

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-193-2021 (O&M)
Reserved on: 08.04.2024
Date of decision: 18.04.2024

DALEL SINGH

...Appellant

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. P.S. Sekhon, Advocate
for the appellant.

Mr. Pradeep Prakash Chahar, Sr. DAG, Haryana

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict made on 15.02.2021, upon Sessions Case No.CIS (NDPS) Case No.8 of 2019, by the learned Special Judge (under Narcotic Drugs and Psychotropic Substances Act, 1985), Jind, wherethrough he convicted the accused for a charge drawn *qua* an offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “the Act”). Moreover, through a sentencing order of 16.02.2021, he proceeded to impose upon the convict sentence of rigorous imprisonment extending upto a period of 20 years, besides imposed upon him, sentence of fine of Rs.2,00,000/- (Rs. 2 lacs), besides in default of payment of fine amount, he sentenced the convict to undergo simple imprisonment extending upto a period of two years.

2. The accused-convict became aggrieved from the above drawn verdict of conviction, and, also the consequent therewith sentence(s) (supra), as became imposed. Resultantly, he instituted thereagainst the instant appeal.

FACTUAL BACKGROUND

3. The genesis of the prosecution case are that, on 1.4.2017, SI Nafe Singh along with ASI Atma Ram, EASI Karnal Singh, EASI Ram Singh, HC Rajesh Kumar, HC Manoj Kumar, EHC Balraj and C. Pardeep Kumar was on patrolling and crime detection duty in Govt. vehicle No.HR31L-6944 with its driver EHC Vinod Kumar and were present near Bus Stand, Village Karamgarh. A secret informer met to SI Nafe Singh and informed that Dharambir and Dalel Singh sons of Mange Ram, both rs/o of village Karamgarh have stored Doda Post for selling, in the kotha of their field and who had just gone at their Kotha in the field with their Mahindra Brito Car bearing registration No.PB-11-AW-9791 of white colour and they would go outside to supply the Doda Post in their vehicle. Secret information was found to be true and believable, so, notice under Section 42 of the Act, was prepared and sent the same to Police Station Sadar Narwana, through EASI Karnail Singh. SI Nafe Singh after disclosing the secret information to his fellow officials and with secret informer, proceeded for the spot, in government vehicle as informed by secret informer. When they reached at the Kacha Path near the field kotha, vehicle No.PB-11-AW-9791 of white colour was found parked there and one young boy was seen putting one gunny bag in the Dicky of the said vehicle, who was Dharambir son of Mange Ram r/o Karamgarh and the second person having jute bag on his back was seen coming from Kotha to vehicle side, who was Dalel Singh son of Mange Ram r/o village Karamgarh and who was earlier known to SI Nafe Singh. On seeing the police vehicle coming towards them, they fled away towards the fields by throwing the

jute bags. SI Nafe Singh along with his fellow officials chased both the youths, but they fled away by taking the advantage of standing crops. Thereafter, SI Nafe Singh along with fellow officials returned to Kotha and found one jute bag lying in front of Kotha and many jute bags were lying inside the Kotha. Dicky of vehicle No.PB-11-AW-9791 was also found opened and two jute bags were found inside it. On the ground of suspicion of having intoxicant substance in the bags, SI Nafe Singh contacted to DSP, Narwana, from his mobile, who told that he is out of station. Thereafter, SI Nafe Singh contacted Shri Paramjit Singh DSP, Jind on his mobile No.8814011502 and after informing about the facts, requested him to reach at the spot. After sometime, Shri Paramjit Singh DSP, Jind-2 along with his staff and government vehicle reached at the spot, who directed SI Nafe Singh to search the 14 bags. Thereafter, SI Nafe Singh checked all the bags after untying their mouths and Doda Post was found filled in the bags. One electronic weighing machine was also found inside the Kotha near the bags. All the jute bags were weighed and weight of each bag was found to be 21 kgs. Out of each bag, two samples of 100 grams each were taken and converted into the parcels and the remaining bags of Doda Post were tied and SI Nafe Singh sealed the same with his seal of "NS". DSP has also put his one seal of "BS" on all the parcels. All the recovered sample parcels of Doda Post and remaining bags, electronic weighing machine, vehicle No.PB-11-AW-9791 make Mahindra Brito Car, documents kept in above said vehicle including bill of vehicle, Insurance and Pollution Slip, affidavit of Som Raj s/o Chhota Singh r/o Nabha, Punjab, affidavit of Dharambir s/o Mange Ram r/o Karamgarh, photostat copies of RC, Aadhar Card and Ration Card of Dharamir s/o Mange Ram were taken into possession vide separate memo, which was signed by the witnesses.

