
(2008) 09 P&H CK 0006

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 2575-SB of 2007

Raja alias Raj Singh alias Sukhmeet Singh

APPELLANT

Vs

The State of Haryana

RESPONDENT

Date of Decision : 19-09-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 162, 313

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 15, 35, 54, 9

Citation : (2009) 5 RCR(Criminal) 747

Hon'ble Judges : Sham Sunder, J

Bench : Single Bench

Advocate : Shiv Raj Singh Sidhu, for the Appellant; A.K. Jindal, AAG, Haryana, for the Respondent

Final Decision : Allowed

Judgement

Sham Sunder, J.—This appeal is directed against the judgment of conviction dated 29.09.2007, and the order of sentence dated 03.10.2007, rendered by the Court of Additional Sessions Judge, Sirsa, vide which it convicted the accused (now appellant), for the offence, punishable u/s 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985, (hereinafter referred to be as the `Act" only) and sentenced him to undergo RI for a period of 10 years and to pay a fine of Rs. 1 lac, in default of payment of fine, to undergo further rigorous imprisonment, for a period of two years, for having been found in possession of 176 Kgs poppy straw, without any permit or licence.

2. The facts, in brief, are that on 09.05.2005 Kanwaljeet Singh, ASI, along with other police officials, was going towards village Tirlokeywala for patrol duty, and when they were at a distance of about 1/2 acre from the outhouse (dhani) of the accused, they noticed that one person was sitting on the heap of manure, lying on the back side of the room, near the eastern wall. His back was towards the Police party. He was putting garbage with a view to cover the bags. When the Police party reached there, he turned back, on hearing the noise of gypsy and,

on seeing the party, started running away. The members of the Police party stopped the gypsy, and chased him. While running, the escapist looked towards the police. ASI Kawaljeet Singh recognized him as Raja alias Raj Singh son of Jana Singh, resident of Gilokewala, who was already known to him. It was further stated That while running the accused said in loud voice, that they would not be able to catch him. Despite best efforts, he could not be caught, at the spot. Thereafter, the Investigating Officer, reached near the heap of manure, where five bags were lying. On search, four bags were found containing 40 kgs. each poppy straw, whereas the fifth bag was found containing 16 KGs of poppy straw. Two samples of 100 grams of poppy straw, were taken out of each of the bags. The samples and the bags, containing remaining poppy straw, were converted into parcels, duly sealed, and taken into possession, vide a separate recovery memo. Ruqa was sent to the Police Station, on the basis whereof, the FIR was recorded. The site plan was prepared. The statements of the witnesses, were recorded. The accused was arrested on 01.01.2006. After the completion of investigation, the accused was challaned.

3. On his appearance, in the Court, the accused was supplied the copies of documents, relied upon by the prosecution. Charge u/s 15 of the Act, was framed against the accused, to which he pleaded not guilty and claimed judicial trial.

4. The prosecution, in support of its case, examined Hans Raj, H.C., (PW- 1), Shanker Lal, S.I., (PW-2), Makhan Singh, ASI (PW-3), Bharat Lal, H.C., (PW-4), Kuldeep Kumar, HC, (PW-5), Kanwaljeet Singh, ASI (PW-6) and Randhir Singh, ASI (PW-7). The. Public Prosecutor for the State, after tendering report Ex.PX of the Forensic, Science Laboratory, closed the prosecution evidence.

5. The statement of the accused, u/s 313 of the Code of Criminal Procedure, was recorded. He was put all the incriminating circumstances, appearing against him, in the prosecution evidence. He pleaded false implication. It was stated by him, that he was not having any Dhani, nor owner of any land in village Tilokewala. It was further stated by him that no recovery was effected from him. It was further stated by him that he was falsely implicated in the instant case, at the instance of Daljit Singh, Chairman of the village, and his wife Paramjit Kaur. It was further stated by him that nothing was recovered from the manure pit.

6. In his defence, the accused examined Beera Singh, DW-1, and Jagjeet Singh, Constable, DW-2. He also tendered into evidence voter list of 2005 Ex.D1, copy of the Jamabandi of village Tirlokeywala for 2004-05 Ex. D-2, copy of the Ak-shijra Ex. D-3, writing mark A of Panchayat, identity card mark B, and photocopy of the ration card mark C. Thereafter, the accused closed the defence evidence.

