

(2007) 10 P&H CK 0166

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 425 SB of 1998

Saffi Ullah

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Oct. 10, 2007

Acts Referred:

- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 18, 50

Citation: (2008) 1 RCR(Criminal) 706

Hon'ble Judges: Ranjit Singh, J

Bench: Single Bench

Advocate: M.S. Sidhu, for the Appellant; Reeta Kohli, Addl. A.G., Punjab, for the Respondent

Final Decision: Dismissed

Judgement

Ranjit Singh, J.

Appellant Saffi Ullah, convicted for an offence u/s 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the Act"), has filed this appeal. He was prosecuted and tried for recovery of 3-1/2 Kgs. of opium, which he was allegedly carrying in a Jhola (bag). Recovery was effected on the basis of secret information, which ASI Narain Singh (PW2) received on 21.8.1996. At that time, PW2 was on patrolling duty in the vicinity near the school at Village Jaullian, when he received this secret information. The information was to the effect that Saffi Ullah is an opium smuggler who has come from Uttar Pradesh and was proceeding towards Village Kallan. PW2 sent a ruqa and request for DSP Gurmeet Singh to reach the spot. One Mehal Singh was joined as an independent witness. When the party reached near cremation ground of Village Jaullian, Appellant Saffi Ullah was seen coming on a cycle. At that time, he was carrying a bag on the cycle. DSP Gurmeet Singh also reached in the meanwhile. PW2 apprised the Appellant that he was to be searched and gave him an option if he wanted to be searched before a Gazetted Officer, who was present. The Appellant agreed to be searched in the presence of DSP and his

statement, Ex.PB, was recorded to this effect. The statement was thumb marked by the Appellant. This memo was statedly attested by DSP Gurmeet Singh, ASI Pritam Singh and independent witness Mehal Singh. On a search of the bag by PW2, opium wrapped in a glazed paper was recovered. Two samples, each weighing 10 grams, were taken out and separated. Remaining opium was weighed and found to be 3 Kgs. 480 grams. The samples as well as the opium, which was recovered were put in separate parcels and sealed with the seal bearing impression 'GS' of DSP Gurmeet Singh. The case property alongwith cycle was taken into possession and deposited with the MHC. The samples were sent for analysis to the Chemical Examiner. On completion of investigation, the Appellant was put to trial.

2. When confronted with the incriminating facts and circumstances and the evidence appearing against him, the Appellant stated that he was innocent besides pleading his false implication. He also examined Mehal Singh as a defence witness in support of his case.

3. The case of the prosecution is supported by the evidence given by DSP Gurmeet Singh (PW1), ASI Narain Singh (PW2) and some formal witnesses. The report of the Chemical Examiner was also exhibited on record and taken into consideration in support of the prosecution case. The Court found the Appellant guilty and sentenced him to suffer 10 years RI coupled with fine of Rs. one lac. This happened on 7.3.1998. This appeal was filed by the Appellant in the year 1998. The same could not be heard for considerable time whereas the Appellant continued to undergo the sentence awarded to him. On 19.11.2004, sentence awarded to the Appellant was suspended by this Court, as the appeal of the Appellant could not be heard. It is, thus, seen that the Appellant, by now, has undergone 8 years and 3 months of the actual sentence out of 10 years RI awarded to him.

4. The appeal is filed through jail. Mr. M.S. Sidhu, Advocate, however, has appeared, to make submissions on behalf of the Appellant. Learned Counsel contends that there is a serious doubt about the presence of DSP Gurmeet Singh (PW1) at the scene. He refers to Exhibits PB and PC, which are the consent and recovery memos, which have not been signed by PW1. From this, it is urged that the DSP was bound to sign the memo if he was present at the scene. DSP has claimed that he had signed the memo, but his signatures are not appearing on any of the above noted exhibits. This, according to the counsel, will cast a doubt in regard to his presence at the scene. Learned Counsel would highlight this fact by saying that absence of a Gazetted Officer during the recovery would make the case of prosecution suspect. Counsel further says that for basing the conviction or maintaining the same, some independent evidence was required to be led, which could have lend assurance to the case of prosecution. In this context only, the counsel points out that the independent witness joined in this case i.e. Mehal Singh appeared as a defence witness, which would also seriously put the prosecution case in doubt. Learned State counsel, however, join issue by saying that DSP Gurmeet Singh (PW1) has given

clear and cogent evidence of his presence at the time of search and that the case of prosecution would also seek support from the evidence given by ASI Narain Singh (PW2) and other circumstantial evidence. Merely because the signatures of DSP do not appear on the memos, say State counsel, would not be enough to assume that he was not present at the scene specially so when the witness has so deposed about his presence during the search.