Memo and all the parcels were attested by DSP and seal after use was retained by him. SI Nafe Singh handed over the seal to HC Manoj after its use.

4. SI Nafe Singh prepared a rukka and handed over the same to EASI Ram Singh No.402 for getting the FIR registered, on the basis of which, the present FIR was registered. Thereafter, further investigation was handed over to ASI Vinod Kumar. Rough site plan was prepared. Statements of witnesses were recorded. Case property and witnesses were produced before the SHO of Police Station, who after checking the case property affixed his seal of "RK" and handed over the same to ASI Vinod Kumar and directed him to deposit case property in Malkhana. Reports under Sections 55 and 57 of NDPS Act were prepared. After reaching the police station, ASI Vinod Kumar handed over the case property to MHC. On 2.4.2017 case property was taken out from the Malkhana of police station and inventory was got prepared in the Court and thereafter, case property was again handed over to Moharer Malkhana. Inventory report was obtained from the Court and samples of case property were sent to FSL. Statements of witnesses were recorded. On 20.4.2017, scaled site plan was got prepared from Halka Patwari Karamgarh. Accused named in the present case were searched, but no clue was found. Search of accused Dalel and Dharambir was got conducted, but they were not found and their non-bailable warrants were got issued and on 5.5.2018 they were declared proclaimed offenders by the Court of Shri Vivek Chaudhary, the then learned JMIC, Narwana. FSL report was received. After completing the investigation, police has prepared the report under Section 173 Cr.P.C. against accused Dalel and Dharambir being Proclaimed Offenders and filed in the Court on 21.5.2018. Thereafter, further investigation of the case was handed over to ASI Jeet Ram, CIA Staff, Jind. On 1.9.2018, accused Dalel Singh son of Mange Ram resident of Karamgarh was arrested. On

2.9.2018 accused Dalel Singh suffered disclosure statement and he was produced before the Court and one day police remand was obtained thereafter, in pursuance of his disclosure statement, he demarcated the place of occurrence. Investigating Officer recorded the statements of witnesses.

Trial Court Proceedings

5. On completion of investigations, challan was filed in the learned trial Court against the accused. On his appearance before the learned trial Court, he was charge sheeted for the commission of an offence punishable under Section 15 of the Act. The said charge was read over and explained to the accused in simple Hindi, to which he pleaded not guilty and claimed trial. Subsequently after the recordings of depositions of 20 witnesses, the learned public prosecutor closed the prosecution evidence but after tendering the report of the RFSL, to which Ex.PZ is assigned. After the closure of the prosecution case, the learned trial Judge drew proceedings under Section 313 Cr.P.C., wherein, the accused pleaded innocence, and, claimed false implication. However, he did not lead any witness in his defence evidence.

Submissions of learned counsel for the convict-appellant

6. That since case property as revealed by destruction certificate Ex.P27, become destroyed. Therefore, when thereby the case property remained not produced, in Court nor when it became shown to the prosecution witnesses concerned, whereas, its production, in Court, but was imperative for thereby firmly establishing, that the apposite link *inter se* the apposite recovery being made through recovery memo, and, its production in Court, thus becomes subserved. Therefore, for non-production of the case property, in Court, in the light of destruction certificate Ex.P27, thus the said link remains not cogently

established. Consequently, it is argued that the charge drawn against the appellant rather remaining not cogently proven.

Submissions of the learned State counsel

7. Learned State counsel has argued that the impugned verdict of conviction, and, consequent thereto sentence (supra), as became imposed upon the convict by the learned trial Judge concerned, is meritworthy, as the same does not suffer from any taint of any gross mis-appreciation or non-appreciation of any evidence germane to the charge. Therefore, he contends that the impugned verdict of conviction be maintained, and, affirmed by this Court.

Analysis of the submissions of learned counsel for the convict-appellant and reasons for rejecting the same

8. In pursuance to the signed disclosure statement of the appellant Ex.P-17, contents whereof becomes extracted hereinafter, thus through recovery memo Ex.P-18, whereons also the undisputed signatures of the appellant exist, thus recovery of contraband i.e. poppy straw weighing about 294 kgs became effectuated.

“Disclosure Statement of Dalel Singh

In the presence of following witnesses, accused Dalel Singh son of Mange Ram, Caste Jat, R/o Village Karamgarh while in police custody, without any fear, pressure or greed, on his own will made statement, "I and my brother Dharamvir both deals jointly in the business of Churapost. On 01.04.2017, my brother Dharamvir brought 14 bags of Doda Post and kept the same in the Kotha built in our fields, which was to be taken in vehicle Verito No. PB-11AW-9791 of Dharamvir for selling. I and Dharamvir both were loading the bags of Doda Post into the vehicle after taking the same from the Kotha. Police reached at the spot. We both ran away from the spot leaving the vehicle and the bags of Doda Post there. I do not know from where, my brother had brought it, only he can tell this. I can get demarcated the place, where on 01.04.2017, we

both brothers were loading bags in the vehicle Verito and escaped leaving vehicle and bags of Doda Post at the spot. I can get my brother arrested from our kinship in Village Kharak Ramji, Ahaibatpur (Hisar)" Disclosure statement of accused has been completed.

Witness:

*Sd/- (In English)
Ct. Ankit No.484
CIA Staff, Jind*

Witness:

*Sd/- (In English)
Ct. Sneh Kumar No.697
CIA Staff, Jind.*

*Sd/- (In English)
Jeet Ram, SI
CIA Staff, Jind
Dt. 02.09.2028"*

9. Subsequently report under Section 57 of the Act was drawn, and, was sent through dak to the superior police officers. Since the appellant has neither controverted his signatures existing respectively on Ex.P-17, and, on P-18, nor when obviously he has proven the said denial, thereby, the confession of guilt made by the appellant in Ex.P-17, especially when it led to the recovery of the seized contraband, through the makings of recovery memo (Ex.P-18), thus resultantly, the confession of guilt embodied in Annexure P-17, rather is not a bald simplicitor confession of guilt. Contrarily, when it led to effectuation of recovery of the relevant contraband, through the recording of Ex.P-18, thereby, the recovery as made in pursuance to Ex.P-17 is both admissible and relevant.

10. In sequel, with the existences thereons vis-a-vis the undisputed signatures of the appellant, thereby the said exhibits also do comprise tenacious incriminatory evidence in respect of the charge drawn against the appellant.

11. The reason for fortifying the above inference emanates from the factum that to the marginal witnesses both to Ex. P-17 and P-18, thus no apposite suggestions became meted nor any answer thereto emanated from the

prosecution witnesses concerned, whereby it may become inferred that the drawing of the exhibits are both engineered, and, manipulated rather merely for falsely implicating the appellant. The effect of the above, is that, through the above proven Ex.P-17 and P-18, the prosecution has been able to prove the charge drawn against the appellant.

12. Through Ex.P-3 recovery of poppy straw was made from the kotha of the fields, and, from the car. Therefore, thereby there was no requirement for the investigating officer concerned, to beget compliance with the mandatory statutory provisions, as embodied in Section 50 of the Act.

13. A reading of the deposition of the investigating officer concerned, reveals that after recovery of the said contraband being made, through Ex.P-3, thus thereons becoming embossed two seal impressions, carrying thereons English alphabets 'NS'. The said number of seals along with the seal impressions 'BS' thus became made on the seized contraband, rather at the crime site.

14. However, as further revealed by the deposition of the SHO, of the police station concerned, who stepped into the witness box as PW12, the latter after receiving the seized contraband, at the police station concerned, thus proceeded to emboss thereons two seal impressions 'RK'.

15. Furthermore, as revealed from a reading of the in-charge of the malkhana concerned, who stepped into the witness box as PW-14, the said seizure became deposited in the malkhana concerned, through entry No.252/346, being made in register No.19. He has also categorically spelt in his deposition, that so long as it remained in his custody, thereupto the case property remained untampered. Subsequently, as deposed by PW-3, the case property became sent by him to the FSL concerned. During the course of his carrying the case property

to the FSL concerned, no material emerges, thus exemplifying qua thereons any tampering being made.

16. A reading of the report of the RFSL concerned, as becomes enclosed in Ex.PZ, contents whereof are extracted hereinafter, thus vividly reveals, that fourteen sealed cloth parcels became received there, thus through EASI Ravinder Singh. The above made narrations in the report of the RFSL concerned, do completely tally with the speakings, as made by the prosecution witnesses concerned, both in respect of the numbers of the seal impressions, as became made on the seizure, besides also tally with the English alphabets, as became embossed thereons. Therefore, but obviously it has to be concluded, that the enclosed residue in cloth sealed parcels, which became removed from the bulk, for examinations thereons being made, by the RFSL concerned, becoming completely related or being compatible, to the numbers of the seal impression, as made thereons, besides with the English alphabets, as became embossed thereon, thus imperatively on the said sealed cloth parcel becoming received in the laboratory concerned.

Xxx

Description of Parcel and condition of seals.

Fourteen sealed cloth parcels. The seals were intact and tallied with the specimen seal as per Forwarding Authority’s letter.

Description of article contained in parcel.

Parcel No.	No. & seal impression	Description of article /sample
1 to 14	3-NS 1-BS 1-RK (on each 1 to 14)	Sample marked here as - SU/N-59/17 (1 to 14) Physical appearance - Yellow brown vegetative material Weight of sample received – 100 g (1 to 14)

Analytical Techniques Applied:-

Colour tests & TLC.

Observations:-

- *The tests were positive for the presence of Morphine, Codeine, Thebaine, Narcotine, Papaverine and Meconic acid in the samples (1 to 14).*

Opinion:

- *The samples (1 to 14) were identified as **Poppy straw (Choorapost)** of *Papaver somniferum L.**

Notes:-

1. *Approx. 10 g of sample was consumed during analysis*
2. *The opinion relates to the analyzed sample only.*
3. *After examination the remnants of the sample along with its original wrapper were sealed with the seal of SSO/NDPS R/FSL Sunaria (RTK(H)).*

*Sd/- 24/5/17 Karishma
Senior Forensic Officer, NDPS
RFSL Sunaria, Rohtak”*

17. Even no contest became raised by the learned counsel defence that the RFSL report Ex.PZ, thus was not made in respect of contents enclosed in the sealed cloth parcels (supra), nor any contest became raised by the learned defence counsel, that the thereons embossed number(s) of seal impressions, besides the embossed thereons, thus English alphabets, rather not tallying either with the number(s) of the seal impressions or with the English alphabets, as became embossed thereons, thus, as became depicted in the road certificate. In consequence, any argument as becomes raised before this Court by the learned counsel for the appellant, that the report of RFSL (supra), as made on the stuff retrieved, from the sealed cloth parcels, rather not relating to the residue enclosed therein, after separating the same from the bulk, thus after seizure thereof being made at the crime site, rather is a pretextually raised argument before this Court. In consequence, the same warrants its rejection, and, is rejected as such.

18. In addition, whatsoever argument is raised before this Court, by the learned counsel for the convict-appellant, that the report, as became made by the RFSL concerned, on the sealed cloth parcels, thus is not related to the stuff inside them, and, as became purportedly separated from the bulk, at the crime site, but necessarily is also a pretextual argument.

19. Importantly, the result of the apposite examinations, as becomes extracted hereinabove, makes vivid echoing that after examinations of the stuff, as was enveloped in the sealed cloth parcels, thus such examinations unfolding, that thereins became enclosed remains of poppy straw. Conspicuously, the report of the RFSL concerned, also recites that after examination of the stuff inside the sealed cloth parcels, the said examined stuff, became re-enclosed in sealed cloth parcels, and, thereons became affixed seals of the RFSL concerned.

20. The said above recitals, as occur in the report of the RFSL concerned, also do not become contested by the learned counsel. The sequel of no contest being raised to the above recitals, is that, the learned defence counsel, neither asking nor was required to be given any opportunity, thus for production of the cloth parcel enclosing therein, the stuff examined by the RFSL concerned, and, in respect whereof an affirmative opinion was made.

21. The effect of the above opportunity neither being asked nor being granted to the learned defence counsel, during the course of cross-examination, of the prosecution witnesses concerned, is naturally that, the above opportunity has been waived or abandoned by the learned defence counsel. In consequence, the further effect thereof, is that, the presumption of truth as attachable to Ex.P-3, through attracting theretos, the mandate existing in Section 292 of the Cr.P.C., does thereby rather acquire conclusivity. Therefore, for non-production of the parcel containing the residue, as became separated from the bulk, at the crime

site, rather before the learned trial Court concerned, does not yet snap the link, *inter se* the residue becoming separated from the bulk, at the time of recovery of the contraband, being made at the crime site, vis-à-vis, the production of the said residue, in Court, which after its examination became re-enclosed in a sealed cloth parcel by the RFSL concerned.

22. The reason being that when the defence for reasons (*supra*), acquiesces, to the residue traveling in an untampered, and, unspoiled condition to the RFSL concerned, besides when it also acquiesces to the conclusivity of the opinion, as, made thereons by the RFSL concerned, thus reiteratedly for want of the defence, rather asking for production, in Court, hence of the parcel containing the residue, as became separated from the bulk at the crime site, especially, at the time of the adduction into evidence of the report (*supra*) of the RFSL concerned. Resultantly, thereby the report of the RFSL concerned, acquires conclusivity, irrespective of non-production, in Court, vis-à-vis the relevant sample cloth parcels, whereons, became affixed the uncontested seal impressions of the RFSL after the latter re-enclosing therein, the stuff examined at the RFSL.

23. In other words, the report of the RFSL concerned, in the above event of acquiescence of the defence, to its conclusivity, thus stems, a conclusion that rather the report of the RFSL concerned, comprising *prima facie* primary evidence against the appellant. Furthermore, since the destruction of the bulk as well as of the residue was made by a team of senior police officials. Therefore, to the unchallenged destruction report Ex.P27, as prepared by a team of senior police officers, but also relieves the prosecution, from ensuring the production of the case property, before the learned trial Judge concerned, nor thereby the

relevant link as arising from the recovery of the case property at the crime site, and, its production in Court, becomes snapped.

Final Order

24. In consequence, the impugned verdict of conviction, and, also the consequent thereto order of sentence, as becomes respectively recorded, and, imposed, upon the convict by the learned trial Judge concerned, does not suffer from any gross perversity, or absurdity of gross mis-appreciation, and, non-appreciation of the evidence on record. In consequence, there is no merit in the appeal, and, the same is dismissed. If the appellant is on bail, thereupon he is ordered to be forthwith taken into custody, through the learned trial Judge concerned, forthwith drawing committal warrants against the accused. Case property, if any, be dealt with in accordance with law, but only after the expiry of the period of limitation for the filing of an appeal.

25. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

18.04.2024

Ithlesh

(DEEPAK MANCHANDA)
JUDGE

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