

(2015) 10 P&H CK 0152

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. S-1323-SB of 2004 (OandM)

Gora Singh and Others

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 14-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 15, 25, 50, 57

Citation : (2015) 10 P&H CK 0152

Hon'ble Judges : Inderjit Singh, J.

Bench : Single Bench

Advocate : G.S. Sidhu, Advocate, for the Appellant; Anmol Malik, Assistant Advocate General and M.S. Sidhu, APP, for the Respondent

Judgement

Inderjit Singh, J.—This criminal appeal has been filed by Gora Singh alias Manjit Singh and Boota Singh-appellants challenging the impugned judgment of conviction and order of sentence dated 24.4.2004 passed by learned Additional Sessions Judge, Sirsa, whereby the accused/appellants have been held guilty and convicted for the offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act'). They have been sentenced to undergo rigorous imprisonment for six years each and to pay a fine of Rs. 25,000/- each and in default of payment of fine to further undergo rigorous imprisonment for six months each for the offence under Section 15 of the Act.

2. The brief facts of the prosecution case are that on 4.5.2002, a police party headed by ASI Gurmit Singh, In-charge, Police Post, Chautala in a Government jeep bearing registration No. HR-24E-0877 driven by Constable Ram Dhari was going towards Village Abubshahar in connection with patrolling and conducting 'Nakabandi'. Dharambir Singh was also joined in the police party. In the meantime, an Ambassador car was seen approaching from the side of Sangeria which was signalled to stop. The driver of the car stopped the car at a distance

and succeeded in escaping from the car. However, a person sitting on the rear seat of the car was apprehended, who on interrogation disclosed his name as Gora Singh alias Manjit Singh. Dharambir Singh PW disclosed the name of the fleeing person as Boota Singh. Gora Singh also disclosed his name as Boota Singh. Head Constable Rajinder Singh and Constable Ram Phall had chased accused Boota Singh, but could not apprehend him. Thereafter, ASI Gurmit Singh, Investigating Officer served notice under Section 50 of the Act upon accused Gora Singh informing him of his right to be searched in the presence of a Gazetted Officer or a Magistrate. However, the accused reposed faith in the Investigating Officer and offered the gunny bag for search. The Investigating Officer searched the gunny bag kept in the car and it was found containing poppy straw. Out of it, a couple of sample each weighing 100 grams were removed and the remaining residue poppy straw on weighment found to be 40 Kgs. 800 Grams. The same parcels and the gunny bag containing the remaining poppy straw were sealed with the seal bearing 'GS' and were taken into police custody vide recovery memo. 'Ruqa' was sent to the Police Station, on the basis of which formal FIR was registered against the accused. Rough site plan was prepared. Statements of the witnesses were recorded. On return to the Police Station, the accused Gora Singh, witnesses and the case property along with samples were produced by ASI Gurmit Singh before SI Rajbir Singh, SHO, Police Station Sadar Dabwali, who had verified the facts and affixed his seals bearing letters 'RS' on sample parcels and the case property. The report under Section 57 of the Act was also presented before the SHO, who sent the same to Dy. S.P., Dabwali. The case property was deposited with seals intact with the MHC. After necessary investigation, the challan was presented in Court.

3. On presentation of challan, the trial Court finding prima facie case against the accused-appellants framed charge for the offence under Sections 15 of the Act, to which the accused pleaded not guilty and claimed trial.

4. In support of its case, the prosecution examined PW-1 ASI Gurmit Singh, who deposed regarding conducting of the investigation in the present case. PW-2 SI Rajbir Singh, who was posted as SHO, deposed about the verifications of the recovery etc. PW-3 Head Constable Ram Kumar and PW-4 Constable Shankar Lal are formal witnesses, who tendered in evidence their affidavits Ex. PG and Ex. PH respectively. PW-5 Head Constable Rajinder Singh, EHC deposed that he was along with the Police party of ASI Gurmit Singh. He also deposed regarding the recovery and supported the prosecution version.

5. At the close of prosecution evidence, the accused were examined under Section 313 Cr.P.C. and were confronted with the evidence of the prosecution, but they denied the correctness of the evidence and pleaded themselves as innocent. They stated that no recovery was effected from them.

