



In the High Court of Punjab and Haryana at Chandigarh

CRA-D-985-DB-2013 (O&M)

Reserved on: 13.11.2024

Date of Decision: 27.11.2024

Pakhar Singh and another

.....Appellants

Versus

State of Punjab

.....Respondent

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

Present: Mr. Baljinder Singh, Advocate (Legal Aid Counsel),
Mr. Vishaldeep Goyal, Advocate and
Mr. L.S.Sekhon, Advocate
for the appellants.

Mr. Maninderjit Singh Bedi, Addl. A.G., Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 21.3.2013, upon Sessions Case No. 18T of 19.12.2009, by the learned Judge, Special Court, Patiala, wherethrough in respect of charges drawn against the accused-appellants *qua* offences punishable under Sections 15, 25 and 29 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 under Section 15 of the Act, against accused-appellants namely Pakhar Singh and Sukhdev Singh @ Sukha. However, the other co-accused namely Gurpreet Singh, Baljinder Singh and Rabbi Dass were acquitted of the charges framed against them.

2. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, imposed upon, the convicts-appellants both



sentence(s) of imprisonment as well as sentence(s) of fine, but in the hereinafter extracted manner:

“x x x x

Resultantly, the convicts are sentenced to undergo rigorous imprisonment for a period of 12 years each and to pay a fine of Rs. One lac each under Section 15 of ND&PD Act and in default in making payment of fine, they shall further undergo rigorous imprisonment for a period of one year.”

3. The period of detention undergone by the convicts, 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.

4. The accused-convicts become aggrieved from the above drawn verdict of conviction, besides also, become aggrieved from the consequent therewith sentences of imprisonment, and, of fine as became imposed, upon them, by the learned convicting Court concerned, and, hence have chosen to institute thereagainst the instant criminal appeal.

Factual Background and Investigation proceedings

5. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. PW1/14 is assigned. The narrations carried in Ex. PW1/14, are that on 02.09.2009 Sub Inspector Jaswinder Singh (investigating officer), Incharge CIA Staff Samana alongwith ASI Darshan Singh, HC Kuldip Singh, HC Karnail Singh, HC Kulwant Singh, C. Beant Singh, C. Gurdip Singh, PHG Ajaib Singh and PHG Balwinder Singh on private vehicle in connection with the search of bad elements, were present on the bridge of Bhamna on Samana-Bhawanigarh main road, where he received a secret information to the effect that Sukhdev Singh @ Sukha son



Singh son of Gurmail Singh, resident of Village Barundi, Police Station Dehlon, District Ludhiana, Baljinder Singh @ Bika, resident of village Barundi. Police Station Dehlon, District Ludhiana, Gurpreet Singh and two/three other unknown persons are drug peddlers and are in the habit of bringing poppy husk from Rajashtan and sell the same in the area of Nabha and Samana. Now Sukhdev Singh @ Sukha and Pakhar Singh on Canter No. HR10-GA-0161 are bringing the poppy husk and Baljinder Singh @ Bika, Gurpreet Singh and two/three other un-known persons are coming on a Bolero vehicle of white colour ahead of the said Canter and they are coming towards the side of Samana, Nabha, and, if a nakabandi is held then all the aforesaid persons can be apprehended alongwith said vehicles and poppy husk can be recovered from them. Subsequently, the investigating officer concerned, alongwith the police officials conducted nakabandi at that place.

6. In the meantime, Darshan Singh son of Mukhtiar Singh, resident of Nabha Colony, Samana met the Investigating Officer and when he was talking with him, thereupon two vehicles Bolero and Canter were seen coming from the side of Samana. The investigating officer concerned, gave signal to stop the vehicles. The persons sitting in Bolero vehicle escaped from the spot and the Canter was apprehended with the help of other police officials. On inquiry, the driver disclosed his name as Sukhdev Singh @ Sukha son of Teja Singh, resident of Deograh, Police Station Patran, District Patiala while another person sitting in the Canter disclosed his name as Pakhar Singh son of Gurmail Singh @ Mela, resident of Barundi, Police Station Dehlon, District Ludhiana. The investigating officer concerned, told them that he has a doubt that there is poppy husk underneath the groundnut lying in the Canter and the search of the Canter is to be conducted. The



investigating officer apprised them about their legal right to get their search conducted in the presence of a Gazetted Officer or a Magistrate, who can be called at the spot. They opted to get the search conducted in the presence of a Gazetted Officer. Their dissent statements were recorded, thumb marked by Sukhdev Singh, signed by Pakhar Singh and attested by the witnesses.

