Supreme Court of India
Baldev Singh vs State Of Haryana on 4 November, 2015
Author: R Banumathi
Bench: Jagdish Singh Khehar, R. Banumathi

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.167 OF 2006

BALDEV SINGH
...Appellant

Versus

STATE OF HARYANA
...Respondent

J U D G M E N T

R. BANUMATHI, J.

Challenge in this appeal is the judgment dated 29.05.2003 passed by the High Court of Punjab and Haryana in Criminal Appeal No.39-DBA of 1995, wherein the High Court reversed the judgment of acquittal passed by the Sessions Judge, Sirsa and convicted the appellant under Section 15 of the Narcotic Drugs and Psychotropic Substances Act 1985 (NDPS Act) on account of having been found in possession of poppy husk and sentenced him to undergo rigorous imprisonment for twelve years and to pay a fine of Rs.1,50,000/- and in default to undergo rigorous imprisonment for six months.

2. Briefly stated case of the prosecution is that on 16/17.09.1990 mid night at about 12.15 a.m., Chander Singh-SI alongwith Ram Singh-ASI and team of police personnel with Government Jeep No. HNN 3108 and a private jeep were holding Nakabandi on both sides of Kacha path leading to village Kingre from G.T. Road for detection of the contraband. At that time, a tractor No.RJV 6299 with trolley was heading towards the road from the village and the same was stopped and the appellant was apprehended and he was inquired about the gunny bags of poppy husk lying in the trolley. The appellant was served with a written notice to the effect that as to whether he wanted to be examined before First Class Magistrate or Gazetted Officer in connection with the recovery of poppy husk from his trolley. The appellant had shown faith in Sub Inspector-Chander Singh and as per rules Sub-Inspector searched the trolley. Thirty three yellow coloured gunny bags containing poppy husk were recovered from the trolley attached to tractor and on weighing the bags, each bag was found to be of forty kilograms i.e. in total about thirteen quintals and twenty kilograms of poppy husk was recovered. From each bag, sample of hundred grams was taken out and parcels were made

and remaining poppy husk lying in the gunny bags were sealed with seal 'CS' and were seized and taken into police possession alongwith the said tractor with its trolley. On the basis of rukka, case bearing No.234 dated 17.09.1990 under Sections 15, 16, 61 and 85 of the NDPS Act was registered at P.S. Sadar, Dabwali. Subsequently, samples were sent for chemical analysis and were found to be poppy straw. On completion of investigation, chargesheet was filed under Sections 15 and 16 of the NDPS Act.

3. To substantiate the charges against the appellant, the prosecution examined only one witness Ram Singh-ASI-PW-1, affidavits of MHC Mohinder Singh and Constable Om Prakash and also the documents including FSL Report were filed. Sessions Judge, Sirsa vide its judgment dated 22.04.1994 acquitted the appellant observing that no other witness except Ram Singh-PW- 1 was examined and that Ram Singh-PW-1's evidence was not trustworthy to base the conviction. Aggrieved by the verdict of acquittal, State preferred appeal before the High Court of Punjab and Haryana at Chandigarh. The High Court vide impugned judgment reversed the judgment of acquittal and convicted the appellant under Section 15 of NDPS Act and sentenced him to undergo rigorous imprisonment and imposed fine as aforesaid. Aggrieved, the appellant has filed the instant appeal.

4. Learned Senior Counsel for the appellant Mr. Anmol Rattan Sidhu submitted that Chander Singh-SI was an important witness as he was the person who held the Nakabandi and prepared rukka and non-examination of Chander Singh is fatal to the prosecution case. It was contended that testimony of Ram Singh- PW-1 does not warrant credibility as he could not have been present at two places i.e. at the place of arrest of appellant- Baldev Singh and also at the place of arrest of one Bhoop Singh in connection with another FIR bearing No.235 dated 17.09.1990 at P.S. Sadar at 5.30 a.m. in which one Bhoop Singh was arrested while carrying opium which renders the presence of Ram Singh-ASI in the place of recovery highly doubtful which aspect was not properly appreciated by the High Court and the High Court erred in convicting the appellant on the sole testimony of Ram Singh-ASI.

5. Per contra, learned counsel for the respondent Mr. Amit Kumar, Additional Advocate General submitted that the recovery was at odd hours in night, prosecution cannot be expected to examine independent witness and public witness, who happened to reach the spot when requested to join the police party but they refused to join. It was further contended that the sole testimony of Ram Singh-ASI is trustworthy and the appellant had not offered any satisfactory explanation for the huge quantity of contraband and the High Court rightly reversed the acquittal and the verdict of conviction warrants no interference.

6. We have carefully considered the rival contention advanced by the parties and perused the impugned judgment and material on record.

7. Case of prosecution hinges on the testimony of sole witness Ram Singh-PW-1. Undisputedly, Ram Singh-PW-1 was the member of the Nakabandi party headed by Chander Singh-SI on the night of 16/17.09.1990. Admittedly, Ram Singh signed all the documents and also witness to the recovery memo. Even after searching cross-examination, evidence of Ram Singh-PW-1 remains unshaken.

8. On the midnight of 16/17.09.1990, when the police party was holding Nakabandi on both sides of Kacha path leading to village Kingre from G.T. Road, the tractor was intercepted and the driver of the tractor–appellant was apprehended under suspicion at odd hours of midnight, prosecution cannot be expected to examine independent witnesses. In his cross-examination, PW-1 stated that two persons had come at the place of Nakabandi in the midnight and they were asked to join, but they refused to join. In the circumstances of the case, when there is satisfactory explanation for non-examination of independent witnesses, conviction can be based solely on the testimony of official witnesses if evidence of such official witnesses inspires confidence.

9. The accused sought to place reliance on the decision in Gyan Singh and Ors. v. State of U.P., 1995 Supp (4) SCC 658, wherein this Court observed that conviction cannot be based on uncorroborated testimony of official witnesses. But this judgment has no relevance in the facts and circumstances of the case as in Gyan Singh's case (supra), this Court focused on the need to have independent witnesses in the odd hours in night as at the distance of 100 yards there was habitation but in the instant case no such material is brought on record to show that there was human habitation in the nearby place.

10. There is no legal proposition that evidence of police officials unless supported by independent evidence is unworthy of acceptance. Evidence of police witnesses cannot be discarded merely on the ground that they belong to police force and interested in the investigation and their desire to see the success of the case. Prudence however requires that the evidence of police officials who are interested in the outcome of the result of the case needs to be carefully scrutinized and independently appreciated. Mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness.

11. Observing that no infirmity is attached to the testimony of police officials merely because they belong to police force and that conviction can be based on the testimony of police officials in Girja Prasad (dead) by LRs. vs. State of M.P., AIR 2007 SCW 5589 = (2007) 7 SCC 625, it was held as under:-

"[24] In our judgment, the above proposition does not lay down correct law on the point. It is well-settled that credibility of witness has to be tested on the touchstone of truthfulness and trustworthiness. It is quite possible that in a given case, a Court of Law may not base conviction solely on the evidence of Complainant or a Police Official but it is not the law that police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption that every person acts honestly applies as much in favour of a Police Official as any other person. No infirmity attaches to the testimony of Police Officials merely because they belong to Police Force. There is no rule of law which lays down that no conviction can be recorded on the testimony of Police Officials even if such evidence is otherwise reliable and trustworthy. The rule of prudence may require more careful scrutiny of their evidence. But, if the Court is convinced that what was stated by a witness has a ring of truth, conviction can be based on such evidence.

[25] It is not necessary to refer to various decisions on the point. We may, however, state that before more than half-a-century, in the leading case of Aher Raja Khima v. State of Saurashtra, AIR 1956 SC 217, Venkatarama Ayyar, J. stated:

"The presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not judicial approach to distrust and suspect him without good grounds therefor. Such an attitude could do neither credit to the magistracy nor good to the public. It can only run down the prestige of the police administration". (emphasis supplied) [26] In Tahir v. State (Delhi), (1996) 3 SCC 338, dealing with a similar question, Dr. A.S. Anand, J. (as His Lordship then was) stated:

"Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case."

