

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 4th January, 2013
Pronounced on : 11th January, 2013

+ CRL.A.132/2009

KEHAR SINGH @ KEHRI Appellant
Through: Mr. Sumit Verma, Adv.

versus

STATE Respondent
Through: Mr.Navin Sharma, APP for State.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. The appellant Kehar Singh is aggrieved from the judgment dated 07.11.2008 vide which he was convicted under Section 21 of NDPS Act for being found in possession of commercial quantity of heroine.
2. Learned Special Judge (NDPS), after hearing the appellant on the point of sentence on 12.11.2008, sentenced him to undergo RI for 10 years and also to pay a fine of Rs.1 lac and in default of payment of fine, to undergo SI for six months.
3. In brief, the case of the prosecution against the petitioner is that on 04.05.2004 at about 11.00 am, a secret information was received by HC Vinod Kumar about the petitioner arriving near Nigam Bodh Ghat, Hanuman Mandir, Yamuna Bazaar, Delhi on Motorcycle No. UP-25-P-

6765 between 12.00 noon to 1.00 pm for supplying heroine to someone. The secret information was communicated to the senior officers and the details were recorded vide DD No.11 Ex.PW5/A. On directions of the senior officers, raiding party was constituted consisting of SI Brij Pal, HC Vinod Kumar, HC Shakir Husain and Ct. Kuldeep Singh. The raiding party proceeded towards the spot in official vehicle bearing registration No.DL-1V-3570 driven by Ct.Tavender. The raiding party was well equipped with field testing kit and electronic weighing machine.

4. On reaching the main gate of Nigam Bodh Ghat, the official vehicle was parked and efforts were made to join some public person but none agreed.

5. Thereafter the members of the raiding party took position at the spot and at about 12.25 pm, motorcycle No. UP-25-P-6765 was seen coming from ISBT side. The motorcycle rider stopped near the main gate of Nigam Bodh Ghat and parked the vehicle and was pointed by the secret informer to be Kehar Singh. He was carrying a green coloured bag placed on fuel tank of the motorcycle. He started waiting for someone and after waiting for about 4-5 minutes, he started proceeding towards his motorcycle. At that time, at about 12.30 pm, he was overpowered by the members of the raiding party.

6. The IO informed him about the secret information received that he was carrying smack/heroin and also about his legal right to get his search conducted in the presence of Gazetted Officer or Magistrate. After complying with the requirements of Section 50 of NDPS Act, the green coloured canvas bag was searched by SI Brij Pal which was found

containing another light purple polythene bag. On opening the polythene bag, one transparent small bag was recovered which was containing some '*matiala*' coloured powder. The powder was checked with the help of testing kit and found to be heroine. The same was weighed and revealed to be two kilograms. After drawing the samples, the samples and remaining heroine were sealed and seized. FSL form was also filled and seal after use was handed over to HC Vinod Kumar.

7. The case property alongwith FSL form and copy of the seizure memo was handed over to Ct. Kuldeep Singh for handing over the same to the SHO of PS Narcotics Branch and rukka was also sent for registration of the FIR.

8. After registration of FIR, further investigation was entrusted to SI Prem Chandra who reached the spot and prepared the site plan. He recorded the statement of witnesses and also formally arrested the accused/appellant and conducted further investigation.

9. After completion of investigation, chargesheet was filed. FSL result was also obtained and filed in the Court.

10. Needless to say that the appellant pleaded not guilty to the charge. Prosecution examined nine witnesses to prove its case. After examining the appellant under Section 313 CrPC, opportunity was granted to him to lead defence evidence.

11. The learned Special Judge (NDPS) considered the compliance of mandatory requirements as well the creditworthiness of the testimony of police officials and was of the view that non-joining of public witness in itself is not sufficient to discard the testimony of police officials who were discharging their duties. The link evidence was also considered

reliable by the learned Special Judge (NDPS), thus, ruling out any tampering with the case property. Taking into consideration the commercial quantity of the heroine i.e. 2 kilograms containing 59.9 % diacetyl morphine , the Court ruled out the possibility of planting of the case property and convicted and sentenced the appellant in the manner aforesaid.

12. On behalf of appellant, Mr.Sumit Verma, Advocate filed brief written synopsis and also made oral submissions. I have also heard Mr.Navin Sharma, learned APP for State.

