

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

CRA-S-1542-SB-2004

Date of decision: 08.10.2015

Uggarsain

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Mr. Yogesh Goel, Advocate for the appellant.

Mr. Manjit Singh Naryal, Additional Advocate General
for the State of Punjab.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment of conviction dated 21.07.2004, passed by the learned Judge, Special Court, Sangrur, vide which accused-appellant Uggarsain has been held guilty and convicted for the offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (here-in-after called the 'Act') and the order on quantum of sentence of the even dated, vide which the appellant has been sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹10,000/- and in default of payment of fine to further undergo rigorous

imprisonment for a period of six months.

2- As per the prosecution case, on 25.01.2000 PW3 Assistant Sub Inspector Sikandar Singh (the Investigating Officer of the case) along with other police officials was present on the bridge of drain in the area of village Bakhora Kalan in connection with the Nakabandi duties. One Ajaib Singh also came there from the nearby fields. When the Investigating Officer was talking with him, he noticed that accused-appellant was coming from the side of village Chotian through the pavement of the drain. He was carrying a plastic bag in his right hand. On seeing the police party, he tried to slip away. On suspicion, the accused-appellant was apprehended. The Investigating Officer asked the accused-appellant that he suspected some contraband in the bag carried by him. The accused was apprised of his right to get the search conducted in presence of a magistrate or a gazetted officer. Vide memo Ex.PC, the accused opted to get his search conducted in the presence of some gazetted officer. The Investigating Officer sent a wireless message to the Deputy Superintendent of Police, Moonak, requesting him to reach at the spot. DSP Inder Mohan Singh reached at the spot. In his presence, the bag carried out by the accused-appellant was checked by the Investigating Officer and it was found containing opium wrapped in a glazed paper. From the recovered opium, two samples of 10 grams each were separated and put into small tins. On weighment, the residue was found to be 1 kilogram and 480 grams. The samples and the residue were

converted into separate parcels and were sealed by the Investigating Officer with his seal bearing impression 'SS' and same were taken into possession vide separate recovery memo Ex.PD, which was attested by the witnesses. Separate sample seal chit was prepared and the seal, after use, was handed over to prosecution witness Ajaib Singh. The accused was arrested. Ruqqa Ex.PE was sent to the police station, on the basis of which, formal FIR Ex.PE/1 was registered. The Investigating Officer prepared the site plan Ex.PH of the place of recovery. Statements of the witnesses were recorded.

3- On return to the Police Station, the Investigating Officer produced the accused, witnesses and the case property before SHO Gurwinder Singh, who verified the case property and affixed his seal bearing impression 'GS' on the case property and sample seal chit. The case property with seals were deposited with Mohrir Head Constable Pavitar Singh. In due course, the sample parcel was sent to the Chemical Examiner, Chandigarh for examination. On receipt of the report of the Chemical Examiner Ex.PJ and completion of formalities of the investigation, the report under Section 173 of Code of Criminal Procedure, 1973 (here-in-after called 'Cr.P.C.') was presented in the Court.

4- The accused-appellant was charge-sheeted for the offence punishable under Section 18 of the Act vide order dated 05.04.2000 by the learned trial Court, to which the accused-appellant pleaded not guilty

and claimed trial.

5- In order to substantiate its case, prosecution examined as many as five witnesses.

6- When examined under Section 313 Cr.P.C., the accused-appellant pleaded innocence and false implication. He pleaded that he was arrested from Bus Stand, Moonak and ₹10,000/- was snatched from him and one Gurpal Singh.

7- In the defence evidence, accused examined Harmesh Kumar as DW1, Ajaib Singh as DW2 and Tilak Raj as DW3.

8- Appreciating the evidence on record and the contentions raised by learned counsel for the parties, the accused appellant was held guilty and convicted for the offence punishable under Section 18 of the Act and was awarded the sentence, as mentioned in the upper part of the judgment.

9- Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

10- I have heard Mr. Yogesh Goel, Advocate, learned counsel for the appellant, Mr. Manjit Singh Naryal, learned Additional Advocate General for the State of Punjab and have meticulously examined the record of the case.

