

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

Date of decision:18.3.2015

1.

CRA-D No.945-DB of 2010

Kuldip Ram @ Wakil Ram

....Appellant

VERSUS

State of Punjab

.....Respondent

2.

CRA-D No.1111-DB of 2010

Shyam Singh

....Appellant

VERSUS

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MS. JUSTICE LISA GILL

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. Atul Lakhanpal, Senior Advocate with
Mr. Rajwant Singh Chahal, Advocate for the appellants.

Ms. Manjari Nehru Kaul, Additional Advocate General,
Punjab.

HEMANT GUPTA, J.

The present appeals are directed against an order dated 02.07.2010 passed by learned Judge, Special Court, Ferozepur convicting the appellants for an offence under Section 18 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act')

and sentencing them to undergo imprisonment for 12 years each and to pay a fine of Rs.1,00,000/- each.

Kundan Singh, Assistant Sub Inspector (for short 'ASI')/Station House Officer (for short 'SHO'), Police Station City, Abohar recorded First Information Report (for short 'FIR') on 23.09.2006 on the basis of his statement. The statement is that he along with police officials in a Government vehicle were proceeding from Abohar city side on link road towards Dhani Kamyian Wala in connection with patrolling duty. When the police party was at a distance of half killa behind the bridge of canal minor on the bypass road Ganganagar Fazilka, three persons were sitting holding a bag of black colour on the right side of the link road. On seeing the police party they tried to run away immediately towards the cotton fields and orchard of kinnow. He along with his companions apprehended two of them whereas the third person managed to escape. In the meantime, Bachan Singh, Sarpanch, came at the spot. The apprehended person disclosed his name as Shyam Singh son of Rattan Singh, caste Sondian Rajpoot resident of Bhawrana, Police Station Ziran, District Nimanch (Madhya Pradesh) and second person told his name as Kuldip Ram @ Wakil son of Bagh Ram caste Rajpoot resident of Pishoi Police Station Siwan District Kaithal (Haryana). The name of escaped person, who was said to be known to Head Constable Surinderpal Singh, was Bagga Ram son of Hans Raj, caste Rajpoot, resident of Grain Market, Moga. He informed the apprehended persons that he wanted to make search of their bag but the apprehended persons have a legal right to get the search of the bag

in their possession from a Gazetted Officer/Magistrate. With their consent, he conducted their search after preparing consent memos. On search, opium was recovered wrapped in glazed envelope from rexine bag of black colour. Two samples of 25 grams each were separated and put into two plastic containers whereas the remaining opium was found to be 6 Kg 950 Grams which was put into same glazed paper and separate parcels were prepared. The samples were sealed and the seal was handed over to Sub Inspector (for short 'SI') Chhinder Singh.

On the basis of statement Ex.P9, FIR Ex.P10 was recorded. On completion of investigation a report under Section 173 Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') was furnished before learned trial Court. The report of Chemical Examiner was also produced in evidence as Ex.P13.

SI Surjit Singh, Investigating Officer, appeared as PW1 but before he could be cross-examined he died. The prosecution case is, thus, based upon statement of Assistant Sub Inspector (for short 'ASI') Kundan Singh. Apart from the formal witnesses, the prosecution examined PW3 ASI Kundan Singh, the author of FIR; PW4 SI Chhinder Singh, PW5 ASI Tilak Raj and PW2 Constable Ajmer Singh.

PW5 Tilak Raj, was though a member of the police party, who is said to have apprehended accused but his statement was not recorded under Section 161 Cr.P.C. In cross examination, he has admitted that his signatures are not on any of the memos prepared at the spot and which are part of the judicial file. His presence is only recorded in the Daily Diary Report of their departure. He also

admitted that out of two samples, one was sent to Chemical Examiner but other was not produced in Court. He appeared in the Court for the first time and had not made any statement earlier. He was also summoned as a witness under Section 311 of Cr.P.C. vide order dated 12.08.2009.

PW3 ASI Kundan Singh, the author of the statement which led to the FIR has reiterated the version given by him in the statement. He admitted that signatures of MHC were not obtained on register No.19 when the case property and samples were deposited in the Malkhana. When the case property was handed over to Constable Ajmer Singh, his signatures were not obtained.

PW4 SI Chhinder Singh deposed that he was part of police team who apprehended the present appellants whereas the third person was successful in running from the spot. He reposed the consent of the appellants for their personal search and the appellants conveyed their acceptance for search by him. However, in the cross examination, he admitted that the bag was lying near the absconded person and that the other two persons were sitting at some distance from that person. All three persons belong to different villages. One is from Madhya Pradesh, other from Haryana and third belongs to Moga (Punjab). He admitted that he never investigated the case as Investigating Officer and he was present when Surjit Chand, ASI was interrogating the accused. He admitted that no recovery of ticket of bus or of railway was made from the accused on their search and that the accused were sitting at some distance from the bag. There was a road in between the place where the bag was lying and the place

where the accused were sitting where they parked their vehicle near the accused.

In the face of evidence led, the question required to be examined is whether the prosecution has proved the charges against the appellant beyond a reasonable doubt. All the three accused were said to be resident of different villages. Not only different villages rather than they were of different States. The appellants were not on any conveyance but said to be sitting on a link road. Link road is not a place which is away from public place. In fact, SI Chhinder Singh has admitted in his cross examination that the bag containing the opium was near the person who ran away, whereas the appellants were sitting on the other side of the road. So in this view of the matter, it cannot be presumed that the appellants would be deemed to be in conscious possession of the contraband when the prosecution has failed to prove any link between the appellants or the fact that they formed a group. There is no evidence that they were part of the group which inference could be drawn on the basis of their conduct.

Since two of the accused were sitting away across the road, we are unable to find that the appellants can be said to be in conscious possession of the contraband. The bag was on the other side of road close to the accused who was not apprehended. The prosecution has not proved any proximity by conduct or otherwise of the appellants with the said person.

Therefore, we find that the prosecution has failed to prove the charges against the appellants beyond a reasonable doubt of being consciously in possession of contraband.

Consequently, the present appeals are allowed. The order passed by learned Special Judge is set aside. The appellants are set at liberty if not wanted in any other case.

(HEMANT GUPTA)
JUDGE

MARCH 18, 2015
‘D. Gulati’

(LISA GILL)
JUDGE