



In the High Court of Punjab and Haryana at Chandigarh

CRA-D-360-DB-2013 (O&M)

Reserved on: 4.10.2024

Date of Decision: 23.10.2024

Gulshan Kumar

.....Appellant

Versus

State of Punjab

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Shubham Chandel, Advocate
for the appellant.

Mr. Kunwarbir Singh, AAG, Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 26.2.2013, upon Sessions Case No. 136 of 16.12.2009, by the learned Judge Special Court, Sangrur, wherethrough in respect of a charge drawn against the accused *qua* an offence punishable under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “the Act”), the learned trial Judge concerned, proceeded to record a finding of conviction against the accused-appellant. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, imposed upon, the convict both sentence(s) of imprisonment as well as sentence(s) of fine, but in the hereinafter extracted manner:

“xxx

Keeping in view the entire facts and circumstances, the convict Gulshan Kumar is sentenced to undergo rigorous imprisonment for 14 years and to pay a fine of Rs.1,00,000/- as fine under Section 22 of the Act. In default of payment of fine, he shall further undergo rigorous imprisonment for three



years.”

2. The period of detention undergone by the convict, during the investigations, and, trial of the case, was, in terms of Section 428 of the Cr.P.C., rather ordered to be set off, from the above imposed sentence(s) of imprisonment.

3. The accused-convict becomes aggrieved from the above drawn verdict of conviction, besides also, becomes aggrieved from the consequent therewith sentences of imprisonment, and, of fine as became imposed, upon him, by the learned convicting Court concerned, and, hence has chosen to institute thereagainst the instant criminal appeal.

Factual Background and Investigation proceedings

4. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. PB is assigned. The narrations carried in Ex. PB, are that on 09.07.2009, Inspector Bhagwan Singh while posted as Incharge Counter Intelligence Unit, Malerkotla, along with SI Daljit Singh, ASI Darshan Pal, C Malkiat Singh, in connection with checking of suspected persons, on private vehicle was present at Club Chowk Malerkotla. At about 5.30 A.M Inspector Bhagwan Singh received a secret information that Gulshan Kumar son of Bachan Lal, resident of Ward No.23, near Pipliwala Petrol Pump, Malerkotla retains in his residential house intoxicant substance and sells the same and further deals with the business of selling of intoxicant substances. It was also informed by the informer that Gulshan Kumar had sold one container (Kuppi) of liquid which was intoxicant @ 50/- per container (Kuppi) and one small packet of intoxicant powder @ 25/- per small packet, and, if a raid is conducted, heavy quantity of intoxicant substance can be recovered from his house. The information being credible



Inspector Bhagwan Singh prepared ruqa Ex.PA and sent the same to the Police Station, City Malerkotla through C. Malkiat Singh, on the basis of which formal FIR Ex.PB was registered against the accused. Inspector Bhagwan Singh also informed to Police Station, City Malerkotla and ASI Birbal Singh and HC Kashmira Singh joined their police party. Thereafter the house of accused Gulshan Kumar was raided. Accused was present in his house. In a room of the house of the accused, intoxicant substances in boxes, plastic buckets, injections, loose tablets and capsules were lying. One drum plastic containing intoxicant liquid was lying and from the intoxicant liquid, two samples of 180 ml each were taken out and converted into parcels. On measurement remaining liquid substance was found to be 188 liters and 40 ml and the same was converted into a parcel. Both the sample parcels and drum containing residue liquid were sealed by Inspector Bhagwan Singh with his seal bearing impression BS. From the plastic box, intoxicant powder was recovered, out of which two samples each containing 25 gram were taken out and put into two small plastic boxes and converted into parcels. On weightment remaining intoxicant powder was found to be 2 kilograms and the same was converted into a parcel. Both the sample parcels and bulk parcel were sealed by Inspector Bhagwan Singh with his seal bearing impression BS. Tablets make Alnok 0.50 were recovered and two samples each of 10 tablets were separated and converted into parcels. Remaining tablets on counting were found to be 145000 approximately, which were put into a plastic bag and the plastic bag was converted into a parcel. Both the sample parcels and bulk parcel were sealed by Inspector Bhagwan Singh with his seal bearing impression BS. From a dibba plastic capsules make Parvon Spas were recovered. Two samples of 10 capsules



