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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. 1591/2011**

Judgment reserved on: 31st August, 2017
Judgment pronounced on: 8th September, 2017

SANTOSH RANI Appellant
Through: Mr. S. S. Das (Advocate)

Versus

STATE Respondent
Through: Mr. Mukesh Kumar, APP for the State

CORAM:
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. The present appeal has been preferred by appellant/Santosh Rani under Section 374 of the Code of Criminal Procedure (hereinafter referred as “CrPC”) against the impugned judgment dated 19.09.2011 and order on sentence dated 10.10.2011 passed by Additional Sessions Judge, Rohini Courts, Delhi, in case FIR No. 86/2008 registered at Police Station -Narcotics Branch, New Delhi, whereby the appellant had been found guilty for possession of 10kg 200grams of Opium, which is punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “NDPS Act”) and has been sentenced rigorous imprisonment of ten years and a fine of Rs.1 Lac, and in default of fine, to further undergo rigorous imprisonment for one year.

2. The case of the prosecution as observed by the Trial Court is that:-

“2. on 08.08.2008 at about 11.30 PM, a secret informer came to ASI Paramjit Singh in the Narcotics Cell and informed him that a lady namely Santosh Rani, a resident of Uttam Nagar, Delhi who is involved in the business of supplying opium in whole sale, would come today in her Black Colour Santro Car bearing No. DL 4CR 5279 between 1.30 PM to 2.30 PM on the way leading to Bhalsava dairy to supply opium and if raid is conducted , she could be apprehended with opium. On receipt of this information, ASI Paramjit Singh produced the secret informer before Ins. M.L. Sharma- SHO, PS Narcotics Branch , who after satisfying himself, informed ACP (N&CP) Sh. Mahinder Singh Dabas on telephone and thereafter Ins. M.L.Sharma directed ASI Paramjit Singh to conduct the raid. Secret information was reduced into writing. On the direction of senior officer, ASI Paramjit Singh constituted a raiding party comprising himself, HC Rani Reddy, HC Kanwal Singh and Ct. Charan Singh. Raiding Team along with secret informer reached the spot. Public persons were requested to join the raiding party, but none agreed. After some time, accused Santosh Rani and her son Rishi reached the spot in black colour Santro Car bearing no. DL- 4CR-5279 and after two minutes thereof, another accused Gurmeet Kaur also reached there. From the spot itself, accused persons Santosh, Rishi and Gurmeet Kaur were apprehended. From the possession of accused Santosh Rani, 10 kg. 200 grams opium was recovered. Mandatory provisions of NDPS Act were complied with. Samples were taken. FSL form was filled in. All the three accused were arrested. After completion of the investigation, the charge sheet against the accused was filed in the

court. The copies were supplied. After recording the disclosure statement of these three accused persons, police also came to know that accused Puran was also involved in the commission of offence. On 18.02.2009, accused Puran surrendered in the court and he was arrested. Thereafter, a supplementary charge sheet against accused Puran Chand was filed in the court. The copies were supplied. Accused Santosh Rani and Gurmeet Kaur were charged for the offence punishable u/s 18 NDPS Act. Accused Rishi was charged for the offence punishable u/s 25 NDPS Act and accused Puran Chand was charged for the offence punishable u/s 29 NDPS Act. The charges were read over and explained to the accused persons, to which they pleaded not guilty and claimed trial.”

3. To bring home the guilt of the accused persons, the prosecution has examined as many as ten witnesses and got exhibited certain documents. Statement of the accused person was recorded under Section 313 of the Code of Criminal Procedure, 1983, wherein they reiterated their innocence. The accused Santosh Rani examined one witness in her defence being DW-1 Satish Kumar.
4. Mr. S. S. Das, learned counsel appearing for the appellant contended that the Trial Court has not properly appreciated and considered the material available on record and has erroneously recorded the findings of conviction and therefore the same is liable to be set aside. He further contended that there were material contradictions, illegalities and infirmities in the testimonies of the material witnesses being PW-1 HC Rani Reddy, PW-7 HC Kanwal Singh and PW-8 ASI Paramjit Singh, who were witnesses to the

recovery of alleged opium which makes the case of the prosecution highly doubtful; that PW-1 & PW-7 were tutored witnesses as they deposed on similar lines in their examination-in-chief; that sufficient time was available to the members of the raiding party to join public witnesses as raid was conducted on 08.08.2008 at 1:55 pm and the raiding party reached the spot at about 01:30 pm; that the testimonies casts serious doubt about the placement of members of the raiding party during the raid; the site plan Ex.PW-9/A does not give any suggestion how the Santro Car and accused Gurmeet Kaur had arrived on the spot; that with regard to the procedure to test the contraband (Opium), it is difficult to ascertain as to which seal was affixed on the case property; that there was every possibility of tampering with the case property as the property was handed over to one of the persons of the raiding party instead of an independent person and the possibility of planting cannot be ruled out; that PW-8 ASI Paramjit Singh was not even aware about the chemical which was used to carry out field testing using the field testing kit.

5. On the other hand, Mr. Mukesh Kumar, the learned APP for the State supporting the impugned judgment and order on sentence contended that the Narcotic Substance was recovered from the possession of the appellant and the Trial Court after scrutiny and appreciation of the testimonies of the witnesses, rightly convicted and sentenced the appellant herein. He further contended that the testimonies of PW-1, PW-7 and PW-8 had passed the test of reliability and there was no obscurity by the Trial Court in basing

the conviction of the appellant herein on the testimonies of PW-1, PW-7 and PW-8; that all the said witnesses being members of the raiding party adduced unfettered and reliable testimonies throughout their examination and cross-examination; that 10.200 kg of opium was recovered from the possession of Santosh Rani; that the recovered contraband was weighed, its samples were sealed with seal bearing “1 SHO NBR DELHI” and “8 APS NB DELHI”; that the respective entry(ies) in the Register No. 19 maintained (Store Room Register) were made in this regard, which was proved by PW-6 HC Mahesh Kumar during his examination-in-chief and exhibited the said document as PW-6/C; that as per the FSL Report, it was found that the said case material collected in pullandas A1, B1, C1 and D1 respectively, contained 0.6%, 0.5%, 0.4% and 0.4% of morphine.

6. I have heard learned Counsel for the parties and have also perused the material available on record.
7. That a total 10.200kg of opium was recovered from the possession of appellant by the raiding party and the samples of 50/50grams were taken out from the recovered four transparent polythene and the same were kept into small polythene and the same were marked as A1, A2, B1, B2, C1, C2, D1 and D2 respectively; The sample(s) were sent to the FSL for analysis and upon receiving the report, the substance was confirmed to be opium; the relevant portion of the said FSL report reads as under: -

**“DESCRIPTION OF ARTICLES CONTAINED IN THE
PARCEL(S)/ EXHIBIT(S)”**

Parcel- 'A1', 'B1' : Four (04) cloth parcels, each sealed with the seals 'C1' & 'D1' "8A, P.S/N.B. DELHI" (01, 01, 01 & 01' respectively) & "1 SHO/N.BR.DELHI" (01, 01, 01, & 01 respectively). They were found to contain exhibits 'A1', 'B1', 'C1', & 'D1', each, kept in a separate polythene.

Exhibits- 'A1', 'B1' : Each, dark brown coloured sticky material, stated to 'C1' & 'D1' be 'OPIUM'.
Exhibits 'A1' 'B1' 'C1' 'D1' Weight approx..
50 50 50 50 grams with polythene.

RESULTS OF EXAMINATION

- (i) On Chemical Thin Layer Chromatography & HPTLC examination, exhibits 'A1', 'B1', 'C1', & 'D1' were found to contain Morphine, Thebaine, Codeine, Papaverine & Narcotine which are main constituents of poppy Plant.
 - (ii) However on HPTLC examination exhibits 'A1', 'B1', 'C1' & 'D1' were found to contain morphine 0.6%, 0.5%, 0.4% & 0.4% respectively.
8. Section 2(xvi)(e) of the NDPS Act gives the definition of 'opium derivative' - "all preparations containing more than 0.2 percent of morphine or containing any diacetylmorphine." From the FSL Report in the instant case, it is clear that the substance seized falls within the definition of 'Opium' under Section 2(xv) of the NDPS Act.
9. Counsel for the appellant casts serious doubt on the reliability and trustworthiness of the material witnesses. It would be relevant and necessary to examine the testimonies of PW-1 HC Rani Reddy

(Woman Head Constable, Raiding Party), PW-7 HC Kanwal Singh
(Head Constable, Raiding party), PW-8 ASI Paramjeet Singh.

