

(2010) 04 P&H CK 0142

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Balraj Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: April 27, 2010**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 173
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 15, 16, 57

Hon'ble Judges: Sabina, J**Bench:** Single Bench**Final Decision:** Allowed

Judgement

Sabina, J.

Accused-Balraj was convicted for an offence u/s 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('the Act' for short) vide judgment dated 29.8.2003 passed by the Additional Sessions Judge, Sirsa. Vide order dated 1.9.2003, accused was sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rupees one lakh, In default, he was ordered to further undergo rigorous imprisonment for two years. Hence, the present appeal by the appellant-accused.

2. The case of the prosecution, as noticed by the trial Court in para 2 of its judgment, is reproduced here in below:

That on 4.8.200 1 ASI Jagdish Rai, Police Station, Ding alongwith Head Constable Raj Kumar No. 664 Constable Dalip Singh No. 633 and Piara Singh, son of Lehna Singh Jajhbi Sikh Chowkidar, resident of village Bhavdeen in government vehicle bearing registration No. HR24D/6 105 driven by Constable Kulbir Singh No. 792 was out for patrolling and 'Thikeri Pahra' checking. While the police party reached near 'T' point Narel Khera, Balraj Singh son of Mehanga Singh, Jat Sikh by caste, resident of village Bhavdeen was seen sitting on gunny bags. He was known to the police who on seeing the police party all of a sudden got up and started running in fields

towards village Narel Khera. On suspicion, he was chased by the police party who concealed himself in the fields. On return four bags containing poppy straw were found lying. From each bag two samples of 100 grams each were separated and the residue in each bag was found to be 39 kgs. 800 grams. The sample parcels and the remaining poppy straw were sealed with seal bearing impression 'JR' and taken into police custody. The seal after use was handed over to Piara Singh Chowkidar. ASI Jagdish Rai prepared a ruqa and sent the same through Constable Dalip Singh No. 633 to the police station on which FIR No. 136 dated 4.8.2001 under Sections 15/16 of the NDPS Act was recorded by SI Vijay Singh. The Investigating Officer prepared rough site plan of the place of recovery and recorded statements of the prosecution witnesses. On return to the police station, he produced the witnesses, accused and the case property and sample parcels before SI Vijay Singh, SHO PS Ding who verified the facts of the case from the witnesses and put his seal bearing impression 'VS' on all the parcels. The Investigating Officer also presented report u/s 57 of the NDPS Act. Ex.PG before SI Vijay Singh who forwarded the report to the Dy.Suptd. Of Police, Sirsa as required u/s 57 of the NDPS Act and deposited the case property with the MHC of the police station who sent the samples to the Director FSL Madhuban. On receipt of FSL report and on completion of other legal formalities, the challan u/s 173 Cr.P.C. was prepared and presented in the Court of learned Sessions Judge, Sirsa, who vide order dated 27.3.2002 entrusted the case to this Court for trial.

3. I have heard the learned Counsel for the parties and have gone through the record of the case.

4. Learned Counsel for the appellant has submitted that the prosecution had failed to prove its case to the effect that the appellant was in conscious possession of the contraband. The appellant was not apprehended at the spot and was arrested after six months of the lodging of the FIR. The complete case property had not been deposited with the MHC by the Investigating Office. Hence, the link evidence was missing in this case. Learned Counsel has further submitted that the appellant has undergone three years of actual sentence.

5. Learned State counsel, on the other hand, has submitted that the prosecution had been successful in proving its case.

6. As per the prosecution case on 4.8.2001, appellant was seen sitting on gunny bags at 'T' point, Narel Khera. On seeing the police party, appellant fled away. Despite efforts by the police party, the appellant managed to escape. From the recovered gunny bags, two samples from each bag weighing 100 grams each were separated. The remaining poppy husk weighed 39 kilograms and 800 grams. The samples as well as the remaining poppy husk were made into sealed parcels and were taken in possession. The case property was deposited with MHC on return to the police station by the Investigating Officer.

7. However, a perusal of the affidavit of PW2 HC Chhaju Ram shows that only four samples of poppy husk were deposited with him on 4.8.2001. The said witness has not deposed with regard to deposit of the remaining case property with him, whereas, PW5 ASI Jagdish Rai has deposed that on return to the Police station, he had deposited the case property with MHC with seals intact. Thus, the prosecution had failed to prove the link evidence in this case as the complete case property had not been deposited with the MHC. An accused is presumed to be innocent till prove guilty. However, the prosecution is required to establish its case beyond reasonable doubt. In the present case, the prosecution has failed to prove its case beyond reasonable doubt against the appellant as the link evidence is missing.

8. Accordingly, this appeal is allowed. The impugned judgment of conviction and order of sentence passed by the trial Court are set aside. Appellant is acquitted of the charge framed against him by giving him benefit of doubt.