
(2011) 11 P&H CK 0221

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 1205-SB of 2003

Kurda Ram

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: Nov. 2, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173, 313
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 18

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Judgement

L.N. Mittal, J.

Kurda Ram accused has filed the instant criminal appeal to challenge his conviction and sentence ordered by learned Additional Sessions Judge, Fatehabad vide judgment dated 6.6.2003 and order dated 7.6.2003 thereby convicting the accused-appellant u/s 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, the Act) and sentencing him to undergo rigorous imprisonment for three years and to pay fine of Rs 5000/-and in default thereof, to undergo further rigorous imprisonment for six months.

2. According to the prosecution version, police party headed by Inspector/SHO Omvir Singh apprehended the accused on 30.7.1997. He was informed of his right to be searched in the presence of Magistrate or Gazetted Officer. The accused did not desire to be searched in the presence of Gazetted Officer or Magistrate. Accordingly, Omvir Singh Inspector searched the accused and recovered 300 grams opium in a polythene from the dub of his tehmada. Out of it, 10 grams opium was separated as sample. Separate parcels of the sample and the remaining opium were prepared, sealed and seized by the police. FIR was got registered by sending ruqa to the Police Station. Statements of the witnesses were recorded. Rough site plan of the place of occurrence was prepared. Accused was arrested. The sample on analysis by the Chemical Examiner was found to be of opium. On completion of investigation, police

presented report u/s 173 of the Code of Criminal Procedure (in short, Cr.P.C.) for prosecution of the accused u/s 18 of the Act.

3. Charge u/s 18 of the Act was framed against the accused. He pleaded not guilty and claimed trial.

4. In support of its case, the prosecution examined six witnesses.

5. Constable Karamveer Singh, PW1 and Head Constable Harphool Singh, PW3 tendered their affidavits in evidence being formal witnesses.

6. ASI Shiv Raj, PW2 stated that he recorded formal FIR in this case.

7. ASI Balbir Singh, PW4 and DSP Omvir Singh (previously Inspector), PW6 broadly stated according to prosecution version about recovery of 300 grams opium from the accused. Omvir Singh also stated about investigation of the case conducted by him.

8. Inspector Balbir Singh, PW5 stated that he prepared report u/s 173 Cr.P.C.

9. The accused in his examination u/s 313 Cr.P.C. denied all the incriminating circumstances appearing against him in the prosecution evidence and claimed to be innocent. He did not lead any evidence in defence.

10. Learned Additional Sessions Judge, Fatehabad vide impugned judgment dated 6.6.2003 and order dated 7.6.2003 convicted and sentenced the accused as noticed hereinbefore. Feeling dissatisfied the convict has preferred the instant criminal appeal.

11. I have heard learned counsel for the parties and perused the case file with their assistance.

12. All the prosecution witnesses have fully supported the prosecution case. Their statements could not be impeached in cross-examination. They had no reason to implicate the accused in a false case or to depose falsely against him. No suggestion was even put to them in their cross-examination in this regard. Even the accused in his own statement u/s 313 Cr.P.C. has not alleged any ground for his false implication. There is, therefore, no reason to doubt or disbelieve the statements of the prosecution witnesses. Even counsel for the appellant did not challenge the conviction of the appellant. Prosecution evidence is cogent and reliable and is sufficient to prove the guilt of the accused beyond reasonable doubt. Conviction of the appellant is well founded. Accordingly, impugned judgment of conviction is affirmed.

13. As regards quantum of sentence, counsel for the appellant contended that the accused is aged about 75/80 years and the occurrence took place 14 years ago. The accused was sick even at that time as also mentioned in his bail order. It was also submitted that the accused was having permit for possession of 5 grams opium.

Accordingly, prayer for reduction in sentence has been made.

14. The prayer has been opposed by learned State counsel.

15. I have carefully considered the matter. As per identification slip Ex. D2 and conviction slip Ex. D3 attached by the police with report u/s 173 Cr.P.C, the accused was aged 60/65 years at the time of occurrence which took place 14 years ago. The accused is, thus, now aged 75/80 years. As per bail order dated 5.9.1997 passed by learned Additional Sessions Judge, Hisar, the accused was ill and also remained admitted in Civil Hospital since 7.8.1997 till 23.8.1997 as under trial prisoner. Keeping in view all these circumstances, it would not be desirable to send back the accused to jail after such a long period particularly because the accused is very old and infirm. According to the custody certificate filed today in Court by learned State counsel, the accused remained in custody for 1 month 8 days. The quantity of contraband opium recovered from the accused is also not very huge. Keeping in view all the circumstances, I am of the considered opinion that ends of justice would be met if the sentence of imprisonment imposed on the accused-appellant by the trial Judge is reduced to the period already undergone by him in custody while enhancing the amount of fine from Rs 5000/-imposed by the trial court to Rs 15,000/-. It is ordered accordingly. In default of payment of fine, the accused shall undergo rigorous imprisonment for six months.

16. With modification in sentence as aforesaid, the instant appeal stands disposed of accordingly.