10. HC Rani Reddy, a member of raiding party stepped into the witness box as PW-1 and deposed as under: -

“ On 08.08.2008, I was posted in PS Narcotics Branch as Women Head Constable. At about 12.25 pm, ASI Paramjit Singh formed a raiding party comprising myself, Ct. Charan Singh and HC Kanwal Singh. ASI Paramjit Singh briefed us about the secret information that a lady who supplies Afeem, resident of Uttam Nagar, would come on the road leading to Bhalsava Dairy between 1.30 pm to 2.30 pm in a black colour Santro car no. DL-4CR-5279 for supplying Afeem, and if raided, she can be apprehended. DD No. 11-A was recorded about departure and ASI Paramjit Singh, I, Ct. Charan Singh and HC Kanwal Singh left the PS in Govt. Vehicle TATA-407 DL-1LD-5059 driven by driver Ct. Sanjeev Kumar, IO was having IO bag with him and Field Testing Kit and electronic weighing scale. We left the PS at about 12.30 pm along with the secret informer. We reached Bhalsava Dairy at 1.30 pm via Pusta Road, Gandhi Nagar, from Shastri Park Red Light, to Khajuri Chowk from there took a left turn Wazirabad Yamuna Bridge, to outer Ring Road xxxxxxxxxx

On the way, at Pusta road , ASI Paramjit Singh asked 5/6 passers by to join the raiding party, but none agreed. Thereafter at Burari Chowk, he again asked five passersby to join the raiding party, but none obliged. They did not tell their names and addresses and went away. ASI Paramjit briefed the members of the raiding party in detail. The Govt. Vehicle was parked towards Burari Chowk at a distance at about 100 meter and briefed the driver

*Ct. Sanjeev to reach the spot on getting the signal
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*We all along with the secret informer took the position on the road leading to Bhalsava after crossing the drain within a radius of 7/8 meters. At about 1.55 pm, one black colour Santro Car after crossing the drain, came towards Bhalsava Dairy and it stopped at a distance of 15/20 steps from us and the number of the car was DL-4CR-5279
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*The secret informer pointed out that it is the same car. From the car, one lady (the Appellant herein) came out from left side after opening the door. She was wearing orange colour suit and the secret informer recognised her and told her that she is Santosh. One aged old lady came from Bhalsava dairy wearing Matmela colour suit. She stopped near Santosh and started talking to her. Santosh took out a bag from the car, but that old lady signalled her for inside the car. When those ladies were about to enter the car, I along with ASI Paramjit, Ct. Charan Singh and HC Kanwal Singh overpowered them at about 2pm. ASI Paramjit Singh also asked the boy sitting on the driver seat of the car, to come out. On inquiry, the boy disclosed his name as Rishi and aged lady told her name as Gurmeet Kaur. These three are today present in the court (correctly identified)
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Notice u/s 50 NDPS Act was given to them and read over to them. All these three notice u/s 50 NDPS Act are Ex. PW-1/a, Ex. PW-1/B and Ex. PW-1/C, bearing my signatures at point A. They also had a right that their search be conducted before a Magistrate or a Gazetted Officer, who can be called there. All the three accused refused for their search before a Gazetted officer or Magistrate or for the search of police party or Govt. Vehicle before their search. ASI Paramjit Singh recorded the refusal of

accused Santoshi Rani on her notice in his own handwriting and the refusal was read over to her and she signed the refusal Ex. PW-1/D in Punjabi at point A and I signed as witness at point B. ASI Paramjit singh also recorded the refusal of accused Gurmeet Kaur on her notice in his own handwriting and the refusal was read over to her and she put the thumb impression on the refusal Ex. PW-1/E at point A and I signed as witness at Point xxxxxxxxxxxx.

