
(2002) 12 P&H CK 0038
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 883 of 1989

Santokh Singh and Sokha

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 04-12-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 297(2)

Citation : (2003) CriLJ 2925 : (2003) 133 PLR 289 : (2003) 1 RCR(Criminal) 613

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : H.S. Sandhu, for the Appellant; H.S. Sran, Addl. A.G., for the Respondent

Final Decision : Allowed

Judgement

S.S. Nijjar, J.—The petitioner was convicted u/s 9 of the Opium Act and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 500/- and in default of payment of fine, he was further sentenced to undergo rigorous imprisonment for two months, by Mr. S.C. Marwaha, Judicial Magistrate, Ist Class, Phillaur, on 28.09.1988. The appeal against the judgment of conviction and order of sentence was dismissed by Mr. Padam Kumar Jain, Additional Sessions Judge, Jalandhar, on 14.09.1989. Hence, the present criminal revision petition.

2. At the outset, learned counsel for the petitioner has submitted that in this case there is no link evidence as to when the sample of poppy husk was deposited in the Malkhana and to the identity of the sample on the basis of which the report of the Chemical Examiner has been made. It is submitted that the affidavits relied upon by the prosecution were not admissible in evidence for want of proper verification. In order to appreciate the submissions made by the learned counsel for the petitioner, the prosecution case may be noticed in brief.

3. The case of the prosecution is that on 31.10.1985, the police party headed by

Head Constable Karamjit Singh, Excise Inspector Bhupinder Singh, Constables Iqbal Singh and Parkash Singh, was going in a government jeep and had reached on the G.T. Road near milk Bar in the area of Phillaur when it received a secret information. In the meanwhile, a truck bearing registration No. PUR 3369 came from the side of Ludhiana which was signalled to stop. The accused was driving the truck and disclosed his name as Santokh Singh alias Sokha son of Phuman Singh. The truck was searched. Eighty gunny bags of poppy husk were recovered which had been hidden under 90 gunny bag containing empty bottles. A sample of 100 grams of Poppy husk was taken, out from each bag. The bags were separately sealed with the seal having impression "KS". The seal after use was entrusted to Excise Inspector Randhir Singh. Gunny bags Exhibits P-1 to P-8, truck Exhibit P-9 and 90 gunny bags containing empty bottles were taken into possession vide memo Exhibit P-A. Ruqa Exhibit P-C was sent to the police station, on the basis of which formal first information Report Exhibit P-C/1 was recorded. During investigation, Chemical Examiner's report Exhibit P-F was obtained.

4. During the trial, prosecution had examined Investigating Officer Karamjit Singh as PW-1, Excise Inspector Randhir Singh as PW-2 and Vijay Guar, Clerk. D.I.O. Office, Ropar, as PW-3. To prove the character of the contraband recovered from the petitioner, Chemical Examiner's Report Exhibit P-F was also adduced in evidence. Further to complete the link evidence, affidavits of A.M.H.C. Raghibir Singh, M.H.C. Som Nath and Constable Jaswant Singh, Exhibits P-G, P-H and P-1, were also tendered in evidence. No independent witness was either joined or examined with the whole proceedings.

5. I have heard the learned counsel for the Parties at length and perused the record of the case.

6. There is force in the submission made by the learned counsel for the petitioner that the affidavit Exhibits P-G, P-H and P-1, are not admissible in evidence as verification of the same is not in conformity with the provisions of Section 297(2) of the Code of Criminal Procedure. The aforesaid Section of the Code of Criminal Procedure clearly provides as under;-

"Affidavits shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable ground to believe to be true, and in the latter case, the deponent shall clearly state the grounds of such belief.

7. Three affidavits tendered in evidence Exhibits P-G, P-H and P-1 contained the same verification in Punjabi. The verification of the aforesaid affidavits when translated into English, reads as under:-

Affidavit of Head Constable, Som Nath:

"I hereby verify that my above affidavit is correct to my knowledge and belief. No part of it is untrue and no fact has been concealed".

Affidavits of Ranghbir Singh and Jaswant Singh are also in identical terms.

8. I am of the considered opinion that the matter is squarely covered by the judgment of this Court rendered in the case of Harjeet Singh v. The State of Haryana 1987(2) RCR 217. In this case, the affidavit had been verified as follows:-

"I, Karan Singh, A.S.I., hereby solemnly affirm and state that I have heard my above statement while in sound disposing mind and the same is verified on my knowledge and information. Nothing had been concealed therefrom".

9. In view of the defective verification the affidavit in Hatjeet Singh's case (supra), was not taken into consideration in support of the case of the prosecution. The aforesaid judgment was cited before the learned Courts below and the same has been distinguished on the ground that the affidavits in the present case are based only on knowledge. A perusal of the verification reproduced above shows that the affidavits have been verified on the basis of knowledge and belief of the deponent. Therefore, it cannot be said that the affidavits are in conformity with Section 297(2) of the Code of Criminal Procedure. In the case of Ravel Singh v. State of U.T., Chandigarh (1988) 93 P.L.R.369 : (1988)15 Cri.L.T. 112, the verification which came up for the consideration of this Court, was as under:-

"I have correctly given my above statement according to my knowledge and belief while conscious and neither anything has been concealed nor added beyond the facts therein".

10. It was held by this Court that the verification is not correct as to make the affidavit admissible in evidence. The learned Lower Appellate Court has not even adverted to the facts of the case in Ravel Singh's case (supra) and held the same to be distinguishable. I am of the considered opinion that the matter is squarely covered by the judgment of this Court mentioned above. Therefore, the affidavits Exhibits P-G, P-H and P-1 were not admissible in evidence. Excluding these affidavits, it cannot be said that the sample which was sent for analysis was the same which was tested by the Chemical Examiner and for which report Exhibit P-F has been sent.

11. I am of the considered opinion that the learned trial Court and the Lower Appellate Court have wrongly relied upon the affidavits for coming to the conclusion of the petitioner's being guilty. There being no link evidence, the petitioner was clearly entitled to benefit of doubt. The conviction of the petitioner is illegal. Therefore, present revision petition is allowed. Consequently, the judgment of conviction and order of sentence passed by the learned Courts below are set aside. Resultantly, the petitioner is acquitted of the charge.

No costs.