peruse the statements of witnesses carefully, then it comes out that PW4 SI Ramesh Kumar(Allawadi), the star witness for the prosecution gave the date of recovery as 27.6.2003. Similarly PW5 ASI Jagdish Chander, the other recovery witness also gave the date of recovery as 27.6.2003. Just to ensure that the date might not have been given as a result of typographical mistake, their statements recorded in vernacular also were perused, wherein too the date has been mentioned as 27.6.2003 in deposition of both these witnesses. No explanation for mentioning of wrong date of recovery is coming forth in statements of these witnesses. Even at a later stage, no application was moved on behalf of the prosecution that inadvertently, the date of

recovery had been stated to be 27.6.2003 by these two prosecution witnesses when as a matter of fact the recovery had taken place on 27.6.2002 and if we see the statement of the accused under Section 313 Cr.P.C. in the incriminating circumstances put to him, the date of recovery has been mentioned to be 27.6.2003 i.e. difference of complete one year. That gives a big jolt to the prosecution story and puts a question mark over the genuineness of the prosecution version. Of course, the accused was greatly prejudiced on that score.

One more thing to be seen is that in the date below the endorsement of Investigating Officer, there is overwriting in the month as originally it was mentioned as 27.7.2002 when by way of overwriting it was changed to 27.6.2002. This fact was admitted by PW4 SI Ramesh Kumar (Allawadi) in his cross-examination without giving any explanation for the same.

Furthermore, as admitted by PW4 SI Ramesh Kumar(Allawadi) on the four seals affixed on the case property Ex.P1, two seals were found to be in broken condition. That also creates a doubt in the mind about genuineness of the prosecution story. Viewed in that context, it is to be noted that both the witnesses of recovery are official witnesses. Though depositions of official witnesses are at par with those of independent witnesses unless some motive for false implication is there or some other doubtful circumstance come out to be there on the record. In view of the overwriting in the date below signatures of the Investigating Officer below endorsement on the ruqa, wrong dates of recovery being given by the Investigating Officer and the recovery

witness that fact that independent corroboration is missing in this case assumes significance. The place of recovery happened to be a busy thoroughfare and people were coming and going during the recovery proceedings in the investigation as conceded by PW4 ASI Ramesh Kumar but no independent witness was joined. Therefore, non-joining of independent witness despite easy availability does affect the credibility of the prosecution story. The explanation given by PW4 SI Ramesh Kumar that he tried to join independent witness but none was ready does not appeal to reason since he admitted that he had not noted down names of any such persons and no action had been initiated against such persons for refusing to join the police party.

Then there are several contradictions between statements of official witnesses. According to PW4 SI Ramesh Kumar, accused did not throw the bicycle on seeing the police party; the police party return the journey at 8:45 p.m. and in addition had patrol in the area of village Daulatpur. However, as stated by PW5 ASI Jagdish Chander on seeing the police party, the accused tried to run away after throwing the bicycle; the police party return journey at 9:50 p.m. and the police party did not patrol at any other place.

Another plea raised on behalf of learned defence counsel is that as per affidavit Ex.PA of MHC Ramesh Kumar, sample seal impression were not deposited by SI Ramesh Kumar with MHC of the police station along with the case property for sending the same to Director, FSL, Madhuban for comparison with seals of case property. However, according to affidavit of PW3 Constable Mohan Lal Ex.PB and

FSL Report as PJ, sample seal was handed over by PW1 MHC Ramesh Kumar to PW3 Constable Mohan Lal and it was also received in the office of FSL, Madhuban with the case property. Although the sample seal impression was not deposited by PW4 SI Ramesh Kumar with MHC Ramesh Kumar. Therefore, it could not reach the office of Director, FSL, Madhuban with the case property.

From all these factors, a reasonable doubt has arisen in the mind about the genuineness of the prosecution story. As per law benefit of doubt is to be given to the accused. The trial Court had noticed most of these points but did not take them adversely to the prosecution case. Whereas those factors should have been seen and considered in proper perspective, in that way the prosecution story could not have been accepted. Therefore, accused was found to be entitled of benefit of doubt.

Thus, I find that the judgment of conviction and order of sentence passed by the Court below are not sustainable. The same are set aside by way of acceptance of this appeal. The appellant is acquitted of the charge under Section 15 of the Act by giving him benefit of doubt.

Necessary intimation be sent to the quarter concerned.

16.3.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No