
(2013) 09 P&H CK 0083

In the Punjab And Haryana At Chandigarh

Case No : Crl. Appeal No. 268-SB of 2002 (O&M)

Jaila Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 12-09-2013

Acts Referred:

Citation : (2013) 09 P&H CK 0083

Hon'ble Judges : Jitendra Chauhan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Jitendra Chauhan, J.—This appeal is directed against the judgment of conviction and the order of sentence dated 11.02.2002, rendered by the Special, Court, Sangrur, vide which the accused/appellant Jaila Singh, was convicted for the offence punishable u/s 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called as "the Act") and sentenced him to undergo rigorous imprisonment for a period of one year and six months, and to pay a fine of Rs. 1000/- or in default of payment thereof, to further undergo RI for a period of six months, for having been found in possession of 250 grams of opium, without any permit or licence. The case of the prosecution as para. No. 2 of the judgment of the trial Court is as under:-

"On 18.07.1999, SI Jasbir Singh along with ASI Gurbhajan Singh and other police officials was on patrolling duty on Government vehicle No. PB-13-B-3341 driven by Constable Manjit Singh and were present at bridge of minor in connection with picketing in the area of village Bhanguan, where PW Leela Singh was also present and in the meantime accused were seen coming from the side of village Bhanguan on scooter No. PB-31B-3222 driven by Antar Singh and Jaila Singh was a pillion rider. They were stopped by SI Jasbir Singh and he told that search of the scooter was to be conducted and if they so desired search could be conducted in the presence of Gazetted Officer or a Magistrate. But both the accused reposed faith in him and their consent statement Ex. PC and Ex. PD

were recorded which were attested by PW Leela Singh and ASI Gurbhajan Singh and thumb marked by the accused. Thereafter search of the scooter was made and opium wrapped in a glazed paper was found in the dickey of scooter; out of which two samples of 10 grams each of opium were taken out and put into small tins and remaining opium on weighment came out to be 230 grams and it was also put into a tin. All the parcels were sealed with seal bearing impression "OS" and were taken into police possession vide memo Ex. PE attested by Leela Singh PW and ASI Gurbhajan Singh and seal after use was handed over to Leela Singh. Sample seal was prepared separately. Scooter was taken into police possession. From personal search of accused Antar Singh Rs. 180/- along with R.C. of scooter and one wrist watch was recovered and from accused Jaila Singh, Rs. 120/- and one wrist was recovered and the same were taken into police possession vide memo Ex. PF and Ex. PG respectively. Memos of ground of arrest Ex. PH and Ex. PJ of accused Anter Singh and Jaila Singh were also prepared. Thereafter ruqa Ex. PK was sent to the police station on the basis of which formal FIR Ex. PK1 was registered against the accused. Rough site plan Ex. PL of the place of recovery was also prepared by the Investigating Officer. On return to the police station, he deposited the case property with MHC Sukhchain Singh. Sample was conveyed to laboratory. On receipt of report Ex. PM of chemical examiner and at the conclusion of investigation, challan against accused was presented in the Court."

2. On commitment, the accused was charged u/s 18 of the Act, to which the accused/appellant pleaded not guilty and claimed trial.

3. In support of the case of prosecution, it examined PW-1 Constable Baldev Singh; PW-2 HC Sukhchain Singh; PW-3 SI Jasbir Singh; PW-4 ASI Gurbhajan Singh.

PW-1, Constable Baldev Singh, tendered his affidavit Ex. PA in evidence.

PW-2, HC Sukhchain Singh, tendered his affidavit Ex. PB in evidence.

PW-3, SI Jasbir Singh, proved the recovery of opium from the possession of accused.

PW-4, ASI Gurbhajan Singh, proved the alleged recovery and corroborated the entire case.

4. The statement of the accused u/s 313 Cr.P.C., was recorded and the incriminating circumstances appearing against him in the prosecution evidence were put to him. He pleaded innocence and asserted false implication. He, however, did not lead any evidence, in his defence.

5. After hearing the Public Prosecutor for the State, the Counsel for the accused, and after going through the evidence, on record, the trial Court, convicted and sentenced the accused/appellant, as stated hereinbefore.

