

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-1842-SB-2006 (O&M)

Date of decision : September 1st,2022

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Billu Singh

.....Appellant

vs.

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. S.S. Sidhu, Advocate for the appellant.

Mr. G.S. Dhillon, Assistant Advocate General,
Punjab.

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H. S. Madaan, J.

1. In nutshell, facts of the case, as per the prosecution story are that on 19.5.2004, at about 5.00 p.m., Inspector Barjinder Kumar, SHO, Police Station Dialpura alongwith other police officials, was present at Bus Stand Aklia, in connection with patrolling and checking of crime. There he received a secret information that Darshan Singh and accused - Billu Singh were indulging in sale purchase of poppy husk, keeping the poppy husk in their respective houses, as well as in the fields of one Bikkar Singh, known as field 'Marie Wala' near metalled road leading to village Kesar Singh Wala and that accused had been cultivating the said field after taking it

from Bikkar Singh on lease/share croppers and in case a raid was conducted, then poppy husk in heavy quantity could be recovered. Finding the information to be reliable, Inspector Barjinder Kumar sent a Ruka Exhibit PA to the Police Station Dialpura through Constable Balbir Singh, on the basis of which formal FIR Exhibit PA/1 was registered at the Police Station between 6.05 p.m. to 6.50 p.m. On 19.5.2004 a raid was conducted in the fields, as well in the respective houses of both the accused. But the accused could not be apprehended.

2. On 20.5.2005, Inspector Barjinder Kumar, accompanied by the police officials, proceeded for a raid. He raided tubewell room of Bikkar Singh in his field and found both the accused present there. They were apprehended. Their personal search was conducted. A notice under Section 50 of the Act was served upon the accused, regarding the search of the field. The accused opted to get the search conducted in presence of a Gazetted Officer. Therefore, intimation was sent to Police Control Room and Sh. Raghbir Singh Chehal, DSP, arrived at the spot. He served notice Exhibit PB upon both the accused informing them of their right to get the search conducted in the presence of DSP or any other Gazetted Officer or before a Magistrate. However, both the accused reposed faith in DSP and allowed him to search the fields. Independent witness Amrik Singh was also joined with the Police Party.

3. Thereafter accused, while in police custody, were interrogated one by one. Accused Darshan Singh suffered a

disclosure statement Exhibit PC to the effect that he had kept concealed two bags containing poppy husk in a pit covered with the soil in the field of Bikkar singh, which had been taken by him on lease regarding which only he knew and he could get it recovered. Such statement Exhibit PC was thumb marked by accused Darshan Singh, attested by ASI Darshan Singh, independent witness Amrik Singh and DSP Raghbir Singh Chehal. Similarly, Billu Singh -accused was interrogated and he suffered a disclosure statement Exhibit PD to the effect that he had kept concealed one bag containing poppy husk in a pit covered by soil in the field of said Bikkar Singh, which he had taken on lease and he had exclusive knowledge of the same and could get the bag containing poppy husk recovered . This statement Exhibit PD executed by accused Billu Singh was attested by ASI Darshan Singh, independent witness Amrik Singh and DSP Raghbir Singh Chehal. Then both the accused in pursuance of disclosure statements made by them got the recovery effected i.e. accused Darshan Singh got two bags recovered from the pit after removing the soil, whereas Billu Singh, who had taken out one bag from the pit after removing the soil with his own hands. All the three bags were given number 1, 2 3. Two samples each containing 200 grams poppy husk, were taken out from the each recovered bag. The samples were converted into parcels and were given Nos. 1-A/1, 2-2/B abd 3-3/C denoting the bag from which those were taken out. All the samples were duly sealed with the seal of Investigating Officer having impression 'BK'. The sample seal

impression chit was also prepared and seal after use was handed over to the independent witness Amrik Singh. Then the case property was taken into police possession vide memo Exhibit PE. Site plan of the place of recovery was prepared as Exhibit PF. The accused were arrested in this case. Grounds of arrest were served upon them. Jama Talashi had also been effected with memos prepared in that regard. Special report was sent to the higher Officers. On return to the Police Station, the Station House Officer kept the case property in safe custody.