I handed over that bag to ASI Paramjit Singh. It was opened and there were four transparent polythene packs containing some black substance. The mouth of all four polypacks was found tied with thread. All the four polythene packs were opened and tested with field testing kit and it was found to be opium. From each polypacks , two samples of 50 grams each were separated and were put in separate small polypacks , mouth tied and rubber band , converted into pullandas. The remaining smack was again put in the same polypacks, tied with the thread , converted into pullandas and marked as A-1, B-1,C-1,D-1 and D-2. The samples were marked as A-1,A-2,B-1,B-2,C-1,C-2,D-1,D-2. All the pullandas were sealed with the seal of "8 A PS NB DELHI" by ASI Paramjit Singh. FSL was also filled in triplicate by ASI Paramjit Singh and same seal was affixed on the FSL Form and seal after use was handed over to me. ASI Paramjit Singh seized all the 12 pullandas, the cloth bag and FSL Form vide memo Ex. PW-1/G xxxxxxxxxxxx

ASI Paramjit Singh prepared the rukka and same was sent to the PS through HC Kanwal Singh. FSL Form, the bag containg 12 pullandas were also sent to the PS along with carbon copy of the seizure memo through HC Kanwal Singh. HC Kanwal Singh was instructed to hand over the rukka to the Duty Officer and all the pullandas along with FSL Form

and copy of seizure memo to the SHO, PS Narcotics Branch.”

11. HC Kanwal Singh, another member of raiding party examined as PW-7 and deposed that: -

“ At about 12.25 pm, ASI Paramjit Singh formed a raiding party comprising myself, Ct. Charan Singh and W/HC Rani Reddy xxxxxxxxxxxx

On the way to Pusta Road, ASI Paramjit Singh asked five passersby to join the raiding party, but none agreed. Thereafter at Burari Chowk, he again asked five passersby to join the raiding party, but none obliged. They did not tell their names and addresses and went away xxxxxxxxxxxx

We all along with the secret informer took the position on the road leading to Bhalsava after crossing the drain within a radius of 7/8 meters. At about 1.55 pm, one black colour Santro car after crossing the drain, came towards Bhalsava Dairy and same stopped at a distance of 15/20 steps from us and the number of the car was DL-4CR-5279 xxxxxxxxxxxx

The secret informer pointed out that it is the same car. From the car, one lady namely Santosh came out from left side after opening the door xxxxxxxxxxxx

Accused is today present in the court. She was wearing orange colour suit and the secret informer recognised her and told that she is Santosh.

One aged old lady came from Bhalsava Dairy wearing Matmela colour suit. She stopped near Santosh and started talking with her. Santosh took out a bag from the car, but that old lady signalled her to sit inside of the car. When those ladies were about to enter the car. I along with ASI Paramjit, Ct. Charan Singh and W/HC Rani Reddy overpowered them at about 02:00 pm xxxxxxxxxxxx

ASI Paramjit also asked the boy sitting on the driver seat of the car, to come out. On inquiry, the boy disclosed his name as Rishi and aged lady told her name as Gurmeet Kaur xxxxxxxxxxxx

Accused Rishi and Accused Gurmeet Kaur are today present in the court(Correctly Identified) xxxxxxxxxxxx

They were told that they also had a right that their search be conducted before a Magistrate or a Gazetted Officer, who can be called there. Notice u/s 50 NDPS Act was given to both of them and read over to them. xxxxxxxxxxxx

All the accused refused for their search before a Gazetted Officer or Magistrate or police party. ASI Paramjit recorded the refusal accused Santosh Rani on her notice in his own handwriting and the refusal was read over to her and she signed the refusal already Ex. PW-1/D in Punjabi at point A and I signed as witness at point C. ASI Paramjit also recorded the refusal of accused Gurmeet Kaur on her notice in his own handwriting and the refusal was read over to her and she put her thump impression on the refusal Ex. PW-1/E at point A and I signed as witness at point C. Accused Rishi wrote his refusal in his own handwriting on his notice and signed in English at point A on refusal already Ex. PW-1/F and I signed as witness at point C. xxxxxxxxxxxx

On the directions of ASI Paramjit Singh , W/HC Rani Reddy took accused Santosh in the Govt. Vehicle and conducted her search. She was having a cloth bag in her left hand. After conducting the search of accused Santosh, W/HC Rani Reddy handed over that bag to ASI Paramjit Singh. That bag was of cream colour , on which "VIMAL" was found printed and some other words in Devangri scripts were found printed. xxxxxxxxxxxx

It was opened and there were four transparent polythene packs containing some black substance. All the four polythene packs were opened and tested with field testing kit and it was found to be opium. The total weight of opium recovered was 10kg 200 grams. From each polypack, two samples of 50/50 grams each were separated and were put in separate small polypacks, mouth tied with rubber band , converted into pullandas. The remaining smack was again put in the same polypacks, tied with the thread , converted into pullanda and were marked as A, B ,C and D. The samples were marked as A-1, A-2, B-1, B-2, C-1, C-2, D-1, D-2. All the pullandas were sealed with the seal of “ 8 A PS NB DELHI” by ASI Paramjit Singh. xxxxxxxxxxxx

FSL was also filled in triplicate by ASI Paramjit Singh and same seal was affixed on the FSL Form and seal after use was handed over to W/HC rani Reddy. ASI Paramjit Singh seied all the 12 pullandas, the cloth bag and FSL Form vide memo Ex. PW-1/G, which bears my signature at point A. xxxxxxxxxxxx

ASI Paramjit Singh prepared the rukka ans same was handed over to me for getting the case registered. ASI Paramjit Singh also handed over FSL Form, the bad containing 12 pullandas to me along with carbon copy of the seizure memo for handling over the same to SHO. xxxxxxxxxxxx

12. Investigating Officer ASI Paramjeet Singh was examined as PW-8 and deposed as under: -

“ On 08.08.2008 I was posted as ASI in Narcotics cell. On that day at about 11.30 AM I received a secret information that a lady namely Santosh Rani resident of Uttam Nagar who is in the business of supplying opium in whole sale. After satisfying with information I produced the informer before SHO

Narcotics branch. Thereafter, I formed a raiding party and informed them about the secret information.

I asked five passersby outside the PS and five passengers at Buradi Chowk to join the raiding party after telling them about the secret information but none of agreed and left the place without telling their names and addresses. xxxxxxxxxx

The members of the raiding party and the secret informer took the position after crossing the bridge on the road leading to Bhasalva within the radius of 7/8 meters. At about 1.55 PM one black Santro Car stopped at a distance of about 15/20 steps from us, the secret informer indentified it is the same car. From the front left seat of the car one lady got down carrying a thela having some weight in it. Secret informer identifies her as Santosh. After about two minutes one aged lady wearing matmela colour suit came from the side of Bhalsava. xxxxxxxxxx

Immediately at about 2pm we surrounded the car. I told them if they want their search can be conducted before a Magistrate or a Gazettes Officer. They refused to exercise their rights. Notices u/s 50 NDPS Act were given to the three accused the same are Ex. PW1/A, 1/B and 1/C having my signature at point D.I recorded the refusal of Santosh Rani in my own handwriting as told by her as she was not knowing how to read and write. I also recorded the refusal of Gurmeet Kaur as she was illiterate. Rishi recorded his refusal in his own handwriting. xxxxxxxxxx

Thereafter, I instructed Rani Reddy to took the search of Santosh Rani. Rani Reddy took the bag from the left hand of the accused Santosh Rani and handed over to me. In bag four polythenes were found. Mouth tied with thread containing black colour substance. xxxxxxxxxx

All the four polythenes were marked as A,B,C and D. The samples taken out from the bag was marked as A1, A2, B1, B2, C1, C2, D1 and D2. The samples were put in separate polythenes and sealed with the seal of 8APSNBDELHI. I prepared the rukka Ex. PW8/A I handed over the rukka, 12 sealed parcels after putting them in the same bag the FSL form having my seal and carbon copy of seizure memo to HC Kanwal Singh and directed him to hand over the rukka to duty officer and remaining to SHO.
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- 13 The contention raised by the counsel for the appellant, that the testimonies of PW1 and PW7 are unreliable and not worthy of trust has to be rejected in its entirety. It is a settled proposition of law that the testimonies of the witness(es) cannot be connoted as tutored on the aspect that they are akin to each other. True facts as and when they occur would always be stated by the witness(es) in their entirety and therefore would not take the aspect of them being tutored. Testimonies of witness(es) being akin to each other is in itself conveys corroboration.
- 14 Another contention raised by the counsel for the appellant that no sincere efforts were made by the raiding party to join independent witnesses. Undoubtedly, the recovery was effected on the basis of secret information and at a public place, but none from the public has been made an witness to the alleged recovery. Testimonies of the members of the raiding party shows that efforts were made to join the public person as witness but they expressed their inability to join the proceedings which left the Investigating Officer with no option but to proceed further with the raid. However, there are

times when the public persons might not willing to join the said proceedings, which very likely might have been in the present case.

- 15 Further, it is a settled position of law that the mere fact of non-joining of a public witness, would not *ipso-facto* make the evidence(es) of the prosecution's witnesses unreliable or untrustworthy. Despite cross-examination no serious discrepancy could be pointed out which could discredit the testimonies of all the witnesses. In **Ram Swaroop Vs. State (Govt. NCT) of Delhi** reported in (2013) 14, **Supreme Court Cases 235**, the Hon'ble Apex Court observed that :

“7. xxxxxxxxx We may note here with profit there is no absolute rule that police officers cannot be cited as witnesses and their depositions should be treated with suspect. In this context we may refer with profit to the dictum in **State of U.P. v. Anil Singh : 1988 Supp SCC 686**, wherein this Court took note of the fact that generally the public at large are reluctant to come forward to depose before the court and, therefore, the prosecution case cannot be doubted for non-examining the independent witnesses.”

- 16 Further, while dealing with the aspect of reluctance of the public persons to join the public proceedings, in the case of **Jawahar v. State** reported in (2007) ILR 2 Delhi 146, it was observed as under: -

17 “As far as non association of public witnesses at the time of recovery is concerned, I consider that this is not an infirmity sufficient to throw out the case of the prosecution. It is very hard these days to get association of public witnesses in criminal investigation. Investigation itself is a tedious

process and a public witness, who is associated, has to spend hours at the spot. Normally, nobody from public is prepared to suffer any inconvenience for the sake of society. The other reason for the public witness not readily agreeing to associate with investigation is harassment of public witness that takes place in the courts. Normally a public witness should be called once to depose in the court and his testimony should be recorded and he should be discharged. But experience shows that adjournments are given even in criminal cases on all excuses and if adjournments are not given, it is considered as a breach of the right of hearing of the accused. These adjournments are specifically taken by counsels for accused persons, when witnesses are present, just to see that witnesses get harassed by calling them time and again. The excuses normally given in the courts are : the counsel having urgent personal work, left the court; death of some near relatives etc; the counsel being busy in arguing other matter in other court or cross examining other witness in some other court. This attitude of the courts of sending witness back is a major cause of harassment which discourages public from associating in the investigation of any case. Since the police is faced with this handicap, the police cannot be blamed for not associating public witness. There is no presumption that the police witnesses are not credible witnesses. The testimony of every witness, whether from public or police, has to be judged at its own merits and the court can believe or disbelieve a police witness considering the intrinsic value of his testimony. Police witnesses are equally good witnesses and equally bad witnesses as any other witness and the testimony of police witness cannot be rejected on the ground that they are official witnesses.”

16. As far as the contention raised by the learned counsel for the appellant with regard to the entry regarding sample parcels and form FSL in Register no. 19 (Store Room Register) as the entry no. 852 and 854 respectively was made and Exhibited as Ex. PW-6/A and Ex.PW-6/B, however no entry with regard to the deposit of the cloth bag containing the remaining opium weighing 10.5 kg was made in the Register No. 19, could not be held to falsify the entire case of the prosecution. The four pullandas were duly sent to FSL along with FSL form on 20.08.2008 registered vide Register No. 71/21. The absence of the particular entry cannot be held to be a ground to absolve the accused of being in possession of the contraband article.
17. Mere fact that Investigating Officer PW-8 fails to give the technical name of the chemical used to find out the nature of the substance holds no ground as the trial court has rightly observed that: -

“ Ld. Defence counsel also contended that witnesses were also not knowing the chemical names of the liquid used for testing the exhibits. But in my opinion, it is immaterial. The police officers are not chemical analysts having knowledge of chemical and chemical reactions. They only have the practical training of how to use the chemical available in the field testing kit which they did. I, therefore, do not find any merit in the contention.”

