

(2009) 04 P&H CK 0204

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 566 of 2009

Ladha Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: April 24, 2009

Acts Referred:

- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 15

Hon'ble Judges: Kanwaljit Singh Ahluwalia, J

Judgement

Kanwaljit Singh Ahluwalia, J.

1 The appellant was tried in case FIR No. 203 dated 13. 10.2002, registered at Police Station Khuian Scrwcr under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter to be referred as, "the Act"). According to the prosecution, 30 Kgs. of poppy husk was recovered from the appellant. The trial Court convicted the appellant under Section 15 of the Act and sentenced him to undergo rigorous imprisonment for three years and to pay a fine of Rs. 30.000/-. In default of payment of fine, he was to undergo further rigorous imprisonment for six months.

2 Case against the appellant was registered on the basis of ruqa Ex.P6 which led to registration of formal FIR Ex.P7. Ruqa Ex.P6 was sent by SI Rattan Singh PW2. Incharge Police Post Khatwan wherein he had stated that he along with his companion officials was going in a private jeep when Teja Singh son of Balwant Singh met them, who was joined in the police party. When police party while patrolling reached near the bridge of canal minor in the area of Village Patti Sadeek, they spotted the accused coming from the bridge of canal minor from the front side. The accused was carrying a gunny bag on his head. On seeing the police party, accused turned towards the pavement of the canal minor. He was apprehended by the police party. An offer was made to him to get himself searched before a Gazetted Officer or a Magistrate, as the Investigating Officer suspected that accused

was carrying some narcotic substance. It is stated that accused who disclosed his name as Ladha Singh had reposed faith in the Investigating Officer to get himself searched. The gunny bag was opened. It contained poppy husk. Two samples of 250 grams were drawn and rest of the poppy husk came to be 29 Kgs. and 750 grams. Thus, 30 Kgs. of poppy husk was recovered from the accused. After the matter was investigated, report under Section 173 Cr.P.C. was submitted. The appellant was charged by the trial Court that on 13.10.2002 at 3.30 P.M. in the area of Village Patti Sadeek, he was found in possession of 30 Kgs. of poppy husk and, thus, he had committed offence under Section 15 of the Act. The appellant pleaded not guilty and claimed trial.

3 Prosecution examined PW1 Constable Lekh Raj. He tendered into evidence his affidavit Ex.PI. This witness was examined to prove the link evidence. The Investigating Officer SI Rattan Singh appeared as PW2. He deposed regarding apprehension of the accused, his address, preparation of the sample, search, seizure and recovery effected from the accused. PW3 HC Harbhajan Singh corroborated the testimony of PW2 SI Rattan Singh. Prosecution examined SI Jagroop Singh PW4. He stated that on 13.10.2002 he was posted as SHO of Police Station Khuian Serwer when one parcel containing 250 grams of poppy husk and one bulk parcel containing 29 Kgs. and 750 grams of poppy husk were produced before him along with the accused. He had taken the case property in his possession vide recovery memo Ex.PI 1 which was attested by SI Rattan Singh. Thereafter, the prosecution closed its evidence.

4 Ail incriminating evidence was put to the accused and his statement under Section 313 Cr.P.C. was recorded. The appellant pleaded innocence and stated that he was falsely implicated. In defence Teja Singh who was joined by the prosecution as an independent witness, was examined as DW1. DW1 Teja Singh deposed that nothing was recovered from the appellant in his presence.

5 Counsel for the appellant has made twofold submissions. It has been submitted that in the present case CFSL form was tendered after 11 days of the recovery and, thus, there was every possibility of the sample having been tampered with. It has been further submitted that independent witness who was joined by the police party has appeared in defence and has stated that no recovery was effected from the appellant and, thus, no reliance can be placed on the testimony of PW2 SI Rattan Singh and PW3 HC Harbhajan Singh.

6 I have read the testimonies of PW2 SI Rattan Singh and PW3 HC Harbhajan Singh. They have no enmity with the appellant. Their testimonies inspire confidence and the same are free from blemish of contradictions, discrepancies and improvements. Some delay in sending the CFSL form will not entitle the appellant to acquittal unless any prejudice is shown.

7 At this stage, Mr. Manchanda has stated that in the present case occurrence had taken place in the year 2002. The appellant has already suffered a protracted trial of about 7 years. The appellant is a first offender. The appellant has committed no other offence after registration of the present case or earlier thereto, He pray that taking into consideration the protracted trial and antecedents of the appellant, sentence should be adequately reduced. This prayer of the counsel for the appellant has not been seriously opposed by counsel for the State.

8 I find merit in this submission made by counsel for the appellant. Accordingly, the sentence awarded upon the appellant is reduced from 3 years rigorous imprisonment to one year rigorous imprisonment and sentence Of fine is also reduced from Rs. 30,000/- to Rs. 15,000/-. However, the default clause is being retained. With aforesaid observations, the present appeal is disposed off.