13. Learned counsel for the appellant has submitted that it is a case where the mandatory requirements of Section 42(1) and 42(2) of NDPS Act have not been complied with. Relying on *Peerawswami vs. State, NCT of Delhi 2007 (2) JCC (Narcotics) 80*, it has been submitted that the facts in the present case are similar to the facts in *Peeraswami's case* and in both the cases, the DD was exhibited as Ex.PW5/A. The Coordinate Bench of this Court in that case held non-compliance of Section 42(1) and (2) of NDPS Act to be fatal to the case of the prosecution. It was urged that in the instant case also, as DD Ex.PW5/A does not show compliance of requirement of Section 42(1) and (2) of NDPS Act regarding recording of secret information. It is a detailed information giving detailed account of who did what and communicating the information to senior officer who instructed to conduct the raid and has been recorded after due deliberations. It has been further submitted that Section 42(1) and (2) of NDPS Act mandates the police officer to send the copy of the secret information reduced into writing to his superior officer which has not been done in this case. Emphasising that

compliance of mandatory procedure under Section 42(1) and (2) of NDPS Act is not a mere formality but infact, it is a safeguard provided against false implication of person as held in *Peeraswami's case*, learned counsel for the appellant has prayed for acquittal as in the instant case, these mandatory requirements have not been complied with.

14. Mr.Sumit Verma, learned counsel for the appellant further submitted that the entire prosecution case is implausible for the reason that distance from Bareilly to Delhi is about 300 kms with various police check posts on the way from U.P. to Delhi. It is highly improbable that a person can reach Delhi after covering a distance of 300 kms with contraband placed on the fuel tank of his motorcycle without being checked at any check post and that too, when he was without a helmet and driving licence.

15. Learned counsel for the appellant has laid great stress on the need to join independent witnesses in such type of cases especially when the time and place of apprehension makes it probable. He submitted that Nigam Bodh Ghat is a place where public persons are available and had there been any truth in the prosecution story, they could have been joined.

16. It was further urged on behalf of the appellant that mandatory requirement of Section 52 of NDPS Act requiring the IO to inform the appellant about the grounds of arrest has also not been complied with. There is also overwriting on the time of arrest in the arrest memo Ex.PW7/A.

17. Mr.Sumit Verma, Advocate also tried to create a doubt in the prosecution's case by referring to the contradictions in the colour of the

polythene bag as appeared in the testimony of PW-9 and the colour of polythene as described in the rukka Ex.PW9/A to be light purple but noticed to be pink when case property was produced in the Court. He also referred to the question put to PW-9 – the Investigating Officer that he knew the difference between the two colours i.e purple and pink. It was argued that FSL form was not sent to the laboratory for the reason that the receipt Ex.PW7/B shows that FSL form was not received in the laboratory as on the receipt given by FSL, there is no mention of receipt of FSL form. Contending that the investigation was unfair, biased and tainted as second IO PW-8 SI Prem Chandra did not try to verify from Kallu, the owner of the motorcycle as to when and why the motorcycle was given to the appellant and even the appellant was not challaned for driving without helmet and driving licence, it cast a serious doubt in the case of prosecution, hence appellant is entitled to be acquitted.

18. On behalf of the State, Mr.Navin Sharma, learned APP submitted that the prosecution has been able to prove its case beyond reasonable doubt. The minor contradictions or the overwriting on the arrest memo have no adverse effect on the prosecution case, as the alleged overwritings have been initialed by the I.O.

19. First of all, it is necessary to deal with the contention of learned counsel for the appellant regarding applicability of Section 42 of NDPS Act to the facts of this case and at the same time to consider whether the facts of this case are squarely covered by the decision of this Court in *Peeraswami's* case. Lot of emphasis has been laid by learned counsel for the appellant on the contents of DD Ex.PW-5/A as in Peeraswami's case and as recorded in the instant case so as to prove on record that, as

held in Peeraswami's case, non-compliance of mandate of Section 42 NDPS Act in this case is fatal to the case of the prosecution. Since comparison of the DD Ex.PW5/A in *Peeraswamy's case* and DD Ex.PW5/A in this case has been made by learned counsel for the appellant in support of his contention that the present case is covered by *Peeraswamy's case*, it is necessary to note the contents of DD in that case as extracted in para 5 of the report which is as under :-

"5. The initial information which was recorded by SI Raj Kumar is Ex.PW5/A and reads as under:-

Time 11.30 am in the morning. It is recorded that at this time one secret informer has come to me (SI) to my office and told that in J.J. Colony House No.X-309, Camp No.1, Nangloi, Delhi, One Peeraswami and his wife Champai were dealing in smack and charas. The information has been recorded in DD and incharge Special Cell Mr.Ashok Tyagi brought it to the notice of his senior officers and sent the same and one raiding party under the leadership of Inspector Ashok Tyagi is made ready. Recorded in the hands of SI Raj Kumar."

20. In this case, the secret information recorded vide DD No.11 at 11:15 am by SI B.P.Singh (PW-7) is to the effect that at 11 am the secret informer informed H.Ct Vinod Kumar that one person namely Kehar Singh, resident of Bareilly (U.P.) dealing in smack and supplying smack/heroine in Delhi and U.P., would come on that date, i.e., 04.05.2004 between 12 noon to 1 p.m on Motor Cycle No.UP 25 P 6765 to Nigam Bodh Ghat near Hanuman Mandir, Yamuna Bazar to supply heavy quantity of heroine to someone and in case of raid he could be apprehended. It is further recorded in this DD that H.Ct. Vinod

alongwith the informer came to SI B.P.Singh and briefed him about the secret information. SI B.P.Singh after satisfying himself, informed Inspector P.S.Hooda , SHO, P.S. Narcotics Branch, and also produced the secret informer before him. The SHO satisfied himself after talking to the secret informer and then telephonically informed ACP (Narcotics), who directed that the raid be conducted.

21. Thereafter, the copy of the DD entry was handed over to the SHO for sending it to the senior officers. There is further endorsement by the SHO on this DD at the portion encircled 'A' for sending it to the ACP (Narcotics).

22. When a search and seizure is effected in a building, conveyance or enclosed place, Section 42 of NDPS Act comes into play thereby requiring the information received to be reduced into writing and transmitting the information to the superior officer. When the search & seizure is effected at a public place, Section 42 of the NDPS Act has no application.

23. The legal position is well settled that Section 43 of the NDPS Act applies when the search is conducted at a public place. When the contraband is seized from a public place, Section 42 of NDPS Act has no application. At the same time, Section 43 of the Act does not require recording of information by the police officer or sending the copy thereof to the immediate superior officer.

24. The distinction between Section 42 and Section 43 of NDPS Act was highlighted by the Apex Court in *State of Punjab vs. Balbir Singh 1994 (3) SCC 299*. In para 12 of the report, it was observed as under :-

“12. The material difference between the provisions of Sections 42 & 43 is that Section 42 requires recording of reasons for belief and for taking down of information received in writing with regard to the commission of an offence before conducting search and seizure, Section 43 does not contain any such provision and as such while acting under Section 43 of the Act, the empowered officer has the power of seizure of the article etc. and arrest of a person who is found to be in possession of any narcotic drug or psychotropic substance in a public place where such possession appears to him to be unlawful”

25. The contents of DD Ex.PW-5/A reveal that the information recorded vide this DD No.11 was that the appellant was coming to a public place i.e. Nigam Bodh Ghat. It is also the case of the prosecution that the appellant had been apprehended from Nigam Bodh Ghat which is a public place.

26. In ***Peeraswami's case***, the information received was that Peeraswami and his wife Champai were dealing in smack and charas from **their house and the raid was conducted at their house**. It was in that circumstance that this Court considered the applicability of Section 42 of the NDPS Act to the facts of that case and formed an opinion about non-compliance of Section 42 (1) and 42(2) in the facts and circumstances of that case. Thus, reliance placed by learned counsel for the appellant on the decision of ***Peeraswami*** (supra) is of no help to the appellant who has been apprehended from a public place i.e. Nigam Bodh Ghat, Yamuna Bazaar, Delhi.

27. Another contention raised on behalf of the appellant is that it was highly improbable for the appellant to come from Bareilly to Delhi thereby covering a distance of about 300 km without helmet or driving

license and carrying the smack in a bag on the fuel tank of the motorcycle.

28. First of all, it is necessary to mention here that the I.O. S.I B.P.Singh has nowhere stated that he questioned the accused as to whether he was straightway coming from Bareilly to Nigam Bodh Ghat or had any stoppage on the way to Delhi. Even in DD Ex.PW-5/A, he has been referred to as resident of Bareilly (U.P.) and not that he was coming directly from Bareilly to Nigam Bodh Ghat, Delhi to supply heroine. Merely because the I.O has not challaned the appellant for violation of provisions of Motor Vehicle Act i.e. without helmet and driving license does not make the recovery of heroine from his possession doubtful. As to how the appellant escaped various check posts on his way from Bareilly to Delhi, could not have been answered by the Investigating Officer of this case as it was only within the special knowledge of the appellant as to what route he had taken to avoid checking at various check posts by the police.

29. No doubt, every effort should be made by the I.O to join independent public witnesses, if the same are available and willing to join the recovery.

30. Learned counsel for the appellant urged that it is a case where the recovery has been effected from a public place and despite that no public person has been joined. The contention raised in this regard cannot be accepted for the simple reason that it is not the case of the appellant that Delhi Police had any enmity with the appellant or have acquaintance with the appellant, who is not even resident of Delhi, so as to falsely implicate him in this case. The police officials had no enmity with him

and they just acted upon the information received. The place of apprehension of the appellant is near Nigam Bodh Ghat and taking into consideration the fact that the people visit that place in grief to perform or attend the last rites of their near and dear ones, it was not possible for the I.O to persuade them to join or become witnesses in a case like the present one.

31. Effect of non-joining of public witnesses was also considered in ***Mahatam Parshad vs. State*** 63 (1996) DLT 884 and it was observed:

'It is no doubt true that the Court should always be reluctant in convicting a person solely on the basis of the testimony of the police officials, however, we have also to keep in view that the prosecution case cannot be thrown out or doubted on that ground alone. One cannot ignore the handicap with which the investigating agency discharge their duties as there is a general apathy in the public to come forward and appear as witness in Court cases. Even in this case one independent witness was associated at the time of search of the appellant and one seal was also kept with him, however, when the summons were sent to him, it was found that he had left the address where he was living as a tenant. The prosecution has done everything within its power to have the statement of the independent witness recorded in Court, however, in case for some reason the said witness has not been produced in the Court, in my opinion, the conviction of the appellant cannot be set aside merely on that ground. It is in the statement of the witnesses that many public independent witnesses were asked to join the raiding party, however, they refused. What the police should have done in these circumstances? No doubt if public witnesses decline to cooperate without any reasonable cause, they would be deemed to have committed an offence under Section 187 of IPC. However, we must also keep in view the ground realities in the sense that public witnesses, normally, do not want them to be associated in cases where they are asked to appear in Courts.'

32. Legal position is well settled that merely because the material

witnesses are police officials in itself is no ground to discard their otherwise creditworthy testimony. It was so held in the case of ***Ajmer Singh vs. Haryana (2010) 2 SCC (Crl.) 475*** :

‘Testimony of official witnesses, even in absence of its corroboration by independent evidence can form basis of conviction if Court is satisfied, on careful and cautious appreciation of evidence, that it is otherwise believable.’

33. So far as explaining the grounds of arrest are concerned, in the arrest memo, all the columns are duly filled in. Even while serving notice under Section 50 NDPS Act, the appellant was informed about the information available with the raiding party and their intention to search him. Thus, it cannot be said that the accused was not made aware of the grounds of arrest.

34. As per prosecution, the recovery has been effected from a bag, so compliance of Section 50 or NDPS Act was not required. In the case of ***Megh Singh vs. State of Punjab (2003) 8 SCC 66***, the Hon’ble Supreme Court has held :

“A bare reading of Section 50 shows that it applies in case of personal search of a person. It does not extend to a search of a vehicle or container or a bag or premises”.

35. In ***Himachal Pradesh vs. Pawan Kumar (2005) 4 SCC 350***, while discussing the scope and ambit of Section 50 of the Act, the Hon’ble Supreme Court observed as under:-

“11. A bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even remotely be treated to be part of the body of a human being. Depending upon the physical capacity of a person, he may

carry any number of items like a bag, a briefcase, a suitcase, a tin box, athaila, a jhola, a gathri, a holdall, a carton, etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder, back or placed on the head. In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word “person” occurring in Section 50 of the Act.”

36. Since in the instant case recovery has not been effected from the person of the convict, there was no need to comply with the requirement of Section 50 NDPS Act, though the convict had been duly served with the notice under Section 50 NDPS Act informing him about his right to get his search conducted in presence of a Gazetted Officer or Magistrate. Even copy of the notice has been recovered from his possession during his personal search.

37. The contradictions referred to by learned counsel for the appellant regarding the colour of the polythene whether it was light purple and pink, cannot be attached much significance, as in such circumstance it is for the witness to identify the colour as per his assessment and if light purple has been referred to as pink, the same becomes immaterial for the reason that the contraband was recovered from a transparent polythene which was kept in another polythene of light purple (also referred to as pink) recovered from the canvas bag.

38. The contention of learned counsel for the appellant that FSL form was not sent along with the sample is liable to be rejected for the reason that the FSL result itself shows the Parcel(s) one in number marked ‘A’

which was sealed and tallied with specimen seal impression forwarded along with forwarding letter (FSL FORM).

39. In his statement recorded under Section 313 CrPC, the appellant denied the recovery of 2 kilograms heroine from his possession and claimed that he was lifted from his village Milk Majra, District Bareilly, U.P. two days prior to the day when he was shown arrested in this case. SI B.P. Singh was known to Village Pradhan namely Shish Pal with whom he (appellant) had enmity and that he even did not know how to drive motorcycle. He also examined DW-1 Kallu, the motorcycle owner, in his defence. DW-1 Kallu had stated that motorcycle No. UP-25-P-6765 was owned by him and was handed over by him to Lalita Prasad who came alongwith appellant Kehar Singh to him to take the motorcycle from him as they wanted to go to Sirsa in connection with some function. Later on, he came to know that police had taken Lalita Prasad and Kehar Singh with them.

40. First of all, let us understand what is the defence of the appellant and whether by producing DW-1 Kallu he could prove that he has been falsely implicated in this case by planting the smack which was recovered from Kallu, who is none else but DW-1. Regarding the date of his arrest also, he has claimed that he was lifted from his house i.e. Village & P.O. Milk Mazra, District Bareilly two days prior to date of his arrest as shown in this case on account of enmity with Shish Pal, his village Pradhan, who was known to SI B.P.Singh, I.O of this case. He also claimed that he did not know how to drive any vehicle including Motor Cycle.

41. DW-1 Kallu has deposed that he knew the accused Kehar Singh (appellant herein) for the last 4 years (DW-1 was examined on 26.03.2008). Kehar Singh and Lalita Prasad came to him with a request to lend his motor cycle to them. As Kehar Singh and Lalita Prasad wanted to go to Sirsa in connection with some ceremony of a boy, he handed over his Motor Cycle to Lalita Prasad. Later on, he came to know that the appellant had taken both Lalita Prasad and Kehar Singh with them. During his cross-examination by the State, DW-1 stated that he was informed about the seizure of his motor cycle by P.S. Kamla Market, Delhi by Lalita Prasad after 3 days of the said incident.

42. In cross-examination of second IO PW-8 SI Prem Chander on behalf of appellant, what has been suggested to him by the appellant but denied by him is that :

“It is incorrect to suggest that the contraband exhibited in this case belonged to the said Kallu and had been planted upon the accused”.

43. No doubt, the testimony of defence witness has to be treated at par with prosecution witness, but here the statement of DW-1 Kallu is of no benefit to the appellant for the following reasons:-

(i) It is the defence of the appellant that recovery was effected from Kallu (DW-1) but planted on him. Kallu has not been chargesheeted in this case nor he has made statement to the effect that recovery was effected from him.

(ii) In the application for return of Motor Cycle on superdari dated 16.11.2004, in paragraphs 2 & 3 of the application, it is mentioned by DW-1 the superdar/registered owner of the motor cycle as under:-

“2. That **accused** one day prior to his arrest has taken the motor cycle from the younger brother of the applicant on the pretext that he was going to attend a party and later on he was arrested and the motor cycle was brought along with him by the police of P.S. Narcotics Branch Delhi and the same has been parked at the police station.

3. That applicant is not in any way connived with the accused nor he has been implicated in the above noted case”.

(iii) The above averment made in the application falsifies the version of DW-1 Kallu that the motor cycle was taken by Lalita Prasad when he came along with the convict/appellant.

(iv) Statement of DW-1 Kallu and the averment made in the application filed by him for release of motorcycle No. UP-25-P-6765 on superdari proves that appellant knows driving and in fact motorcycle had been taken by him from the registered owner.

(v) During cross-examination of PW-9 SI B.P.Singh, it has not been suggested to him that the convict was brought from his village two days prior to the date of his arrest in this case or that the village Pradhan Shish Pal was known to SI B.P.Singh or that the convict has been falsely implicated in this case at the instance of the village Pradhan Shish Pal because of his enmity with the convict.

44. It is worth mentioning here that the arrest memo Ex.PW-7/A shows that in Column No.9 which requires the arresting officer to fill in the details of the Arrestee such as Address and Telephone, if any, the said column has been filled in as under:-

9	Person of the Arrestee to be informed with Address and Telephone if any	Mulzim Ki Ichhanusar Uski Giraftari Ki Soochna Shishu Pal Pradhan Ko Telephone No.05812790260 Par Dee Gai.
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45. Had there been any enmity with the Village Pradhan, the accused/appellant would not have expressed his desire to inform Village Pradhan Shishu Pal about his arrest by giving his telephone number.

46. Thus, the version of the appellant as given by him in his statement under Section 313 Cr.P.C. regarding his enmity with the village Pradhan or his false implication in this case at the instance of village pradhan by SI B.P.Singh stands falsified.

47. From the above, it is established that the Motor Cycle was borrowed from DW-1 Kallu by the appellant on the pretext of attending some party, but was used by him for travelling to Delhi.

48. Now the question to be considered by this Court is whether the evidence adduced by the prosecution in this case to prove the charge is sufficient to convict him for the offence complained of. In ***Iqbal Moosa Patel vs. State of Gujarat***, the Apex Court while observing the degree of proof required to be proved by the prosecution to bring home the guilt of the accused, held as under:-

*‘13. That brings us to the question whether the Appellants could be given the benefit of doubt having regard to the nature of the evidence adduced by the prosecution against them. We do not think that the Appellants have made out a case for grant of any such benefit. It is true that the prosecution is required to establish its case beyond a reasonable doubt, but that does not mean that the degree of proof must be beyond a shadow of doubt. The principle as to what degree of proof is required is stated by Lord Denning in his inimitable style in ***Miller v. Minister of Pensions*** (1947) 2 ALL ER 272:*

That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond a shadow of a doubt. The law would fail to protect the community if it permitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with sentence 'of course, it is possible but not in the least probable,' the case is proved beyond reasonable doubt....

It is true that under our existing jurisprudence in a criminal matter, we have to proceed with presumption of innocence, but at the same time, that presumption is to be judged on the basis of conceptions of a reasonable prudent man. Smelling doubts for the sake of giving benefit of doubt is not the law of the land.

14. Reference may also be made to the decision of this Court in **Sucha Singh and Anr. v. State of Punjab** [MANU/SC/0527/2003](#) : (2003) 7 SCC 643 where this Court has reiterated the principle in the following words:

*...Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let a hundred guilty escape than punish an innocent. Letting the guilty escape is not doing justice according to law. (See **Gurbachan Singh v. Satpal Singh** [MANU/SC/0034/1990](#) : AIR 1990 SC 209). Prosecution is not required to meet any and every hypothesis put forward by the accused. A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish.'*

49. Reverting to the facts of the present case, from the evidence

adduced by the prosecution, the recovery of heroine weighing 2 kilograms containing 59.9% diacetyl morphine (commercial quantity) was proved beyond any reasonable doubt. The arrest of the appellant, who is resident of Bareilly (U.P.), in a case under NDPS Act was duly informed to the concerned village Pradhan of his village. Thus the conclusion arrived at by learned Special Judge (NDPS) convicting the appellant under Section 21 of NDPS Act is based on sound reasoning and proper appreciation of the testimony of prosecution witnesses. The impugned order cannot be termed as perverse or suffering from any illegality as all the necessary requirements have been duly complied with by the police in this case.

50. The appeal has no merits and the same is hereby dismissed. Trial Court Record be sent back along with copy of this order. A copy of this order be sent to Jail Superintendent informing the appellant about the dismissal of the appeal.

PRATIBHA RANI, J

January 11, 2013
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