4. On 21.5.2004, the Station House Officer produced the entire case property alongwith inventory Exhibit PM and sample seal chit before the Area Magistrate. Learned Magistrate passed order Exhibit PM/1. Another application Exhibit PN was filed for pre-trial disposal of the case property under Section 52-A of the Act. Learned Magistrate had passed order Exhibit PL/1. Learned Magistrate had however, drawn another sample of 200 grams from each bag, certifying that the remaining poppy husk came to be 44 kgs 400 gms in each bag. Application Exhibit PL was filed to keep the case property in the judicial *Malkhana*.

5. On return to the Police Station the Station House Officer kept the case property in his safe custody. Six samples each, containing 200 grams poppy husk duly sealed with the seal of the Investigating Officer having impression 'BK' alongwith sample seal chit Exhibit P-1 were sent to the Chemical Examiner through Constable Sarabjit Singh, who had deposited the same in the office of

Chemical Examiner in intact position on 28.5.2004. As per report received from the Chemical Examiner, Punjab, Exhibit PO, the samples were found containing Chura Poppy Heads.

6. After completion of the investigation and other formalities, challan against the accused was prepared and filed in the Court.

7. On presentation of the challan in the Court, copies of documents relied upon therein, were supplied to the accused free of costs as provided under Section 207 Cr.P.C. Then finding a prima facie case, charge for offence under Section 15 of the Act was framed against the accused, to which they pleaded not guilty and claimed trial.

8. The prosecution, in order to establish its case had examined PW-1 Constable Sarabjit Singh, who had deposited six sample parcels with Chemical Examiner, Patiala. PW-2 Inspector Barjinder Kumar, Investigating Officer and PW-3 DSP Raghbir Singh Chehal, besides PW-4 Lakhvir Singh Photographer. PW-2 and PW-3 also supported the prosecution story on material aspects toeing the line of prosecution. The prosecution relied upon various documents. With that the prosecution evidence got concluded.

9. Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused in the prosecution evidence, were put to them, but they denied the allegations contending that they were innocent and had been falsely involved in this case.

10. Accused, Dharshan Singh stated that he is neither owner nor in possession of the land from where the alleged recovery was effected. Bikkar Singh was owner and in possession of that land; that he was implicated due to party factionalism and nothing had been recovered from him.

11. Accused – Billu Singh had also taken up this very plea.

12. During their defence evidence accused examined Amrik Singh as DW-1. Thereafter their evidence was closed.

13. After hearing the arguments, the trial Court of Judge, Special Court, Bathinda, vide judgment dated 25.7.2006 convicted both the accused for an offence under Section 15 (C) of the Act and in terms of order passed on that very date, they both were sentenced to undergo rigorous imprisonment for a period of 10 years each and to pay a fine of Rs. 1 lac each, in default of payment of fine to undergo further rigorous imprisonment for six months under Section 15 (C) of the Act.

14. Feeling aggrieved, both the accused – convicts had filed separate appeals, which were taken up and admitted for regular hearing. On applications having been filed, the remaining sentence of the appellants – accused was suspended during pendency of the appeals on their furnishing requisite bonds to the satisfaction of Chief Judicial Magistrate, Bathinda.

15. During pendency of appeals, accused-Dharshan Singh had died and proceedings against him stood abated, vide order dated 26.8.2022. That leaves us with the appeal filed on behalf of Billu

Singh only.

