

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

1.

CRA-D No. 1245-DB of 2010

Date of Decision: May 25 , 2015.

Jujhar Singh @ Ladi

..... APPELLANT (s)

Versus

State of Punjab

..... RESPONDENT (s)

2.

CRA-D No. 695-DB of 2013

Rajinder Kumar @ Raju

..... APPELLANT (s)

Versus

State of Punjab

..... RESPONDENT (s)

**CORAM:- HON'BLE MR.JUSTICE HEMANT GUPTA
HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr. G.S.Jagpal, Advocate
(in CRA-D No.1245-DB of 2010)
Ms. Aditi Girdhar, Amicus Curiae
(in CRA-D No.695-DB of 2013)
for the appellants.

Ms. Manjri Nehru Kaul, Addl.AG, Punjab.

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

LISA GILL, J.

This judgment shall dispose of Crl. Appeal-D No.1245-DB of 2010

(Jujhar Singh @ Ladi v. State of Punjab) and Crl. Appeal-D No.695-DB of

2013 (Rajinder Kumar @ Raju v. State of Punjab).

Appellants Jujhar Singh @ Ladi and Rajinder Kumar @ Raju alongwith Sukhdev Singh @ Sukha (not an appellant before this Court) were convicted for the offences punishable under Sections 18(b) read with Section 8 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the 'NDPS Act') and sentenced to undergo rigorous imprisonment for 12 years each, besides, pay a fine of ₹1,00,000/- each and in default thereof, to undergo rigorous imprisonment for one year by the learned Judge, Special Court, Ferozepur vide judgment and order dated 12.05.2010.

As per prosecution version, SI Gurbhej Singh, PW3 alongwith ASI Fauja Singh (since deceased), HC Gurnam Singh, PW4 and other police officials had set up a barricade on the bridge of canal minor in the area of village Ramsara on 12.12.2007. At about 4.00 p.m. a truck bearing registration No. RJ-13G-3665 coming from the side of Matili was signalled to stop by SI Gurbhej Singh. On inquiry, the driver of the truck revealed his name to be Sukhdev Singh and the other two persons sitting beside the driver disclosed themselves to be Jujhar Singh @ Ladi owner of the truck and Rajinder Kumar @ Raju conductor/cleaner of the truck. SI Gurbhej Singh, on suspicion of some intoxicant material being carried in the said truck, apprised the accused of their legal right for having the search being conducted in the presence of a gazetted officer or before him. All the accused opted for being searched in the presence of a gazetted officer. Memo Ex.P11, Ex.P12, Ex.P13 were prepared.

On receipt of a wireless message in the Sub Division Abohar, Parampal Singh DSP, Abohar reached the spot in a Govt. Gypsy. He was apprised of the facts. DSP Parampal Singh after introducing himself to the

accused informed them that there was suspicion of some intoxicant material being carried in the truck and asked for the option by the accused for the search to be conducted in the presence of any other gazetted officer or a Magistrate. All the accused reposed faith in Parampal Singh, Deputy Superintendent of Police as reflected in the consent memos Ex.P14, Ex.P15, and Ex.P16. On direction of the Deputy Superintendent of Police search of the truck was conducted. Opium wrapped in a glazed paper was recovered from a box beneath long seat behind the driver seat. Opium weighing 10 grams was drawn as a sample and remaining, on weightment, was found to be 8.990 Kg. It was wrapped in the same glazed sheet, put in a box and converted into a bulk parcel. SI Gurbhej Singh sealed the parcel with his seal 'GS'. Separate seal impression slip (Ex.P1) was prepared. Seal was handed over to ASI Fauja Singh (since deceased). DSP Parampal Singh sealed both the parcels with his seal 'PS' and one seal impression was affixed on Ex.P1 and attested the same. Entire case property attested by the other witnesses was taken in possession vide memo Ex.P17 by SI Gurbhej Singh. Currency notes recovered from personal search of the accused were taken in possession vide memo Ex.P18. The truck alongwith Registration Certificate and driving licence of Sukhdev Singh alongwith 360 bags of gram (Chhilka Chana) were taken in possession vide memo Ex.P19. As the accused were not able to produce any licence or permit for keeping opium in their possession, Ruqa (Ex.P20) was sent by SI Gurbhej Singh on the basis of which formal FIR No.260 dated 12.12.2007 (Ex.P10) was registered.