each were taken out and converted into parcels. On counting, remaining capsules were found to be 4000 approximately and the same were put into same dibba plastic and converted into a parcel. Both the sample parcels and bulk parcel of capsules Parvon Spas were sealed by Inspector Bhagwan Singh with his seal bearing impression BS. Further tablets make Alprazom in the small pouches were recovered and each pouch containing 100 tablets. Two samples of one small pouch of Alprazom each were taken out and put into small plastic boxes and converted into parcels. On counting, remaining Alprazom pouches were found to be 4810 and total tablets of Alprazom were found to be 480800. These tablets were put into a plastic bag and same was converted into a parcel. Both the sample parcels and bulk parcel were sealed by Inspector Bhagwan Singh with his seal bearing impression BS. Tablets make Momotil were recovered from the house of accused and these tablets were found in pouches and each pouch contained 100 tablets. Two samples of one pouch each were taken out and converted into parcels. On counting, remaining tablets were found to be 29800, which were put into plastic bag and the bag was converted into a parcel. Both the sample parcels and bulk parcel were sealed by Inspector Bhagwan Singh with his seal bearing impression BS. Thereafter, Injections make Alwin were recovered. Two samples of one Injection each were taken out and converted into separate parcels. On counting remaining injections were found to be 958 and the same were put in a plastic bag and converted into a parcel. Both the sample parcels and bulk parcel were sealed by Inspector Bhagwan Singh with his seal bearing impression BS. Injection make Fortwin were also recovered. Two samples of 12 injections each were taken out and converted into separate parcels. On counting the remaining injections were found to be



2856, which were put in a plastic bag and converted into a parcel. Both the sample parcels and bulk parcel were sealed by Inspector Bhagwan Singh with his seal bearing impression BS. Tablets make Lomotil were also recovered from the house of accused and these tablets were found to be in vials and each vial contained 100 tablets. Two samples of two vials each containing 100 tablets were taken out and converted into parcels. On counting, remaining tablets were found to be 85800, which were put into plastic bag and the bag was converted into a parcels. Both the sample parcels and bulk parcel were sealed by Inspector Bhagwan Singh with his seal bearing impression BS. Injections make Avil were recovered and each injection was of 10 ml. Two samples of one injection of Avil each were separated and converted into separate parcels. On counting the remaining injections were found to be 328, which were put into a plastic bag and converted into a parcel. Both the sample parcels and bulk parcel were sealed by Inspector Bhagwan Singh with his seal bearing impression BS. Injection make Penta Lab recovered in the strip. Each strip contained 5 injections. Two samples each of 5 injections were taken out and converted into separate parcels. On counting remaining injections were found to be 24990, which were put in a plastic bag and converted into a parcel. Both the sample parcels and bulk parcel were sealed by Inspector Bhagwan Singh with his seal bearing impression BS. Plastic vials make Rexcof were also recovered from the house of accused. Each vial was of 100 ml. Two samples of 1 vial each were taken out and converted into separate parcels. On counting the remaining plastic vials of Rexcof were found to be 6718, which were put into 14 jute bags and converted into 14 parcels. Both the sample parcels and 14 bulk parcel were sealed by Inspector Bhagwan Singh with his seal



bearing impression BS. Capsules make Pyeen-Spas were recovered, which were lying in plastic bucket. Two samples each of 10 capsules were taken out and put into two dabbi plastic and converted into parcels and on counting the remaining capsules were found to be 120000 and the bulk was converted into a parcel. Both the sample parcels and bulk parcel were sealed by Inspector Bhagwan Singh with his seal bearing impression BS. From the same bucket 12180 open capsules were recovered, which included in the total capsules of 120000 referred above. Sample seal was prepared. Seal after use was handed over to SI Daljit Singh. All the parcels and specimen of the seal were taken into possession vide recovery memo Ex.PC, attested by SI Daljit Singh and ASI Birbal Singh. From the personal search of accused ₹1770/-, which were taken into possession vide personal search memo Ex. PD, signed by the accused and attested by the witnesses. Accused was arrested vide memo Ex. PE. Information regarding the arrest of accused was given to his brother Tarsem Lal on on his mobile phone. Investigating Officer also prepared rough site plan Ex.PF of the place of recovery. On returning the police station Inspector Bhagwan Singh produced the accused, witnesses and the case property before SI/SHO Harvinder Singh, Police Station City Malerkotla, who verified the facts of recovery from the accused and the witnesses and affixed his seal bearing impression HS on all the parcels and also on the specimen seal and attested the same. On his direction Inspector Bhagwan Singh deposited case property with MHC Gurmit Singh with seals intact.

