

(2006) 01 P&H CK 0214

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Appeal No"s. 47/DB of 2003

Didar Singh

APPELLANT

Vs

The State of Haryana

RESPONDENT

Date of Decision: Jan. 12, 2006**Acts Referred:**

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

Citation: (2006) 2 RCR(Criminal) 249**Hon'ble Judges:** Kiran Anand Lall, J; H.S. Bedi, J**Bench:** Division Bench

Advocate: K.S. Sidhu and Mr. Vikrant Oberoi, in Criminal Appeal No. 47/DB of 2003, Mr. Baldev Singh and Mr. Sudhir Sharma in Criminal Appeal No. 86/DB of 2003 and Mr. Narinder Singh, for Mr. T.S. Sangha in Criminal Appeal No. 115/DB of 2003, for the Appellant; Rajiv Kwatra, Assistant Advocate General, Haryana, for the Respondent

Final Decision: Dismissed

Judgement

Kiran Anand Lall, J.

Appellants Didar Singh, Jitender Singh, and Lila Singh were convicted u/s 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (to be referred as "the Act"), by the court of Additional Sessions Judge, Fatehabad, and were sentenced to undergo rigorous imprisonment for a period of 11 years and to pay a fine of Rs. 1 lakh, each. In default of payment of fine, the defaulter was to undergo further rigorous imprisonment for a period of one year. They have challenged this verdict by filing three separate appeals, bearing Criminal Appeal Nos. 47/DB, 86/DB, and 115/DB of 2003, respectively. All the three appeals are being disposed of by this common judgment.

2. As per the prosecution case, a police party headed by ASI Azad Singh was present at the bus-stand of Village Zabta Khera, on 4.10.2000, in connection with patrolling and crime checking. Balam Singh PW happened to be present there and he started

talking to the ASI. Meanwhile, a Jeep bearing registration No. HR-17-0927 was seen coming from the side of Ratia. On seeing the police party, Jitender Singh appellant, who was driving it, tried to take it back, whereupon the ASI became suspicious. With the help of his companions, he got it stopped and found that two persons viz. Didar Singh and Lila Singh appellants were sitting on its rear seat. On the checking of its dickey, six gunny bags were found loaded therein. The ASI suspected that the bags may be containing some narcotic substance. He, therefore, served notices u/s 50 of the Act (Exs.P19, P20 and P21) on Jitender, Lila Singh and Didar Singh appellants. In their written replies (Exs.P19/1, P20/1 and P21/1), they opted for search of the bags in the presence of a gazetted officer. A wireless message was, accordingly, sent and in pursuance thereof, Shri Avtar Singh Bhullar, Deputy Superintendent of Police, Tohana, reached there. He was apprised of the facts by the ASI. Thereafter, the gunny bags were opened as per his directions and the same were found to contain poppy husk. Two samples of 100 grams each were taken out from each bag, and the remaining contents of each bag, on weighment, were found to be 39 Kgs 800 grams. After converting each sample into a separate parcel, the sample parcels and gunny bags were separately sealed with the seal bearing inscription AS, at four places. The seal of the DSP bearing inscription ASB was also affixed at two places on all the samples and bags. The samples, bags, and the jeep were taken into possession vide seizure memo, Ex.P6. The ASI sent written information, Ex.P1, to the police station, and on its basis, case against the appellants was registered vide formal FIR, Ex.P2. He also prepared site plan of the place of recovery, Ex.P22, and arrested the appellants. On return to the police station, he produced the appellants, witnesses, and the case property before Shamsheer Singh SI/SHO Police Station, Sadar Tohana. The latter verified facts of the case and, then, affixed his seal, bearing inscription SSD, on all the sample parcels and the bags. The ASI also submitted report u/s 57 of the Act, Ex.P4, before him, which was forwarded by the latter (SI/SHO) to the Deputy Superintendent of Police, Tohana, after making his endorsement Ex.P5, thereon. The case property was deposited with the Moharrir Head Constable of the police station, with seal intact. The Moharrir Head Constable, then, sent the samples to F.S.L. Madhuban. On analysis, the Director, FSL, found the samples to be of poppy husk, vide his report, Ex.P23.

3. On receipt of challan in court against the appellants, the court committed the case to the Court of Sessions. The appellants were, thereafter, charged u/s 15 of the Act. Since they pleaded not guilty, prosecution was called upon to substantiate the charge against them.

4. In support of their case, prosecution examined seven witnesses. PW1 ASI Anand Singh proved formal FIR, Ex.P2. PW2 Head Constable Sube Singh, MHC, Police Station, Sadar Tohana, and PW3 Constable Makhan Singh filed their affidavits, Exs.P3 and P4/A respectively, pertaining to the intactness of the samples so long as the same remained in their possession. PW4 Shamsheer Singh SI/SHO deposed that after the ASI Azad Singh produced the appellants, witnesses, and the case property

before him, he verified the facts from the witnesses and affixed his seal SSD on the parcels. He also directed the ASI to deposit the case property with the MHC and lodge the appellants in the police lock-up. He further deposed that the report u/s 57 of the Act, Ex.P4, submitted by the ASI, was sent by him, to the Deputy Superintendent of Police, Tohana, after making his endorsement, Ex.P5, thereon. PW5 Avtar Singh Bhullar DSP and PW6 Balam Singh testified about all the above referred to relevant facts which had taken place in their presence. PW7 ASI Azad Singh, who is the investigating officer, deposed about the different steps taken by him, in the investigation. Report of FSL, Ex.P23, was also tendered in evidence, by the prosecution.

