

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

CRA-S-1146-SB-2006 (O&M)

Date of pronouncement: 02.09.2022

Gurtej Singh

...Appellant

Versus

State of Haryana

...Respondent

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

Present: Mr. D.N. Ganeriwala, Advocate for the appellant.

Mr. Brijesh Sharma, AAG, Haryana.

H.S. MADAAN, J.

1. Appellant Gurtej Singh, an accused in FIR No.34 dated 20.02.2004, for offences under Sections 15/16 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), registered with Police Station Sadar, Dabwali faced trial by Addl. Sessions Judge, Sirsa, on the allegations that on 22.02.2004, he was found in conscious possession of seven gunny bags containing 35 kgs of poppy straw each in the area near Hanuman Mandir, Kaluana road Sirsa without any permit or license and vide judgment dated 15.05.2006, accused was convicted for an offence under Section 15 of the Act and in terms of order dated 16.05.2006, he was sentenced to undergo rigorous imprisonment (RI) for a period of 10 years and to pay a fine of Rs.1 lakh; in default of payment of fine, to further undergo RI for two years.

2. Briefly stated facts of the case, as per prosecution story are that on 22.02.2004, ASI Som Nath, In-charge, Police Post Goriwala, Police Station Sadar Sirsa, Dabwali [hereinafter referred to as the Investigating Officer (IO)], along with other police officials in Government vehicle No.HR24-3033 was present in the area near Hanuman Mandir, Kaluana road Dabwali in connection with patrolling, then a Maruti car bearing No.DL-6C-3737 of white colour came from the side of village Kaluana; on observing the police party, accused Gurtej Singh driver of the car brought it to a halt and himself ran away, leaving the car behind and on being checked, seven gunny bags containing poppy straw were found lying in the area; the IO separated two samples of 100 gm each from each of seven gunny bags and the remainder on being weighed came out to 35 kgs in each gunny bag; the samples and the gunny bags containing residue poppy straw were converted into separate parcels sealed with seal of IO having impression 'SN'; the specimen of seal inscription was prepared on a chit; then the sample parcels and the bulk parcels along with Maruti car in question were taken into police possession, vide memo Ex.PF attested by the witnesses; seal after use was handed over to HC Ramesh Kumar; the IO sent ruqa Ex.PG to the police station on the basis of which formal FIR Ex.PG/1 was recorded there by ASI Bhanwar Singh; IO prepared rough site plan of the place of recovery as Ex.PH; he recorded statements of witnesses.

On return to the police station, the IO produced, the witnesses and the case property including maruti car along with report

under Section 57 of the Act Ex.PA before SI Rajbir Singh, SHO, PS Sadar, Dabwali, who verified the facts from the witnesses and thereafter affixed his seal having impression 'RS' on all the sample parcels and bulk parcels making his endorsement Ex.PA/1 on report sending it to DSP, Dabwali; that report was perused by Sh. Kuldeep Singh, DSP; on the directions of SI Rajbir Singh, SHO of the police station, the IO deposited the case property with MHC of the police station on 18.04.2004, registration certificate of the maruti car Ex.P15, affidavit of Baljinder Singh Ex.PD produced by him were taken into possession, vide recovery memo Ex.PC; the accused was arrested on 27.08.2004 by ASI Kanshi Ram; during the course of investigation, seven sample parcels were sent to FSL at Madhuban for analysis and as per report received there from, those were found to be of poppy straw (choora post).

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

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

4. During the course of prosecution evidence, prosecution examined as many as eight witnesses as per details below:-

PW1 SI Rajbir Singh who was posted as SHO, PS Sadar, Dabwali on 22.02.2004 and before whom the case property along with

witnesses had been produced by the IO on that day, deposed regarding his part, which has been detailed while narrating the facts of the case above. He proved the residue parcels as Ex.P1 to P7 and second sample parcels Ex.P8 to P14 and maruti car Ex.P15.

PW-2 ASI Kanshi Ram, who had taken over the investigation of the case and arrested the accused on 27.08.2004 deposed in that regard.

PW-3 HC Ram Kumar and PW-8 Subhash Chander who were formal witnesses had tendered in evidence their affidavits as Ex.PB and PK respectively.

PW-4 Sh. Baljinder Singh registered owner of maruti car No.DL-6C-3737 stated that he had purchased this car from car bazaar at Malout and got registration of the car transferred in his name. Since he did not support the prosecution story, therefore, he was declared as a hostile witness at request of learned Public Prosecutor and learned counsel was allowed to cross-examine him.

PW-5 ASI Jaipal Singh who while posted as ASI/SHO of PS Dabwali on 09.09.2004 had prepared challan in this case, testified in that regard.

PW6 ASI Som Nath, who was leading the police party which had effected the recovery from maruti car being driven by accused while accused had managed to run away deposed in that regard besides the investigation conducted by him, proving various documents.

