

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

CRA-S-2424-SBA-2006
Date of decision:-23.8.2022

State of Punjab

...Appellant

Versus

Sikander Singh and another

...Respondents

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

Present: Mr.Anmol Singh Sandhu, AAG, Punjab.

H.S. MADAAN, J.

1. Accused Sikander Singh and Gurpiar Singh were tried by Judge, Special Court, Sangrur in case FIR No.333 dated 13.8.2004 for an offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), registered with Police Station Sunam.

2. Briefly stated, the facts of the case as per prosecution version are that on 13.8.2004, a police party from P.S. Sunam, District Sangrur headed by ASI Vijay Kumar (hereinafter referred to as the Investigating Officer/I.O.) was travelling in official vehicle bearing registration No.PB-13B-1583; it was present on the bridge of drain at Bhatinda road Sunam; a naka was laid there; in the meanwhile, one Shiam Singh son of Bakhtaur

Singh, resident of Attar Singh Colony came there; he was joined with the police party; in the meanwhile, a Ceilo car bearing registration No.HR51-9332 being driven by Sikander Singh accused with accused Gurpiar Singh sitting on the front side was spotted being driven in a rash and negligent manner; the police party gave a signal to the car driver to stop the said car; the driver of the car tried to reverse the car after slowing it down; however since the car driver had become nervous, he struck the car with the railing of the bridge, whereas other side of the car struck against the bridge; both the occupants of the car were apprehended and their names and other particulars were inquired into, which they disclosed; two gunny bags having contents were found lying on the rear seat of the car and two plastic bags were found lying in the dicky of the car; Sikander Singh disclosed that gunny bags lying on the rear seat of the car belonged to him, whereas the plastic bags lying in the dicky of the car belonged to Gurpiar Singh; the Investigating Officer told both the accused that he suspected all the four bags to be containing contraband and was desirous of searching the same and if the accused so desired, some gazetted officer or a Magistrate could be called to the spot; both the accused opted to get the search conducted in presence of a gazetted officer; their statements in that regard was prepared as Ex.PC, which was signed by the accused and attested by the witnesses; then the Investigating Officer sent a wireless message to Sh.Shushil Kumar, DSP, who came to the spot along with his staff in official gypsy; Sh.Sushil Kumar, DSP introduced himself to both the accused and told them that search of their bags was to be conducted and if they so desired any other gazetted officer or Magistrate could be

called to the spot; however, both the accused reposed confidence in the DSP; their consent statements were recorded in that regard; the consent statement of accused Sikander Singh is Ex.PD and consent statement of accused Gurpiar Singh is Ex.PE, which were signed by the accused and attested by the witnesses. Then on instructions of DSP Shushil Kumar, search of the gunny bags was conducted; those were found to contain poppy husk; two samples of 250 gms. each were taken out separately and on being weighed, each bag was found to contain 29 kgs. 500 gms. of poppy husk; the bags lying in the dicky of the car were also searched; they were also found to contain poppy husk; out of each bag two samples of 250 gms. each was taken out separately and the remaining poppy husk in each bag came out to be 29 kgs. 500 gms.; the samples and bags containing remainder poppy husk were converted into parcels; all the parcels were sealed by the Investigating Officer with his seal having inscription VK; DSP Shushil Kumar also put his seal having impressions SK on the parcels; the sample seal impression chit was prepared as Ex.P1; all the parcels were taken into police possession vide recovery memo Ex.PF attested by the witnesses.

3. Both the accused were arrested in this case as per rules and necessary documents in that regard were prepared. The Investigating Officer sent ruqa Ex.PM to the police station, on the basis of which formal FIR Ex.PM/1 was recorded against the accused at Police Station Sunam. The Investigating Officer had prepared rough site plan of the place of recovery with correct marginal notes as Ex.PN. He recorded statements of witnesses.

4. On return to the police station, the Investigating Officer produced the accused along with the case property and witnesses before Inspector Harinder Singh, SHO of the Police station; the latter verified the facts of the case, interrogated the accused and after his satisfaction put his own seal having inscription HS on the parcels and attested the sample seal chit Ex.P1; then on his instructions the Investigating Officer deposited the case property with MHC Mehar Singh. On a sample parcel being sent to the office of of Chemical Examiner, Punjab, as per report received therefrom, it was found to be that of poppy-husk. After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

5. On presentation of the challan, copies thereof were supplied to the accused free of costs, as envisaged under Section 207 Cr.P.C.

6. On receipt of the case in the Court, observing that prima facie charge for an offence under Section 15 of the Act was disclosed against the accused, they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial.

7. During the course of its evidence, the prosecution examined the following witnesses:

PW1 Inspector Harinder Singh, who was posted as SHO P.S. Sunam on 13.8.2004 deposed regarding his part.