7. The investigating officer made telephonic call to Sh. Jaskaranjit Singh Teja, Deputy Superintendent of Police (Circle) Samana to visit the spot, who reached at the spot alongwith his gunmen on Government vehicle no. PB- 11AJ-9274. The investigating officer concerned, apprised the facts of the case to the Deputy Superintendent of Police. Subsequently, the Deputy Superintendent of Police disclosed his identity to accused and told them that he is Gazetted Officer and that he has a doubt that there is poppy husk underneath the bags of groundnut lying in their Canter and its search is to be conducted and the Deputy Superintendent of Police also apprised the accused about their legal right to conduct their search conducted in the presence of some other Gazetted Officer or a Magistrate, who can be called at the spot, but the accused reposed faith in the Deputy Superintendent of Police. Thereafter, the Deputy Superintendent of Police recorded the consent statement of accused, thumb marked by Sukhdev Singh, signed by Pakhar Singh and attested by witnesses.

8. On the instructions of the Deputy Superintendent of Police, the investigating officer concerned, conducted the search of the Canter and jute bags were recovered. The jute bags were got down from the Canter which are 30 in number. On checking the said jute bags, poppy husk was recovered from each bag. Subsequently, the investigating officer concerned, marked Sr. Nos.1 to 30 on the said jute bags. Two samples of 100 grams each were



separated from each jute bag and its parcels were prepared, and, the investigating officer concerned, marked Sr. Nos. 1A, IB to 30A, 30B on all the sample parcels. The remaining poppy husk on weighment came out to be 29 kg 800 grams in each jute bag, which were converted into separate parcels. All the parcels were sealed by the investigating officer concerned, with his seal bearing impression JS, whereas, the Deputy Superintendent of Police sealed all the parcels with his seal bearing impression JS. Sample seal was also prepared separately and the seal was handed over to independent witness Darshan Singh after its use and the Deputy Superintendent of Police retained his seal with him. The case property was taken into possession vide recovery memo. On personal search of accused Sukhdev Singh @ Sukha, Rs.300/- were recovered which were taken into possession vide separate memo whereas nothing was recovered from the personal search of accused Pakhar Singh. Canter No. HR-10GA-0161 was taken into possession vide separate memo. Hundred bags of groundnut were also taken into possession vide separate memo. Mobile phones of accused Sukhdev Singh and Pakhar Singh were taken into possession vide separate memo.

9. A ruqa was sent to the police station for registration of the case and on the basis of which formal was registered. The investigating officer concerned, prepared the rough site plan of the place of recovery, and, recorded the statements of witnesses. On return to police station, the investigating officer produced the case property before SHO Harwinder Singh, who also verified the facts of the case, and, affixed his seal bearing impression HS on the case property, and, deposited the case property with MHC Harjeet Singh. Accused Gurpreet Singh and Rabbi Dass were arrested.



10. 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

11. 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 the offences punishable under Sections 15, 25 and 29 of the Act. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

12. Accused Baljinder Singh @ Bika was arrested and a supplementary challan was presented before the learned Court concerned. Subsequently, the learned trial Judge concerned, proceeded to draw charges against all the accused, for the offences punishable under Sections 15, 25 and 29 of the Act. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial

13. In proof of its case, the prosecution examined eight 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 thereins, the accused pleaded innocence, and, claimed false implication. Though, the accused chose to adduce defence evidence, however, they did not lead any witness into the witness box.

14. As above stated, the learned trial Judge concerned, proceeded to convict the accused-appellants for the charges (supra), as became drawn against them, and, also as above stated, proceeded to, in the hereinabove



manner, impose the sentence(s) of imprisonment, as well as of fine, upon the convicts-appellants.

Submissions of the learned counsel for the appellants

15. 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

16. 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 convicts, 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 convicts, be dismissed.