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

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

sentence, rendered by the trial Court, the instant appeal, was filed by the appellant.

9. I have heard the Counsel for the parties, and have gone through the evidence and record of the case, carefully.

10. The Counsel for the appellant, at the very outset, submitted that the identity of the accused, as the perpetrator of crime, was not established by the prosecution, beyond a reasonable doubt. He further submitted that the accused, according to the, prosecution story, allegedly escaped from the spot, and could not be caught hold. He was, ultimately, arrested on 01.01.2006. No doubt, the name of the accused was mentioned in the ruqa: Kawaljeet Singh, ASI, during the course of examination-in-chief, stated that he was knowing the accused earlier to the present incident. However, his statement, in this regard, is not corroborated by any other evidence or circumstance, which. could go to prove that he actually knew the accused earlier to the instant incident. It was stated by Kawaljeet Singh, ASI, during the course of cross- examination, that the accused was never arrested by him, in any other case. He further stated that the accused was not cited as a witness, in any case by him. He further stated that he never received any complaint, against the accused. He could not tell whether the accused owned any land, in his village, because this fact was not investigated by him, during the course of investigation. He further stated that he did not know that accused Raja, had been a panch, Sarpanch or a Nambardar of his village. He further stated, in his cross-examination, that he did not study with him nor he could tell about his education. He could not tell as to how many children, the accused was having. He could not tell about the brothers or sisters, if any, of the accused. He had not seen any photograph of accused Raja, in the Police Station. From the statement of Kanwaljeet Singh, ASI, made by him, during the course of cross-examination, one cannot possible conclude that the accused was either known to him earlier or was identified by him at the spot. It is evident from the evidence, on record, that the back of the accused was towards the Police party, when they were half an acre away from Dhani. They noticed that one person, who was sitting on the heap, on hearing the noise of the gypsy, succeeded in running away. The Police party chased him for some distance, but he could not be caught hold. It appears that the name of the accused was written, in, the ruqa, by ASI Kanwaljeet Singh, on the basis of some information that might have been provided to him either by his wife or by Daljit Singh, against whom, he took up the plea u/s 313 Cr.P.C., that he was inimical towards him. The accused was not earlier known to any of the members of the Police party. Had the accused been known to any of the members of the Police Party earlier, to the alleged recovery, he would have been immediately arrested after the same. The alleged recovery was effected on 09.05.2005, whereas, the accused was arrested on 01.01.2006, which clearly showed that he was not known to the Police party and was only arrested on suspicion, after about eight months. The identity of the accused, as the perpetrator of crime, therefore, did not stand proved, in the instant case, beyond a reasonable doubt. It was a fit case, in which the

identification parade should have been held. It was held in *Budhsen and Another Vs. State of U.P.*, that the facts, which establish the identity of an accused person, are relevant u/s 9. As a general rule, the substantive evidence of a witness, is a statement, made in Court. The evidence of mere identification of the accused person, at the trial, for the first time, is from its very nature, inherently of a weak character. The evidence of the witnesses, in order to carry conviction, should ordinarily clarify, as to how, and, under what circumstances, they came to pick out the particular accused person, and the details of the part, which the accused played, in the crime, in question, with reasonable particularity. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of the witnesses in Court, as to the identity of the accused, who are strangers to them, in the form of earlier identification proceedings. There may, however, be exceptions to this general rule, when, for example, the Court is impressed by a particular witness, on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the investigation stage. They are generally held, during the course of investigation, with the primary object of enabling the witnesses, to identify persons concerned, in the offence, who were not previously known to them. This serves to satisfy the investigating officers of the bona-fides of the prosecution witnesses, and also to furnish evidence, to corroborate their testimony in Court. Identification proceedings, in their legal effect, amount simply to this that certain persons are brought to jail, or some other place, and make statements either express or implied, that certain individuals, whom they point out, are persons, whom they recognize, as having been concerned in the crime. They do not constitute substantive evidence. These parades are essentially governed by Section 162 Cr.P.C. The principle of law, laid down, with regard to the test identification parade in *Ramanathan Vs. The State of Tamil Nadu*, was as under:

