

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

1.) CRA-D-106-DB of 2010  
Date of Decision:- 23.02.2015.

Puran Singh and another

.....Appellants

Versus

State of Punjab

.....Respondent

2.) CRA-D-120-DB of 2010

Rakesh Kumar

.....Appellants

Versus

State of Punjab

.....Respondent

3.) CRA-D-238-DB of 2010

Bhagwan Singh son of Amar Singh and another

.....Appellants

Versus

State of Punjab

.....Respondent

**CORAM: HON'BLE MR. T.P.S. MANN  
HON'BLE MR. JUSTICE SHEKHER DHAWAN**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Parvesh Sachdeva, Advocate for the appellants

in CRA-D-106-DB of 2010.

Mr. Jasjit Singh, Advocate for the appellant in  
CRA-D-120-DB of 2010.

Ms. Geeta Sharma, Advocate for the appellants in  
CRA-D-238-DB of 2010.

Mr. Rajesh Bhardwaj, Additional A.G. Punjab.

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**SHEKHER DHAWAN, J.**

The appellants named above have challenged the judgment of conviction dated 07.12.2009 and order of sentence of the even date vide which all the 5 appellants have been held guilty and convicted for the offence under Section 15 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'Act') and sentenced to undergo 12 years' rigorous imprisonment and to make payment of fine of Rs.1,00,000/- and in default of payment of fine, to further undergo 2 years' rigorous imprisonment.

Briefly, prosecution case is that on 12.06.2002, ASI Narinder Pal Singh along with other police officials was present in the revenue area limits of village Sherewala on a *Katcha* passage and set up a *Naka*. At about 8.10 am, a jeep bearing registration No.DL 2CF-2644 came from village Patli via Katcha passage and on seeing the police party, the driver of the jeep stopped the jeep at a distance of 100 yards from the Naka. On suspicion, police party reached the spot and tried to apprehend the occupants of the jeep. Three persons who were present in the jeep fled away whereas two

persons were apprehended on the spot. On inquiry, one of them disclosed his name as Bhagwan Singh son of Amar Singh, resident of village Sukhera and the other person disclosed his name as Puran Singh son of Pritam Singh, resident of village Mahalam. The names of other persons were disclosed by the said accused as Bhagwan Singh son of Makhan Singh resident of village Sukhera, Raja son of Sona resident of village Sukhera and Nikku Ram son of Nirmal resident of village Lamochar Kalan who was the driver of the jeep.

ASI Narinder Pal Singh suspected some intoxicant substance in the jeep and shown his intention to the accused persons that the search of the jeep was to be conducted. Accused persons were informed of their legal right to get the search of the jeep conducted in the presence of some Gazetted Officer or a Magistrate. Both the accused opted to be searched in presence of a Gazetted Officer. Request was sent to DSP Harbans Lal Sharma who was posted at Sub Division Abohar on wireless/Walkie Talkie set. On receipt of message DSP Harbans Lal Sharma along with his gunmen reached at the spot. Accused were told by DSP Harbans Lal Sharma that he had suspicion that there was some intoxicant substance in the jeep and as such, the search of the jeep was to be conducted and both the accused reposed confidence in the DSP. Consent memos Ex. P-1 and P-2 were prepared. On search of Jeep bearing registration No.DL 2CF 2644, seven bags of poppy straw were recovered. Sample of 250 grams of poppy husk was separated

from each bag and the remaining, on weighment, was found to be 37.750 kilograms of poppy straw. Sample as well as the remainder were sealed with seal bearing impression NPS and sample seal chit Ex.P-3 was prepared. Seal was handed over to DSP Harbans Lal Sharma after its use. ASI Narinder Pal Singh took the entire case property in intact position along with sample seal chit and along with chit in police possession vide recovery memo Ex. P-4. Personal search memos Ex.P-5 and Ex. P-6 were prepared. *Rukka* Ex.P-12 was sent to the Police Station for registration of FIR on the basis of which formal FIR Ex.P-13 was recorded. Both the accused were arrested, arrest memo Ex.P-14 and P-15 were prepared. Rough site plan Ex.P-16 of the place of recovery was prepared. Case property along with both the accused were produced before SHO Prem Kumar who verified the facts of the case and affixed his seal bearing impression PK.

On 21.08.2002, accused Rakesh Kumar alias Nikku surrendered himself before the Court of Judicial Magistrate, Ist Class, Abohar and he was arrested in the case. Arrest memo Ex.P-18 was prepared. Accused Rakesh Kumar suffered disclosure statement Ex.P-19. Copy of registration certificate of jeep was got recovered and the same was taken in police custody vide recovery memo Ex.P-20. After completion of investigation, challan was presented before the Court. Charge was framed against the accused for commission of offence under Section 15 (e) of the Act to which

accused pleaded not guilty and claimed trial.

Learned Trial Judge recorded statement of 7 prosecution witnesses.