5. After conclusion of investigations, and, on receipt of report of Chemical Examiner the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned Court



concerned.

Trial Proceedings

6. The learned trial Judge concerned, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charge against the accused, for an offence punishable under Section 22 of the Act. The afore drawn charge was put to the accused, to which he pleaded not guilty, and, claimed trial.

7. In proof of its case, the prosecution examined seven witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. The accused also chose to adduce defence evidence, and two witnesses were led into the witness box.

8. As above stated, the learned trial Judge concerned, proceeded to convict the accused for the charge (supra), as became drawn against him, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonment, as well as of fine, upon the convict.

Submissions of the learned counsel for the appellant

9. The learned counsel for the aggrieved convict-appellant has argued before this Court, that the impugned verdict of conviction, and, consequent therewith order of sentence, require an interference. He supports the above submission on the ground, that it is based on a gross misappreciation, and, non-appreciation of evidence germane to the charge.

Submissions of the learned State counsel

10. On the other hand, the learned State counsel has argued before



this Court, that the verdict of conviction, and, consequent therewith sentence(s) (supra), as become imposed upon the convict, is well merited, and, does not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the instant appeal, as preferred by the convict, be dismissed.

Analysis of the case

11. Through recovery memo Ex.PC, the recovery of the contraband became allegedly recovered from the site concerned. In proof of the prosecution case, Inspector Bhagwan Singh stepped into the witness box as PW-1, and, in his examination-in-chief, he made speakings thereins, which concur with the contents of the appeal FIR, to which Ex. PB is assigned.

12. The prosecution though has been able to lead cogent evidence, in proof of the recovery of the seizure, thus being effected at the crime site, and, the same thus being sealed with the relevant seal impressions. Moreover, though the prosecution has also been able to cogently establish, that the sealed cloth parcels, became deposited in the malkhana concerned. In addition, though the prosecution has been able to establish, that the case property travelled in an untampered condition to the FSL concerned.

13. A reading of the report (Ex. PW6/A), as made by the FSL concerned, whereto the relevant seizures became sent for an examination being made of the stuff inside the sealed cloth parcels, though reveals, that the examined stuff inside the sealed cloth parcels, as became sent to it for examination, thus being the intoxicant power, tablets/capsules, injections and syrup. The said report is *ad verbatim* extracted hereinafter.

“x x x x

6. *Articles received* *Thirteen (13) parcels marked 1 to 13*
in the laboratory each sealed with two



seals one each of GS and BS alleged to contain intoxicating material.

Seals on the parcels were found intact and tallied with the specimen seal impression.

x x x x

Report

The contents of all the parcels No. 1 to 13 under reference have been analysed separately by chemical analysis. On the basis of analysis the ingredients along with their quantity found present in these have been given at serial No. 8 (Identification and tests) of this report.”

14. Be that as it may, though a reading of the report (supra) of the FSL also discloses, that the sealed cloth parcels, became received there, hence with the seal impressions thereons being intact. However, the chemical examiner at the FSL concerned, after making examinations of the stuff inside the sealed cloth parcels, and, thereafter his drawing the report (supra), yet omits to mention in the report Ex. PW6/A, about his re-enclosing the examined stuff inside the cloth parcels, and, his thereons affixing the seals of the FSL concerned.

15. The above was required to be mandatorily done, as, thereupon the imperatively required to be proven, thus unbroken links in the chain of incriminatory evidence, commencing from the seizure being made from the crime site, through recovery memo Ex.PC, and, lasting upto the production of the case property in Court, thereby thus would become convincingly proven, rather to remain unsnapped or unbroken. In the above event alone the charge drawn against the accused would be concluded to become cogently established. However, as above stated, for want of the chemical examiner concerned, after making examination(s) of the stuff inside, the sealed cloth parcels, thus re-enclosing the examined stuff inside the cloth



parcels, and, his further failure to emboss thereons, rather the seals' of the FSL concerned, whereafter the examined stuff was to be produced in Court, for its being shown to the investigating officer concerned, for thereby thus, on evident surging-forth of the above requisite primary evidence, rather the charge drawn against the accused, could be concluded to be convincingly proven.