11- Initiating the arguments, learned counsel for the appellant contended that as per the prosecution allegations, one Ajaib Singh was associated as independent witness. Even the seal after use is alleged to

have been entrusted to him but he has not been examined, rather he has appeared in the witness-box as DW2 and has totally demolished the entire prosecution case. He has categorically stated that no recovery was effected in his presence from the possession of the appellant.

12- He further contended that the recovery is alleged to have been effected on 25.01.2000, whereas the sample has been sent to the Chemical Examiner on 01.02.2000. There was delay of six days in sending the sample to the Chemical Examiner, which has not been explained. The Investigating Officer stated that he has received back the seal on the next day and Ajaib Singh, the independent witness to whom the seal was entrusted, was not examined. So, the tampering with of the case property cannot be ruled out. He also contended that the presence of PW5 Inder Mohan Singh DSP is extremely doubtful, as he has not affixed his seal on the case property.

13- He further contended that the police party was on private scooters but the Investigating Officer could not tell the registration numbers of those scooters. There are also some discrepancies in the statements of the prosecution witnesses. He further contended that the prosecution has not been able to establish the exact quantity of the opium recovered from the appellant. He contended that the Investigating Officer stated that on weighing the opium came to be 480 grams, whereas the DSP has stated that the weight of the opium came to be 1 kilogram and 400 grams. Whereas the prosecution has alleged the recovery of 1

kilogram and 500 grams opium.

14- He further contended that HC Magar Singh, who was also cited as the witness of recovery, has not been examined, which raises adverse inference against the prosecution. He further contended that as the presence of the Deputy Superintendent of Police is extremely doubtful, so there is no corroboration to the statement of the Investigating Officer.

15- He further contended that the appellant has already undergone about 01 year and 02 months of sentence. He is not a previous convict, nor involved in any other case, so he deserves the reduction in sentence.

16- To support all the contentions raised by learned counsel for the appellant, he has placed reliance upon cases *Din Dayal Vs. State of Punjab 2014(1) RCR (Criminal) 502*, *Major Singh Vs. State of Punjab 2014(2) RCR (Criminal) 200*, *Amrik Singh and others Vs. State of Punjab 2014(3) RCR (Criminal) 615*, *Balwinder Singh Vs. State of Punjab 2014(2) RCR (Criminal) 568*, *Swaroop Singh Vs. State of Haryana 2014(2) RCR (Criminal) 571*, *Parminder Singh Vs. State of Haryana 2006(4) RCR (Criminal) 495*, *Satpal alias Pala Vs. State of Haryana 2015(2) RCR (Criminal) 646*, *Radha Bai Vs. State of Haryana 2015(2) RCR (Criminal) 713*, *Sahab Singh Vs. State of Haryana 2015(1) RCR (Criminal) 594* and *Hoshiar Singh Vs. State of Haryana 2015(1) RCR (Criminal) 840*.

17- On the other hand, learned State counsel pleaded that

from the testimonies of PW3 ASI Sikandar Singh, the Investigating Officer of the case and PW5 Inder Mohan Singh, S.P. (Vigilance) (the then DSP), it is established that 1.5 kilograms opium was recovered from the possession of the appellant. He contended that the prosecution witness Ajaib Singh was won over by the accused and was given up by the learned Public Prosecutor on 07.10.2003. So, the non-examination of such a witness will not cause any dent in the prosecution case. He further contended that from the evidence brought on record, it is established that the case property remained intact. So, the delay of 06 days in sending the sample to the Chemical Examiner is immaterial.

18- He further contended that it is not necessary that all the witnesses should affix their seals on the case property. So, the non-sealing of the case property by the DSP with his own seal will not make any difference, when the case property has been sealed by the Investigating Officer and the SHO of the Police Station. Thus, he pleaded that there is no legal infirmity in the conviction of the appellant recorded by learned trial Court.

19- I have duly considered the aforesaid contentions.