PW2 MHC Mehar Singh with whom the case property remained deposited vide his affidavit Ex.PA testified with regard to its safe custody.

PW3 Constable Sher Singh, a formal witness in his affidavit

Ex.PB testified that no tampering with the case property had taken place during the period, he remained in possession thereof.

PW4, HC Hardeep Singh, PW5 DSP Shushil Kumar, PW6 ASI Vijay Kumar, the Investigating Officer of this case supported the prosecution story with regard to recovery of contraband from the possession of the accused.

The prosecution relied upon several documents and then its evidence was closed.

8. Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing in the prosecution evidence against them were put to accused but they denied the allegations contending that they were innocent and had been falsely involved in this case. Accused Sikander Singh took up the plea that as a matter of fact he was arrested from the bus stand of Sunam and HC Hardeep Singh snatched Rs.10,000/- from him and from his co-accused and later on falsely involved them in this case. Accused Gurpiar Singh also took took up the similar plea.

9. During their defence, the accused examined the following witnesses:

DW1 Constable Jaswinder Singh, who proved on record entries of DDR register No.19 as Ex.D1 and Ex.D2.

DW2 Sham Singh, an independent witness joined by the police, who was given up by the prosecution stated that he does not have any knowledge of the case.

DW3 Ashok Kumar, Clerk, MC Sunam proved on record

copy of acquittance roll register for the year 2004 as Ex.D1.

DW4 Mai Singh stated that on 13.8.2004, while he was present at home, on that day, he had received a telephonic message from the accused that they had been arrested by the police at bus stand Sunam; on the next day, he went to Sunam and police told him that poppy husk had been recovered from them. According to this witness, he told the police that accused do not indulge in any illegal activity and he asked the police to show him poppy husk recovered from the accused but police refused to show that.

10. The trial Court had formulated the following point for determination:

Whether the accused were found in possession of Four gunny-bags, each bag containing 30 kgs. poppy-husk, on 13.8.2004 in the area of Sunam?

11. When the trial got completed, learned Judge, Special Court, Sangrur vide judgment dated 4.4.2006 acquitted both the accused of the charge framed against them.

12. Feeling dissatisfied with such judgment, the State of Punjab had approached this Court by way of moving an application under Section 378(3) Cr.P.C., which was taken up on 28.11.2006, when it was admitted and notice was issued to the accused throughailable warrants.

13. Now the appeal has come up for regular hearing.

14. I have heard learned State counsel besides going through the record.

15. A perusal of the impugned judgment goes to show that the

main reason given for acquittal of the accused was that in recovery memo Ex.PF, FIR number is written as 323 though actually it was FIR No.333 and that raised an inference that either it could be clerical mistake or the documents had been tried to be prepared hurriedly resulting in taking place of glaring mistake causing a serious dent in the case of the prosecution. Another reason was that Shiam Singh, an independent witness, who was allegedly joined with the police party for effecting recovery, inasmuch as according to the prosecution version, the independent witness had reached the spot in between 10:15 to 10:30 a.m., ruqa was stated to have been completed at 12:30 p.m., the independent witness was allowed to go after 5:00 p.m.; however there is contradiction in the statements of PWs in that regard inasmuch as in terms of statement of PW4 HC Hardeep Singh, independent witness was allowed to go after 5:00 p.m. but the Investigating Officer stated that he was freed at 4:30 p.m., meaning thereby that during his office hours, the independent witness is alleged to have been shown with the police party. without there being any evidence that he was on leave on that day, rather the documents show that the independent witness had obtained salary for the full month as is evidence from document Ex.D1. The independent witness stepping in the witness box as DW2 had denied the recovery in his presence. The trial Judge had observed that when a government official is present in the office, he could not be presumed to be there with the police party at that very time, therefore, the presence at the spot of independent witness become unbelievable rendering the prosecution story doubtful.

16. Under the circumstances, it could not be said that the

prosecution had been able to prove its charge against the accused beyond a shadow of reasonable doubt. The benefit of doubt was rightly given by the Court to the accused and they were acquitted of the charge framed against them.

17. After considering the rival contentions, I do not find any reason to set aside the impugned judgment. The trial Court has given detailed reasons for coming to conclusion that guilt of the accused was not established on record. The judgment can certainly be not termed as perverse or result of erroneous or arbitrary approach. The law is well settled that judgment of acquittal should not be interfered merely for the reason that another view in the matter is possible. It can certainly be not said that the impugned judgment has resulted in grave miscarriage of justice or the same is manifestly unjust and unreasonable. There is nothing to show that the trial Court had misread the evidence or wrongly interpreted the law in the process arriving at a wrong conclusion. Therefore, no reason is found to be there calling for upsetting the impugned judgment by way of acceptance of appeal.

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

23.8.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes