
(2007) 08 P&H CK 0128
In the Punjab And Haryana At Chandigarh

Shammi Singh and Others

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 06-08-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 100

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 15, 18, 25, 42

Citation : (2007) 08 P&H CK 0128

Hon'ble Judges : S.D. Anand, J;Mehtab S. Gill, J

Bench : Division Bench

Judgement

Mehtab S. Gill, J.—This is an appeal against the judgment dated 18.5.2004 of the Judge, Special Court, Faridkot, whereby he convicted Shammi Singh alias Lali son of Shingara Singh, Mukhtiar Singh son of Puran Singh, Gurmej Singh alias Geja son of Sulakhan Singh, Jagjit Singh alias Bittu son of Mukhtiar Singh, Gurmej Singh alias Geja son of Surjit Singh and Gurmit Singh alias Dimple son of Surjit Singh u/s 18 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "NDPS Act") and sentenced them to undergo 15 years R.I. and to pay a fine of Rs. 1,50,000/-. In default of payment of fine to further undergo R.I. for three years. They were further convicted u/s 15 of the NDPS Act and sentenced to undergo 15 years R.I. and to pay a fine of Rs. 1,50,000/-. In default of payment of fine to further undergo R.I. for three years. All sentences were ordered to run concurrently.

2. The case of the prosecution is unfolded by the statement Ex.PF of Bhupinder Singh DSP. He stated, that a special secret informer had informed him, that Gurmej Singh alias Geja and Dimple sons of Surjit Singh, their driver Mukhtiar Singh, Bittu son of Mukhtiar, Geja Singh son of Sulakhan Singh and Lali Singh son of Shangara and some other persons dealt in the sale of poppy husk and opium. This information was given on 18.5.2000 at 7.30 p.m. The informant stated, that these persons were present in a house situated on Deviwalla Road. This house had been taken on rent by Gurmej Singh alias Geja son of Surjit

Singh. All these persons were unloading the gunny bags containing poppy husk from truck No. PUU-6094. On the basis of this statement, a case under Sections 15 and 18 of the NDPS Act was registered at Police Station City Kotkapura. Special reports were sent to the Illaqa Magistrate and other higher officers through Constable Balwant Singh. Harbhajan Singh, SP(D) and Darshan Singh Sandhu, S.D.M. Faridkot were requested through wireless to visit the police station City Kotkapura. On their arrival, Bhupinder Singh DSP along with Darshan Singh SHO and other police officials left for raiding the house. FIR Ex.PF was concluded vide Report No. 25, dated 18.5.2000 at 8.10 p.m.

3. The prosecution to prove its case brought into the witness box Sanjiv Kumar Clerk PW1, Subhash Chander PW2 Junior Assistant, Pishori Lal Reader PW3, Constable Harvinder Singh PW4, SI Gurjeet Singh PW5, Ram Pal Singh Bargari PW6, Narinder Kumar Clerk PW7, ASI Gurjant Singh PW8, ASI Mukhtiar Singh PW9, SI Darshan Singh PW10, Darshan Singh Sandhu SDM PW11, Harbhajan Singh SP(D) PW12, HC Balwant Singh PW13, ASI Jagsir Singh PW14 and DSP Bhupinder Singh PW15.

4. Learned Counsel for the appellants has argued, that the case of the appellants can be divided into two parts; the first set being the case of appellants Gurmej Singh alias Geja son of Sulakhan Singh, Jagjit Singh alias Bittu, Gurmej Singh alias Geja son of Surjit Singh and Gurmit Singh alias Dimple son of Surjit Singh. These four appellants had allegedly run away from the place of occurrence, when the raiding party reached the house. The second set being the other two appellants i.e. Shammi Singh alias Lali son of Shingara Singh and Mukhtiar Singh son of Puran Singh, who were apprehended at the spot.

5. Charge u/s 25 of the NDPS Act was not framed against the appellants, who had allegedly run away from the spot. The secret information was not admissible in evidence, as the informant was not produced. The two witnesses Kewal Krishan and HC Harpal Singh, who had identified the appellants, as per SI Darshan Singh PW10, were not produced.

6. The only witness examined for the identification of the appellants, who had run away from the place of occurrence, was SI Darshan Singh PW10, who had stated, that he identified the four appellants i.e. Gurmej Singh alias Geja son of Sulakhan Singh, Jagjit Singh alias Bittu, Gurmej Singh alias Geja son of Surjit Singh and Gurmit Singh alias Dimple on the identification of Kewal Krishan and HC Harpal Singh. Kewal Krishan and HC Harpal Singh were not produced in Court. These four appellants have not been identified in the Court also by any of the prosecution witnesses.

7. As alleged by the prosecution, 30/35 police officials surrounded the house from where the contraband was recovered, but strangely no police official chased the appellants, who had allegedly run away. Darshan Singh Sandhu SDM PW11 has stated, that he did not see the persons, who had escaped from the house, nor does he identify the appellants who had allegedly escaped.

8. Similarly, Harbhajan Singh SP(D) PW12 has stated, that four accused escaped and two were apprehended. The identity particulars and structure of the persons, who had escaped, has not been given by this witness, though he claims to have been present there. Whether they were clean shaven or turbaned, well built, thinly built, their approximate age, nothing has come on record. No test identification parade was held. The number of persons escaped is also not clearly stated by this witness, as he has said that three/four persons escaped.

9. DSP Bhupinder Singh PW15, the complainant has identified only Shammi Singh alias Lali and Mukhtiar Singh in Court. He has not identified the other appellants Gurmej Singh alias Geja son of Sulakhan Singh, Jagjit Singh alias Bittu, Gurmej Singh alias Geja son of Surjit Singh and Gurmit Singh alias Dimple in Court also. This itself is a very serious lapse.

10. The prosecution failed to prove as to who was the owner of the house from where the contraband and truck were recovered. Search allegedly had taken place at night. Provisions of Section 42 of the NDPS Act and Section 100 of the Cr.P.C. were not complied with. The secret information was received at 7.30 p.m. on 18.5.2000. The raiding party must have left at about 9.00/9.30 p.m. for the place of occurrence. Darshan Singh Sandhu SDM PW11 and Harbhajan Singh SP(D) had come in the police station. Two witnesses of the locality could have been easily joined, as people in the locality had not gone to sleep because it was the month of May.

11. Learned Counsel for the State has argued, that the prosecution witnesses and especially Darshan Singh Sandhu PW11 and Harbhajan Singh SP(D) PW12, both being gazetted officers, were inducted in the raiding party. Both have categorically stated, that appellants were present. Four of them escaped and two i.e. Shammi Singh alias Lali and Mukhtiar Singh were apprehended at the spot. Recovery is of very heavy quantity and as such, chances of this having been planted falsely cannot be so. The official witnesses SI Darshan Singh SHO PW10, Darshan Singh Sandhu SDM PW11, Harbahajan Singh SP(D) PW12 and DSP Bhupinder Singh PW15 corroborated each other and have proved the case of the prosecution. The house, which was raided, was in possession of appellants Shammi Singh alias Lali and Mukhtiar Singh. An electric light was on. The house where contraband was stored, was in a locality, which had other houses in its surroundings; thus the four accused, who ran away, could not be apprehended.

12. We have heard the learned Counsel for the parties and perused the record with their assistance.

13. The case of the prosecution is that information was received at Police Station Kotkapura and FIR Ex.PF was recorded at 7.30 p.m. on 18.5.2000, which was concluded by 8.10 p.m. Harbhajan Singh SP(D) PW12 and Darshan Singh Sandhu SDM PW11 were associated with the raiding party.

14. As per statement of Darshan Singh Sandhu SDM PW11, he along with Harbhajan Singh SP(D) PW12 left Faridkot for Kotkapura at 8.10 p.m. They

arrived at the police station. A raiding party was formed and one Kewal Krishan was inducted in the raiding party from the bus stand as an independent witness. On reaching the place where the contraband was stored, appellants Shammi Singh and Mukhtiar Singh were apprehended and the other appellants ran away. 15 Kg. of opium and 50 bags of poppy husk were found from the truck. 100 bags were recovered from the house. With regard to appellants Gurmej Singh son of Sulakhan Singh, Jagjit Singh alias Bittu, Gurmej Singh son of Surjit Singh and Gurmit Singh alias Dimple, nothing has come on record through any document or by oral evidence that they were the ones who were present at the place of occurrence. The charges framed against these four persons are that they were in possession of opium and poppy husk. No charge u/s 25 of the NDPS Act allowing the house or vehicle i.e. the truck to be used for storing or transporting narcotics was framed.

15. As per the statement of Darshan Singh Sandhu SDM PW11, there were 30/35 police officials in the raiding party. This witness has stated, that he had seen the persons, who had escaped. Harbhajan Singh SP(D) PW11 has stated, that two persons were apprehended and four persons ran away. Both these witnesses did not recognize as to the persons who had run away. Harbhajan Singh SP(D) PW12 has stated, that some police officials were deputed to chase them, but he could not tell the name of the policemen. Bhupinder Singh DSP PW15, the star witness of the prosecution, has stated that 3-4 persons made good their escape and they were identified by Darshan Singh SHO PW10. In his testimony before the Court Darshan Singh SHO PW10 has stated as under:

I identify two persons Shammi Singh alias Lali and Mukhtiar Singh today in Court and rest of the four persons I do not identify.

Darshan Singh SHO PW10 could not identify the other persons apart from Shammi Singh alias Lali and Mukhtiar Singh, when the others ran away from the place of occurrence, nor did he identify them in Court. He (PW10) has stated, that it was Kewal Krishan and HC Harpal Singh, who had identified the appellants, when they were running away. Strangely, the prosecution has not brought Kewal Krishan and HC Harpal Singh into the witness box to identify Gurmej Singh alias Geja son of Sulakhan Singh, Jagjit Singh alias Bittu, Gurmej Singh alias Geja son of Surjit Singh and Gurmit Singh alias Dimple.

16. No test identification parade was held for the appellants, who had run away, nor were they identified in Court by any of the prosecution witnesses. Even the author of the FIR Bhupinder Singh DSP PW15 has stated, that three/four persons made good their escape. The evidence qua appellants Gurmej Singh alias Geja son of Sulakhan Singh, Jagjit Singh alias Bittu, Gurmej Singh alias Geja son of Surjit Singh and Gurmit Singh alias Dimple is shaky. The prosecution has failed to prove its case against appellants Gurmej Singh alias Geja son of Sulakhan Singh, Jagjit Singh alias Bittu, Gurmej Singh alias Geja son of Surjit Singh and Gurmit Singh alias Dimple.

17. Some evidence has been led by the prosecution to prove that the truck was in the name of Gurmej Singh son of Surjit Singh. Sanjiv Kumar PW1, clerk D.T.O., Faridkot was produced. He could not produce any supporting document to show, that the truck belonged to appellant Gurmej Singh son of Surjit Singh. There are no signatures of D.T.O. on the papers Ex.PA. Subhash Chander Junior Assistant, Municipal Council Kotkapura PW2 has stated, that he could not tell the ownership and possession of the house, from where the contraband was recovered. Only evidence is given by Narinder Kumar PW7 Clerk, where he speaks of an electric connection Ex.PE, sanctioned in the name of Geja Singh son of Surjit Singh. Going through the original application, name of Pritam Singh is in the application and it has been changed to Surjit Singh. Learned Counsel for the appellants has rightly argued that merely an electric connection cannot prove that the house was in the possession of a particular person. The prosecution failed to prove the ownership of the house and in whose possession it was. The best evidence with the prosecution was to get the owner of the house into the witness box.

18. As already stated, appellants Gurmej Singh alias Geja son of Sulakhan Singh, Jagjit Singh alias Bittu, Gurmej Singh alias Geja son of Surjit Singh and Gurmit Singh alias Dimple have not been charged u/s 25 of the NDPS Act. The charges under Sections 15 and 18 of the NDPS Act, which were clamped on appellants Gurmej Singh alias Geja son of Sulakhan Singh, Jagjit Singh alias Bittu, Gurmej Singh alias Geja son of Surjit Singh and Gurmit Singh alias Dimpl, are different from Section 25 of the NDPS Act.

19. Appellants have produced HC Baljit Singh DW2 and HC Balwant Singh DW3 to prove, that Kewal Krishan, the sole independent witness was a stock witness of the police. No independent witness, who had no link with the police, was associated with the raiding party.

20. Case against appellants Shammi Singh alias Lali son of Shingara Singh and Mukhtiar Singh son of Puran Singh is proved by the prosecution.

21. Case against appellants Gurmej Singh alias Geja son of Sulakhan Singh, Jagjit Singh alias Bittu, Gurmej Singh alias Geja son of Surjit Singh and Gurmit Singh alias Dimple is doubtful for the reasons already recorded. They are acquitted of all the charges, appeal qua them is allowed and their conviction and sentence is set aside. Appeal of appellants Shammi Singh alias Lali and Mukhtiar Singh is dismissed qua their conviction.

22. Learned Counsel for the appellants has stated, that appellants Shammi Singh and Mukhtiar Singh have been awarded excessive sentences. None of them is a previous convict. Appellant Shammi Singh is 21 years of age and appellant Mukhtiar Singh is 38 years of age. They are the only bread-earners of their families and a lenient view may be taken.

23. Sentence of both appellants Shammi Singh alias Lali and Mukhtiar Singh is modified/reduced to that of 10 years R.I. and a fine of Rs. one lac u/s 15 of the

NDPS Act. In default of payment of fine to undergo six months R.I. Similarly, the sentence of both Shammi Singh alias Lali and Mukhtiar Singh u/s 18 of the NDPS Act is reduced to 10 years and fine of Rs. one lac is imposed. In default of payment of fine to undergo six months R.I.

24. Sentences awarded under Sections 15 and 18 of the NDPS Act shall run concurrently.