
(2009) 03 P&H CK 0158
In the Punjab And Haryana At Chandigarh

Jai Bhagwan

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 02-03-2009

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 15, 18, 50, 61

Citation : (2009) 03 P&H CK 0158

Hon'ble Judges : Mehtab Singh Gill, J;L.N. Mittal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mehtab S. Gill, J.—This is an appeal against the judgment dated 1.2.2000 of the learned Special Judge, Ludhiana, whereby he convicted Jai Bhagwan son of Chuhan Mal u/s 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called as "NDPS Act") and sentenced him to undergo twelve years R.I. and to pay a fine of Rs. 1,00,000/-. In default of payment of fine to further undergo R.I. for one year.

2. The case of the prosecution is that Gurcharan Singh SI sent a ruqa Ex.PG to the SHO, Police Station Sudhar, in which he stated, that he was going on patrol duty, along with ASI Nidhan Singh, ASI Raminderjit Singh, C. Karam Singh, C.Teja Singh, C. Balwinder Singh and SPO Mela Singh on the bank of canal Tugal. In between the bridge of Kular and the bridge of Tugal, when they were travelling on a Govt. vehicle No. PB-10H- 9974, driven by PHG Harnek Singh and on reaching the canal minor in the area of Village Tugal, they saw a man coming on a scooter from the opposite direction. When he came near, SI Gurcharan Singh asked him to stop. With the help of the police party, the man riding on the scooter was apprehended. He told his name as Jai Bhagwan son of Chuhan Mal, resident of Sherpur Kalan PS Sidhwan Bet. SI Gurcharan Singh asked him, that he wanted to search the plastic bag, which he was carrying on the footrest of the scooter and if he so desired, a Magistrate or a Gazetted Officer could be called.

Jai Bhagwan replied, that a Gazetted Officer be called. A wireless message was sent to Gurmeet Singh Virk, DSP(D), Jagraon to reach the spot. The DPS (D), Jagraon reached the spot. He was in uniform, disclosed his identity and asked Jai Bhagwan as to whether he wanted to be searched by a Magistrate. Jai Bhagwan reposed confidence in the DSP and stated, that he would be satisfied to be searched by the DSP. SI Gurcharan Singh opened the white plastic bag, wherein he found opium wrapped in a glazed paper. Out of the recovered opium, two samples of opium each weighing 10 grams were separated and put into two separate match boxes, which were made into two parcels. The remaining opium after weighing came out to be 11 Kilo 980 grams. It was wrapped in the same glazed paper and put in the plastic bag. Thereafter the plastic bag was put into a tin box, which was converted into a parcel. Two parcels of samples and one parcel of tin box were sealed with seal of SI bearing superscription "GS". Gurmeet Singh Virk, DSP (D), Jagraon also sealed the parcels with his own seal bearing the superscription "GS". Sample of opium and one parcel of tin box were taken into police possession vide memo, which was prepared. Memo was attested by the witnesses. Seal after use was handed over to ASI Nidhan Singh. Scootri (Moped) was taken into possession. Jai Bhagwan committed an offence u/s 18/61/85 of the NDPS Act. On the basis of this ruqa, FIR Ex.PG/1 was registered.

3. The prosecution to prove its case brought into the witness box, Gurjit Singh DSP PW1, ASI Nidhan Singh PW2, Gurcharan Singh PW3, HC Kuldeep Singh PW4, SHO Balbir Singh PW5, HC Jarnail Singh PW6, Baldev Raj Clerk PW7 and CII Harjit Singh PW8. In defence, the accused has produced Gurdev Singh DW1.

4. Learned Counsel for the appellant has argued, that Gurmeet Singh DSP(D), who has been mentioned in the FIR Ex.PG/1, is not the same person who appeared in the witness box, as in the witness box it is Gurjit Singh DSP who was appeared. In the FSL Report Ex.PL, it comes out that the sample sent and the report prepared after its analysis, it was not opium. There are glaring discrepancies in the statements of the witnesses, which go to the very root of the case. The distance between Village Tugal and Village Kular from the place of recovery is 2/3 K.Ms. SI Gurcharan Singh PW3, the Investigating Officer did not make any attempt to join independent witnesses. Constable Sewa Singh was sent to get the weighing scale from Village Tugal and also some person from the public, which could be a witness. Constable Sewa Singh has not been examined for the reason best known to the prosecution.

5. Learned Counsel for the State has argued, that the independent witness could not be joined, as there was none available. Recovery is of very heavy quantity and planting of this and false implication of the appellant is ruled out.

6. We have heard the learned Counsel for the parties and perused the impugned judgments and the record with their assistance. The police party was going to Village Tugal. SI Gurcharan Singh PW3 has categorically stated, that no one was present on the canal bank, when appellant Jai Bhagwan was apprehended. Both

the villages i.e. Tugal and Kular are 2/3 K.Ms. away from the place of recovery; thus an independent witness could not be joined.

7. The argument of the learned Counsel for the appellant, that Gurmeet Singh PW1 DSP was not present does not cut much ice. Consent Memo Ex.PA prepared by DSP Gurmeet Singh PW1 is in his hands. He has stated in details how the samples were taken and the seals were put. Statement of Gurmeet Singh DSP PW1 has been corroborated by Nidhan Singh ASI PW2 and Gurcharan Singh SI PW3. Consent memo Ex.PA has been signed by the appellant. There are other recovery memos i.e. recovery of opium Ex.PB and recovery of Moped and driving licence Ex.PD. The minor discrepancies in the statements of SI Gurcharan Singh PW3 and DSP Gurmeet Singh PW1 bound to appear after a long lapse of time.

8. Learned Counsel for the appellant has argued, that Section 50 of the NDPS Act was not complied with. There is also a Consent Memo Ex.PE and signatures of appellant Ex.PE/1, wherein the appellant stated, that he wanted to be searched by a Gazetted Officer. DSP Gurmeet Singh PW1 after receiving the wireless message from SI Gurcharan Singh PW2 came to the spot. He also asked the appellant as to whether he wanted to be searched by a Magistrate. Appellant stated, that he was ready to be searched by the DSP. Thereafter Consent Memo Ex.PA was prepared by Gurmeet Singh DSP PW1. Section 15 of the NDPS Act has been complied with. The name of Gurjit Singh DSP PW1 instead of Gurmeet Singh DSP(D), Jagraon, as mentioned in the statement in Court, is a typographical mistake. Nothing much can be read into it; otherwise, on all the papers it is Gurmeet Singh DSP.

9. We do not find any infirmity in the judgment of the learned trial Court qua conviction of the appellant. Conviction of the appellant is upheld. But we feel that sentence of the appellant is on the higher side. Sentence of the appellant is modified and reduced to 10 years R.I. Fine shall remain intact, as already awarded by the learned trial Court. With the above modification in sentence, appeal is dismissed.