16. I have heard, learned counsel for the appellant-accused Billu Singh, learned State counsel, besides going through the record and I find that the judgment of conviction and sentence passed against the accused is not sustainable, for the reason that the prosecution has not been able to prove the conscious possession of the contraband by the accused. Admittedly, the land from which the accused -appellant is stated to have got the contraband recovered in pursuance of the disclosure statement made by him, does not belong to him. Similarly, such accused -appellant being possession of the land is also not established on the record. Although according to the prosecution story, the land from which the recovery was got effected had been taken on lease by the accused-appellant, but no document in that regard in the form of lease deed etc. has been proved in evidence by the prosecution. Similarly, no revenue record in the form of Jamabandi or Khasra Girdawari has been proved in evidence by the prosecution to prove that the appellant accused had been owner/in possession of the land in question. Rather, the accused have tendered in evidence Khasra Girdawari qua such land as Exhibit D-1 which reflected that one Bikkar Singh, Ajaib Singh sons of Sucha Singh, happen to be owner in possession of the land in question, having sown wheat crop therein. Inspector Barjinder Kumar admitted in his cross examination that he did not take any document regarding the agricultural land shown in possession of the accused. He further stated that he had contacted Bikkar Singh son of Sucha Singh, owner

of the fields from where Poppy Husk was recovered. However, no document regarding giving of land to accused as share cropper was produced before him by Bikkar Singh. He further stated that he did not take any Girdawari of the aforesaid land to check the cultivating possession from where the alleged poppy husk was recovered and he had not recorded the statement of Bikkar Singh. Going further, this witness stated that no neighbours of the fields had suffered any statement that accused had obtained the land on Theka from Bikkar Singh. As is commonly said, man may tell lies, but circumstances do not and further documentary evidence carries much more credibility taking precedence over the oral evidence, which unfortunately, the interested persons manage to procure in support of their case.

17. In this case, there is no cogent or convincing oral evidence, what to talk of documentary evidence to show the appellant-accused being in possession of the land from where the recovery of contraband was allegedly got effected by them. Rather Bikkar Singh etc., owner of the land should have explained as to how the bags containing contraband came to be buried in their fields. The Investigating Officer did not bother to record their statements even. The investigation has been conducted in a very casual and unprofessional manner. Unless the prosecution proved any connection between the land from where the contraband was recovered with the accused, the accused could not be fastened with any criminal liability for possession of that contraband. As is evident from the reply given by PW-2 Inspector Barjinder Kumar, in his cross examination, he did

not record the statement of Bikkar Singh, no neighbourer of the fields suffered any statement that the accused had taken the land on Theka from Bikkar Singh. If appellant -accused had been concealing the bags containing contraband in the land of Bikkar Singh and Ajaib Singh, they must have been digging the land for that purpose, damaging the crops, which could not have been done without knowledge of the owners of the land. That means, either Bikkar Singh and Ajaib Singh were hand-in-glove with the appellants-accused or they themselves were to account for recovery of contraband from their land. The Investigating Officer did not find anything incriminating against Bikkar Singh and Ajaib Singh, so much so, their statements were also not recorded during the investigation.

18. Then it is difficult to understand how the appellants accused have been fastened with criminal liability for possession of the contraband as per the prosecution story. The settled law on the point is that the burden to prove guilt of the accused to the hilt is stationary on the prosecution and it never shifts. The prosecution was required to prove guilt of the accused conclusively and affirmatively, which it has failed to do. The accused were required to render a reasonable and plausibly explanation and to create a reasonable doubt about their guilt. They have successfully done so by proving in evidence Khasra Girdarwari of the land as Exhibit D-1, which being part of the public record, has to be given due weightage.

19. The trial Court, vide impugned order, did not consider

this aspect of the matter in proper perspective and by mis-appraisal of the evidence and wrong interpretation of law, came to erroneous conclusion that prosecution had proved its charge against the accused beyond a shadow of reasonable doubt, when it was not so.

20. As such, the appeal is accepted and the impugned judgment of conviction and sentence passed against the accused-appellant is set aside.

21. Resultantly, the appellant – Billu Singh is acquitted of the charge framed against him.

22. Appellant -Billu Singh, who is stated to be lodged in Central Jail, Bathinda, be released from there. Necessary intimation be sent to Chief Judicial Magistrate, Bathinda, in that regard.

September 1st, 2022
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No