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(2007) 08 P&H CK 0205

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 607-DB of 2005

Lakhwinder Singh and Another	APPELLANT
Vs	
The State of Punjab	RESPONDENT

Date of Decision: Aug. 20, 2007

Acts Referred:
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) â€" Section 15

Citation: (2007) 08 P&H CK 0205

Hon'ble Judges: Mehtab S. Gill, J; A.N. Jindal, J

Bench: Division Bench

Advocate: S.S. Gill, for the Appellant; S.S. Bhinder, Addl. A.G. Punjab, for the Respondent

Final Decision: Allowed

Judgement

Mehtab S. Gill, J.
This is an appeal against the judgment dated 7.7.2005 of the Special Court, Patiala, whereby the learned Judge

convicted Lakhwinder Singh son of Mann Singh and Balwinder Kaur wife of late Amrik Singh u/s 15 of the Narcotic Drugs and Psychotropic

Substances Act, 1985 (hereinafter called as ""NDPS Act""). They were sentenced to twelve years R.I. and to pay a fine of Rs. one lac each. In

default of payment of fine to further undergo R.I. for two years.

2. The case of the prosecution is that on 23.4.2002 SI Tejinder Singh, SHO Police Station Ghagga sent ruqa Ex.PM to Police Station Ghagga,

stating that he along with SI Ajaib Singh, ASI Surinderpaljit Singh, Constable Labh Singh, Constable Faqir Chand, Constable Kulwant Singh,

Constable Balwant Singh, Constable Jagtar Singh and Constable Baljinder Singh were present at Village Shahpur on a private vehicle in

connection with the checking of religious places at the temple of Shahpur, which is named as Shahpur Tilla. When they stopped to check the

temple of Shahpur Tilla, the police party saw a man and a woman sitting on plastic bags. On seeing that the police party was watching them, they

took shelter behind the arranged bags. On seeing them behaving in a suspicious manner, SI Tejinder Singh asked them as to who they were. The

man gave his name as Lakhwinder Singh alias Lakha son of Mann Singh and the woman gave her name as Balwinder Kaur wd/o Amrik Singh. SI

Tejinder Singh told them, that he had suspicion that there was contraband in the bags and he wanted to conduct a search. He offered them, as to

whether they wanted to be searched by a Gazetted Officer or a Magistrate. They refused to be searched by SI Tejinder Singh. He sent a wireless

message to Police Station Samana to send a Gazetted Officer or a Magistrate. A lady constable was also called at the spot. Sh.J.P.S. Sidhu, DSP

Samana reached the spot. Both the accused gave their consent to be searched by the DSP. Consent memo was prepared. Lamberdar Gurnam

Singh of Village Kakrala was joined in the investigation. Lady Constable Harjit Kaur also reached at the spot. On search, poppy husk was found

in all the 35 bags. 250-250 gms of poppy husk was taken out twice as samples from 2 each bag. 70 sample parcels were prepared. The bulk of

poppy husk in the rest of 35 bags was weighed, which came out to be 19.5 Kgs each. Each bag was marked with Sr. No. 1 to 35. Sample bags

were sealed and the main bulk was also sealed with the sample seal of ""TS"". After using the sample seal, it was handed over to Lamberdar

Gurnam Singh. The sample seal was attested by the DSP Samana. On the basis of this ruqa, FIR Ex.PM/1 was recorded.

3. The prosecution to prove its case brought into the witness box HC Swatantarpal Singh PW1, HC Satnam Singh PW2, ASI Surinderpaljit Singh

PW3 and SI Tejinder Singh PW4.

4. Learned Counsel for the Appellant has argued, that the police officials were travelling in a private jeep. Number of the jeep is not mentioned

anywhere, nor the driver of the jeep was brought into the witness box. No explanation has also come forth as to why the driver was not made a

witness.

5. J.P.S. Sidhu, DSP Samana did not fix his seal. He was cited as a witness, but was given up as being unnecessary. This is fatal flaw in the case of

the prosecution. DSP Samana J.P.S. Sidhu was the Gazetted Officer, who was called to the spot.

6. Constable Faqir Chand, who had allegedly brought the weights and scales, was not brought into the witness box, nor was his affidavit filed.

7. ASI Surinderpaljit Singh PW3 has stated, that the seal was handed over to a private person, but that private person has not been named. The

Investigating Officer SI Tejinder Singh PW4 has stated, that 3 the seal was given to SI Ajaib Singh. Lamberdar Gurnam Singh of Village Kakrala,

who was joined by the Investigating Officer, was not brought into the witness box. Actually, the seal was handed over to Gurnam Singh

Lamberdar.

8. The sample of the case property was sent to the Forensic Science Laboratory after seven days. This itself shows, that the tampering must have

taken place.

9. Learned Counsel for the State has argued, that the Appellants were apprehended sitting on the gunny bags of poppy husk. Message was sent to

J.P.S. Sidhu, DSP Samana and after DSPJ.P.S. Sidhu came to the spot, the search was conducted. It is clear that the bags were to be

transported. The conduct of the Appellants of hiding behind the bags made the police party suspicious and thereafter, they were taken into

custody.

10. We have heard the learned Counsel for the parties and perused the record with their assistance.

11. There are glaring discrepancies in the prosecution case. ASI Surinderpaljit Singh PW3, in his testimony before the Court and ruqa Ex.PM, has

stated, that the seal was handed over to Gurnam Singh Lamberdar of Village Kakrala. SI Tejinder Singh PW4, the Investigating Officer has stated,

that the seal was handed over to SI Ajaib Singh. Constable Faqir Chand, who had brought the weights and scales, was not produced.J.P.S.

Sidhu, DSP Samana, who was called, as the Appellants wanted to be searched in front of a Gazetted Officer, was not brought into the witness

box and was given up by the prosecution, as being unnecessary. The police officials were travelling in a private jeep. The number of jeep is not

given. No explanation has come from SI Tejinder Singh PW4, the Investigating Officer, as to who was driving the jeep, from where did the jeep

come and who was the owner of the jeep. The sample of the case property was sent to the Forensic Science Laboratory after seven days.

Recovery of the contraband took place on 23.4.2002, while the samples were received by the Forensic Science Laboratory vide its report Ex.PE

on 29.4.2002. In the intervening period, tampering of the case property could have been easily done. It is clear from the recovery memo Ex.PG,

that J.P.S.sidhu, DSP Samana did not put the impressions of his own seal, either on the case property or the samples. The only seal, which was

put, was that of SI Tejinder Singh PW4.

12. We do not have any hesitation in coming to the conclusion, that the prosecution has failed to prove its case beyond reasonable doubt.

Appellants are acquitted of the charges framed against them. Appeal is allowed. Their conviction and sentence is set aside. Appellants, if in

custody, be set free forthwith.