

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

317

**CRA-S-508-SB-2002
Decided on : 16.02.2023**

Jaspal Singh

... Appellant(s)

Versus

State of Punjab

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Ms. Komal Thakur, Advocate as *Amicus Curiae*.
(appointed vide order dated 18.11.2022).

Mr. Gurlal Singh Dhillon, AAG, Punjab.

SANJAY VASHISTH, J.

1. Appellant has filed the instant appeal against the judgment of conviction and order of sentence dated 07.03.2002, passed by the Ld. Judge, Special Court (ND&PS), Patiala, in Sessions Case No.149T/2000/28.08.2000, arising out of FIR No.294, dated 02.06.2000, under Section 18 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (in short 'NDPS Act'), registered at P.S. Civil Lines, Patiala.
2. Appellant was found in possession of 300 grams of opium without any valid permit or licence, and was thus, sentenced for a period of one year RI, and to pay a fine of Rs.2500/-, and in default of payment of fine to further undergo RI for one month.
3. Learned State counsel points out that as per custody certificate, appellant has undergone actual custody period of 01 year, 04 months and 26 days, which is more than the sentence awarded by the Ld. Trial Court.
4. Story of the prosecution emerging from FIR is that on 02.06.2000, Inspector Piara Singh along with other police officials, in connection with the patrolling in Govt. Gypsy bearing registration No. PB-

06-3110, driven by C. Nirmal Singh, No.91, were going from Sular Chowk to Kheri Gujran. Meanwhile, Baldev Singh, Sarpanch of village Bathoi Kalan met the police party at Sadar Chowk, who was joined in the police party. When the police party was near the link road, which leads to officer colony, a person having Jhola in his right hand was noticed coming from the front side. On seeing the police party, he tried to turn to his left side, and then started walking. On suspicion, he was stopped, and thereafter, his whereabouts were inquired, who disclosed his name as Jaspal Singh. Accused was informed about the suspicion of the police party of his having some contraband article in his Jhola, and was also given an option of his search to be conducted in the presence of Gazetted Officer or the Magistrate, and accused opted for his search in the presence of Gazetted Officer. Accordingly, through wireless message, DSP, City-II, Patiala was requested to come at the spot. After sometime, Mr. Gursharan Singh Bedi, DSP, City-II, Patiala, along with his gunman reached in a Govt. Gypsy at the spot. Thereafter, Investigating Officer (IO) in the presence of DSP conducted the search of Jhola held in the right hand of the accused, and on search, 300 grams of opium rapped in a paper was recovered. Two samples of 10 grams were separated and were put in a different small dabbi tins. After completing the other formalities on the spot, ruqa was sent to the police station for lodging of the FIR and thereupon, after completion of investigation, final report/challan under Section 173 Cr.P.C was presented.

Finding a *prima facie* case accused was charge-sheeted under Section 18 of the NDPS Act, for which he claimed trial.

5. Prosecution in total examined six witnesses i.e. SI Ajmer Singh as PW1 (member of the investigating team), Sh. Gursharan Singh Bedi, DSP as PW2 (As a Gazatted Officer in whose presence the recovery was

effected), C. Rajesh Kumar No.3488 as PW3 (formal witness), HC Hari Pal Singh as PW4 (formal witness), C. Chet Ram No.1426 as PW5 (who deposited samples to FSL), Inspector Piara Singh as PW6 (who was heading investigating agency at the time of recovery and sealed the parcels). Thereafter, vide order dated 04.05.2001, prosecution gave up ASI Sanjeed Ali as unnecessary and PW Baldev Singh being won-over by the accused, and thus, closed its evidence on 26.11.2011.

6. In the statement under Section 313 Cr.P.C., appellant-accused took a specific stand that *“The case is false, I am innocent. Nothing was recovered from me. I was taken by the police from my shop in the presence of respectables of the village and a false case has been planted upon me.”*

7. In defense evidence, DW1 – HC Darshan Singh, who brought the summoned record Ex.D1, as correct copy of the register No.19, dated 02.06.2000. Darshan Singh appeared as DW2, and deposed that beside working in the Punjab State Electricity Board (PSEB), appellant is selling vegetables and on 01.06.2000 in the evening, police came to his shop and took his search, but nothing was recovered, and thereafter, he was taken to the police station in his presence.

DW3 - Hukam Chand, who appeared as DW3, who is tailor master in village Kheri Gujran, is a Panch of the village and has deposed in the tune of DW2. C. Jaswinder Singh [No.209 Gunman SP(D)], who appeared as DW4, and deposed that he was present on the spot, and at that place Baldev Singh, Sarpanch was also present. DW5 Baldev Singh, Sarpanch, r/o Bathoi Kalan deposed that on 02.06.2000, he went to P.S. Civil Lines, Patiala, where, his signatures were obtained on 2/3 papers.