6. Feeling aggrieved against the judgment of conviction, and the order of

sentence rendered by the trial Court, the instant appeal, was filed by the accused/appellant was admitted on 15.02.2002. The accused/appellant was admitted on bail, on the same day.

7. The learned counsel for the appellant contended that the appellant was not in the conscious possession of the contraband. He refers to the statement of PW-3, SI Jasbir Singh, in which he has admitted that the appellant had no concern with the co-accused, who was the owner of the scooter from which the recovery had been effected. The appellant was going to pay obeisance to the nearby shrine (dera) and took lift from the co-accused and he was only the pillion rider. The learned counsel further argued that no specific question with regard to the conscious possession as envisaged u/s 313 Cr.P.C. was put to the appellant. It is further asserted that the independent witness namely Leela Singh was already known to the police party as emerged from the statement of PW-3, SI Jasbir Singh and PW-4, ASI Gurbhajan Singh. There is no compliance of Section 52 and 57 of NDPS Act. Lastly, he submitted that keeping in view the fact that no recovery was effected from the appellant, the small quantity of contraband allegedly recovered, and the period undergone, a lenient view be taken.

8. On the other hand, the learned State counsel submits that the appellant was arrested from the spot. He was the pillion rider. The contraband i.e. opium was recovered from the dicky of the scooter owned by Anter Singh, co-accused. He further contended that the appellant is fully liable for the commission of crime.

9. This Court has heard the arguments of the learned counsel for the appellant and the learned State counsel and has carefully gone through the record of the case.

10. Perusal of cross examination of PW-3, SI Jasbir Singh, shows that he knew the only independent witness Leela Singh for the last 4/5 years before the present incident. He categorically stated that there were number of persons passing at the time of recovery but did not join any of them as independent witness. Only Leela Singh was made an independent witness to the present occurrence, to whom PW-3 SI Jasbir Singh, Investigating Officer knew previously. Neither the case property was produced before the Gazetted Officer nor it was got verified by any Magistrate. Appellant/accused-Anter Singh was also not the owner of the said scooter used in the commission of crime. No recovery was effected from the personal search of the appellant/accused.

11. Perusal to the statement of PW-4, ASI Gurbhajan Singh, also reveals that the present appellant/accused has no concern with the scooter. At the time of arrest of appellant/accused, no ground of arrest was disclosed to him.

12. The appellant was a pillion rider at the time of recovery and not known to co-accused Anter Singh. The only independent witness namely Leela Singh was given up by the prosecution. Moreover, the recovery is of small quantity.

13. There is no positive evidence on record to show that appellant Jaila Singh

was in conscious possession of the contraband kept in the dicky of the scooter. He was a pillion rider only. The appellant Jaila Singh and co-accused Anter Singh hail from different states and no evidence has come on record that they had any kind of proximity with each other. In his statement u/s 313 Cr.P.C., appellant Jaila Singh took the plea that on the alleged date of recovery, he was going to pay obeisance at Dera Sant Ghugi Dass at village Dharamgarh, on the way he was arrested by the police and was framed in this case. It appears that the appellant Jaila Singh took lift without knowing the rider and did not know the rider. In statement u/s 313 Cr.P.C., no specific question was put to the appellant-accused that he was in conscious possession of the opium, on 18.07.1999. The word "conscious" is also missing in the charge framed against accused on 31.08.1999. So, the defence of the accused was prejudiced by this omission.

14. Lastly, there is another reason which makes the prosecution story doubtful that Leela Singh, the independent witness was withheld by the prosecution. His affidavit Ex. DA has been proved on record, in which he has stated that no such recovery was effected in his presence on 18.07.1999 from the present appellant and co-accused Anter Singh and that his signatures were taken on blank papers by the police.

15. The cumulative effect of these circumstances is that the prosecution has failed to prove its case beyond reasonable doubt. Keeping in view the facts and circumstances, the recovery being small, the appeal is accepted and the judgment of conviction and the order of sentence dated 11.02.2002, rendered by the Special, Court, Sangrur is set aside.

Allowed.