PW7 HC Ramesh Kumar, a witness of recovery supported

the prosecution story on material aspects.

The prosecution relied upon several documents including report from FSL, Haryana Ex.PJ and thereafter, the evidence of prosecution was closed.

5. 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 and had been falsely implicated in this case at the instance of Harnam Singh, Sarpanch of village Kingre, with whom he had strained relations due to elections.

6. After hearing arguments, the trial Court vide impugned judgment and order had convicted and sentenced the accused as mentioned supra.

7. Feeling aggrieved by the judgment of his conviction and order of sentence, the appellant/accused had approached this Court by way of filing an appeal. The appeal was Admitted for regular hearing and on an application having been filed by appellant/accused, his remaining sentence was suspended during pendency of the appeal, subject to his furnishing requisite bonds to the satisfaction of Chief Judicial Magistrate, Sirsa. Notice of the appeal was given to the State, which has put in appearance.

Now the appeal has come up for final hearing.

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

9. Learned counsel for the appellant has argued that there is no evidence to connect the appellant/accused with the recovery since Baljinder Singh owner of the maruti car while appearing as PW4 had not supported the case of prosecution and had resiled from his earlier statement that he had given car to Gurtej Singh-accused for attending marriage by him in his relations. However, I do not find myself in agreement with learned counsel for the appellant/accused in that regard. No doubt PW-4 Baljinder Singh owner of the car had turned hostile stating that he had not given car to accused Gurtej Singh and that his signatures had been obtained by the police on blank papers. He had also denied having given any affidavit Ex.PD to the police but in his cross-examination on behalf of the State, he was confronted with the statement made by him to the police that he had given his car to Gurtej Singh accused for attending marriage by him in his relations, rather, he denied having given car to Gurtej Singh. However, he has not explained as to how the car came in possession of Gurtej Singh. It is certainly not his case that the car had been stolen and in that way, it might have fallen in hand of Gurtej Singh. Furthermore, he nowhere claims that Gurtej Singh had taken away car from him forcibly. The version given by Baljinder Singh to the police in his statement Ex.PE that he had given car to Gurtej Singh for attending marriage in the relations seems to be much more probable. Many a times, human beings succumb to the pressure of fellow human beings and refrain from appearing as a witness against a person who is on the wrong side of law, for various reasons, which may include

monetary allurements, pressure by the persons known to him, fear of the criminal causing harm to that person or his family etc. Under the circumstances, it appears that the witness had given his car to the accused as had been stated by him in his statement to the police and thereafter, in order to protect him from punishment, he denied having done so. In any case, we are to see whether the accused was driving a Maruti car or not.

PW6 ASI Som Nath happened to be a star witness for the prosecution. He appearing as PW6 categorically stated that it was the accused Gurtej Singh, whom he had identified in the Court to be the same person who had fled from the spot on 22.02.2004. He deposed regarding recovery of contraband from the car, which was being driven by the accused. Though the name of the accused is not mentioned in the ruqa, but his other features, like colour, complexion, height, age are mentioned from which identity of the accused could be established. It is not a case of the appellant that such features given in the ruqa are quite different from those of the appellant as regards colour, complexion, height, age. Though, no identification parade is shown to have been got arranged by the prosecution so as to get the accused identified from the eye witnesses but in the absence thereof, the prosecution has led sufficient evidence to connect the accused with the recovery.

An important fact which goes against the appellant/accused is that on seeing the police party, he stopped the car and ran away, that means he was aware of the fact that contraband was being carried in the car in question and for that reason, on observing the police party he had

run away fearing that otherwise he could be arrested by the police contingent present there.

10. Learned counsel for the appellant had argued that none of the official witnesses of recovery claimed that he/they was/were acquainted with the accused earlier, therefore, they could not say with certainty whether it was accused, who was driving that car in question or not. May it be so, the accused can certainly not take advantage of his own wrong in running away after seeing the police party, rather it goes to show his guilty intention. Furthermore, no cogent or convincing reason has been suggested prompted by which the IO might have involved the accused in this case wrongly or the official witnesses would have deposed against him to secure his conviction. Although, holding of test identification parade would have improved the prosecution case to some extent but non-holding of such parade does not prove fatal to the prosecution story. As per human nature when a person is seen in the close quarter, the features of that person usually get imprinted on the mind of such observer which he can recall even after some time, though with long passage of time, such recognition gets weak and diluted. Here the recovery was effected on 22.02.2004. Statements of witnesses of recovery i.e. PW6 ASI Som Nath was recorded on 03.10.2005 and HC Ramesh Kumar PW-7 on that very day, it can certainly be not taken that on account of long passage of time, the witnesses might have forgotten the details with regard to features of the accused. Affidavit furnished by Baljinder Singh to the police Ex.PD which is dated 17.04.2004 duly attested by Notary Dabwali,

Sirsa after a period less than two months of the incident, it is mentioned that Baljinder Singh had asked Gurtej Singh to return his car. Gurtej Singh firstly dillydallied and subsequently told him the factual position, stating that he had loaded seven bags of poppy straw in the car which had been apprehended by the police, therefore, he had run away, leaving the car behind. Baljinder Singh though denied having given any affidavit to the police but then it comes out to be highly unlikely that the police would have fabricated that document itself. As such, accused stand clearly connected with the recovery.

