

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

343

CRA-S-780-SB-2004 (O&M)
Decided on 27.01.2023

Makhan Singh

. . . Appellants(s)

Versus

State of Punjab

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Gopal Sharma, Advocate

Amicus Curiae,

appointed by a separate order dated 27.01.2023.

Mr. Anmol Singh Sandhu, AAG, Punjab.

SANJAY VASHISTH, J. (Oral)

1. Present appeal has been filed by appellant-Makhan Singh, against the judgment of conviction and order of sentence dated 27.03.2004 passed by the Judge, Special Court, Patiala, in session case No. 104 T of 17.10.02/08.12.2003 arising from FIR No. 144 dated 08.06.2002, under Sections 15/61/85 of Narcotic Drugs and Psychotropic Substances, Act, 1985 (in short 'NDPS Act'), registered at Police Station Sadar, Patran.

2. Vide judgement of conviction and order of sentence dated 27.03.2004, appellant was convicted for a period of 01 year as rigorous imprisonment alongwith fine of Rs. 1000/- and in default of payment of

fine, to further undergo R. I. for 01 month.

3. Brief facts of the case are that on 08.06.2002, ASI Sukhdev Singh alongwith his police party was present for police patrolling at bus stop of village Shutrana. Meanwhile, witness Jaswant Rai met the police party and he was joined by the police party. On reaching near the bus stop of village Jogewal, accused came there on foot having a bag on his shoulder. On seeing the police party, he tried to take a turn towards his left hand and in that process, the bag fell on the ground and some poppy husk came out of it. Thereafter, ASI Sukhdev Singh took search of the bag which was found containing 10 kg of poppy husk, out of which two samples of 250 grams each were separated. Samples were put in parcels. Remaining poppy husk was also put in a parcel and these were sealed with the seal of ASI Sukhdev Singh as 'SS' and specimen seal impression Ex. P1 was also prepared. Case property was taken into possession vide recovery memo Ex. PD. Ruqa Ex. PF was sent to the police station and accordingly formal FIR (Ex. PF/1) was registered. After completion of the other legal formalities, rough site plan Ex. PG of the place of recovery was prepared. Case property was deposited with the MHC Mewa Singh and on the same day, the case property was produced before the Illaqa Magistrate by ASI Sukhdev Singh.

4. On completion of the investigation, challan/report under Section 173 Cr.P.C. was presented before the concerned Court and after completion of trial, appellant was held guilty for the offence punishable

under Section 15 of the NDPS Act.

5. The prosecution, in order to prove its case, examined 05 witnesses, which are as under:-

PW-1	Mewa Singh	Head Constable
PW-2	Bimal Kumar	Sub-Inspector
PW-3	Sukhdev Singh	ASI
PW-4	Harbans Singh	Constable
PW-5	Satnam Singh	Constable

6. In the statement under Section 313 Cr.P.C., appellant has *denied the allegations of the prosecution and pleaded that he has been falsely implicated. He has further averred that no recovery was effected from him.*

7. Today, at the time of hearing, there was no representation on behalf of the appellant, so Mr. Gopal Sharma, Advocate has been appointed as *Amicus Curiae* by this Court and given reasonable time for going through the record. This Court has also examined the record available before it. Learned *Amicus Curiae*, while addressing his arguments on behalf of the appellant, submits that police itself had joined one independent witness Jaswant Rai, who was not examined for the reasons best known to the prosecution. Thus, case of the prosecution falls on this score alone.

8. Another argument addressed by counsel is that there are lot of contradictions in the statements of of witnesses. Thus, evidence based upon the deposition of the police witnesses cannot be considered as

proving of recovery of contraband in the present case without any doubt.

The discrepancies pointed out are as under:

“i) PW-3, ASI Sukhdev Singh has stated that the accused was seen for the first time on their left side while Harbans Singh has stated that the accused was on their right side when they saw him.

ii) PW-3 ASI Sukhdev Singh has stated that the weighing scales were arranged through driver Jagdish Singh from Village Jogewal, who went on Allwyn Nissan, while C. Harbans Singh PW4 has stated that Jagdish Singh went on foot to arrange weighing scales.

iii) PW3 ASI Sukhdev Singh has stated that seal used by him was made of gilt while PW4 C. Harbans Singh has stated that the seal of ASI Sukhdev Singh was of silver.”