- 18 It was further contended by the counsel for the appellant that there was a delay of 10-12 days in handing over the seal after use by

PW-1 to the Investigating Officer and thus the sample parcels is liable to be tampered by the IO or members of the raiding party is of no consequence as it is evident that initial affixation was done by the SHO and on that very day it was given to Mahesh Kumar. The seal was given to Mahesh Kumar by him and thereafter was handed over by him to Ct. Rajender on 20.08.2008, who in turn deposited the said sample for FSL. It is observed that the said sample was affixed with the seal (“8 APS NB DELHI” and “1 SHO NBR DELHI”) even on the date of depositing the sample to FSL as clearly provided for in FSL report exhibited as Ex. PW-9/B. Moreso, initial sealing was done in a time bound manner and admittedly the seals were put on or were placed on proper date and time of the respective events and or, their handing over to proper channel and authorised person. There is no laxity whatsoever on the part of the police personnel which shows seal was not affixed in time bound and proper manner.

- 19 In the case of ***Harelip Singh v. State of Punjab*** reported in **2008 (8) SCC 557**, the Hon’ble Apex Court while dealing with the question of delay in sending the samples to FSL held as under:

“16. So far as the question of delay in sending the samples of opium to the Forensic Science Laboratory (FSL) is concerned, the same in our opinion has no consequence for the fact that the recovery of the said sample from the possession of the Appellant stands proved and established by cogent and reliable evidence led in the trial. PW 5 has categorically stated and asserted about the recovery of opium from the possession of the Appellant, which fact is also corroborated by a

higher officer, namely, SS Mann, DSP who was also examined at length during the trial. The said recovery was effected in the presence of the said SS Mann, DSP, as senior police officer, who also put his seal on the said parcels of opium.

17. The then Station House Officer, Inspector Baldev Singh, who was examined as PW 1, was posted at Police Station Ajnala on the date of occurrence. He received the said samples of opium along with case material, being produced before him by PW 5. It has come on evidence that Inspector Baldev Singh kept the entire case property with him till it was deposited in the office of Chemical Examiner, Amritsar on 30.9.1997 through AST Surinder Singh, (PW3). It has also come on evidence that till the date the parcels of sample were received by the Chemical Examiner, the seal put on the said parcels was intact. That itself proves and establishes that there was no tampering with the aforesaid seal in the sample at any stage and the sample received by the analyst for chemical examination contained the same opium which was recovered from the possession of the Appellant. In that view of the matter, delay of about 40 days in sending the samples did not and could not have caused any prejudice to the Appellant. The aforesaid contention, therefore, also stands rejected. "

- 20 The plea of the counsel for the appellant that on the technical aspects relating to deployment of raiding party and the site plan not prepared at the spot does not come to the rescue and benefit of the accused, in view of the recovery of the contraband, proved from the testimony of the witnesses in whose presence the same was recovered.

- 21 Though the accused examined DW-1, Satish Kumar who deposed that he was running a shop in partnership with the accused but he failed to help the accused in any manner as he could not even produce the partnership deed of the shop or the licence number of the shop.
- 22 That from a bare perusal of the testimonies of the witness(es) of the raiding party as elucidated and reproduced in the preceding paragraphs, it goes to show that the testimonies of the witness(es) corroborate and supplement each other. The testimonies of the witness(es) do not dither on either of the relevant and/ or material aspects. The facts and the circumstances of the case, more or less the incident, as it took place can be identified and distinguished in lime line. The contention of the counsel for the appellant holds no ground on this aspect, as the testimonies are unfettered, unrebutted and corroborate with each other well.
- 23 It is evident from the record, that the raid took place, the accused was apprehended from the spot and the contraband was seized. The Ld. Court has rightly convicted the Appellant herein for her being in possession of the contraband and intent to distribute.
- 24 After going through the entire facts of the present case, I hold that the prosecution evidence is reliable and trustworthy and the narration of the above events would go to show that the arguments advanced by the learned counsel for the appellant are based on mere conjectures and surmises. The prosecution has successfully established that the appellant was found in conscious possession of 10.200 Kg. and the conviction and sentence awarded to her does

not suffer from any illegality and are hereby upheld.

25 I find no merit in the appeal, the same is dismissed.

26 The appellant be informed of the order through the Superintendent Jail. Trial Court record be sent back forthwith along with a copy of this judgment.

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 8th, 2017

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