

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

CRA-S-29-SB-2006 (O&M)

Reserved on:- 13.09.2022

Date of pronouncement: 21.09.2022

Mukhtiar Singh @ Gullu

...Appellant

Versus

State of Haryana

...Respondent

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

Present: Mr. Ashwani Verma, Advocate for the appellant.

Mr. Vijesh Sharma, Addl. A.G., Haryana.

H.S. MADAAN, J.

1. Appellant Mukhtiar Singh @ Gullu, an accused in FIR No.174 dated 12.05.2000, for an offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), registered with Police Station Sadar, Fatehabad, was tried by Addl. Sessions Judge, Fatehabad on the allegations that on 12.05.2000 in the area of Aherwa bridge on Ratia road, he was found in possession of 40 kg of poppy husk without any license or permit.

Vide judgment dated 21.11.2005, the accused was convicted for an offence under Section 15(b) of the Act and in terms of the order passed on 23.11.2005, he was sentenced to undergo rigorous imprisonment for a period of 04 years and to pay a fine of Rs.20,000/-;

in default of payment of fine, to further undergo simple imprisonment for one year.

2. Feeling aggrieved by the judgment of his conviction and order of sentence, the appellant had preferred an appeal before this Court which was Admitted for regular hearing on 09.01.2006, and on an application having been filed under Section 389 Cr.P.C., the remaining sentence of the appellant was suspended during the pendency of the appeal, subject to his furnishing requisite bonds to the satisfaction of Chief Judicial Magistrate, Fatehabad. Now the appeal has come up for final arguments.

3. Briefly stated facts of the case, as per prosecution story are that on 12.05.2000, a police party led by ASI Ghisa Ram [hereinafter referred to as the Investigating Officer/IO] was present at Aherwa bridge on Ratia road, Fatehabad in connection with patrolling; Narveer Singh, Lamberdar, who had come from the side of village Aherwa was talking with the IO; in the meanwhile, accused Mukhtiar Singh was spotted coming from the side of village Aherwa carrying a bag, having contents, on his head; on seeing the police party, he tried to turn back, however, he was apprehended on the basis of suspicion; his name and other particulars were enquired about, which he disclosed; since the IO suspected that there was some narcotic substance in the bag being carried by the accused, he served a notice under Section 50 of the Act Ex.P7 upon the accused, informing him that the IO wanted to search

the bag being carried by him on suspicion of the same containing some contraband and the accused had a right to get the search conducted in the presence of some Gazetted Officer or a Magistrate; however, the accused reposed faith in the IO vide his reply Ex.P8; thereafter the IO searched the bag of the accused which was found to contain poppy husk; the IO took out sample of 100 gm from the contents of the bag and on being weighed, the residue poppy husk in the bag came out to 39 kg 900 gm; the sample and bag containing residue poppy husk were converted into parcels, sealed with the seal of IO having impression 'GR'; specimen of seal impression was taken, then the sample parcel, bulk parcel as well as sample seal impression chit were taken into police possession; the IO had handed over his seal after use to HC Kailash Chand; the accused was accordingly arrested in this case as per rules, preparing requisite documents; the IO had sent ruqa Ex.P3 to the police station on the basis of which formal FIR was registered; the IO prepared rough site plan Ex.P10 of the place of recovery and recorded statements of witnesses.

On return to the police station, the IO produced the accused along with case property and witnesses as well as report U/s 57 of the Act before SHO Shingara Singh, who verified the facts from the accused and witnesses and put his own seal having impression 'SS' on the sample parcel and bulk parcel; thereafter, on instructions of SHO Shingara Singh, the IO deposited the case property with ASI Raj

Singh, In-charge of the malkhana and put the accused in the lockup.

During the course of investigation, a sample parcel was sent to Forensic Science Laboratory, Madhuban, Haryana (for brevity 'FSL') and as per report received there from Ex.P13, it was found to be that of poppy straw; on completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

4. On receipt of the challan, the Court of SDJM, Fatehabad supplied copies of documents relied upon therein to the accused free of costs as provided under Section 207 Cr.P.C., and committed the case to Addl. Sessions Judge-I, Fatehabad where finding a prima facie case, charge for an offence under Section 15 of the Act was framed against the accused, to which he pleaded not guilty and claimed trial.

5. During the course of prosecution evidence, prosecution examined the following witnesses:-

PW-1 Constable Ram Chander, the carrier of the sample parcel to FSL, Madhuban, Haryana on 22.05.2000 tendered in evidence his affidavit Ex.P1.

