

(2003) 08 P&H CK 0162

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Appeal No. 375-SB of 1990

Salot alias Saloth

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: Aug. 13, 2003**Acts Referred:**

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

Citation: (2003) 9 CriminalCC 688 : (2003) 4 RCR(Criminal) 619**Hon'ble Judges:** Virender Singh, J**Bench:** Single Bench**Advocate:** M.K. Vashishta, for the Appellant; Rajesh Bhardwaj, AAG, Haryana, for the Respondent**Final Decision:** Dismissed

Judgement

Virender Singh, J.

Salot alias Saloth stands convicted u/s 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short to be referred as "the Act") by learned Additional Sessions Judge, Bhiwani vide judgment dated 3.8.1990 and has been sentenced to undergo RI for ten years and to pay a fine of Rs. one lakh, in default of payment of fine to further undergo RI for two years.

2. The allegations against the appellant are that he was found with one kg of opium in the area of village Phulpura without any permit or licence on 2.4.1989 when he was intercepted by SI Ramji Lal PW3 who was present at T point in the revenue estate of village Phulpura alongwith other police officials. After the recovery of the above said opium, 20 grams was extracted as sample for the purpose of sending it to the Chemical Examiner. Other legal formalities were also done at the spot. As per Chemical Examiner report. Ex.PC, the contents of the sample were opium.

3. The appellant was consequently challaned in this case. He was charged u/s 18 of the Act.

4. After appreciating the entire evidence of the prosecution, the learned trial court has convicted and sentenced the appellant as stated above.

5. I have heard Mr. M.K. Vashishta, learned counsel for the appellant and Mr. Rajesh Bhardwaj, learned Assistant General, Haryana. With their assistance, I have also gone through the entire record of the case.

6. At the very outset learned counsel for the appellant has very fairly stated that he does not press the appeal on merits and instead made a prayer for reduction in the quantum of sentences. Strengthening his arguments in this regard, he further contended that the alleged recovery from the appellant does not fall under the head "commercial quantity" as per the amended provisions of the Act as substituted by Act No. 9 of 2001 and the said provisions shall also be applicable to the present appeal although the alleged recovery was effected prior to the amendment. In support of this contention, the learned counsel relies upon *Ran Singh v. State of Haryana*, 2002 (3) RCC 425.

7. Strengthening the arguments further, the learned counsel relies upon another judgment of this Court rendered in Criminal Appeal No. 1451 -SB of 2001, *Babu Khan v. State of Punjab*, decided on 24.10.2002 in which the appellant was sentenced to undergo RI for ten years and to pay a fine of Rs. one lakh but the same was reduced from ten years to three years and the sentence of fine was reduced of Rs. 3000/-.

8. The learned State counsel on the other hand has opposed the arguments advanced by the learned counsel for the appellant.

9. Although the impugned judgment has not been assailed on merits, yet I have seen the entire evidence and find no infirmity in the impugned judgment of conviction. I, however, do not feel any necessity of entering into detailed discussion on merits. The conviction is, thus, confirmed.

10. So far as quantum, of sentence is concerned. I find force in the argument of the learned counsel for the appellant. The judgment of *Babu Khan's* case (*supra*) clearly covers the case of the appellant.

11. Keeping in view all the circumstances of the case and that the appellant is suffering the rigor of protracted trial since 1989, the ends of justice would be adequately met if the sentence of imprisonment awarded to the present appellant is reduced from ten years to two years and the sentence of fine is reduced to Rs. 3000/-. In default of payment of fine, the appellant shall undergo further RI for three months. It is ordered accordingly.

12. It is stated that the appellant by now has already undergone about 10 months of actual substantive sentence. The said period, however, would be set off according to law.

13. Except in the modification on the point of quantum of substantive sentence and in regard to fine as indicated above, the present appeal stands dismissed.