12. Testimony of Ram Singh-PW-1 and evidence on record amply establishes physical possession of the contraband by the appellant. The appellant being the driver of the vehicle by all probabilities must have been aware of the contents of the bags transported in the trolley attached to the tractor. Once the physical possession of the contraband by the accused has been proved, Section 35 of the NDPS Act comes into play and the burden shifts on the appellant-accused to prove that he was not in conscious possession of the contraband. Section 35 of the NDPS Act reads as under:-

35. Presumption of culpable mental state.—(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—In this section "culpable mental state" includes intention, motive knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.

Explanation to sub-section (1) of Section 35 expanding the meaning of 'culpable mental state' provides that 'culpable mental state' includes intention, knowledge of a fact and believing or reason to believe a fact. Sub-section (2) of Section 35 provides that for the purpose of Section 35, a fact is said to be proved only when the Court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of the probability. Once the possession of the contraband by the accused has been established, it is for the accused to discharge the onus of proof that he was not in conscious possession. Burden of proof cast on the accused under Section 35 of the NDPS Act can be discharged through different modes. One of such modes is that the accused can rely on the materials available in the prosecution case raising doubts about the prosecution case.

The accused may also adduce other evidence when he is called upon to enter on his defence. If the circumstances appearing in the prosecution case give reasonable assurance to the Court that the accused could not have had the knowledge of the required intention, the burden cast on him under Section 35 of the NDPS Act would stand discharged even if the accused had not adduced any other evidence of his own when he is called upon to enter on his defence.

13. In Abdul Rashid Ibrahim Mansuri vs. State of Gujarat, AIR 2000 SC 821, this Court has clearly held that where an accused admits that narcotic drugs were recovered from bags that were found in his possession at the time of his apprehension, in terms of Section 35 of NDPS Act the burden of proof is then upon him to prove that he had no knowledge that the bags contained such a substance. This Court then went further on to explain as to the standard of proof that such an accused is expected to discharge and the modes vide which he can discharge the said burden. In paras (21) and (22) of the said judgment, this Court held as under:- "21. No doubt, when the appellant admitted that the narcotic drug was recovered from the gunny bags stacked in the autorickshaw, the burden of proof is on him to prove that he had no knowledge about the fact that those gunny bags contained such a substance. The standard of such proof is delineated in sub-section (2) as "beyond a reasonable doubt". If the court, on an appraisal of the entire evidence does not entertain doubt of a reasonable degree that he had real knowledge of the nature of the substance concealed in the gunny bags then the appellant is not entitled to acquittal. However, if the court entertains strong doubt regarding the accused's awareness about the nature of the substance in the gunny bags, it would be a miscarriage of criminal justice to convict him of the offence keeping such strong doubt undispelled. Even so, it is for the accused to dispel any doubt in that regard.

22. The burden of proof cast on the accused under Section 35 can be discharged through different modes. One is that he can rely on the materials available in the prosecution evidence. Next is, in addition to that, he can elicit answers from prosecution witnesses through cross- examination to dispel any such doubt. He may also adduce other evidence when he is called upon to enter on his defence. In other words, if circumstances appearing in the prosecution case or in the prosecution evidence are such as to give reasonable assurance to the court that the appellant could not have had the knowledge or the required intention, the burden cast on him under Section 35 of the Act would stand discharged even if he has not adduced any other evidence of his own when he is called upon to enter on his defence."(Emphasis added)

14. In the light of the above principles, what is to be examined in the present case is whether the accused-appellant has been able to discharge the burden of proof cast upon him under Section 35 of the NDPS Act. The appellant has raised doubts about the prosecution case mainly on two aspects viz.; (i) evidence of sole witness Ram Singh-ASI is not trustworthy and (ii) non-examination of Chander Singh-SI who prepared the rukka.