8. Thus, by producing the defense witnesses, appellant has made attempt to prove that he was in fact booked up by the police on 01.06.2000,

and case was planted on 02.06.2000 by saying that recovery of 300 grams opium in the presence of independent witness Sarpanch Baldev Singh was effected from him.

After considering evidence of the witnesses, Ld. Trial Court held the accused guilty, and sentenced him as already detailed above in this judgment.

9. Ld. *Amicus Curiae* points out that the method of seizure and then sampling of the case property is faulty. In fact, there is no specific formula mentioned in the Act that at what time and how the sample should be formed for its further transmission for confirmation to the Forensic Science Laboratory. While reading out Section 52-A of the NDPS Act, Ld. *Amicus Curiae* submits that said provision of law deals with the disposal of seized narcotic drugs and psychotropic substances like manner of preparing its inventory, sampling and inventory and production of the contraband before the Magistrate. However, said provisions of Section 52-A of the NDPS Act, have not been complied with by the prosecution agency.

To substantiate his arguments, Ld. *Amicus Curiae* refers to the judgment of this Court rendered in ***CRA-S-2384-SB-2003 (O&M)***, titled as, ***“Smt. Kali Vs. State of U.T. Chandigarh”***, decided on ***20.01.2023***, wherein, similar kind of argument has been considered by this Court.

10. Further, Ld. *Amicus Curiae* submits that there was an independent witness, who was joined by the police party i.e. Baldev Singh, Sarpanch, but without any reason, he was not examined by the prosecution side by giving an excuse that said witness has been won-over by the accused-appellant. Ld. *Amicus Curiae* further submits that in this regard, such a plea of the prosecution that said Baldev Singh, Sarpanch, was not examined being won-over, is not tenable.

This Court has considered the similar arguments in ***CRA-S-433-SB-2004***, titled as, ***“Jaswinder Singh Vs. State of Punjab”***, decided on ***21.12.2022***. Therefore, in view of said judgment of this Court, the submission made by Ld. *Amicus Curiae* gets weight.

11. It is also argued that appellant also examined total 05 witnesses, and from the statements of the said witnesses, it can be fairly assessed that in fact, appellant was picked up by the police on 01.06.2000, and no such recovery was effected on 02.06.2000. Stand taken by the appellant in his statement under Section 313 Cr.P.C., has been substantiated by producing the other co-villagers of the appellant. Hukam Chand (DW3), who is Panch of the village, cannot be said to be fake witness out-rightly, as Darshan Singh (DW2), who also corroborates the defense version is also the co-villager of the appellant. In fact, appearance of Baldev Singh, Sarpanch as DW5, give strength to the statements of the other co-villagers of the appellant, to prove the fact that he was never a witness of recovery of opium from the appellant. Statement of Baldev Singh, Sarpanch becomes very weighty once it is noticed that he is resident and Sarpanch of different village i.e. Bathoi Kalan, other than that of the appellant.

12. It is well settled proposition of law that the defense witnesses are to be given equal weightage, as is given to the prosecution witnesses. In the case in hand, recovery is of 300 grams of opium from the appellant, who is a Government employee working in the office of Punjab State Electricity Board. Prosecution has not even tried to bring any evidence that once a Govt. official is alleged to be possessing narcotic substances, then what was its source to obtain.

13. By noticing the aforementioned factors, evidences available on record, and the judgments, as cited by the appellant, I find that the appellant

deserves benefit of doubt. Moreover, it will not go unnoticed that out of total one year of sentence, as per custody certificate dated 16.02.2023, appellant has undergone custody period of 01 year, 04 months and 26 days, before being released on bail, during the pendency of appeal. It is also noticeable that except of present case registered in the year 2000, petitioner is not alleged to be found involved in any other similar activity. This aspect also fortifies the view point that case of prosecution is not proved beyond doubt.

14. Considering the aforementioned circumstances, arguments addressed by counsel for the parties, and after perusing the record carefully, this Court finds force in the submissions addressed by Ld. Legal Aid Counsel, and thus, judgment of conviction and order of sentence dated 07.03.2002, passed by Ld. Trial Court, are hereby *set aside*, and consequently, **appeal is allowed** by acquitting the appellant from all the charges levelled against him.

Appeal stands disposed of.

(SANJAY VASHISTH)
JUDGE

February 16, 2023

J.Ram

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*