16. Be that as it may, bulk parcels Ex. MO1 to Ex. MO13 became produced in the Court, besides sample parcels Ex. MO14 to Ex. MO39 and sample seal chits Ex. MO40 to Ex. MO43 also became produced in the Court. However, sample parcels Ex. MO14 to Ex. MO39 and sample seal chits Ex. MO40 to Ex. MO43 rather cannot be related to the results of the examinations, as became made on the parcels, as became sent to the laboratory concerned. The reason for stating so, becomes comprised in the trite factum, that since after examination(s) of the stuff inside the sealed cloth parcels, the same never became re-enclosed in the cloth parcels, nor the seal impression of the FSL concerned, became made thereovers. Resultantly, therebys it may be concluded that neither the same sample parcels were ever sent to the laboratory concerned, and/or if they became sent, they for the above stated infirmity, cannot be declared to be related to the supra results of the examinations, as became made thereovers. Therefore, benefit of doubt is to be assigned to the appellant.

17. Resultantly, reiteratedly when scope is, thus left for an inference *qua* either the case property, thus not relating to the report (supra) of the FSL concerned, and/or to the enclosures inside Ex. MO14 to Ex. MO39, being introduced therein, thereby the report of the FSL (supra), rather looses its evidentiary vigour. A further scope is also left, thus to infer



that the case property, if any, became tampered with. Moreover, much scope is also left for the drawing of an inference, that the case property other than the one related to the charge drawn against the accused, thus became produced in Court. As but a natural corollary, when the primary evidence for proving the charge drawn against the accused, does come under a cloud of deep suspicion. Resultantly, this Court is constrained to conclude, that the charge drawn against the accused did not come to be cogently established.

18. Moreover, in paragraph 35 of the judgment rendered by the Hon'ble Apex Court in "Noor Aga V. State of Punjab and another" Criminal Appeal No.1034 of 2008, decided on 09.07.2008, paragraph whereof becomes extracted hereinafter, thus becomes spelt the imperative *sine qua non*, rather requiring to become cogently proven hence for therebys the charge drawn against the accused becoming declared to become unflinchingly proven. However, since after the examination(s) being made of the stuff inside the sample parcels, thus by the FSL concerned, rather the latter did not re-enclose them in the sealed cloth parcels, hence carrying thereons the seals' of the FSL concerned. Moreover, when the said sample parcel(s) became never returned to the office wherefrom they generated nor when they became produced in Court.

"35. The High Court proceeded on the basis that non-production of physical evidence is not fatal to the prosecution case but the fact remains that a cumulative view with respect to the discrepancies in physical evidence creates an overarching inference which dents the credibility of the prosecution. Even for the said purpose the retracted confession on the part of the accused could not have been taken recourse to."

19. Consequently, since the expostulation of law carried in verdict



acquittal.

20. The said view is also supported by a judgment rendered in case titled as “Gaunter Edwin Kircher V. State of Goa, Secretariat Panji, Goa”, Criminal Appeal No.642 of 1991, decided on 16.03.1993, relevant paragraph whereof becomes extracted hereinafter.

“J. Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 52A and 53 – Customs Act, 1962, Section 110(IB) – Physical evidence – Case Property – Recovery of heroin from accused – Case property destroyed and not produced – Physical evidence relating to three samples taken from the bulk amount of heroin were also not produced – Bulk quantity was destroyed the samples were essential to be produced and proved as primary evidence for the purpose of establishing the fact of recovery of heroin as envisaged under Section 52A of the Act.”

Final order

21. The result of the above discussion, is that, this Court finds merit in the appeal, and, is constrained to allow it. Consequently, the appeal is allowed. The impugned judgment convicting, and, sentencing the appellant, and, as becomes recorded by the learned trial Judge concerned, is quashed, and, set aside. The appellant is acquitted of the charge framed against him. The fine amount, if any, deposited by him, be, in accordance with law, refunded to him. The personal, and, surety bonds of the accused shall stand forthwith cancelled, and, discharged. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal. The appellant, if in custody, and, if not required in any other case, be forthwith set at liberty. Release warrants be prepared accordingly.



- 22. Records be sent down forthwith.
- 23. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

October 23, 2024
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No