15. To assail the prosecution case, it was contended that Ram Singh- PW1's testimony cannot be relied upon as PW-1 has stated that he remained busy in the investigation in the present case for 7-8 hours but the fact that Ram Singh has been associated in the investigation of another FIR No.235 dated 17.09.1990 relating to Police Station Sadar Dabwali at 5.30 a.m. in which one Bhoop Singh was arrested while carrying one kilogram and hundred grams opium, which according to the

appellant, renders the presence of Ram Singh-ASI in the instant case highly doubtful. The learned Sessions Judge accepted the above submission of the appellant to hold that evidence of Ram Singh-ASI does not inspire confidence. As observed by the High Court, the learned Sessions Judge overlooked that there is no evidence as to the distance between the places of recovery in both the cases. As observed by the High Court, it has come on record that in both the FIRs the place of occurrence has been stated as "in the area of Village Kingre, at a distance of 18 K.M. towards the East, Deh.No.33". It appears from the above entry in the FIR, that the place of occurrence was the same for both the FIRs recorded on that night. The case relating to Bhoop Singh in FIR No.235 resulted in acquittal. Referring to the acquittal of Bhoop Singh, High Court observed that the same would warrant an inference that what is incorporated in FIR No.234 is incorrect and that defence has not been able to make any dent in the testimony of Ram Singh- ASI to discard his evidence as untrustworthy. We find no reason to take a different view.

16. Contention at the hands of the learned Senior Counsel for the appellant is that non-examination of Chander Singh-SI who prepared rukka and who investigated the case raises serious doubts about the prosecution case. Material on record would show that Chander Singh-SI who investigated the case was not examined by the prosecution in spite of several opportunities. No doubt, it is always desirable that prosecution has to examine the investigating officer/police officer who prepared the rukka. Mere non-examination of investigating officer does not in every case cause prejudice to the accused or affects the credibility of the prosecution case. Whether or not any prejudice has been caused to the accused is a question of fact to be determined in each case. Since Ram Singh-PW-1 was a part of the police party and PW-1 has signed in all recovery memos, non- examination of Chander Singh-SI could not have caused any prejudice to the accused in this case nor does it affect the credibility of the prosecution version.

17. In his statement under Section 313 Cr.P.C., no plea has been taken that the appellant was not in conscious possession of the contraband. The appellant has only pleaded that he being falsely implicated and that a false case has been foisted against him in the police station. In his statement under Section 313 Cr.P.C., the appellant had not stated anything as to why would the police foist the false case against the appellant. It is to be noted that huge quantity of poppy straw was recovered from the possession of the appellant. Admittedly, the police officials had no previous enmity with the appellant. It is not possible to accept the contention of the appellant that he is being falsely implicated as it is highly improbable that such a huge quantity has been arranged by the police officials in order to falsely implicate the appellant.

18. In his statement under Section 313 Cr.P.C., the appellant denied the allegations against him and stated that he has been falsely implicated and to substantiate his defence, the appellant adduced two documents Exs.D1 and D2. Ex.D1 is a certified copy of the FIR No.235 dated 17.09.1990 under Sections 17 and 18 of the NDPS Act relating to case against Bhoop Singh and Ex.D2 is a copy of the judgment acquitting the said Bhoop Singh. Of course, case against Bhoop Singh originated from FIR No.235 dated 17.09.1990 registered at 5.30 a.m. ended in acquittal but acquittal of Bhoop Singh in the said case does not render the prosecution case against the appellant-Baldev Singh doubtful.

19. From the evidence led by the prosecution, it has been proved beyond reasonable doubt that the accused being the driver of the tractor was in conscious possession of the thirty three bags of poppy husk in the trolley attached to the tractor. Upon appreciation of evidence, High Court rightly reversed the acquittal and convicted the appellant under Section 15 of the NDPS Act. The occurrence was in the year 1990 and the appellant has suffered a protracted proceeding of about twenty five years. In the facts and circumstances of the case, the sentence of imprisonment imposed on the appellant is reduced from twelve years to ten years.

20. The conviction of the appellant under Section 15 of the NDPS Act is confirmed and the sentence of imprisonment imposed on the appellant is reduced to ten years and the appeal is partly allowed. The appellant is on bail and his bail bonds are cancelled. The appellant be taken into custody forthwith to serve the remaining part of the sentence.

.....J.

(JAGDISH SINGH KHEHAR) .....J.

(R. BANUMATHI) New Delhi;

November 4, 2015