

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

SR. No.352

CRA-S-855-SB-2004 (O&M)

Reserved on:02.12.2022

Date of Decision:06.01.2023

Daler Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Ms. Sushma Chopra, Advocate,
for the appellant.

Mr. Vipin Pal Yadav, Addl. A.G., Punjab.

N.S. SHEKHAWAT, J.

Challenging the judgment of conviction dated 03.04.2004 and order of sentence of even date passed by the learned Judge, Special Court, Patiala, whereby the appellant has been convicted for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.2,000/- and in default thereof, to further undergo rigorous imprisonment for two months, the appellant has approached this Court by way of filing the present criminal appeal.

The prosecution story, as it emerges from the report under Section 173 Cr.P.C., is that on 09.08.2000, a police party headed by SHO Balwinder Singh, Police Station Ghagga, was holding a Nakka on one side, whereas another police party headed by ASI Karan Singh had set up a

Nakka on the other side of the bridge. In the meantime, Mohinder Singh, independent witness, came at the spot and started talking to the police party. While they were talking, accused/appellant Daler Singh and another person Dial Singh were seen coming on two separate mares and tried to cross the wooden bridge of Ghaggar River. On seeing the police party, both tried to flee from the spot, but they were caught by the police parties and both alighted from the mares. The police party suspected that the said persons were carrying some contraband and they were apprised of their right under Section 50 of the NDPS Act to the effect that they could get their search effected from some gazetted officer or a Magistrate. The accused/appellant stated that he wanted to get his search conducted from some gazetted officer. The consent of the accused/appellant was reduced into writing by SHO Balwinder Singh and message was sent to DSP Gurbachan Singh, who reached at the spot and after disclosing his identify, he gave the option to the accused/appellant that he could get his search conducted as per the provisions of the NDPS Act, but he reposed confidence in the DSP and his statement Ex.PD was recorded accordingly.

After following the procedure, as provided by the NDPS Act, search of accused-appellant Daler Singh was conducted by ASI Karan Singh and on unloading the bags, 20 kgs of poppy chura was recovered from two bags. Two samples of 250 grams from each of the bag were separated and the remember quantity weighed to be 39 kgs.

After necessary investigation, the challan was presented against the accused/appellant under Section 15 of the NDPS Act. Finding a prima facie case, the charge under Section 15 of the NDPS Act was ordered to be framed against the present appellant, to which he pleaded not guilty and

claimed his trial.

In order to bring home the guilt of the accused/appellant, the prosecution examined five witnesses. PW-1 ASI Gurmail Singh was examined, who was posted as MHC PS Ghagga on 09.08.2000 and he tendered his affidavit Exhibit PA. PW-2 Constable Amrik Singh was examined, whose evidence was of formal character and he tendered his evidence by way of his affidavit, Exhibit PB. The prosecution further examined ASI Karan Singh as PW-3, who was a witness of search and seizure proceedings. He supported the case of the prosecution in totality. Inspector Balwinder Singh was examined as PW-4, who was posted as SHO PS Ghagga on 09.08.2000 and ASI Karan Singh had produced the accused/appellant, case property, samples of poppy husk and witnesses of the case, before him. ASI Karan Singh also produced seal impression Exhibit P1 before him and he verified the factum of recovery of the contraband and the investigation and found the same to be correct. He had also affixed his seal bearing impression 'BS' and the case property was ordered to be deposited with MHC Gurmail Singh. On the next day, he made request Exhibit PK under his signatures and the case property and the accused were presented before the Court of learned Area Magistrate, on which the learned Magistrate passed orders Exhibit PK/1 and PL/1 on the applications on production of the case property and the accused. PW-5 Ram Dia was the part of the police party, which was headed by SI Balwinder Singh and he supported the case of the prosecution with regard to the recovery made from the present appellant.

After the closure of the prosecution evidence, the statement of the accused/appellant was recorded U/s 313 Cr.P.C., who stated that a false

case had been planted upon him after arresting him from his village and no recovery was effected from him. He further pleaded that the thumb impression of the accused were obtained on blank papers and the entire proceedings were false and fabricated.

