

(2015) 07 P&H CK 0013
In the Punjab And Haryana At Chandigarh
Case No : CRA No. 886-DB of 2009

Jawahar Lal

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 01-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 313
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 50

Citation : (2015) 07 P&H CK 0013

Hon'ble Judges : Hemant Gupta, J; Lisa Gill, J

Bench : Division Bench

Advocate : Geeta Sharma, for the Appellant; Vishal Garg, Addl. AG, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Hemant Gupta, J.

1. The present appeal arises out of the judgment of conviction dated 12.08.2009 and order of sentence dated 13.08.2009 rendered by the learned Special Court, Panipat, whereby the appellant was convicted for an offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called as "the Act") and sentenced to undergo rigorous imprisonment for a period of 14 years and to pay a fine of Rs.1,50,000/-. In the event of default of payment of fine, the appellant shall further undergo rigorous imprisonment for a period of one year and six months.

2. On 01.01.2008, SI Rajbir Singh, CIA-I, Panipat along with other police officials was present at T-point Sikandarpur Kabri Road for checking of crime and patrolling duty. One person i.e. the present appellant was seen coming from Panipat side having a bag in his right hand. On seeing the police party, he sought to slip away. Due to suspicion, he was overpowered. On inquiry, he disclosed his name and address as Jawahar Lal son of Bhagwan Chand, resident of Dehabi, P.S. Aanni, District Kullu (HP). After introducing himself, ASI Rajbir Singh served

a notice under Section 50 of the Act and apprised the accused of his rights and sought his option for search either in the presence of a gazetted officer or a Magistrate. Upon notice, the appellant opted that he wanted himself to be searched from a Gazetted Officer. Thereafter, Shri Rohtash Singh Ahlawat, DSP, Panipat reached at the spot on receipt of message from ASI Rajbir Singh. After introducing himself to the accused-appellant, Shri Rohtash Singh Ahlawat, DSP, Panipat, directed ASI Rajbir Singh to search the bag. On search of the bag being carried out, charas wrapped in the polythene was recovered. On weighment, the charas came to be 3 Kgs. Out of the recovered charas, two samples of 20 gms. each were separated. The remainder i.e. 2.960 Kgs. charas along with polythene was also put in another plastic box. The samples as well as remainder were converted into separate parcels and sealed with seals bearing impressions "RS" belonging to SI Rajbir Singh and "RSA" belonging to Shri Rohtash Singh Ahlawat, DSP, Panipat. All the articles i.e. charas and bag etc. were taken into possession. Since the accused-appellant was found in possession of 3 Kgs. Charas without any permit or licence, SI Rajbir Singh sent information Ex.PA to the Police Station, on the basis of which FIR Ex.PA/1 was recorded. After completion of necessary formalities, report under Section 173 of the Cr.P.C. was finalized and the appellant was made to stand trial for an offence punishable under Section 20 of the Act.

3. To prove the guilt against the appellant, the prosecution has examined ASI Rajbir Singh, the Investigating Officer as PW-7; Shri Rohtash Singh Ahlawat, DSP Headquarter, Panipat as PW-6 and ASI Sewa Ram, a witness of the recovery as PW-8. Apart from the above witnesses, the prosecution also examined the formal witnesses to complete the chain of circumstances.

4. In his statement recorded under Section 313 Cr.P.C., the appellant has taken a stand that he has been falsely implicated by the Police and that no recovery was affected from him. In his defence, the accused examined as many as six witnesses.

5. After going through the evidence on record, the learned trial Court found that the prosecution has succeeded in proving the charge against the appellant, as all the links in the chain of events right from the apprehension of the accused till receiving the report of Forensic Science Laboratory are connected by the prosecution witnesses beyond any reasonable doubt. Consequently, the learned trial Court convicted and sentenced the appellant, as mentioned above.