PW-1 Harbans Lal, DSP (Retd.) deposed that on 12.06.2002, he was posted as DSP of Sub-Division Abohar. He had received wireless message from Narinder Pal Singh, ASI and reached on the spot. Accused Puran Singh and Bhagwan Singh were present on the spot. He had introduced himself to both the accused and asked them whether they wanted their search to be conducted by him or by some other Gazetted Officer or Magistrate. Both the accused opted to be searched from him and consent memo Ex.P-1 and P-2 were prepared and the same were thumb-marked by the accused. The search of the jeep was conducted which contained seven bags of poppy straw. One sample of 250 grams each was drawn and remainder was sealed with seal NPS. Narinder Pal Singh handed over his seal to him. The case property was taken into police custody vide recovery memo Ex.P-4. Personal search memo Ex.P-5 and P-6 were prepared.

PW-5 Narinder Pal Singh deposed that on 12.06.2002, he was present in the area of village Sherewala in connection with Nakabandi. At about 8.30 am, jeep bearing Registration No.DL-2CF-2644 came from village Patli via Kacha passage. The jeep was stopped at a distance of 100 yards from Naka party. On suspicion, police party apprehended two accused. Three suspects succeeded

in running away from the spot whereas Bhagwan Singh son of Amar Singh and Puran Singh were apprehended on the spot. The name and whereabouts of the remaining three accused were disclosed by these two accused apprehended on the spot. DSP Abohar was informed on wireless/walkie talkie and he reached on the spot and remaining investigating formalities were completed in his presence. PW-1 HC Pipal Singh tendered his affidavit Ex.P-7. PW-3 SI Jaspal Singh deposed that on 17.08.2002, he was posted as SHO Police Station Sadar Abohar. On that day, Prem Kumar, Additional SHO had handed over to him 7 sample parcels of poppy straw containing 250 grams each bearing seal impressions NPS/HL/PK along with other case property. On 19.08.2002, he had sent the same to Chemical Examiner, Chandigarh. PW-4 ASI Darshan Singh deposed that on 22.12.2002, he was posted as Incharge P.P. Bahavwala, Police Station Sadar, Abohar. On 02.12.2002, he had obtained production warrants of accused Bhagwan Singh who was detained in Central Jail, Ferozepur. On 22.12.2002, he was produced in the Court of JMJC, Abohar and with the permission of the Court, he had formally arrested the accused and produced him before the Ilaqa Magistrate and police remand was obtained. PW-6 Darshan Singh, HC (retd.) deposed that on 12.06.2002, he was present along with ASI Narinder Pal Singh and was associated with investigation proceedings.

PW-7 Kuldeep Singh SHO deposed that in the year 2002,

he was posted at Police Station Sadar, Abohar and identified the handwriting and signatures of Prem Kumar SI (since deceased) on Ex.P-21 and P-22.

Accused were examined under Section 313 Cr.P.C. when plea of denial and false implication was taken. H.C. Jasbir Singh was examined as DW-1.

Learned Trial Judge, after considering the statements of prosecution witnesses and documentary evidence available on record and after considering the plea of defence held the appellants accused guilty for commission of offence under Section 15 (c) of the Act and convicted and sentenced thereunder. Hence, the present appeal before this Court.

At the time of arguments, Mr. Parvesh Sachdeva, learned counsel representing appellants Puran Singh son of Pritam Singh and Raj Kumar son of Sona Singh took the plea that prosecution case has not been proved at all. The first contention having been raised by learned counsel for the appellants is that as per prosecution case, itself, only two appellants, namely, Bhagwan Singh, son of Amar Singh and Puran Singh son of Pritam Singh were apprehended at the spot and the remaining three appellants were not apprehended at the spot. Even their names and parentage were disclosed by co-accused which is not admissible as per law. Except that there is nothing incriminating against the remaining three appellants, namely, Raj Kumar, Rakesh Kumar son of Nirmal Singh

and Bhagwan Singh son of Makhan Singh. More so, the identification of accused at the trial stage, itself, is disputed. PW-1 Harbans Lal was put to cross-examination on the point of identification of accused during trial and the witness failed to identify the accused in the Court itself. PW-1 specifically took the plea that he could identify accused Bhagwan Singh and Puran Singh present in the Court after going through the mark and identification on right arm of accused Bhagwan Singh because the name of Bhagwan Singh was tattooed on his right arm. The witness was allowed to check the right arm of the accused person in the Court to identify accused Bhagwan Singh. The witness checked the right arm of the two of the accused but the name of Bhagwan Singh was not tattooed on the right arm of either of the accused checked by the witness. However, the witness identified accused Rakesh Kumar present in the Court as Bhagwan Singh. These observations have been specifically recorded by learned Trial Judge in the statement of PW-1 Harbans Lal. These facts do establish that PW-1 Harbans Lal was not sure about the identification of the accused who were apprehended at the spot. As per learned counsel for the appellant, learned Trial Judge has completely ignored these facts while passing the judgment and order of sentence.

Mr. Rajesh Bhardwaj, learned Additional A.G. Punjab, representing the State took the plea that statement of Harbans Lal PW-1 was recorded on 28.07.2006 whereas the alleged recovery

was effected on 12.06.2002 and after a gap of four years, human memory is bound to fade. More so PW-1 Harbans Lal being senior Police Officer happened to interact with so many people during the course of discharge of his duties and it is humanly not possible to remember and recollect after a gap of four years. Otherwise, there is no dispute about identification of the accused person.

The rival contentions having been raised by learned counsel for the appellants on this point have been considered. There is no dispute on the point that only two appellants, namely, Puran Singh son of Pritam Singh and Bhagwan Singh son of Amar Singh were apprehended on the spot. The names and parentage of remaining accused were disclosed by co-accused. The Investigating Officer has not come with the plea that the remaining accused were known to him. On this point, statement of PW-5 Narinder Pal Singh (retired ASI) who is Investigating Officer of the case is most relevant because in the cross-examination, he admitted that except Puran Singh son of Pritam Singh and Bhagwan Singh son of Amar Singh the remaining accused were not known to him. In the next line, the witness volunteered that accused Rakesh Kumar was also known to him. If accused Rakesh Kumar was known to PW-5 Narinder Pal Singh, this fact should have been recorded in the initial police proceedings by the Investigating Officer.

More so PW-1 Harbans Lal who was the material witness to depose about identity of the accused, failed to identify the accused

facing the trial. For that purpose, he had even checked the tattoo mark on the arm of the accused. The plea taken by learned State counsel would have been acceptable if PW-1 Harbans Lal had not identified the accused person on the basis of permanent tatoo marks. However, there is no dispute about identity of two appellants-accused, namely, Puran Singh son of Pritam Singh and Bhagwan Singh son of Amar Singh, who were apprehended on the spot. As regard to identification of remaining three appellants accused, the same cannot be said to have been established during trial of the case and as such, their involvement in the present commission of offence is certainly doubtful.

Learned counsel for the appellant also took the plea that no independent witness was joined with the police party at the time of alleged recovery. PW-5 Narinder Pal Singh has given specific reply in the cross-examination that he had asked HC Swaran Singh to bring the evidence from the village but when he came back, HC Swaran Singh replied that none was ready to join the police investigation proceedings. More so, it is a matter of common knowledge that now-a-days, general public remains reluctant to join the police proceedings in such like cases. Law on the point is settled that police officials are as good a witness as witnesses from the general public but the real test of law is that the witnesses should stand the test of cross-examination. In the present case, PW-1 Harbans Lal, PW-5 Narinder Pal Singh and remaining police officials

have well stood the test of cross-examination and there is nothing to disbelieve them. More so no enmity has been alleged or proved against these police officials giving an occasion for the police officials to falsely implicate the accused persons in this case.

Learned counsel for the appellants has resisted the contention that affidavit Ex.P-7 was legally not admissible as the deponent failed to explain that which portion of affidavit was correct according to his knowledge and which portion of affidavit was correct as per his plea. The perusal of affidavit Ex. P-7 reveals that the contents of affidavit Ex.P-7 were within his exclusive knowledge as well as plea so there was nothing wrong in affidavit Ex.P-7 so as to make it a basis that link evidence was missing.

The contention was also raised that it was a case of non-compliance of provisions under Section 50 and Section 57 of the Act. However, as in this case, the recovery was effected from the jeep and not from the personal search and report had been sent to the higher authorities, it was not a case of non-compliance of Section 50 or Section 57 of the Act.

Against the evidence led by prosecution the defence version by way of statement of accused under Section 313 Cr.P.C. and statement of DW-1, the plea of denial does not find any support or corroboration. DW-1 Jasbir Singh, Head Consable had made deposition on the basis of record that samples in this case were sent on 19.08.2002, whereas, the alleged recovery was effected on

12.06.2002 and delay has not been explained in any way. However, in the case in hand, there is no such report from the CFSL that samples or the case property were tampered with and as such, the prosecution case does not suffer from any infirmity on that account also.

In view of the above discussion, the present appeals having been filed by appellants Raj Kumar son of Sona Singh, Rakesh Kumar son of Nirmal Chand and Bhagwan Singh, son of Makhan Singh are accepted and judgment of conviction and order of sentence qua them stand set aside. However, the appeals filed by appellants Puran Singh son of Pritam Singh and Bhagwan Singh son of Amar Singh against judgment of conviction and order of sentence are without any merit and the same stand dismissed. However, order of sentence qua these two appellants, namely, Puran Singh son of Pritam Singh and Bhagwan Singh son of Amar Singh stands modified that both these appellants shall undergo 10 years rigorous imprisonment and to pay a fine of Rs.1,00,000/- and in default of the same, to further undergo one year rigorous imprisonment.

**(T.P.S. MANN)**  
**JUDGE**

**(SHEKHER DHAWAN)**  
**JUDGE**

**February 23, 2015.**

*sandeep sethi*