

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-650-SB-2005 (O&M)

Date of decision : 20.5.2022

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Vijayinder Kumar

.....Appellant

vs.

State of Punjab

.....Respondent

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

Present: Mr. Ashutosh, Advocate / Amicus Curiae
for the appellant.

Mr. Anmol Singh Sandhu, Assistant Advocate General,
Punjab.

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H. S. Madaan, J. (Oral)

1. Appellant/accused Vijayinder Kumar, aged 27 years son of Ram Pal Singh, resident of Anand Colony, Rajpura, District Patiala, faced trial by Judge, Special Court, Patiala, in case FIR No. 68 dated 3.4.2002, u/s 18 of NDPS Act, Police Station Sadar Rajpura and vide judgment dated 2.3.2005, he was convicted for an offence under Section 18 of the Narcotic and Psychotropic Substances Act, (hereinafter referred to as 'the Act'), and in terms of the order passed on that very date, was sentenced to undergo rigorous imprisonment for 1 ½ years and to pay a fine of Rs.2500/-, in default of payment of fine to further undergo rigorous imprisonment for 4 months.
2. Briefly stated, facts of the case, as per the prosecution story are that on 3.4.2002, at about 4.15 p.m., when the accused was apprehended by the Police Party in the area of embankment of

Bhakra Canal, Khanpur Gandian, within the jurisdiction of Police Station Sadar, Rajpura, he was found in possession of 500 grams of opium, without any licence or permit. His search had been conducted as per rules. Two samples of 10 grams each were drawn from the contraband recovered. Samples and the remaining contraband which on weighment came out to be of 480 grams, were converted into sealed parcels and taken into police possession. Ruka was sent to the Police Station, which formed the basis for registration of FIR. The accused was arrested in this case. On the samples being sent to the office of FSL, Punjab, Chandigarh, as per report received therefrom, it was found to be that of opium.

3. After completion of investigation, the accused-appellant was sent up to face trial, which ended in his conviction and sentence, as mentioned above.

4. Feeling aggrieved by the said judgment of conviction and order of sentence, the accused-convict had approached this Court by way of filing the present appeal, which was taken up on 5.4.2005, when it was admitted and on an application under Section 389 Cr.P.C. having been filed, his remaining sentence was suspended. Now the appeal has come up for final hearing.

5. I have heard learned counsel for the appellant and learned State counsel, besides going through the record.

6. Learned counsel for the appellant-accused has contended that though an independent witness namely Kulbir Singh was joined with the investigation by the Police Party, but he was not examined

during the trial, rendering the prosecution story doubtful and benefit of doubt should be given to the accused and he be acquitted of the charge framed against him.

7. Whereas, learned State counsel has contended that independent witness Kulbir Singh had been given up by the prosecution for the reason of having been won over by the accused and the official witnesses did not have any previous enmity with the accused and they had no motive to involve him in this case falsely, as such they are reliable witnesses and the trial Court has rightly relied upon their statements, while convicting the accused.

8. After hearing the rival contentions, I find that independent corroboration is a rule of prudence and not requirement of law. The independent witness, if examined, would have lent credence to the prosecution story, but absence thereof does not create any dent in the prosecution case. The prosecution has rendered a plausible explanation for non-examination of the independent witness for the reason of having been won over by the accused. There is nothing on record to show that the official witness of recovery namely PW3 ASI Parkash Chand or the Investigating Officer PW3 William Jeji had any previous enmity with the accused, prompted by which they might have involved him in this case falsely or wrongly deposed against him, to secure his conviction. Therefore, non-examination of independent witness does not make any difference more particularly when he was not examined by the accused in his defence evidence to show that the recovery had been effected from

the accused by the police in his presence i.e. the date, time and place as alleged by the prosecution.

9. The other plea put forward by learned counsel for the appellant was that Mr. R.K. Sharma, DSP, Rajpura, in whose presence the search of the accused is stated to have taken place and recovery effected, was not examined by the prosecution, creating a serious doubt about truthfulness of the prosecution case. Again learned State counsel has countered the argument, stating that non-examination of DSP Rajpura, does not effect the prosecution story adversely.