PW-2 ASI Raj Singh, who was In-charge of malkhana at Police Station Ratia with whom the case property had been deposited after search and seizure vide his affidavit Ex.P2 testified that it remained in safe custody so long as it was in his possession.

PW-3 ASI Ishwar Singh deposed that on 12.05.2000 while

he was posted at Police Station Sadar, Fatehabad, on that day, on receipt of written information from ASI Ghisa Ram, he had recorded formal FIR Ex.P4 under his signatures.

PW-4 SI Jagdish Kumar deposed that on 04.06.2000 while he was posted at PS Sadar, Fatehabad, he had carried out the investigation in this case in part inasmuch as he had recorded statements of PWs ASI Raj Singh and Constable Ram Chander under Section 161 Cr.P.C.

PW-5 Inspector Shingara Singh, retired, before whom the case property along with accused and PWs had been produced by the IO after search and seizure and who after satisfying himself had affixed his own seal having impression 'SS' on the sample parcel and sealed parcel as well as preparing sample seal impression of his seal deposed in that regard. He stated that he had put his endorsement Ex.P5/A on report Ex.P5 sending that report to DSP (HQ) Fatehabad on 13.05.2000 and on completion of investigation, he had prepared final report under Section 173 Cr.P.C., against the accused and filed it in the Court.

PW-6 ASI Ghisa Ram, who was leading the police party which had apprehended the accused on 12.05.2000 and effected recovery of contraband in the form of 40 kg of poppy husk from him, deposed in that regard in tune with the prosecution story. He further testified with regard to the investigation carried out by him proving various documents.

PW-7 HC Kailash Chand, a witness of recovery supported the prosecution story on material aspects.

The Public Prosecutor for the State by making a statement in the Court on 27.11.2002 had given up PW Narveer Singh, Lamberdar for the reason of his having been won over by the accused and on 02.03.2004, after tendering in evidence report of FSL Ex.P13, the Public Prosecutor closed the evidence of prosecution.

6. Thereafter, statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing in prosecution evidence against the accused were put to him but he denied the allegations contending that he was innocent. Nothing was recovered from his possession. He was already in custody of the police, since he had been taken away by the police from village Aherwa due to party factionalism and later on falsely implicated in this case.

7. The accused did not led any evidence in his defence.

8. After hearing arguments, the trial Court convicted and sentenced the accused as mentioned supra.

9. I have heard learned counsel for the appellant/accused, learned State counsel besides going through the record.

10. Learned counsel for the appellant has argued that the link evidence in this case is missing inasmuch as according to the prosecution story and as deposed by PW-2 ASI Raj Singh, who was In-

charge of the malkhana of Police Station Ratia on 12.05.2000 with whom the case property is said to have been deposited in his affidavit in para No.3 has testified that on 22.05.2000, he had handed over the sample parcel sealed with the seals having impression 'GR' and 'SS' and specimen seal impressions chit to Constable Ram Chander, 9201 for the purpose of depositing those articles in FSL, Madhuban, Haryana. Constable Ram Chander accordingly did so and on return handed over receipt to him. PW-1 Constable Ram Chand in his affidavit Ex.P1 has also testified in that regard. Both of them have mentioned the RC number as 281 dated 22.05.2000, however, in the report of Chemical Examiner, the RC number is mentioned to be 354 dated 19.06.2000 and sent through Constable Kamal Singh received in the laboratory on 20.06.2000. According to learned counsel for the appellant, the sample which was analyzed by FSL, was not the one relating to this case but to some other case.

11. Though, learned State counsel has tried to counter the argument but he could not explain as to how under what circumstances, it should be taken that the necessary link evidence in this case comes out to be there.

This very contention had been raised before the trial Court also. The trial Court could not meet with this contention in a proper and appropriate manner and chose to ignore the same by giving reasons which were least convincing. As pointed out by learned counsel for the

petitioner, necessary link evidence in this case is certainly missing, and it cannot be said that the sample which had been analyzed by the FSL related to this very case. A reasonable doubt arises in the mind about guilt of the accused, and rather the prosecution has failed to prove its charge against the accused beyond a shadow of reasonable doubt. As per law, the benefit of doubt goes to the accused which was wrongly denied to the appellant/accused by the trial Court.

The judgment of conviction and order of sentence passed by the trial Court are not sustainable and are liable to be set aside. The appeal has merit. The same is accordingly allowed. Resultantly, the impugned judgment of conviction and order of sentence passed against the appellant/accused are set aside and he is acquitted of the charge framed against him.

21.09.2022

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No