9. In this regard, it is observed that merely explaining the direction, which side the accused turned and same being in discrepancies cannot be said to be a serious defect in the evidences of the witnesses. It is so observed, more for the reason that in the present case, the recovery is from the bag which had fallen from the shoulder of the appellant and on falling down of the bag, some quantity of poppy husk had come out of it and was visible to the police party. Otherwise, there is no such material

contradictions found in the statements of material witnesses i.e. PW-3 and PW-4.

10. It is also submitted that regarding the non-examination of independent witness, Jaswant Rai, trial Court has given observation which is reproduced as under:-

*“14. Seal in this case after use was handed over to Jaswant Rai independent witness, who has been given up by the prosecution as having been won over by the accused. Now the question arises as to whether the testimony of prosecution witnesses are worthy of reliance in the absence of independent witness. In the case of **Shera Singh Vs. State of Punjab reported as 1996 (2) Recent Criminal Reports, 128**, it has been observed by the Hon'ble High Court of Punjab and Haryana that there is no rule of law that the evidence of police officer cannot be accepted unless it is corroborated by independent witness. If the police officer otherwise is dependable. In the case of **Ram Singh Vs. State of Haryana reported as 2000 (1) Recent Criminal Reports 541** the independent witness was joined, but he did not support the prosecution version and His lordships of Hon'ble Punjab and Haryana High Court observed that the conviction can be based on the statement of official witness if it inspires confidence. In the case of **Roop Chand Vs. State of Punjab reported as 1999 (4) Recent Criminal Reported, 127** the independent*

witness joined by the Police party was not examined and his lordship of Hon'ble Punjab and Haryana High Court observed as follows:-

"In my opinion, the case has to be viewed

*from, the angle that whether a conviction can be based on the statements of police officials or not irrespective of the fact that Kulwant Singh has not been examined. Assuming for the sake of argument that Kulwant Singh has been examined and he does not want to support the case of the prosecution at the trial, still this court is of the opinion that conviction could be based on the testimony of the police witnesses as held even in **Balbir Singh Vs. State of Punjab, 1994 (1) Recent C.R. 736.***

Further it depends upon individual to individual whether he would like to support the allegations of the prosecution at the trial stage or not. We have to see whether the investigation was honest or not. When the Investigation Officer ASI Kishan Singh has taken the assistance of Kulwant Singh in getting his attestation, it can be safely said that there was a genuine effort on the part of the investigating officer to associate an independent witness. The appellant has not taken trouble to examine Kulwant Singh in his defence to explain under what circumstances he has attested the recovery memo etc. There can be

variety of reasons why a witness is not interested to come forward to assist the law. He can be threatened; he can be bribed; he might come under the pressure of co-villagers etc; or he may not want to purchase enmity with the accused. The non-examination of a witness who has been joined in the investigation per se is not fatal untill and unless some strong circumstance emerges out from which a reasonable doubt can be created".

11 Learned State counsel produces custody certificate dated 12.12.2022 and same is taken on record. Registry is directed to tag the same at appropriate place.

As per said custody certificate, appellant has already undergone the sentence period of 01 month and 09 days, uptill 17.07.2002 and he is not found to be involved in any other case of similar nature despite passing of more than 20 years.

12. I have heard and considered the submissions of both the Counsel and perused the record with the able assistance of arguing counsel.

13. I find that it is a case where the evidence of independent witness will not be material, rather it appears that falling down of the bag from the appellant's shoulder was seen by the police party and even the poppy husk came out from the bag. Thereafter, according to the FSL report, it was found that contraband in the bag was nothing but poppy

husk. Thus, there is connectivity in the recovered contraband and the FSL report. Hence, qua conviction part, findings of trial Court is maintained and present appeal stands dismissed.

14. This Court has also gone through the judgment passed by the trial Court and has found that there is no illegality or perversity, which require any change in the findings, already recorded.

QUANTAM OF SENTENCE:

15. However, considering the aspect that for the last more than 20 years, appellant has not been found involved in any other case especially of similar nature; and the recovered quantity is even much less than the non-commercial quantity in the present case and appellant is already facing the proceedings of prosecution since the time of registration of FIR No. 144 dated 08.06.2002, I hereby modify the sentence part to the sentence already undergone by the appellant that is 1 month and 9 days.

16. However, remaining part of sentence i.e. fine/compensation etc would remain intact.

17. With the aforementioned modification in the order of sentence, present appeal i.e. **CRA-S-780-SB-2004** stands disposed of.

(SANJAY VASHISTH)
JUDGE

27.01.2023

Riya

Whether speaking/reasoned:

Yes/~~No~~

Whether Reportable:

~~Yes~~/No