

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

**Crl. Appeal No.213-DB of 2010**

**Date of Decision: July 29 , 2015.**

Baljinder Singh

..... APPELLANT (s)

Versus

State of Punjab

..... RESPONDENT (s)

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

Present: Mr. Veneet Sharma, Advocate  
for the appellant.

Mr. Manoj Bajaj, Addl.AG, Punjab.

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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?

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**LISA GILL, J.**

Present appeal has been preferred by Baljinder Singh impugning judgment and order dated 08.02.2010 passed by learned Judge, Special Court, Tarn Taran whereby he has been convicted for the offence punishable under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the 'NDPS Act') for being in illegal possession of 13 Kgs. of heroin and sentenced to undergo rigorous imprisonment for 12 years, besides, a fine of ₹1,20,000/- and in default thereof, to undergo further rigorous imprisonment for two years.

Brief facts of the case as revealed in Ruqa, Ex.PF sent by PW4 Inspector Balbir Singh are that some unusual movement of throwing of goods over the fence at the international border of India-Pakistan was noticed on the intervening night of 27/28.02.2006. Troops of 3<sup>rd</sup> Battalion BSF were deployed along Naka Nos.57 and 58. Constable Manik Ghosh and Constable M.K. Deb Barma were to take over their duties at 3.00 a.m. Constable Manik Ghosh rushed towards the place and observed one person with a gunny bag trying to run towards India. Constable Manik Ghosh challenged the smugglers. In the meantime other troops, namely, Constable Shivesh, Constable P.K.Mandol, Constable R.K.Rathore, Constable A Raja and Constable M.K.Dev Barma rushed there and cordoned off the area on this side of the border fence. PW7 Indraj Singh, Commandant of 3<sup>rd</sup> Battalion BSF alongwith other officials reached the spot at 4.00 a.m. PW4 Inspector Balbir Singh, Party Commandore apprised the officers of the position. Search of the area was carried out on the extended line of border fence towards the home side. An unknown person was observed lying in the fields with a gunny bag on his shoulder. On apprehension, he disclosed his identity as Baljinder Singh son of Jaswant Singh, resident of District Amritsar. On search of the gunny bag, 13 packets of white powder suspected to be heroin weighing one kilogram each wrapped with yellow tape were recovered. One 9 mm pistol without magazine was also recovered in the fields of Inderjit Singh son of Sajjan Singh. On further questioning, appellant – Baljinder Singh disclosed the names of four other persons alongwith him, indulging in smuggling i.e., Sarwan Singh, Chinta Singh, Nachhatar Singh and Balwinder Singh. Said persons managed to escape due to darkness, undulating

terrain and knee-high crops.

Samples of 20 grams and 10 grams each of the white powder suspected to be heroin were taken from the 13 packets and sealed on the spot. Each packet of 970 grams were also sealed on the spot with the seal of Commandant 3<sup>rd</sup> Battalion BSF. A total of 39 parcels were prepared, which were sealed with the seal of Commandant 3 BN BSF. They were all taken in possession vide memo Ex.PG. Form M29 was also prepared at the spot. Two vehicles i.e., a motorcycle Kawasaki bearing registration No. PB35-8502 and Freedom (Prima) bearing registration No.PB38A-2335 were recovered from about 500 meters from the international border.

On the said information, FIR Ex.PW5/B was registered against the present appellant alongwith four other persons. PW4 Inspector Balbir Singh and PW7 Indraj Singh handed over the accused as well as the case property to PW5 SI/SHO Bikramjit Singh. Inventory Ex.PE was prepared. SHO Bikramjit Singh also affixed his seal on 13 parcels of 970 grams each as well as on 13 samples of 20 grams each with seal bearing impression 'BS'. 13 packets of 10 grams each were retained by PW7 Commandant Indraj Singh. Rough site plan, Ex.PW5/C was prepared.

PW5 SI/SHO Bikramjit Singh produced accused Baljinder Singh alongwith the case property before the court of Sub Divisional Judicial Magistrate, Patti on 01.03.2006. He moved application, Ex.PW5/D. On verification of the case property produced, order Ex.PW5/E was passed by the Judicial Magistrate. Case property was thereafter deposited in the Malkhana. It is revealed by PW5 Bikramjit Singh that on an application moved by him on

04.03.2006 under Section 52A of the NDPS Act, order Ex.PW5/F was passed and vide application, Ex.PW5/G representative samples were taken. Order, Ex.PW5/H was passed for disposal of the case property by the Judicial Magistrate, Patti. Photographs, Ex.PW5/I and Ex.PW5/J were taken. Inventory Ex.PW5/K bore his signatures alongwith the orders passed by the Judicial Magistrate First Class. Samples were sent for chemical examination on 16.03.2006 through PW1 HC Janga Singh.

On completion of investigation, report under Section 173 Cr.P.C. was presented. Charge was framed against the appellant as well as other accused on 08.02.2010. Accused pleaded not guilty and claimed trial.

Prosecution examined as many as eight witnesses to prove its case. Accused while denying the incriminating evidence put to them pleaded innocence and false implication in their statements under Section 313 Cr.P.C. One witness DW1 HC Gurnam Singh was examined in defence.

Learned trial court on consideration of the evidence, facts and circumstances acquitted all other persons except the present appellant of the charges against them as there was no other evidence on record to incriminate them except the statement of present appellant. However, appellant – Baljinder Singh was found guilty of the offence as charged and he was accordingly convicted and sentenced as detailed above.

Learned counsel for the appellant vehemently argues that the appellant has been made a scapegoat and victimized unnecessarily. He submits that it is improbable that out of five persons present, four of them managed to escape whereas, the present appellant was apprehended at the spot.

Furthermore, there is a blatant non-compliance of provisions of the NDPS Act which vitiates the trial. It is submitted that there is non-compliance of the provisions of Section 42 of the NDPS Act. Link evidence in this case is stated to be missing. Special attention is drawn to the factum of cutting in respect of the quantity of contraband in Ex.PG. It is also submitted that it is not explained as to where the samples of 10 grams allegedly taken were kept. While referring to the statement of PW7 Commandant Indraj Singh, learned counsel submits that possibility of tampering with the samples cannot be ruled out thus benefit thereof indeed accrues to the appellant. His conviction is not sustainable in the facts and circumstances of the case.

Learned counsel for the State, on the other hand, while refuting the abovesaid arguments submits that there is clear and cogent evidence on record to show the culpability of the present appellant in commission of the crime. He prays for upholding the judgment and order.

On hearing learned counsel for the parties and going through the record with their assistance, we find that no ground is made out for setting aside the conviction and sentence imposed upon the appellant.

It has been duly proved on record that the appellant was apprehended near the international border while trying to smuggle 13 Kgs of heroin. He was apprehended by the troops of Border Security Force deployed at the Indo-Pak border. On noticing unusual movement immediate information was sent by Constable Manik Ghosh upon which PW7 Commandant Indraj Singh as well as Company Commander, PW4 Inspector Balbir Singh rushed to the spot. Non-examination of Constable Manik Ghosh is not material or relevant in the facts and circumstances of the case. PW4 Inspector Balbir Singh

and PW7 Indraj Singh have duly testified before the court in respect to the events as they unfolded.

Similarly, contention of learned counsel for the appellant that information should have been first reduced into writing by Constable Manik Ghosh and then conveyed to superior officers, is a futile argument keeping in view the peculiar facts and circumstances of this case. Neither can accused get any benefit on the premise that the officials of Border Security Force were not authorised to apprehend the appellant under the NDPS Act therefore, the trial stands vitiated. It is due to the prompt action by the troops of BSF that the appellant was apprehended alongwith the contraband.

There is substantive compliance of the provisions of Section 42 of the Act. After apprehension of the accused, Ruqa was sent to the police station on which formal FIR was recorded with copy thereof sent to the Illaqa Magistrate as well as to the higher officials. PW4 Inspector Balbir Singh and PW7 Indraj Singh, Commandant, have proved that the appellant was apprehended while trying to hide in the fields of wheat crop with a gunny bag on his shoulder. On search of the bag, 13 packets containing heroin were recovered. Two samples i.e., one of 20 grams and another of 10 grams from each of 13 packets were prepared. Parcels of rest of the packets each containing 970 grams heroin were prepared. Case property was duly handed over to PW5 SI/SHO Bikramjit Singh.

An attempt has been made to indicate tampering of samples with reference to the seizure memo, Ex.PD. It is submitted that there is cutting on the quantity of heroin i.e., instead of 980 grams, seven has been superimposed to make it 970 grams in respect to 13 packets. An addition of 10 grams sample

packet is made with hand. Learned counsel for the appellant submits that evidence on record shows that these samples of 10 grams each were never deposited with the SHO neither produced before the Magistrate. Therefore, it reflects tampering with the samples.

A perusal of the record shows that 13 parcels each containing 970 grams and 13 parcels each containing 20 grams of heroin were produced before the Duty Magistrate on 01.03.2006. Application Ex.PW5/D mentions the same. Order dated 01.03.2006, Ex.PW5/E by the Duty Magistrate also verifies the same. It were these samples of 20 grams each, which were sent to the Forensic Science Laboratory for chemical examination on 16.03.2006 through PW1 HC Janga Singh. As per the report of Chemical Examiner, Forensic Science Laboratory, Chandigarh seals on the samples were intact and tallied with the specimen seals. It is certified that the exhibits remained in the safe custody of the Chemical Examiner from its receipt till its analysis was done. PW1 HC Janga Singh has submitted his affidavit to the effect that case property was not tampered with by him neither he allowed anyone to tamper with the same while it remained in his custody. PW1 HC Janga Singh had taken the samples for deposit with the Chemical Examiner on 16.03.2006. In respect of the samples of 10 grams, explanation has been afforded by PW7 Commandant Indraj Singh. He has testified that PW5 Bikramjit Singh had handed over 13 parcels of 10 grams each to PW7 Indraj Singh. Said 13 parcels of 10 grams each were retained by PW7 Indraj Singh. He produced the same before the court. Said samples were kept in the Almirah of his office. Cutting is sufficiently explained as a simple over sight or a computer mistake. There is no reason to infer

anything to the contrary.

Keeping in view the facts and circumstances as narrated above even if it is accepted that the 13 parcels of 10 grams each were never produced before the Magistrate, it does not create a dent in the prosecution version because there is no doubt about the rest of the samples or production of the case property before the Magistrate. Even if the said thirteen samples of 10 gms. each are ignored, appellant has been found in illegal conscious possession of heavy quantity of contraband. Samples sent for chemical examination were the ones which were duly produced before the Magistrate. There is no evidence on record to indicate tampering of the said samples. Said argument is, therefore, of no avail to the appellant and does not advance his case in any manner.

Similarly, it is not open to the appellant to say that PW7 Commandant Indraj Singh had been given up by the prosecution as unnecessary on 20.07.2007 and he has wrongly been produced later to testify on 08.05.2008 to fill the lacunae in the prosecution version. This argument is untenable in view of the fact that on 15.03.2008 defence specifically recorded that it had no objection to the examination of Commandant Indraj Singh on an application moved by the prosecution.

Contention of learned counsel for the appellant that conviction of the appellant in the wake of acquittal of all other accused cannot sustain, is untenable. It has been authoritatively held by Hon'ble Supreme Court in **Israr v. State of U.P., 2005(2) RCR(Criminal) 40** that maxim "falsus in uno falsus in omnibus" has no applicability in India. Even if evidence has been found to be deficient to prove the guilt of other persons in a given case but the residue is

found sufficient to prove the guilt of an accused notwithstanding the fact of acquittal of number of other co-accused, his conviction can be maintained. It was observed that even where evidence of some of the witnesses is found to be deficient to prove the guilt of some accused, it is open to the court to convict co-accused on the same evidence. In the present case, appellant has been apprehended on the spot alongwith 13 Kg. heroin.

Learned counsel for the appellant is unable to point out any circumstance which can create a doubt regarding the complicity of the appellant in this matter.

We find no merit in the contention of learned counsel for the appellant that the sentence imposed upon the appellant should be reduced as he is a poor person and has a dependant wife, aged parents and a sister suffering from polio. Keeping in view the facts and circumstances of the case as well as heavy quantity of heroin recovered from the appellant near the international border, we find no ground to reduce the quantum of sentence imposed upon the appellant.

We find no ground whatsoever to interfere in the conviction and sentence imposed upon the appellant as prosecution has proved its case beyond reasonable doubt qua the appellant in respect to the commission of offence punishable under Section 21(c) of the NDPS Act.

Consequently, this appeal is dismissed.

**( HEMANT GUPTA )**  
**JUDGE**

**( LISA GILL )**  
**JUDGE**

July 29 , 2015.  
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