

A STATE OF PUNJAB

V.

SURJIT SINGH & ANR.

Criminal Appeal No. 646 of 2005

APRIL 22, 2009

B [DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ.]

C *Narcotic Drugs and Psychotropic Substances Act, 1985*
– s. 15 – Prosecution under – Case based on evidence of
official witnesses -- Independent witness to recovery and seizure
of contraband, not examined – Reason for non-examination
stated that he was won over – Conviction by trial court –
D Acquittal by High Court on the ground that conviction on the
basis of official witnesses not correct – Independent witness
even if won over, should have been examined – On appeal,
held: Accused liable to be convicted – Evidence of official
witnesses does not suffer from any infirmity.

E CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
No. 646 of 2005

From the Judgement and Order dated 22.08.2003 of the
Hon'ble High Court of Punjab & Haryana at Chandigarh in
Criminal Appeal No. 80-SB of 2002 (O&M).

F Seeraj Bagga (for Kuldip Singh), for the Appellant.

Ex-parte, for the Respondent.

The Judgement of the Court was delivered by

DR. ARIJIT PASAYAT, J.

G 1. In this appeal challenge to the judgment of a learned
Single Judge of the Punjab & Haryana High Court directing
acquittal of the respondents who faced trial for alleged
commission of offence punishable under Section 15 of the

Narcotic Drugs & Psychotropic Substances Act, 1985 (in short, 'the Act'). Each of the respondents was sentenced to undergo 10 years' rigorous imprisonment and to pay a fine of Rs.1,00,000/- with default stipulation. A

2. Learned Judge, Special Court, Sangrur had found them guilty. Prosecution version as unfolded during the trial was as follows. B

3. On 11.7.2000, Assistant Sub Inspector Vijay Kumar along with other police officials was on patrol duty in the area of village Nagra. Karnail Singh independent witness met them there and he was joined in the police party. Thereafter, they proceeded towards Village Akberpura. When they reached near the bridge of minor canal, then the respondents were seen sitting on the gunny bags. On seeing the police party, they succeeded in running away. However, they were identified by Kashmir Singh, Head Constable and Baljit Singh, Head Constable. C
D

4. Assistant Sub Inspector Vijay Kumar sent wireless message to Raj Bachan Sandhu, Deputy Superintendent of Police, Sangrur to reach at the spot and under his directions Assistant Sub Inspector Vijay Kumar conducted search of the bags. On search, the bags were found to contain poppy husk. The bags were four in number. Two samples of 250 grams each of poppy husk were taken from each of the bags. The remainder in each bag was found to be 29.500 kilograms. The samples and the remaining poppy husk in the four bags were separately sealed with the seal of 'VK' and seal after use was handed over to Karnail Singh. They were taken into possession vide memo Ex.PA attested by the witnesses. E
F

5. Assistant Sub Inspector Vijay Kumar sent ruqa Ex.PE, to the police station for registration of the case, on the basis of which formal first information report Ex.PA/1 was recorded by Assistant Sub Inspector Surjit Singh. He prepared rough site plan, Ex.PF, with correct marginal notes. On return, he produced the case property and witnesses before the Station House Officer Amit Joshi, who after verifying the facts, put his own seal G
H

A bearing impression "AJ", and then on his clarifications, Assistant Sub Inspector Vijay Kumar deposited the case property with Mahar Head Constable Jaswinder Singh.

B 6. Parma, respondent, was arrested on 17.4.2000 while respondent Surjit Singh was arrested on 27.7.2000. After receipt of the report of the Chemical Examiner, Ex.PH, the challan was put up in the court.

7. As accused persons pleaded innocence, trial was held.

C 8. In order to prove the allegations, prosecution examined seven witnesses. Trial Court found accused guilty and convicted them.

D 9. The High Court set aside the judgment of conviction, as recorded by the learned trial Judge, solely on the ground that only official witnesses were examined and no independent witness was examined. Prosecution during trial made a statement before the Court that Karnail Singh was not being examined as he had been won over. The High Court held that the evidence of the official witnesses was not sufficient to record conviction. Even if the aforesaid Karnail Singh had been won over, the prosecution should have examined him. With these conclusions, the appeal was allowed and the acquittal was directed.

E 10. Learned counsel for the appellant-State submits that the view of the High Court was clearly unsustainable. Conviction can be recorded even on the basis of the official witnesses.

F 11. There is no appearance on behalf of the respondents in spite of service of notice.

G 12. In the instant case, the reason as to why no independent witness was examined was clearly stated to the court. It was specifically stated that one Karnail Singh, who was a part of the recovery and seizure was won over and, therefore, there was no purpose in examining him.

H 13. So far as the examination of only official witnesses is

concerned, it is to be noted that the only witness who was a party to the recovery and the seizure was given up as he was won over. The High Court's conclusion that he should have been examined even if that was so, is clearly not sustainable. No material was brought on record by the defence to discredit the evidence of the official witnesses. The ultimate question is whether the evidence of the official witnesses suffers from any infirmity. In the instant case, nothing of that nature could be pointed out. As noted above, official witnesses stated the reason as to why Karnail Singh was not being examined. Therefore, the High Court was in error in holding that the prosecution version became vulnerable due to non-examination of any person who was not an official witness. The impugned judgment of the High Court is clearly unsustainable and is set aside. The respondents shall surrender to custody forthwith to serve the remainder of the sentence.

14. The appeal is allowed.

K.K.T.

Appeal allowed.