11. Another argument put forward by learned counsel for the appellant was that provisions of Section 52-A of the Act were not complied with. However, if we see the statement of PW6 ASI Som Nath it comes out that on the day of recovery, he had produced the case property, witnesses and report under Section 57 of the Act before SI Rajbir Singh, SHO of PS Sadar, Dabwali, who had verified the facts of the case from witnesses, affixing his own seal having impression 'RS' on all the parcels and thereafter, the case property had been deposited with MHC of the police station. Inspector Rajbir Singh, appearing as PW1 had also deposed in that regard. From the oral as well as documentary evidence brought on record by the prosecution especially PW3 HC Ram Kumar with whom the case property was deposited on 22.02.2004 and who on 26.02.2004 had handed over sample parcels to Constable Subhash Chander for depositing those in FSL, Mahduban, Haryana and testimony of PW8 Constable Subhash Chander who had furnished Ex.PK regarding

the safe custody of sample parcels, it comes out that no tampering with case property had taken place and the same remained in safe custody and further the sample parcels had reached the office of FSL, Haryana with seals intact. Report from FSL also goes to show that on analysis the sample parcels were found to be of poppy straw. Therefore, no prejudice was caused to the accused in the process. The case property in the form of bulk parcels Ex.P1 to P7 and second sample parcels Ex.P8 to P14 had been produced in the Court which were got proved by PW1 SI Rajbir Singh and no tampering of seals thereof could be pointed out on behalf of the defence.

12. While being examined U/s 313 Cr.P.C., the accused had simply denied having been found in possession of the contraband. The explanation render by him is that he had strained relations with Harnam Singh, Sarpanch of Village Kingre on account of elections and for that reason, he has been falsely involved in this case. This explanation does not come out to be plausible or probable. The accused has not led any evidence in defence to prove his version. Furthermore, a Sarpanch of village cannot be so influential so as to manipulate the things including false plantation of huge quantity of contraband on an innocent person. The police officials would not have agreed to do so simply at asking of a village sarpanch fully aware that if that alleged wrongful act was detected, they would suffer not only in their service carrier but may have to go to jail even for foisting a false criminal case of serious nature on an innocent person.

13. A Single Judge of this Court in case **Krishan Kumar Vs. State of Punjab, 2016(2) RCR (CrL.) 707**, dealing with aspect of false implication where there was recovery of 35 bags containing 35 kgs poppy husk in each bag from had observed that such a huge quantity of the contraband cannot be planted by the police from its own source, that too, just for the false implication, the conviction and sentence of the accused was upheld.

In this case also, I find that the recovery involved in this case is quite substantial that almost rule out the possibility of false plantation. It needs to be mentioned here that identify of the accused was came to be known from statement of PW Baljinder Singh. Now it is to be seen that if the appellant has been able to win over Baljinder Singh by giving him allurements, threat or coercion etc., then the prosecution story crumbles like a house of cards. The answer cannot be in positively. Baljinder Singh resiling from his earlier statement does not mean that he can cause serious dent to the prosecution story, when in view of the affidavit furnished by him and statement made to the police earlier, he had categorically stated that the present accused had borrowed his car for attending marriage of some relative but then he proceeded to carry bag of poppy straw therein. If it was not accused Gurtej Singh, then it would have been Baljinder Singh owner of the car because he is to explain as to how contraband was being carried in the car belonging to him.

14. Keeping in view the totality of circumstances, it comes out that it was Gurtej Singh accused who was driving the car from which the

contraband had been recovered, since he had managed to run away. He cannot take advantage of this fact and ask for acquittal for that reason. The prosecution had successfully proved its charge against the accused beyond a shadow of reasonable doubt with regard to accused having been found in conscious possession of 245 kgs of poppy straw placed in bags, which he was carrying in the maruti car. The accused could not render any reasonable or plausible explanation for possession of the contraband, therefore, he is to be taken in conscious possession thereof, in terms of Sections 35 and 54 of the Act. He was rightly convicted and sentenced by the trial Court. The sentence awarded to him is minimum prescribed for the offence. There is no scope for further reduction in the sentence.

The appeal is found to be without merit and same is hereby dismissed.

15. The appellant/accused is directed to surrender before Chief Judicial Magistrate, Sirsa within a week from today, failing which learned CJM, would issue warrants of arrest to secure his presence and send him to jail to undergo the remaining sentence. Necessary intimation be sent to the Court concerned for information and compliance.

02.09.2022

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(H.S. MADAAN)
JUDGE

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