6. Before this Court, learned counsel for the appellants have rightly not disputed that the provisions of Section 50 of the Act are not attracted in the present case, as the recovery was not from the person of the accused. However, it was argued that non-joining of independent witness is a factor, which has not been taken into consideration in proper perspective by the learned trial Court. We do not find any merit in the argument raised. The process of recovery was completed by the police officials, when they were on routine checking duty. The fact that the police officials were on routine checking duty have not been disputed nor the presence

of the police officials at the place of occurrence. It was a chance recovery, as no secret information had been received against the accused. The police officials were on routine checking duty and all of sudden the accused was found coming on foot from the side Panipat having a bag in his right hand. On seeing the police party, he tried to slip away, but was apprehended on suspicion. On search of the bag in accordance with law 3 Kgs. charas was recovered. The mere fact that the witnesses are police officials is not sufficient to discard their testimonies. Being police officials, the Court may scrutinize their statements with little more care and caution. But if after careful and cautious scrutiny, the Court comes to the conclusion that the same are reliable and trust worthy, the same can be made basis for conviction. PW-8 ASI Sewa Ram, a witness to the recovery of contraband in his cross-examination admitted that no independent person was joined in the investigation, but there is nothing on record that the official witnesses were inimical towards the accused. They had no ill-will or enmity against the accused to falsely implicate them in the present case. Thus their statement requires closure scrutiny.

7. From the testimonies of the witnesses PW-7 ASI Rajbir Singh, the Investigating Officer; PW-6 Shri Rohtash Singh Ahlawat, DSP Headquarter, Panipat and PW-8 ASI Sewa Ram, it stands clearly established that the accused was in conscious possession of the contraband, when he was apprehended and could not show any license or authorization to keep such a heavy contraband. It cannot be accepted that such huge quantity of 3 Kgs. Charas has been planted. There is nothing suggest as to why the Investigating Officer would falsely implicate the accused. The defence has sought to examine DW-1 Rajesh Kumar, DW-2 Sobha Ram, DW-3 Kanshi Ram, DW-4 Rajesh, DW-5 Rajesh and DW-6 Rajinder Kumar Sharma, who have sought to establish the innocence of the accused. However, from the testimonies of these witnesses, it clearly stands elaborated that at the time of apprehension of the present appellant, his two other accomplices namely DW-3 Kanshi Ram and DW-4 Rajesh Kumar, are also facing trial for the offences under the Act, shows that they are self serving witnesses. In fact, CRA No. 858-DB of 2009 filed by Kanshi Ram stands disposed of on 29.11.2013 upholding the conviction, but sentencing him to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1 lac. Learned counsel for the appellant could not show any material inconsistency in the testimonies of the witnesses of the recovery namely PW-7 ASI Rajbir Singh, the Investigating Officer; PW-6 Shri Rohtash Singh Ahlawat, DSP Headquarter, Panipat and PW-8 ASI Sewa Ram, which could create a doubt over the veracity of these witnesses. More so, the story propounded by the defence witnesses was never put to any of the prosecution witnesses at the time of their cross-examination. It was not the stand of the accused in his statement under Section 313 Cr.P.C. The defence did not move higher officers regarding these allegations of false implication and, therefore, the defence version is an after thought and not credit worthy.

8. The evidence of the prosecution witnesses was thoroughly scrutinized by the

learned trial Court and the same was found to be cogent, convincing, reliable and inspiring confidence. This Court has also examined the evidence of the prosecution witnesses and even after in-depth scrutiny could not find out that the same suffer from any serious infirmity. The evidence of the official witnesses in the instant case is reliable and trustworthy.

9. In view of the above discussion, we find that the judgment of conviction rendered by the trial Court is based on the correct appreciation of evidence, as the prosecution has completed the chain of events, which point out to the guilt of the accused. Therefore, the appellant has been rightly convicted by the learned trial Court for the offence punishable under Section 20 of the Act.

10. However, keeping in view the facts and circumstances of the case, we think that the sentence imposed by the learned trial Court is excessive. Accordingly, we modify the sentence imposed upon the appellant to that of rigorous imprisonment for 10 years and a fine of Rs.1 lac. In the event of non-payment of fine, the appellant shall further undergo rigorous imprisonment for a period of three months.

11. With the said observations and modification in the sentence, the present appeal is disposed of.