6. After going through the evidence on record, the learned trial Court vide its impugned judgment and order convicted and sentenced the accused-appellants for the offence as mentioned above. Aggrieved against the judgment, the

present appeal has been filed.

7. At the time of arguments, learned counsel for the appellants mainly argued on two points firstly, that independent witness had not been examined and secondly, the identity of accused/appellant No. 2 Boota Singh was not proved and a reasonable doubt exists in the prosecution version. Learned counsel for the appellants also argued that the appellants have been falsely implicated in this case.

8. On the other hand, learned State counsel argued that the case of the prosecution has been duly proved by the PWs. There are no material contradictions or improbabilities in the version of the prosecution. There are no material improvements in the version of the prosecution. The PWs have consistently deposed regarding the prosecution case. They argued that there is no merit in this appeal and the same should be dismissed.

9. I have heard learned counsel for the appellants and learned Assistant Advocate General, Haryana appearing for the respondent-State and have gone through the record.

10. From the record, I find that first of all as regards the independent witness, it is settled law that testimony of Police officials is as good as of any other witness unless enmity or motive of the Police officials is alleged and proved. In the present case, no such enmity or motive of the Police officials has been alleged and proved. There is nothing on the record to prove that Gora Singh-appellant No. 1 has been falsely implicated. Neither material contradictions nor material improvements have been proved or pointed out by the learned counsel for the appellant-Gora Singh. There is nothing in the cross-examination of the witnesses which may make their statements unreliable.

11. Therefore, from the above discussion, I find that as regards appellant No. 1-Gora Singh, the impugned judgment of conviction passed by the learned Additional Sessions Judge is correct, as per evidence and law. Link evidence is complete and the mandatory provisions of the Act have been complied with.

12. As regards appellant No. 2-Bootia Singh, the only point argued is that his identity has not been proved by the prosecution by leading cogent evidence. From the perusal of the record, I find that even as per prosecution version, the independent witness, who has not been examined, had identified Bootia Singh, who ran away from the spot. It is no where the case of the Investigating Officer that any of the Police officials had identified Bootia Singh nor there is any case of the prosecution that any of the Police officials was earlier knowing Bootia Singh. The mere fact that Gora Singh made a statement to the Police that the person who ran away was Bootia Singh can, in no way, be treated as admissible evidence. Any statement made by an accused or co-accused before the Police is hit under Section 25 of the Act and is inadmissible evidence. A perusal of the statement of the Investigating Officer and the recovery witness both official witnesses no where state that they were knowing Bootia Singh before he ran

away nor they have stated that they had identified him at the time he fled away. As per the prosecution version, the independent witness had identified, but the identifying witness had not been examined by the prosecution. Therefore, a reasonable doubt exists regarding the identity of appellant No. 2-Bootia Singh and the benefit of doubt is to go to him.

13. Therefore, from the above discussion, I find merit in this appeal qua appellant No. 2-Bootia Singh and the same is allowed qua him and he is acquitted of the charge as framed against him and as the sentence of appellant No. 2 has been suspended and he is on bail, his bail/surety bonds stand discharged.

14. As regards appellant No. 1-Gora Singh alias Manjit Singh, learned counsel for the appellant in the alternative prayed for reduction of sentence of imprisonment.

15. I have gone through the record. The FIR was registered in this case in the year 2002. Since then Gora Singh alias Manjit Singh-appellant No. 1 is suffering from the long protracted criminal proceedings. Further more, the recovery from the appellant is non-commercial quantity and minimum sentence has not been provided for non-commercial recovery. As argued appellant No. 1 Gora Singh is a poor person and first offender and only bread earner of the family and is a married person and has two children and wife to support.

16. Keeping in view the facts and circumstances of the present case, the sentence of appellant No. 1-Gora Singh alias Manjit Singh is reduced from rigorous imprisonment of six years to rigorous imprisonment for three years. The remaining sentence of fine and in default of payment of fine will remain the same.

17. As the sentence of appellant No. 1-Gora Singh alias Manjit Singh has been suspended and he is on bail, his bail/surety bonds stand cancelled. He is directed to surrender himself before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against him in accordance with law.