

In the High Court of Punjab and Haryana at Chandigarh

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(1) Criminal Appeal No.S-1607-SB of 2008

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Date of decision:14.10.2015

Kewal Singh s/o Jagir Singh

...Appellant

v.

State of Punjab

...Respondent

....

(2) Criminal Appeal No.S-1653 of 2008

.....

Kewal Singh s/o Neela Singh

...Appellant

v.

State of Punjab

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. N.L. Sammi, Advocate for Mr. Hitesh Kumar Sammi,
Advocate for the appellant in Cr. A. No.S-1607-SB of 2008.

Mr. Rahul Rampal, Advocate for the appellant in Cr. Appeal
No.S-1653-SB of 2008.

Mr. B.S. Bhullar, Assistant Advocate General, Punjab for the
respondent-State.

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Inderjit Singh, J.

This judgment will dispose of above two criminal appeals as

these arise out of the same judgment of conviction and order of sentence dated 4/5.8.2008 passed by learned Special Judge, Ferozepur, whereby the accused/appellants have been convicted for the offence under Section 15(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act'). They have been sentenced to undergo rigorous imprisonment for ten years each and to pay a fine of Rs.1,00,000/- each and in default of payment of fine to further undergo rigorous imprisonment for one year each for the offence under Section 15(c) of the Act.

The brief facts of the prosecution case are that on 17.1.2003, a police party headed by ASI Hardum Singh was on patrol duty and was going towards Village Bazidpur Bhoma on a private vehicle. When they reached the turning of Village Chak Radhewala at about 8.30 p.m. a Jeep was seen coming from the side of Village Bazidpur Bhoma. It was signalled to stop by torch light and it stopped. The registration number of the Jeep was RJ-05C-0153. Two persons were sitting in the Jeep. On interrogation, driver of the Jeep disclosed his name as Victor Masih alias Vicky and the other person disclosed his name as Kewal son of Jagiru Ram. When they were asked to open the 'Dala' of the Jeep, both the accused on the pretext of opening the 'Dala' ran away and escaped taking the advantage of the darkness. Thereafter, search of the Jeep was made as per law and four bags of poppy husk were recovered. Out of each bag, two samples of 100 Grams each of poppy husk were taken and the residue poppy husk in each bag on weighment was found to contain 24.800 Kgs. of poppy husk. All the samples and the bags containing bulk poppy husk were sealed and taken

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into possession vide memo Ex.P.2. Jeep was taken into possession vide memo Ex.P.3. 'Ruqa' Ex.P.4 was sent to the Police Station, on the basis of which formal FIR Ex.P.5 was registered against the accused. ASI Hardum Singh prepared rough site plan Ex.P.6 showing the place of recovery. Investigation was conducted. On return to the Police Station entire case property was produced before ASI Kuldip Chand, who was officiating as SHO of the Police Station, who sealed the case property and took the same into possession vide memo Ex.P.7. On the next day, he produced the case property before the learned Illaqa Magistrate. On 1.2.2003, accused Kewal Singh was produced before ASI Ranjit Singh by Partap Singh, who was formally arrested in this case. On 16.7.2003, ASI Ranjit Singh raided house of accused Kewal Singh son of Jagiru and arrested him. After necessary investigation, the challan was presented in Court.

On presentation of challan, the trial Court finding *prima facie* case against the accused-appellants framed charge for the offence under Section 15 of the Act, to which the accused pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Constable Bishan Dass, who is a formal witness, to whom ASI/SHO Kuldip Chand handed over the sample parcels for depositing the same with the Chemical Examiner's Laboratory. PW-2 ASI Hardum Singh is the Investigating Officer of this case and he deposed as per the prosecution version. He stated that the Jeep was being driven by Victor Masih alias Vicky, present in the Court, whereas the second person told his name, who

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was sitting with the driver as Kewal Singh son of Jagiru, present in the Court. He asked the accused to open the 'Dala of the Jeep, then both the accused ran away from the spot due to the darkness. He also conducted investigation in the present case. PW-3 ASI Ranjit Singh mainly deposed that on 1.2.2003, accused Kewal Singh was produced before him by Partap Singh and he formally arrested the accused. On 16.7.2003, he raided the house of Kewal Singh son of Jagiru, who tried to run away on seeing the Police party but was also arrested by him. PW-4 ASI Kuldip Chand mainly deposed regarding verification of the investigation etc. as he was posted as officiating SHO at that time. PW-5 HC Rachhpal Singh is the witness, who was with the Police party and he deposed regarding the recovery from the accused.

At the close of prosecution evidence, the accused were examined under Section 313 Cr.P.C. and were confronted with the evidence of the prosecution, but they denied the correctness of the evidence and pleaded themselves as innocent. They also pleaded their false implication. It is also stated by them that no incriminating article was ever recovered from them.

After going through the evidence on record, the learned Special Judge, Ferozepur vide its impugned judgment and order convicted and sentenced the accused-appellants for the offence as mentioned above. Aggrieved against the judgment, the present appeals have been filed.