Analysis of the case

17. Through recovery memo Ex. PW1/5, the recovery of contraband weighing 900 kilograms, became allegedly recovered from the site concerned. In proof of the prosecution case, Inspector Jaswinder Singh stepped into the witness box as PW-1, and, in his examination-in-chief, he made speakings therein, which concur with the contents of the appeal FIR to which Ex. PW-1/14 becomes assigned.

18. 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.

19. A reading of the report, 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 Poppy Chura Heads. The said report is *ad verbatim* extracted hereinafter.

“Analysis of the sample of Bhuki received by me on dated 14.9.09, forwarded by the Sr. Superintendent of Police Patiala, referred to his ends to given overleaf. Certified that the samples of exhibits was/were intact and agreed with sample seal, and if/they remained in my safe custody till analysis upto 8/10/09.

Results:					
Marked here	830-P-09	831-P-09	832-P-09	833-P-09	834-P-09
Macroscopic	Chura PH	Chura PH	Chura PH	Chura PH	Chura
Morphine	Present	Present	Present	Present	PH
Meconic Acid	Present	Present	Present	Present	Present
					Present

Results:					
Marked here	835-P-09	836-P-09	837-P-09	838-P-09	839-P-09
Macroscopic	Chura PH	Chura PH	Chura PH	Chura PH	Chura
Morphine	Present	Present	Present	Present	PH
Meconic Acid	Present	Present	Present	Present	Present
					Present

Results:					
Marked here	840-P-09	841-P-09	842-P-09	843-P-09	844-P-09
Macroscopic	Chura PH	Chura PH	Chura PH	Chura PH	Chura
Morphine	Present	Present	Present	Present	PH
Meconic Acid	Present	Present	Present	Present	Present
					Present

Results:					
Marked here	845-P-09	846-P-09	847-P-09	848-P-09	849-P-09
Macroscopic	Chura PH	Chura PH	Chura PH	Chura PH	Chura
Morphine	Present	Present	Present	Present	PH
Meconic Acid	Present	Present	Present	Present	Present
					Present

Results:					
Marked here	850-P-09	851-P-09	852-P-09	853-P-09	854-P-09
Macroscopic	Chura PH	Chura PH	Chura PH	Chura PH	Chura



Morphine	Present	Present	Present	Present	PH
Meconic Acid	Present	Present	Present	Present	Present
					Present

Results:					
Marked here	855-P-09	856-P-09	857-P-09	858-P-09	859-P-09
Macroscopic	Chura PH	Chura PH	Chura PH	Chura PH	Chura
Morphine	Present	Present	Present	Present	PH
Meconic Acid	Present	Present	Present	Present	Present
					Present

x x x x

Opinion: All contents are Poppy Chura Heads.”

20. 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 (supra), about his re-enclosing the examined stuff inside the cloth parcels, and, his thereons affixing the seals of the FSL concerned.

21. 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.PW1/5, and, lasting upto the production of the case property in Court, thus therebys 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, contrarily 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, whereafters the examined stuff after retrievals



from the malkhana concerned, was to be produced in Court, for its being shown to the investigating officer concerned, for thereby thus, on evident surgings-forth of the above requisite primary evidence, rather the charge drawn against the accused, could be concluded to be convincingly proven, thereupon rather for wants (supra) the charge would stagger.

22. The further 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 appellants.

23. 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, 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.

24. Lastly, since this Court while answering the substantial question



of law sent to the larger Bench of this Court, in case No. **CRA-S-5190-SB-2015 titled as “Deepak Kumar V. State of Punjab”**, thus has therein expostulated that; a) There being an imperative necessity of testings being made of the stuff inside the sample parcels. b) The inventory as becomes prepared in the presence of Magistrate concerned, in terms of Section 52A of the Act, but without testings of the stuff enclosed in the sample parcels, thus being made at the laboratory concerned, rather *per se* not acquiring the utmost evidentiary vigor.

20. *Conspicuously, the hereinabove extracted respective standing order and notification become declared by a judgment rendered by the Hon’ble Apex Court in case titled as “Noor Aga V. State of Punjab and another” Criminal Appeal No.1034 of 2008, decided on 09.07.2008, to be holding a mandatory character and also become ordained therein to be requiring completest adherence. Contrarily on breach thereof becoming made, therebys may be the accused would become entitled to an acquittal.*

21. *Furthermore, in case the entire bulk is homogeneously mixed and derivative samples are derived therefrom, resultantly the effect thereof would be that, the incriminatory finding as become recorded on the stuff inside the sample parcels as sent to the laboratory concerned, thus would acquire a presumption of truth, irrespective of the fact that the entire bulk wherefrom the derivative samples are borrowed, but after the entire seizure becoming homogeneously mixed, rather not becoming sent for analyses thereovers, being made at the laboratory concerned. Contrarily, in case the entire bulk seizure remains not homogeneously mixed, thereupon the charge drawn against the accused appertaining to the weight of the entire weight of the seizure, de hors affirmative results being made in respect of the stuff inside the residue sample parcels, as, sent to the laboratory concerned, rather would come under a cloud of doubt, whereupon benefit thereof would accrue to the accused.*

22. *As an illustration, if the 08 packets were allegedly recovered from the appellant and only two packets were having contraband substance and rest 6 packets did not have any contraband; though*



all may be of the same colour, when we mix the substances of all 8 packets into one or two; then definitely, the result would be of the total quantity and not of the two pieces. Therefore, the process adopted by the prosecution creates suspicion. In such a situation, as per settled law, the benefit thereof should go in favour of the accused. It does not matter the quantity, but proper procedure has to be followed, without which the results would be negative.

23. *Reiteratedly, in case, the derivative samples from the bulk are drawn but without the entire bulk seizure becoming homogeneously mixed, thereupon the laboratory examination of the stuff inside the sample cloth parcels rather would not prove the charge relating to the weight of the entire bulk seizure taking place, at the crime site, thus from the alleged conscious and exclusive possession of the accused.*

24. *Contrarily, in case the entire bulk seizure is not homogeneously mixed or when the narcotic drug(s) or psychotropic substance, does become carried in different vials or in different packets, besides upon the said mode(s) of carryings of (supra), becomes not homogeneously mixed, thereupons, even if a fragment or a portion thereof becomes extracted from one vial or only from one packet, thus for creating a residue parcel, it would beget the ill consequence of the accused becoming entitled to an acquittal. Resultantly, when despite the evident absence of apposite homogeneous mixings of the entire bulk, taking place be it borne in packets, containers or be it being carried in different vials, besides when only a part or the fragment or portion of the seizure or only one or two of the vials, becoming extracted from the bulk, yet the said extracted fragment when becomes sent for examination to the laboratory concerned, but the apposite affirmative laboratory examination as becomes made vis-a-vis the stuff inside the sample parcels, rather would not make the charge drawn against the accused, thus for his allegedly exclusively and consciously possessing, the entire seizure, thus also becoming efficaciously proven.*

25. *Conspicuously when for the drawing of an effective conclusion, that the charge drawn against the accused qua his allegedly consciously and exclusively possessing, the entire bulk, but*



requires that only after homogeneous mixing of the bulk seizure, taking place, be it of psychotropic substance, in vials or in any other mode or be it with respect of narcotic drugs carried in whatsoever mode, rather residues therefrom becoming drawn, whereafter an affirmative finding on the stuff inside the residues, is required to be made by the Chemical Examiner concerned.”

25. Moreover, when evidently in the instant case, there is no mentioning of takings place of homogeneous mixings of the entire bulk seized from the offending bulk, before taking sample parcels therefrom, hence the charge drawn against the accused appertaining to the weight of the entire seizure, *de hors* affirmative results being made in respect of the stuff inside the residue sample parcels, as, sent to the laboratory concerned, thus is not cogently proved.

26. 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.”

27. Consequently, since the expostulation of law carried in verdict (supra), remains unsatiated thereby the accused become entitled to an acquittal.

28. 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

29. 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 appellants, and, as becomes recorded by the learned trial Judge concerned, is quashed, and, set aside. The appellants are acquitted of the charge framed against them. The fine amount, if any, deposited by them, be, in accordance with law, refunded to them. 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 appellants, if in custody, and, if not required in any other case, be forthwith set at liberty. Release warrants be prepared accordingly.

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

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

November 27th, 2024
Gurpreet

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