10. After giving thoughtful consideration to his contentions, I find that though Mr. R.K. Sharma, DSP, Rajpura, having examined would have strengthened the case of prosecution but his non-examination is certainly not fatal to the prosecution case. The other evidence adduced by the prosecution fully proves its case against the accused beyond a shadow of reasonable doubt. It is to be taken note of that it is quality of the evidence and not quantity, which matters. Therefore, this contention also does not have much merit.

11. Learned counsel for the appellant has pointed out some discrepancies in the statements of the official witnesses i.e. PW-3 SI William Jeji, Investigating Officer and PW-4 ASI Parkash Chand. However, I find that those are not with regard to material details of the incident and rather such small variations and inconsistencies are bound to occur in the statements with the passage of time.

12. Learned defence counsel has further contended that the

appellant/accused had rendered a plausible defence version, which was wrongly rejected by the trial Court. However, I do not find myself in agreement with him on this point. The version put forward by the accused is that on 2.4.2002, the police had raided the house of one Saroj Bala and on that very day in the morning, he along with Saroj Bala and other persons was going to village Pao Majra in tractor trailer when a police party came there, picked up the appellant/accused along with his wife and children, taking them to the police station, where he along with his wife were tortured. The police had picked up husband of Saroj Bala, namely Swaroop Singh and one Paramjit Singh by conducting raid on the house of Saroj Bala on 3.4.2002. All this was done at the instance of Harcharan Singh having links with SI William Jeji, Investigating Officer of this case. SI William Jeji had demanded bribe of Rs.1 lakh for freeing the accused and when accused failed to pay the amount, he was falsely involved in this case. In support of that version, he had examined DW1 Saroj Bala. However, on careful examination of this plea raised by the accused and deposition of DW1 Saroj Bala in light of facts and circumstances of the case and evidence brought on file by the prosecution, I find that such defence version does not seem to be plausible and convincing. The trial Court in para No.12 of the judgment giving detailed reasons has concluded that defence version is unnatural and unbelievable being based on concoctions. While saying so, a reference to the cross-examination of DW1 Saroj Bala has been made. The accused does not come out to have anything to

do with the enmity between Harcharan Singh and husband of Saroj Bala, namely Swaroop Singh. Therefore, it does not seem believable that SI William Jeji would implicate accused in this case at the asking of Harcharan Singh. Similarly SI William Jeji is not shown to have any axe to grind with the accused prompted by which, he might treaded the dangerous path of false involvement of accused in this case risking his service career fully aware of the criminal action being taken against him in case he was found indulged in such type of acts.

13. I find that the judgment passed by the Judge, Special Court, Patiala, is quite detailed, well reasoned and does not suffer from any illegality or infirmity. Therefore, it is upheld with regard to the conviction of the accused.

14. In the end, learned counsel for the appellant has contended that some leniency be shown to the appellant-accused in the matter of sentence because he was aged 27 years at the time of recovery on 3.4.2002; that more than 20 years have elapsed from the date of recovery; that the recovery amounts to non-commercial quantity; that that appellant has already undergone 29 days of imprisonment in this case, as reflected in the custody certificate filed by the State counsel; that he had already deposited the amount of fine in the trial court, as mentioned in the order dated 5.4.2005, passed by this Court, while suspending the sentence of the appellant-accused and granting him bail.

15. He has further contended that the accused is only earning

member of his family and a poor person, as such, the sentence of imprisonment awarded to him be reduced to the period already undergone. Though learned State counsel has opposed the request, I find that after considering the circumstances pointed out by counsel for the accused and the fact that there is nothing on record to show that appellant accused has indulged in any criminal activity, after granting him suspension of sentence and relief of bail and that the recovery amounts to non-commercial quantity, for which no minimum sentence is provided, the ends of justice would be adequately met, if the sentence of imprisonment is reduced to the one already undergone by him, in this case. It is ordered accordingly.

16. Accordingly, the appeal challenging the impugned judgment stands disposed of upholding the conviction of the appellant-accused, whereas the sentence part is modified as detailed above. Necessary intimation be sent to Chief Judicial Magistrate, Patiala.

20.5.2022
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(H.S. Madaan)
Judge

Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No