

(2008) 01 P&H CK 0261

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 1202 SB of 2001

Makhan Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: Jan. 30, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 15

Citation: (2008) 2 RCR(Criminal) 449

Hon'ble Judges: Harbans Lal, J

Bench: Single Bench

Advocate: Atul Lakhnupal, for the Appellant; Tarunveer Vashist, Additional Advocate General, Haryana, for the Respondent

Final Decision: Allowed

Judgement

Harbans Lal, J.

This appeal is directed against the judgment dated 5th July, 2001/order of sentence dated 9th July, 2001 passed by the Court of learned Additional Sessions Judge, Hisar, whereby he convicted and sentenced the appellant/accused to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 1 lac and in default thereof, to further undergo rigorous imprisonment for 2-1/2 years, u/s 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act').

2. The facts in brief of the prosecution case are that on 30th August, 2000, Assistant Sub Inspector Udey Ram among other police officials happened to be present at T-point Adampur on Bhadra road near the college of Mandi Adampur where Chhotu Ram PW met him. When he was chattering with him, in the meantime, the accused was spotted coming from the side of Bani with a bag on his head. On catching sight of the police party, he turned back, which aroused suspicion in the mind of the aforesaid ASI, who intercepted the accused and served notice Ex. PB upon him. Vide

reply Ex. PB/1, the accused reposed confidence in the aforesaid ASI. On search of the bag, the contents were found to be poppy husk, out of which 200 grams were drawn to serve as a sample, which was converted into a parcel. The remainder when weighed came to 19 kgs. 800 grams, which was also made into a parcel. Thereafter, both the parcels were sealed with seal bearing impression `MP" and were taken into possession vide recovery memo Ex.PC. The specimen seal impression was also prepared. Ruqa Ex.PD was also sent to the police station, where on its basis formal FIR Ex. PD/1 was recorded. The rough site plan showing the place of recovery was prepared. The accused was arrested. The accused alongwith the witnesses and the case property were produced before Devender Kumar, Sub Inspector/Station House Officer, who after verifying the facts from the witnesses, affixed his seal `DK" on the sample as well as the residue and made his endorsement. The case property and the samples were deposited with MHC Suresh Kumar.

3. After completion of the investigation, the charge was laid in the Court for trial of the accused.

The accused was charged u/s 15 of the Act, to which he did not plead guilty and claimed trial.

In order to substantiate its allegations, the prosecution has examined HC Suresh Kumar PW1, Chhotu Ram, PW2, ASI Udey Ram ASI PW3, Constable Randhir Singh PW4 and SI Devender Kumar PW5 and closed its evidence by tendering the Forensic Science laboratory's report Ex.PJ.

On close of the prosecution evidence, when examined u/s 313 of Cr.P.C, the accused denied all the incriminating circumstances appearing in the prosecution evidence against them and pleaded innocence. He did not lead any defence evidence.

4. After hearing the learned Public Prosecutor for the State, learned defence counsel and examining the evidence on record, the learned trial Court convicted and sentenced the accused as noticed at the outset. Feeling aggrieved with the same, the appellant has preferred this appeal.

I have heard the learned counsel for the parties and have gone through the record with due care and circumspection.

5. Mr. Atul Lakhanpal, Advocate appearing on behalf of the appellant canvassed at the bar that as transpires from the record, the sample was despatched after 7 days, though, as per the standing instructions of Narcotic Control Bureau, the same should have been sent to the Forensic Science laboratory for analysis within 72 hours. He further contended that the prosecution has not adduced any evidence for withholding the sample for such long time. Consequently, in view of the observations made in re: Parminder Singh v. State of Haryana 2006 (4) RCR 495 (DB), the conviction is liable to be set aside.

6. To controvert this submission, Mr. Tarunveer Vashist, Additional Advocate General, Haryana submitted that as per the FSL report Ex.PJ, the sample seal tallied with the seal affixed on the sample parcels, which clearly indicates that the seal of the sample parcels were not tampered with in any manner and consequently, the alleged delay of 7 days in sending the sample to the Laboratory is not fatal to the prosecution case.

7. This contention does not find favour with me. As observed in re: Parminder Singh (supra), according to the Narcotic Control Bureau Instructions, the sealed parcels should be deposited within 72 hours with the Chemical Examiner. The record is quite barren to justify this delay on the part of the prosecution. The possibility of tampering with contents of sample parcel during this period of 7 days cannot be ruled out.

8. Chhotu Ram PW2 has admitted in candid terms that there is no seal impression on the case property Ex.P1 today. In the face of this evidence, it is very difficult to say that the prosecution has been able to connect the case property with the appellant.

9. In view of the foregoing reasons, this appeal succeeds and is accepted by setting aside the impugned judgment/order of sentence. The appellant is hereby acquitted of the charged offence. His bail bonds shall stand discharged.