20- As per the prosecution allegations, 01 kilogram and 500 grams opium has been recovered from the possession of the appellant on 25.01.2000. As a result of the option exercised by the appellant, PW5 Inder Mohan Singh, DSP Moonak, was called at the spot and the search and seizure was conducted under his supervision. One Ajaib Singh was

associated as an independent witness in the investigation of the case but he has not been examined by the prosecution and was given by the learned Public Prosecutor as having been won over by the accused vide his statement dated 07.10.2003. It was not a hollow claim of the prosecution, rather the same was confirmed when this Ajaib Singh stepped into the witness-box as DW2 and sided with the accused-appellant. He has stated that he does not know any person named Uggarsain son of Roop Chand, resident of Ward No.11, Jakhal Mandi, nor he identified Uggarsain today in the Court. He further denied the apprehension of accused-appellant Urragsain and the recovery of the contraband from his possession in his presence. In the cross-examination, he admitted his signatures on the memos Ex.PC, Ex.PD, Ex.PG and Ex.PF. However, he took the stand that his truck was taken on begaar (forced labour without payment) by the police on 24.01.2000 and when he went to take back his truck on 25.01.2000, his signatures were obtained on blank papers. This version of DW2 Ajaib Singh does not inspire any confidence. He has not narrated as to for what purpose his truck was taken by the police on begaar. Such a heavy vehicle is not generally required by the police and it is only for some special purpose such vehicle may be needed, but he has not been able to narrate the purpose of requisitioning his truck on begaar by the police of Police Post, Bhutal Kalan. He is an educated person, which appears from his signatures in Punjabi. It is not believable that he will sign the blank

papers on the asking of the police officials. He has also not specifically named the police officials who obtained his signatures on the blank papers. So, the story projected by DW2 Ajaib Singh that he has not witnessed the recovery and his signatures were obtained on the blank papers, carries no substance, rather he only deposed so to favour the accused-appellant, as this version has come on record for the first time on 03.01.2004 whereas the recovery was effected on 25.01.2000. DW2 Ajaib Singh has also not agitated anywhere nor made any complaint against the Investigating Officer to the superior police officers that his signatures were obtained by the police on blank papers. So, the non-examination of such a witness, who is openly sided with the accused, will not create any dent in the prosecution case.

21- It is well settled principle of law by this time that the testimonies of the police officials is also at par with the other witnesses. Mere their official designation *ipso facto* is not a ground to discard their testimonies. If the evidence of the official witnesses is trust worthy and credible, there is no reason as to why those statements should not form the basis for conviction. In the instant case also, the statements of the official witnesses are consistent, cogent and reliable. The search and seizure has been conducted in the presence of PW5 Inder Mohan Singh DSP, a gazetted police officer. There was no reason that a gazetted police officer will support the false case set up by his subordinate police officer. Thus, the non-examination of Ajaib Singh by the prosecution is

no ground to render the testimonies of the official witnesses unworthy of credence. To support this view, reference can be made to the cases ***Kulwinder Singh & Anr. Vs. State of Punjab 2015(2) RCR (Criminal) 918*** and ***Balbir Kaur Vs. State of Punjab 2009(3) RCR (Criminal) 580***.

22- The recovery in this case has been effected on 25.01.2000. As per the report of the Chemical Examiner, the sample parcel has been received in the laboratory on 01.02.2000. So, there is delay of six days in sending the sample to the laboratory. In case ***Mohan Singh Vs. State of Punjab 2007(4) RCR (Criminal) 705***, there was delay of 10 days in sending the sample to the F.S.L. The Division Bench of this Court held that mere delay in sending the sample to the laboratory is not fatal where there is evidence that the seized articles were kept in proper and safe custody. The Hon'ble Apex Court also in case ***State of Orrisa Vs. Kanduri Sahoo 2004(1) RCR (Criminal) 196*** has also laid down that mere delay in sending the sample to the laboratory is not fatal where there is evidence that the case property was kept in proper and safe custody. In case ***Baggar Singh alias Gaggi Vs. State of Haryana 2009(4) RCR (Criminal) 183***, there was delay of 18 days in sending the sample to the F.S.L. and the another Division Bench of this Court held that it would not render the case of the prosecution doubtful if the seals remain intact when the sample reached to the F.S.L. In the instant case also, there is no material on record to establish that the sealed articles were tampered with. Rather, from the evidence on record it comes out