"Identification parades have been in common use for a very long time, for the object of placing a suspect in a line up with other persons for identification is to find out whether he is the perpetrator of the crime. This is all the more necessary where the name of the offender is not mentioned by those who claim to be eye-witnesses of the incident but they claim that although they did not know him earlier, they could recall his features in sufficient details and would be able to identify him if and when they happened to see him. The holding of a test identification in such cases is as much in the interest of the investigating agency or the prosecution as in the interest of the suspect or the accused. For while it enables the investigating officer to ascertain the correctness or otherwise of the claim of those witnesses who claim to have seen the perpetrator of the crime and their capacity to identify him and thereby fill the gap in the investigation regarding the identity of the culprit, it saves the suspect or the accused from the sudden risk of being identified in the dock by the self same witnesses during the course of the trial. The line up of the suspect in a test identification parade is

therefore a workable way of testing the memory and veracity of witnesses in such cases and has worked well in actual practice. "

Keeping in view the principle of law, laid down, in the aforesaid authorities, now let us see, as to whether, the prosecution, was able to prove that the appellant was the perpetrator of crime. The appellant was identified, in the Court, at the time of his evidence, for the first time, and that identification was hardly of any consequence, to pin-point his identity, as the perpetrator of crime. With a view to prove its case, against the accused, it was obligatory upon the prosecution, to prove his identity, as the perpetrator of crime beyond a reasonable doubt. In the instant case, the prosecution miserably failed to prove the identity of the accused, beyond a reasonable doubt, as the perpetrator of crime. Since the identity of the accused, as the perpetrator of crime, was not proved, beyond a reasonable doubt, he was not connected with the present case. He was, thus, liable to be acquitted. The trial Court was wrong in convicting him.

11. It was next submitted by the Counsel for the appellant, that the appellant, was not found in conscious possession of the poppy straw, aforesaid. As stated by Kanwaljeet Singh, ASI, he did not investigate into the matter as to whether the accused was the owner of any outhouse (Dhani) or fields in village Tirlokeywala. Even no evidence was collected by the Investigating Officer, that the accused was residing in village Tirlokeywala. On the other hand, Ex.D-1 is the voter list, tendered by the accused, in his defence evidence. In this voter list, the name of the accused does not figure as a resident of village Tirlokeywala. In copy of the jamabandi of village Tirlokeywala, for the 2004-05, the name of the accused does not figure either as owner of the land or in possession of the same. Aks shajra Ex.D-3 also supports the case of the accused. As per the statement of Kanwaljeet Singh, ASI, PW6, the Police party was at a distance of 1/2 an acre from the alleged Dhani of Raja Singh, when a person was found sitting on the heap of manure, which was lying on the back side of the room, near the eastern wall, and on hearing the noise of gypsy and on seeing the police, he succeeds in running away. There is nothing, on the record, that he was putting garbage on the bags containing poppy straw. There is no evidence, on record, that the accused was found sitting on the bags. Neither any overt-act was attributed to him, as per the evidence, on record, nor any scale or weights were lying there, for the purpose of sale of poppy straw, nor any investigation was conducted by Kanwaljit Singh, ASI, as to whether the Dhani or the fields, in question, were the ownership of the accused. In these circumstances, the mere fact that a person was sitting near the bags in the fields an open and accessible area to all the sundry did not prove that he was in possession of the same. Since the possession of the accused, in respect of the bags, containing poppy straw, was not proved, the question of statutory presumption under Sections 54 and 35 of the Act, operating against him, did not at all arise. It, therefore, could not be said that he was in conscious possession of the contraband, aforesaid. The submission of the Counsel for the appellant, to the effect, that the accused was not found in conscious possession of the bags, containing poppy straw, carries

substance, and is accepted.

12. No other point was urged, by the Counsel for the parties.

13. In view of the above discussion, it is held that the judgment of conviction and the order of sentence, rendered by the trial Court, are not based, on the correct appreciation of evidence, and law, on the point. Had the trial Court, taken into consideration, the aforesaid infirmities and lacunae, it would not have reached the conclusion, that the accused committed the offence, punishable u/s 15 of the Act. The judgment of conviction, and the order (f sentence are, thus, liable to be set aside.

14. For the reasons recorded, hereinbefore, the appeal is accepted. The judgment of conviction dated 29.09.2007, and the order of sentence dated 03.10.2007, are set aside. The appellant shall stand acquitted of the charge, framed against hire. If, he is on bail, he shall stand discharged of his bail bonds. If, he is in custody, he shall be set at liberty, at once, if not required in any other case.