

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

CRA-S-820-SB-2005

Date of Decision:-25.03.2022

Ginder Singh

... Appellant

Versus

State of Punjab

... Respondent

Present:- Mr. Arav Gupta, Advocate
for the appellant.

Mr. M.S. Nagra, AAG, Punjab.

KARAMJIT SINGH, J.

This criminal appeal has been instituted by the appellant against the judgment and order dated 15.4.2005 rendered by Judge Special Court, Patiala in case SC No.367-T of 2004 whereby the appellant who was charged with and tried for offence punishable under Section 15 of the NDPS Act, has been convicted thereunder and sentenced to undergo RI for one year and to pay fine of ₹1,000/- and in default to further undergo RI for a period of 1 ½ month.

The case of the prosecution in nutshell is that on 3.12.2003 the police party headed by ASI Surinderpal Jit Singh was on patrolling duty and when they reached in the area of village Bijilpur, Karnail Singh was associated in the police party. In the meantime, appellant-accused came from the side of village Chohant Kheri and he was carrying plastic bag on

his shoulders. On seeing the police officials, he threw his plastic bag and ran away from there. Appellant-accused was identified by PW-4 CII Jugpal Singh as he was already known to him. The police officials chased, appellant-accused but he succeeded in escaping from there. On checking the aforesaid plastic bag thrown by accused appellant was found to be containing 5 kg. of poppy husk out of which 2 samples of 25 grams each were drawn and converted into separate parcels. The bulk and said two parcels were sealed by the Investigating Officer with a seal bearing impression 'SS' and then sample seal impression was prepared and the entire case property was taken into possession by the police vide separate memo. Ruqa was sent to the police station for registration of the FIR. After completion of proceedings at the spot, the case property was produced before the SHO who put his seal bearing impression 'JS' on the case property and then the case property was deposited with the MHC. On 4.12.2003 the case property was produced before the Illaqua Magistrate by the Investigating Officer and after obtaining orders in writing, the same was re-deposited with MHC. Subsequently the appellant-accused surrendered in the Court and was arrested. One of the sealed samples was sent to office of Chemical Examiner for its analysis and on completion of investigation challan was presented against the accused-appellant.

Court of Special Judge framed charge under Section 15 NDPS Act, to which the accused-appellant pleaded not guilty and claimed trial.

Prosecution to prove its case examined PW-1 C.Narinder Singh who took the photographs of the case property, when it was produced before the Illaqua Magistrate. PW-2 HC Kuldeep Singh deposited the sealed

sample in the office of Chemical Examiner, whereas PW-3 ASI Sukhwinder Singh arrested the accused after obtaining the permission from the Court. PW-4 C-II Jugpal Singh deposed regarding the recovery of poppy husk which was effected in his presence. PW-5 Inspector Jassa Singh was the SHO before whom the case property was produced by the Investigating Officer. PW-6 ASI Surinderjit Pal Singh, the Investigating Officer of the case, deposed accordingly. PW-7 MHC Harminder Singh was MHC of the Malkhana at the relevant time.

After the closure of prosecution evidence, the appellant was examined under Section 313 Cr.P.C.. He pleaded innocence and stated that he was falsely implicated in this case. He had not led any evidence in his defence.

The counsel for the appellant has vehemently argued that the prosecution has failed to prove the case against the appellant-accused. He contended that the prosecution has miserably failed to establish the identity of the accused-appellant. It is further contended that there is no independent corroboration to the testimony of PWs all of whom were police officials. The counsel further contended that there was also un-explained delay in sending the sample to the office of chemical examiner.

On the other hand the State counsel has supported the prosecution case as well as the impugned judgment.

I have heard the counsel for the parties and have gone through the judgment and record minutely.

It is the admitted case of prosecution that one person ran away from the spot after leaving behind plastic bag and that the said person was identified as accused-appellant Ginder Singh by PW-4 C-II Jugpal Singh, who was already knowing him. However, PW-4 failed to explain as to how he was knowing accused-appellant. Undoubtedly no test identification parade was conducted by the prosecution to establish the identity of the accused-appellant. In these circumstances this Court is of the view that prosecution has failed establish the identity of the accused-appellant beyond reasonable doubt.

The recovery in question was effected on 3.12.2003, as per the report of FSL Ex.PE it stands established that the sealed sample was deposited in the said laboratory on 23.12.2003. So there was delay in sending the sample for its analysis to the FSL. As per the prosecution version the Investigating Officer after use handed over his seal to independent witness Karnail Singh. The prosecution failed to examine the said independent witness during the trial. It is not clear as to when the said independent witness returned the aforesaid seal to the Investigating Officer. In these circumstances the possibility of the samples and the case property being tampered with by the police officials till it reached the FSL, cannot be ruled out in the present case. Furthermore there is no independent corroboration to the testimony of PWs. As per the testimony of the Investigating Officer, there were 4 persons in the police party including he himself and even independent witness Karnail Singh was also accompanying them. In the given circumstances, it seems to be highly improbable that

accused-appellant succeeded in running away from the spot after leaving behind one plastic bag.

In light of the above, I am of the view that prosecution has failed to prove its case beyond doubt against the appellant. The conviction and sentence of the appellant-accused are unsustainable.

Accordingly the appeal is allowed and judgment and order dated 15.4.2005 rendered by Judge Special Court, Patiala are set aside. The appellant-accused is acquitted. As the appellant is on bail, his surety stands discharged.

(KARAMJIT SINGH)
JUDGE

25.03.2022
Gaurav Sorot

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No