that the sealed articles were kept in proper and safe custody and reached the F.S.L. in intact condition. PW3 ASI Sikandar Singh, the Investigating Officer of the case, has stated that the case property was deposited with MHC Pavitar Singh. PW4 SI/SHO Gurwinder Singh has stated that on his direction ASI Sikandar Singh deposited the case property with the MHC. Then the prosecution examined the then MHC Pavitar Singh as PW1, who has filed his affidavit Ex.PA and deposed that the case property remained intact in the Malkhana. PW2 Constable Rajwinder Singh, who had carried the sample parcel to the Chemical Examiner, has filed his affidavit Ex.PB mentioning therein that the sample parcel remained intact during transit from police station to the office of the Chemical Examiner. Ex.PJ is the report of the Chemical Examiner, which also depicts that the sample parcel was properly sealed and seals tallied with the specimen seal impression. Thus, from the aforesaid evidence, it is established that the sample parcel remained intact and was not tampered with at all at any stage of the proceedings. So, mere delay of six days in sending the sample will not create any dent in the prosecution case.

23- This fact is not disputed that at the time of apprehension of the appellant, the police officials were having two private scooters. This fact has been stated consistently by PW3 ASI Sikandar Singh, the Investigating Officer and PW5 Inder Mohan Singh DSP. If with the lapse of time the Investigating Officer could not tell the registration number of

those scooters, that is not a ground to render the prosecution case doubtful.

24- The learned counsel for the appellant could not point out any material contradiction in the statements of the prosecution witnesses, which could go to the root of the case. No contradiction could be pointed out by learned counsel for the appellant on the manner of apprehension of the appellant, the search and the seizure. The contradiction pointed out by the learned counsel for the appellant in the weight of contraband appears to be slip of tongue or a clerical mistake. It is not expected that the Investigating Officer might not be knowing the correct weight of contraband recovered by him and similarly a gazetted police officer who has supervised the search and seizure. The weight of the contraband has been correctly mentioned in the documents i.e. the seizure memo Ex.PD and the ruqqa Ex.PE, prepared by the Investigating Officer. The seizure memo Ex.PD has also been attested by PW5 DSP Inder Mohan Singh, wherein the correct weight of the contraband has been mentioned. ***In case Jarnail Singh Vs. State of Punjab 1989(1) RCR (Criminal) 611***, 06 kilograms and 500 grams opium was recovered. One of the prosecution witness has stated that the quantity of opium was 4 kilograms and 500 grams. This Court held that the disability of forgetfulness as to the quantity cannot be ruled out especially when police officials had to appear in evidence after some lapse of time. Thus, in view of the documents available on record, this contradiction in their statements

carries no substance.

25- Head Constable Magar Singh, no doubt, was a witness of recovery and has attested the recovery memo. He has not been examined by the prosecution. It is settled principle of law that the witnesses are not to be counted rather those are to be weighed. The Court is to reach to the conclusion on the basis of quality of evidence and not the quantity of evidence. It is not necessary that each and every person who had witnessed the recovery/occurrence must be examined. The prosecution in order to establish its case has examined PW3 ASI Sikandar Singh, the Investigating Officer of the case and PW5 Inder Mohan Singh, a gazetted police officer. So, the non-examination of HC Magar Singh is also no ground to draw any adverse inference against the prosecution.

26- Mere this fact that PW5 Inder Mohan Singh, the Deputy Superintendent of Police has not affixed his own seal on the parcels of the contraband is also no ground to render his presence at the spot doubtful. While appearing in the witness box as PW5 Inder Mohan Singh has deposed in detail about the search and seizure of the contraband from the possession of the appellant. He has been cross-examined at length by the learned defence counsel. Learned counsel for the appellant has not been able to point out any material contradiction or infirmity in his testimony. If PW5 Inder Mohan Singh would not had visited the spot and would had simply attested the documents later on while sitting in his office, he would not have been able to answer the pointed questions put

by the learned defence counsel in his cross-examination. So, there is no ground to doubt the presence of PW5 Inder Mohan Singh DSP.