Accused alongwith case property were produced before SI Ranjit Singh (PW1) who was the additional SHO, Police Station Sadar Abohar on

12.12.2007. He affixed his seal 'RS' on the parcels. Specimen slip and case property were taken in possession vide memo Ex.P2. Truck was parked in the police station complex and the case property was kept in the police Malkhana under supervision of SI Ranjit Singh (PW1). SI Ranjit Singh produced the case property as well as the accused before Area Magistrate on 13.12.2007 and moved the applications Ex.P3, Ex.P4 and Ex.P5. The Area Magistrate vide Ex.P7 certified the sample of 10 grams as well as bulk parcel, the sample seal bearing the seal impressions 'PS', 'GS' and 'RS' as having seen and certified to be correct. Three envelopes of the personal search having currency notes are also endorsed as having “seen not sealed”. It was directed vide Ex.P8 that the case property be deposited in the judicial Malkhana.

Sample seal alongwith specimen seal impressions slip Ex.P1 and CFSL Form, Ex.P9 were handed over to HC Rajpal Singh, PW2 by SI Ranjit Singh on 20.12.2007 for submitting the same to Chemical Examiner at Amritsar. However HC Rajpal Singh returned with the abovesaid, as the sample could not be deposited due to it being a holiday. PW2 HC Rajpal Singh handed over the sample parcel to SI Ranjit Singh who kept the same in the Malkhana under his own supervision. The abovesaid sample etc. were again handed over to HC Rajpal Singh on 28.12.2007 for depositing with the laboratory for chemical examination. The receipt of deposit was handed over to SI Ranjit Singh by HC Rajpal Singh on the sample being deposited with the Chemical Examiner. HC Rajpal Singh deposed to the effect that sample was not tampered with while the same was in his possession neither he allowed anyone else to tamper with the same.

As per report of the Chemical Examiner (Ex.P25) the contents of the sample were found to be that of opium.

On completion of investigation, challan/report under Section 173 Cr.P.C. was presented against the accused. Charge was framed against all of them for the offences punishable under Section 18(b) read with Section 8(c) of the NDPS Act. They pleaded innocence and false implication and claimed trial.

Prosecution examined as many as six witnesses to prove its case.

Accused while denying the incriminating material and evidence against them, pleaded false implication. They pleaded that SI Gurbhej Singh (PW3) had enmity with them and they have been falsely implicated due to this reason. DW1 HC Devi Lal was examined in defence.

Learned trial court on considering the facts and circumstances and the evidence on record concluded that the prosecution had succeeded in proving its case beyond reasonable doubt. Consequently, convicted and sentenced the accused as aforementioned.

Learned counsel for the appellants argue that the evidence on record is not sufficient to prove the complicity of the accused in the alleged offence. It is submitted that there is a colossal delay in sending the sample for chemical examination. It is also pointed out that the sample is initially stated to have been sent on 20.12.2007 at the first instance and thereafter, the second time on 28.12.2007. However, there is no document on record to show that it was sent the second time. There is no evidence of the sample having been entrusted and returned once 20.12.2007 was found to be the holiday. The incident is alleged to of 12.12.2007 whereas, the sample was sent to the laboratory on 28.12.2007.

Furthermore, Form 29 i.e., the CFSL form was not filled up on the spot.

It is vehemently urged that only one sample was drawn which is in contravention to the standing order No.1 of 1989 issued by the Govt. of India, Ministry of Finance that two samples have to be drawn. Therefore, the entire proceedings are vitiated and conviction of the appellants is liable to be set aside on this ground itself.

It is also contended that SI Gurbhej Singh (PW3) had sent Ruqa (Ex.P20) in this case therefore, he could not have investigated the case in question. There is no independent witness to the alleged recovery which casts serious prejudice to the accused. It is also submitted that the link evidence in this case is woefully absent. Even the case property has not been produced. Therefore, the prosecution version is seriously afflicted and the impugned judgment and order have been passed on the basis of surmises and conjectures and is, therefore, liable to be set aside.

Learned counsel for the State while refuting the aforementioned arguments submits that there is sufficient evidence on record to show the complicity of the accused in this case. They have indulged in a serious offence and have been recovered with a huge quantity of contraband for which there is no explanation. She, thus, prays for upholding the impugned judgment of conviction and order of sentence.

We have heard learned counsel for the parties and carefully gone through the record.

Submission of the learned counsel for the appellants that the trial is vitiated due to the absence of independent witnesses is not borne out from the

record of this case. Official witnesses have given a graphic description of the events as they unfolded leading to the recovery of the contraband from the truck in which accused Sukhdev Singh was a driver (who has not preferred an appeal against his conviction and sentence) and the present appellants were sitting alongwith him in the truck. They have supported the prosecution version on all material aspects. There is no reason whatsoever to doubt their testimony. An attempt has no doubt been made to suggest that SI Gurbhej Singh had some enmity with the accused but there no evidence on record to prove the same. In the absence of any positive evidence on record to show that the official witnesses had an axe to grind against the accused, non-joining of an independent witness by itself cannot be fatal to the prosecution case. It has been held by the Hon'ble Supreme Court in **Dharampal Singh v. State of Punjab, 2010 (4) R.C.R. (Criminal) 504** that mere absence of independent witness in itself would not vitiate the proceedings until and unless it is shown that evidence on record is unreliable and untrustworthy.

Similarly, contention that the delay in sending the sample would be a material factor to vitiate the trial is not tenable. Absence of link evidence is sought to be projected by contending that there is nothing on record to show that the sample was deposited the second time. In this respect testimony of HC Rajpal Singh PW2 is relevant. He has specifically stated that he was handed over the sample parcel alongwith the sample seal (Ex.P1) pasted on the CFSL Form (Ex.P9) on 20.12.2007 to deposit the same in the office of Assistant Chemical Examiner, Amritsar. When he found that it was holiday on reaching there, he returned to the police station and handed over the said material in intact

condition to SI Ranjit Singh (PW1). Said material was again handed over to him on 28.12.2007 by SI Ranjit Singh. HC Rajpal Singh handed over the receipt of deposit to SI Ranjit Singh and that as long as the case property remained with him, he had not tampered with the same and neither allowed anybody else to do the same. He had submitted his affidavit to this effect and had deposed on similar lines. Factum that he did not sign Register 19 would not be relevant. SI Ranjit Singh (PW1) has corroborated this version. It is proved on record that there was no tampering with the said material. Delay in sending the sample did not cause any prejudice to the appellants thus, no benefit can be derived by them on this count.

As per the chemical examiner's report, one parcel of the opium weighing 10 grams was received with the seal 'GS', 'PS' and 'RS' with the seals duly intact. We have examined the available record. Sample seals on slip (Ex.P1) are present. Assistant Chemical Examiner, Amritsar has certified the seals on the Exhibits to be intact and as per sample seals sent (Ex.P25).

It has been held by the Hon'ble Supreme Court in **Hardip Singh v. State of Punjab, (2008) 8 SCC 557** that when the seals put on the sample were proved to be intact till it was handed over to the Chemical Examiner, delay in sending the sample to laboratory itself could not be fatal to the prosecution case.

Learned counsel for the appellants have also attempted to project that the case property in this case was not produced. However, on examination of the record this contention is not borne out.

In the facts and circumstances, prosecution has proved its case beyond reasonable doubt against the accused. Appellants-accused have been

rightly convicted for the offences punishable under Section 18(b) read with Section 8(c) of the NDPS Act.

Faced with this situation, learned counsel for the appellants submit that the appellants are not involved in any other case. They are poor persons and sole bread earners having their families to support. In this situation, it is prayed that the quantum of sentence imposed upon them be reduced.

It is confirmed by the learned counsel for the State on the basis of custody certificates that the appellants are not involved in any other case.

Keeping in view the peculiar facts and circumstances of the case, it is considered just and expedient to reduce the sentence of twelve years of rigorous imprisonment imposed upon the appellants to that of rigorous imprisonment for ten years. Fine of ₹1,00,000/- imposed upon them shall remain the same being the minimum provided in the statute. In default of payment of fine, appellants to undergo further imprisonment for six months.

With the above said modification in the sentence, both the appeals are dismissed.

(HEMANT GUPTA)
JUDGE

(LISA GILL)
JUDGE

May 25 , 2015.
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