5. I have given due consideration to the contentions raised before me. I have gone through the evidence given by DSP Gurmeet Singh (PW1). No doubt, the witness has stated that he had attested the personal search memo and that his signatures are not seen on the said memos but this fact alone, in my view, would not be enough to find that he was not present. While appearing before the Court, PW1 stated on oath that he was called at the spot at the time of search in this case and that search was conducted in his presence. He was questioned in detail while being cross-examined but it was not even put to him that he was not present at the scene at the time of recovery. This argument, in my view, perhaps is raised by taking lead from the fact that signatures of DSP do not appear on the exhibits. Otherwise, there would be nothing to doubt the version of PW1 in regard to his presence. PW1 is a Gazetted Officer and would not have any reason or cause to say something false. If he had not been present, then he could have easily said that he did not sign the memos. His inability to correctly recollect and depose about having signed the memo would rather reflect his truthfulness and genuine ability to correctly recollect the events. This fact perhaps would show that he genuinely failed to recollect minute details at belated stage while giving evidence. The aspect of recovery is also fully supported by ASI Narain Singh (PW2). The signatures of ASI Narain Singh and other witnesses are appearing on the memos. The defence has also not urged anything to allege false implication of the Appellant. The evidence of police witnesses would come under suspicion if some allegation of reasons to falsely implicate are either urged or made out. The case set up by the defence is not on any count of this nature. Recovery is of 4 Kgs. Of opium.

6. Too much stress was laid by the defence to urge violation of the provisions of Section 50 of the Act before the trial Court. Obviously, the view at that time perhaps was that a contraband carried in a Jhola though hung on the cycle may be a case of a personal search needing compliance of Section 50 of the Act. That aspect would not visit the present case in view of the law laid now settled in this regard by the Hon'ble Supreme Court in State of Punjab Vs. Balbir Singh, wherein it has clearly been ruled by the Hon'ble Supreme Court that recovery of contraband from a bag either being carried by a person or hung on a cycle, would not be a case of personal search requiring compliance of provisions of Section 50 of the Act.

7. The other submissions made by the defence that examination of independent witness would be essential in this case to lend assurance to the case of prosecution, in my view, would also not be of much significance. The independent witness indeed

was joined but he (Mehal Singh) declined to support the prosecution. He was examined as a defence witness on behalf of the Appellant. This witness could not offer any justification for his signatures on the memos etc. Obviously, he has been won over. Mehal Singh had in fact been given up by the prosecution and thereafter he was examined by the Appellant. Merely because the Appellant was won over the independent witness would not be enough to say that conviction in this case can not be sustained. Nothing serious is pointed out by the Appellant to shake the credibility of the police officials. One of the witness examined was a Deputy Superintendent of Police and, thus, a Gazetted Officer. In the case of *Balwinder Singh v. State of Punjab*, 1995(2) RCR(Crl.) 250 (P&H), which was relied upon by the trial Court can certainly be pressed into consideration in this case as well. This was also a case where the independent witness was given up by the prosecution and he appeared to support the case of the defence. In this case, it was further noticed that the independent witness could not offer any valid explanation in regard to his signatures, which appeared on the recovery memo. Similar is the situation in the present case. As already noticed, no motive or animosity has been alleged against the prosecution witnesses to falsely implicate the Appellant. There is nothing pointed out in this regard against the prosecution witnesses. In my considered opinion, prosecution witnesses have acquitted themselves with sufficient credit. The defence could not shape the credibility of the prosecution witnesses in any manner, which would require their version to be needing a support from some independent evidence.

8. Accordingly, I do not find any merit in the appeal. The same is dismissed.