Learned counsel for the appellant vehemently argued that there are material contradictions in the statements of PW-3 ASI Karan Singh and PW-5 Constable Ram Dia and the entire prosecution case is rendered unbelievable. She further submitted that there was no independent corroboration of the prosecution evidence and the entire case hinges on the testimonies of the official witnesses. Consequently, the provisions of Section 100 of the Code of Criminal Procedure were also not complied with and the appellant was liable to be acquitted by this Court.

The above-mentioned submissions raised by the learned counsel for the appellant have been refuted by the learned State Counsel, who stated that the official witnesses had withstood the test of cross-examination and the testimonies could not be disbelieved only on the ground of their official status.

I have heard the learned counsel for the parties and with their able assistance, I have gone through the entire case file minutely. However, I find no substance in the arguments raised by the learned counsel for the appellant.

It is a matter of common experience that the official witnesses got a chance to appear as prosecution witnesses before the learned trial Court after a considerable lapse of time and cannot be expected to submit a parrot like version before the learned trial Court. It is trite to say that some discrepancies appear in the testimonies of truthful witnesses also. Even the

learned counsel has pointed out minor inconsistencies/contradictions appearing in the testimonies of PW-3 ASI Karan Singh and PW-5 Constable Ram Dia, who have supported the case of the prosecution in all material particulars and such minor variations/contradictions do not go to the root of the case so as to discard the case of the prosecution in its entirety. Even the learned counsel has failed to point out any serious contradiction in the statements of both the witnesses and the argument raised by learned counsel is without any substance.

Even the submission raised by learned counsel for the appellant that there was no independent corroboration of the prosecution case, is also liable to be rejected by this Court. The Hon'ble Supreme Court is held in number of judgments that the violation of the provisions particularly that of Sections 100, 102, 103 or 165 of the Code of Criminal Procedure strictly *per se* does not vitiate the prosecution case. If there is any such violation, the Court has to see whether any prejudice was caused to the accused after appreciating the evidence and other relevant factors. The Courts should bear in mind that there was such a violation and from that point of view, evaluate the evidence on record. It is equally well settled that the testimony of a witness is not to be doubted or discarded merely on the ground that he happened to be an official, but as a rule of caution and depending upon the circumstances of each case, the Courts look for independent corroboration.

In the instant case, the prosecution has examined five official witnesses, who were searchingly cross-examined and nothing material could be elicited from their respective cross-examination. Even I have perused the testimonies of five official witnesses and the same are worthy of credence and the learned trial Court has correctly placed reliance on the testimonies

of these official witnesses. Even otherwise, the accused/appellant merely stated that he had been falsely implicated by arresting him from the village. However, he assigned no reason for false implication by the official witnesses and the arguments raised by learned counsel for the appellant are devoid of any merits.

From the above discussion, it is apparent that the prosecution has proved the case beyond the shadow of reasonable doubt and had complied with all mandatory provisions of the NDPS Act and the impugned judgment of conviction passed by the learned trial Court does not suffer from any illegality or infirmity and is liable to be upheld.

However, this Court cannot lose sight of the fact that the FIR in the instant case was registered on 09.08.2000 and the accused/appellant is facing the agony of trial/appeal for the last more than 22 years. Even the recovery of the contraband from the appellant is non-commercial in nature. As per the custody certificate produced by the learned State counsel, the present appellant has undergone 04 months and 18 days of actual custody. Even the custody certificate further shows that no other case was registered against the present appellant, after he was released on bail on 28.04.2004 by this Court. Furthermore, he is shown to be aged 40 years as on 17.10.2000 (as per the charge-sheet) and is a senior citizen at present. Consequently, the ends of justice would be suitably met, if his substantive sentence is reduced to the one already undergone by him.

Resultantly, the conviction of the appellant, as recorded by the learned trial Court vide its impugned judgment dated 03.04.2004, is maintained. However, his substantive sentence of imprisonment is reduced to the one already undergone by him. The sentence of fine will remain the

same and the appellant is directed to deposit the same within a period of 04 months from today, if not paid already, failing which he shall undergo further rigorous imprisonment for a period of 02 months.

In view of the above, the present appeal stands disposed off, accordingly.

Pending application, if any, is also disposed off, accordingly.

Case property, if any, be dealt with, and, destroyed after the expiry of period of limitation for filing the appeal, in accordance with law. The trial Court record be sent back forthwith.

06.01.2023
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO