
(2010) 11 P&H CK 0691
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 1142-SB-2000

Through Jail (Accused Gurtej Singh alia Teja)	APPELLANT
Vs	
State of Punjab	RESPONDENT

Date of Decision : 26-11-2010

Acts Referred:

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

Citation : (2011) 2 RCR(Criminal) 461

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M. Jeyapaul, J.—The accused Gurtej Singh @ Teja was convicted for an offence punishable u/s 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985. He was sentenced to undergo ten years rigorous imprisonment and to pay a fine of rupees one lakh, in default to undergo further rigorous imprisonment for a period of two years. Hence, he has preferred the present appeal.

2. The case of the prosecution as deposed to by the witnesses examined on its side is as follow:

a) The accused was seen coming on the link road from the side of Kothe Waring at 7:00 PM on 31.08.1998 by the police party headed by the Assistant Sub Inspector of Police Harinder Singh (PW4). Daljinder Singh alias Bhola also joined the said police party.

b) On suspicion, the accused was apprehended. The accused was suspected to have possessed intoxicant. The right to have a search in front of the gazetted officer was duly informed to the accused. As per the desire of the accused, the Deputy Superintendent of Police PW1 Paramdeep Singh reached the spot. His identity was disclosed to the accused. PW4 made a search of the accused in the presence of PW1 The opium wrapped in a glazed paper was recovered from the Chaddara owned by the accused. Neither licence nor permit could be produced

by the accused.

c) 20 grams of opium was separated as sample out of 1000 grams of opium recovered from the accused. The sample as well as the remaining opium was separately parcelled and sealed. Thereafter, the seal was handed over to the independent witness Daljinder Singh alias Bhola.

d) Both the parcels were taken into possession under recovery memo. On personal search of the accused, a sum of Rs. 110/- was also recovered from his pocket under separate recovery memo. The ground of arrest was disclosed to the accused. Rough site plan was prepared. Formal First Information report was recorded. The sample was dispatched to the office of the Central Forensic Science Laboratory, Chandigarh. The accused was produced for a remand. PW6 having completed the investigation filed the final report as against the accused.

3. Of course, on the side of the defence, an immaterial witness was examined as DW1.

4. The trial Court having relied upon the evidence of PW4 Assistant Sub Inspector of Police Harinder Singh in the background of the evidence of PW1 Deputy Superintendent of Police and witness to the recovery PW5 Head Constable chose to record conviction for the offence punishable u/s 18 of the NDPS Act.

5. The learned Counsel/amicus-curiae appearing for the Appellant would submit that the independent witness, namely, Daljinder Singh alias Bhola, who was associated not only for the purpose of recovery that was effected by PW4, but also for the purpose of entrustment of the seal, was not examined. The Central Forensic Science Laboratory Form No. 29 was not filled up at the place where the recovery was effected. There is a delay of about eight days in dispatching the sample of the contraband to the CFSL. It has been demonstrated from the evidence of PW4 that the very seal was available with the police even at the time when the sample was dispatched to the CFSL. No explanation was offered by PW6 Inspector of Police as to why he had not entrusted the material objects for about 7 long days to the custody of the Court. The Head Constable who was entrusted with the material objects by PW6 to deposit the sample with the Malkhana was not examined, he would further submit.

6. Per contra, the learned Deputy Advocate General appearing for the State would submit that even without examining the independent witness Daljinder Singh alias Bhola, the prosecution could establish that the accused/Appellant was found in possession of one kilogram of opium without any licence or permit. The other lapse pointed out by the learned Counsel/amicus-curiae appearing for the Appellant would not go to the root of the case, inasmuch as the prosecution could establish independently that the accused committed, the offence punishable u/s 18 of the NDPS Act he contends.

7. Daljinder Singh alias Bhola is the only independent witness, who was

associated by PW4 during the course of recovery of the contraband from the accused. No acceptable explanation was offered by the prosecution as to why the sole independent witness Daljinder Singh alias Bhola was not examined. Of course, the prosecution would state that Daljinder Singh alias Bhola was won over by the defence and therefore, he was not examined; Such a lame excuse given by the prosecution is not found acceptable. In all fairness, the prosecution should have examined the only independent witness. Even if he turned hostile, he should have been cross examined by the prosecution. Non examination of the sole independent witness creates a doubt in the case of the prosecution.

8. PW4 would candidly admit that the very next day of the recovery made by him, the independent witness Daljinder alias Bhola who was entrusted with the seal returned the seal to him. The records would disclose that the sample taken from the opium recovered from the accused was despatched to the CFSL only on 07.09.1998. The above facts and circumstances would go to show that the seal was very much available with the police; party for about eight long days till the sample was dispatched to the CFSL. As rightly pointed out by the learned Counsel/amicus curiae for the Appellant, the very fact that the seal was with the police party till the sample was dispatched to the CFSL gives room for suspicion as to the veracity of the prosecution story that the sample as such sealed by PW4 was despatched to the CFSL. There is every possibility of tampering with the seal on the sample, as the seal was with the police party.

9. There has been a delay of about eight days in dispatching the sample collected from the opium alleged to have been recovered from the accused. No plausible explanation is forthcoming from the prosecution as to why such a whopping delay had occurred. The delay in dispatching the sample further deepens the suspicion with respect to the story of the prosecution.

10. It is on record that PW6, who was entrusted with the sample, proceeded to the Court of Judicial Magistrate for the purpose of entrusting, in judicial custody. Despite orders passed by the learned Judicial Magistrate for entrustment of the material objects, in the custody of the Court, it appears that PW6 had taken about seven days time for entrustment of the material objects to the CFSL on 07.09.1998.

11. PW6 would state that the material objects were entrusted to the custody of the Head Constable as he could not entrust same to the judicial custody and the Head Constable was in possession of the sample till it was dispatched on 07.09.1998. Quite unfortunately the said Head Constable who could supply link evidence was not examined before the Court.

12. No witness has spoken to the preparation of the CFSL Form No. 29, at the place where the recovery was effected. To remove any suspicion regarding the sample lifted by PW4, he should have prepaid CFSL Form No. 29 at place where the recovery was effected. But, he has not deposed anything about the preparation of CFSL Form No. 29 at the place of occurrence. The above said circumstance also strengthens the suspicion in the mind of the Court as to the

actual recovery of contraband allegedly effected from the accused.

13. For all these, reasons, I find,that Atrial Court has not properly analysed the material on record in proper perspective. The prosecution has infact not established that the accused was found in possession of 1000 grams of opium, without any permit or licence beyond reasonable doubt.

14. Therefore, the accused is acquitted of the offence u/s 18 of the NDPS Act, 1985. Consequently, the judgment of the aside and set aside and the appealaris allowed. The fine amount if any paid by the accused/Appellant, shall be returned to him.

15. As the learned Counsel, Shri Prem Chand Chaudhary has entered appearance as Amicus-curiae appointed by this Court, he is entitled to the fees as per the Rules.