5. In their statements recorded u/s 313 Cr. P.C., all the appellants denied the recovery of poppy husk from their possession and claimed themselves to be innocent. The plea taken up by Didar Singh appellant is reproduced below :-

I am innocent. I Alongwith Lila Singh was present at bus stand of Damana and the police arrested me Alongwith Lila Singh and falsely implicated in this case. On that day I Alongwith Lila Singh had come to Village Damana to collect money from Lakha Ram son of Matkan Singh as the price money of a buffalo sold by me to said Lakhu Ram.

6. Lila Singh appellant also took up an identical plea.

7. Two DWs viz. DW1 Mange Ram and DW2 Constable Dayal Chand were examined in defence.

8. Having been convicted and sentenced by the trial court, the appellants came up in appeal, to this court.

9. We have heard arguments addressed by the learned counsel for the parties and have also carefully considered the evidence on record.

10. Since all the prosecution witnesses owned the respective roles assigned to them by the prosecution, learned counsel for the appellants were not in a position to attack the prosecution case on the ground of lack of evidence, on any point. The contention of Mr. K.S. Sidhu, Advocate, however, was that Jitender Singh appellant was only driver of the jeep and, therefore, he could not be fastened with the conscious possession of the bags which were found lying in the dickey of the vehicle. No such plea, it may be stated, was put forward by this appellant in his statement recorded u/s 313 Cr. P.C. nor any suggestion on these lines is discernible in the cross-examination of any of the witnesses. Rather, his conduct at the time of capture and recovery gave a clear indication that he was not only well aware of the contents of the bags but he also shared possession thereof, with the other two occupants of the vehicle, viz. Didar Singh and Lila Singh appellants. If it had not been so, he would have stopped the vehicle immediately, when police intercepted it. But he did not do so. Instead, he tried to turn the vehicle back. It is also material to

note that at no stage, viz. at the time of recovery or during trial, he offered any explanation, with regard to the presence of the gunny bags in his vehicle. The judgment relied upon on his behalf, *Avtar Singh v. State of Punjab*, 2002 (4) RCR(Cri) 180 (SC) is of no use to him, since in that case, the conduct of the accused who was driver of the truck, did not give any indication of his guilty intention. On seeing the police party, he had not tried to run away nor he did any other overt act which could create suspicion qua him, and it were the (two) persons who were sitting on the bags loaded in the truck who had fled away.

11. Learned counsel for Didar Singh and Lila Singh appellants wanted this court to brush aside the testimony of the public-witness, Balam Singh, as he dubbed him as a stock witness of the police. But, we do not find any merit in this contention, as there is nothing on record to show that he had ever appeared as a (prosecution) witness in any case prior to the capture of the appellants. There is, therefore, no basis for terming him as a stock-witness of the police. In any case, even if, for arguments sake, the testimony of this witness is ignored, we still have the evidence of PW5 Avtar Singh Bhullar DSP and PW7 Azad Singh ASI, with regard to the recovery and the other legal formalities, completed at the spot and in the police station.

12. It was also argued, though half-heartedly, on behalf of Didar Singh and Lila Singh appellants that these appellants could not be said to be in conscious possession of the gunny bags as they were only travelers in the jeep and were not aware of the presence of bags in the vehicle. We are, however, not impressed with the argument. At no stage, Didar Singh and Lila Singh appellants admitted their presence in the vehicle in question or the recovery of gunny bags therefrom. If what the learned counsel now contended, at the time of arguments, had been true, the same would have found place in the statements of these appellants recorded u/s 313 Cr. P.C. or it would have, atleast, been suggested to the PWs in their cross-examination. Since nothing of this type was done, the argument has to be brushed aside.

13. It is also significant to note that though the prosecution case was supported by all the prosecution witnesses, including an responsible officer of the rank of DSP (PW5), the defence (appellants) could not dare to attribute any motive to any of them for the alleged false implication of the appellants. There is, therefore, no reason to disbelieve them.

14. No other argument was addressed.

15. For the above stated reasons, we do not find any flaw in the judgment of the trial court in so far as the conviction of the appellants is concerned. The verdict of conviction is, therefore, affirmed. But, in so far as the quantum of sentence is concerned, we find it proper to reduce the period of sentence of rigorous imprisonment from 11 years to 10 years in respect of each of the appellants, and we

order accordingly.

16. The appeals shall, accordingly, stand dismissed with the said modification in the quantum of sentence.

Appeals dismissed.