27- The accused-appellant has examined DW1 Harmesh Kumar, resident of Jakhal Mandi, who has stated that on 25.01.2000 the present appellant and one Gurpal were arrested by the police from the Bus Stand Moonak and ₹10,000/- was snatched from them. No evidence has been led as to what was the *inter se* connection between Uggarsain Singh and Gurpal Singh. DW1 Harmesh Kumar could not tell in the cross-examination the official rank of the police officers who had snatched the aforesaid money from the appellant and Gurpal Singh. DW1 Harmesh Kumar belongs to the native town of the appellant. Such a witness can be easily procured. DW3 Tilak Raj is also a resident of Jakhal. He is a contractor by profession. He admitted that his job involves extensive travelling. He has given the evidence of general type that the appellant is the religious man. He does not take the intoxicant. He is doing the private labour and was never involved in any case of opium etc. and the present case has been falsely planted upon him. But in the cross-examination, he stated that he does not know that on 25.01.2000 at 03:00 p.m., the appellant was found in possession of 1.5 kilogram of opium in the area of village Lehal Kalan. DW3 is also the resident of native town of the appellant. He is not supposed to be present at the place of recovery. His testimony is also only of a general type and had nothing to do specifically with the present recovery from the

possession of the appellant. DW2 is Ajaib Singh, who was cited as a witness by the prosecution, about whom I have already dealt with in the upper part of the judgment. So, the aforesaid defence evidence, which appears to be created one as a result of afterthought, cannot dislodge the prosecution.

28- From the statements of PW3 ASI Sikandar Singh the Investigating Officer of the case and PW5 Inder Mohan Singh DSP, it is established that 1.5 kilograms opium has been recovered from the possession of the appellant. The case of the prosecution is also corroborated from the testimony of PW4 SI Gurwinder Singh, the then SHO Police Station, Moonak before whom the accused, witnesses and the case property was produced immediately after recovery. The testimonies of the prosecution witnesses are consistent, cogent, reliable and inspires confidence. So, I do not find any infirmity in the conviction of appellant recorded by the learned trial Court.

29- 01 kilogram and 500 grams opium has been recovered from the possession of the appellant. He has been sentenced to undergo rigorous imprisonment for a period of 03 years by the learned trial Court. Keeping in view the recovery of opium from the possession of appellant, the sentence awarded to him cannot be stated to be disproportionate or excessive. So, the sentence awarded to the appellant by the learned trial Court is just and appropriate and does call any interference by this Court.

30- I have gone through all the authorities cited at bar by the

learned counsel for the appellant. Almost all the authorities relates to the delay in sending the sample to the Chemical Examiner and the non-joining of the independent witness. In view of the judgment of the Hon'ble Apex Court and the Division Bench of this Court referred to above in the discussion, these cases relied upon by learned counsel for the appellant cannot render any help to him.

31- Thus, keeping in view my aforesaid discussion, from the evidence adduced by the prosecution, there is no escape from the conclusion that the prosecution has been able to establish beyond shadow of reasonable doubt that the appellant was found in conscious possession of 1.5 kilogram opium. Thus, the conviction of the appellant and sentence awarded to him by the learned trial Court is well founded and is hereby maintained.

32- Consequently, the present appeal has no merits and the same is hereby dismissed. The accused-appellant is on bail. His bail stand cancelled. He will surrender within 15 days from the date of this judgment before the learned Chief Judicial Magistrate, Sangrur, who shall send him to jail to undergo the remaining part of his sentence. If, he fails to surrender, the learned Chief Judicial Magistrate, Sangrur, shall take coercive steps to secure his presence and send him to jail to undergo the remaining part of the sentence.

Dated: 08.10.2015.
sunil yadav

(DARSHAN SINGH)
JUDGE