At the time of arguments, learned counsel for the appellants argued that the prosecution has failed to prove the guilt of the appellants by

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leading cogent evidence and the appellants have been falsely implicated in the present cases. There is no independent corroboration which is required in the facts and circumstances of the present case. Learned counsel for the appellants further argued that as per prosecution version when the accused were asked to open the 'Dala' of the Jeep, then they ran away from the spot. This version is improbable as there were five Police persons with arms at that time and the persons cannot escape from these five persons. Learned counsel for the appellants next argued that even if the version is presumed to be correct, then the Investigating Officer should have mentioned the description of the accused in the 'Ruqa' or other documents, but no description of the accused had been mentioned. Rather, as per prosecution version Victor Masih was stated to be driving the vehicle, but Victor Masih is not an accused in the present case, rather Kewal Singh son of Neela Singh had been substituted at later stage by stating that he was driving the vehicle. He argued that there is no evidence as to how Kewal Singh son of Neela Singh was connected in the present case later on. Learned counsel for the appellants further argued that it is the admitted case of the prosecution that at that time in the month of January at 8.30 p.m. it was total darkness and foggy night. The witnesses were not knowing the accused, therefore, their test identification was necessary in the present case, which had not taken place. He further argued that the RC of the vehicle is not in the names of these appellants. Therefore, he argued that the appeals should be accepted and the accused-appellants should be acquitted.

On the other hand, learned Assistant Advocate General, Punjab

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appearing for the respondent-State argued that the prosecution case has been duly proved by bringing cogent evidence and there is nothing in the statements of the witnesses which may make their statements unreliable. He argued that there being no merit in the appeals, the same be dismissed.

I have heard learned counsel for the appellants and learned Assistant Advocate General, Punjab appearing for the respondent-State and have gone through the record.

From the record, I find that the prosecution has failed to connect the accused-appellants with the crime by leading cogent evidence. Firstly, the version of the prosecution is improbable. It is improbable that two persons, who were driving the Jeep and sitting on the seat when asked to open the 'Dala' of the Jeep, they fled away. In Police party there were five Police officials duly armed with weapons and it was impossible for accused to fled away. This version becomes more doubtful as the Police officials state that Victor Masih was driving the vehicle, but Victor Masih was not found to be driving the vehicle, rather, later on Kewal Singh son of Neela Singh had been arrested in this case, but there is no evidence on the record at all to show as to how Kewal Singh son of Neela Singh had been impleaded in the present case as an accused. It is admitted fact that the occurrence took place in the month of January at about 8.30 p.m. and it was a foggy night. It is the case of the prosecution that the accused-appellants ran away by taking the benefit of darkness. In these circumstances, in the absence of independent corroboration and also in the absence of identification parade, the case of the prosecution cannot be held as proved

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beyond reasonable doubt. Further more, the RC is in the name of other person. Again there is nothing in the 'Ruqa' or other documents prepared on the spot showing the description of the accused. Therefore, a reasonable doubt exists regarding the identity of the accused also. Even the Investigating Officer while appearing as PW-2 deposed that the Jeep was being driven by Victor Masih alias Vickey, present in the Court, but Victor Masih alias Vickey was not present in the Court. It is no where the case of the prosecution that any member of the Policer party was knowing the accused prior to the occurrence. Therefore, the identification parade becomes more necessary in the present case. The Investigating Officer in cross-examination has stated that he had not written the description of the accused in the 'Ruqa', who had run away. PW-5 Head Constable Rachhpal Singh, who was also in the Police party, stated that two suspects were in the Jeep. The driver of the Jeep on interrogation revealed his name as Victor Masih alias Vickey and the other has told his name as Kewal Singh son of Jagiru Ram. Both the accused were present in the Court, who fled away taking the benefit of darkness from the place of occurrence. Even the prosecution has failed to show or connect the accused Kewal Singh son of Neela Singh that he was Victor Masih alias Vickey. The PWs have also no where deposed that this Kewal Singh son of Neela Singh has wrongly given his name as Victor Masih alias Vickey. It is also not the case of the prosecution that Kewal Singh son of Neela Singh is also known as Victor Masih alias Vickey. PW-5 in cross-examination stated that all the Police party was armed at the time of occurrence. He also stated that they were

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searching for the accused in the orchard, but did not run after them. This conduct of the Police party also creates a doubt. There is no explanation as to why the Police party had not tried to apprehend them by chasing them. PW-5 also stated that it was fog on that day.

Therefore, from the above discussion, I find that a reasonable doubt exists in the prosecution version and the benefit of a reasonable doubt is to be given to the accused. Therefore, by giving benefit of doubt to the appellants, I find merit in the appeals filed by them. Hence, the same are accepted. The appellants are acquitted of the charge as framed against them. The impugned judgment of conviction and the order of sentence are set aside. The appellant-Kewal Singh son of Jagir Singh (Cr. Appeal No.S-1607-SB of 2008), who is in custody, be released forthwith, if his custody is not required in connection with any other case.

As the sentence of the appellant-Kewal Singh son of Neela Singh (Cr. Appeal No.S-1653-SB of 2008) has been suspended and he is on bail, his bail/surety bonds stand discharged.

October 14, 2015.

(Inderjit Singh)
Judge

hsp