

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

CRA-S-1573-SB of 2009

Date of decision : 14.05.2015

Dayanand and others

..... Appellants

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. S.P.S.Sidhu, Advocate
Learned counsel for the appellant.

Mr. R.S.Doon, Learned AAG, Haryana.

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

DARSHAN SINGH,J

1. The present appeal has been preferred against the judgment of conviction dated 11.06.2009, vide which all the appellants were held guilty and convicted for the offence punishable under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter to be referred as 'Act') and the order of sentence dated 12.06.2009, vide which all the appellants were sentenced to

undergo rigorous imprisonment for a period of ten years each and to pay a fine of Rs. 1,20,000/- each, in default of payment of fine they were ordered to further undergo rigorous imprisonment for a period of three years.

2. In nutshell, the brief facts of the prosecution case are that on 20.05.2008 PW-9 Inspector Kapoor Singh along with PW-2 ASI Dharam Singh, PW-3 ASI Karan Singh and other police officials was present at Pabra-Balak Road in connection with patrolling. In the meantime, a Tata 709 bearing registration No. RJ-02-G-3621 was spotted coming from the side of village Balak. On seeing the police party, the driver of the vehicle tried to turn away the vehicle, but was intercepted by the police party. In the meantime, two persons who were travelling in the aid vehicle succeeded in running away. The driver of the Tata 709 Dayanand was apprehended at the spot. He disclosed the names of the other two persons who had fled away from the spot as appellants Krishan Kumar and Virender Singh @ Dhirander Singh @ Billu. Suspecting the intoxicant substance in possession of the accused, Inspector Kapoor Singh served a notice under Section 50 of the Act. In the reply to the notice appellant Dayanand opted for the search in the presence of a Gazetted officer. PW-11 DSP Ram Kishan was called at the spot. In the presence of DSP Ram Kishan, the search of Tata

709 was conducted. 9 bags containing poppy straw were recovered from the cabin of the vehicle. Two samples of 200 gms each were separated from each gunny bag. The residue poppy straw was weighed separately. Each bag was found containing 40 kg 600 gms poppy straw. The sample parcels as well as the gunny bags containing residue poppy straw were sealed with the seal of KS of the Investigating Officer and the seal 'RK' of DSP. The seal after use was entrusted to ASI Dharam Singh by the Investigating Officer. DSP kept his seal with him. On checking of the vehicle the registration certificate in the name of appellant Krishan Kumar was recovered. The case property was taken into possession. The Investigating Officer sent ruqa to the police station, on the basis of which the formal FIR was registered. The Investigating Officer also prepared the site plan of the place of recovery.

3. Thereafter, the case property alongwith witnesses and accused were produced before SI Jeet Singh, the than SHO, Police Station Barwala, who verified the facts from the witnesses and thereafter put his seal bearing impression 'JS' on the parcels of the case property. Thereafter, the case property was deposited MMHC of the Police Station and accused was detained in the lock up.

4. On the next day, the accused Dayanand

alongwith the case property was produced before the Ilaqa Magistrate. Accused-appellant Krishan Kumar was arrested on 20.08.2007 and accused-appellant Virender Singh @ Dhirender Singh @ Billu was arrested on 07.02.2008 in this case. On completion of the formalities of the investigation, the report under Section 173 Cr.P.C (for short 'Cr.P.C') was presented in the Court.

5. All the three appellants were charge sheeted for the offence punishable under Section 15 of the Act to which all the appellants pleaded not guilty and claimed trial.

6. In order to establish its case, prosecution examined as many as twelve witnesses in all.

7. When examined under Section 313 Cr.P.C, the accused pleaded false implication due to party faction. In the defence evidence, accused-appellant Virender Singh examined Dr. R.S.Punia as DW-1, thereafter the defence evidence was closed.

8. On appreciating the evidence on record and contentions raised by learned counsel for the parties, the learned trial Court held guilty and convicted all the three appellants for offence punishable under Section 15 of the Act and they were awarded the sentence as mentioned in upper part of the judgment.

9. Aggrieved with the aforesaid judgment of

conviction and the order on the quantum of sentence, the present appeal has been preferred.

10. I have heard Mr.S.P.S. Sidhu, Advocate, learned counsel for the appellants, Mr. R.S.Doon, learned Assistant Advocate General, Haryana and have meticulously gone through the record of the case.

11. Initiating the arguments, learned counsel for the appellants contended that the story of the prosecution is highly unreliable. He contended that though the recovery is alleged to have been effected at a public place, the presence of the independent persons is also admitted, but no independent witness has been associated in the investigation of the case, which renders the conduct of the Investigating Officer doubtful.

12. He further contended that it is not believable that accused-appellant Krishan Kumar and Virender Singh @ Dhirender Singh @ Billu could have escaped. Appellant Krishan Kumar is an old man of 60 years. Appellant Virender Singh @ Dhirender Singh @ Billu had suffered the fracture in his leg and as per the statement of DW-1 Dr.R.S.Punia, his leg was under plaster. Moreover, number of police officials armed with weapons were present at the spot. They were having the police vehicle. So, it is not believable that in such eventuality appellant Krishan Kumar

and Virender Singh @ Dhirender Singh @ Billu could have been able to escape on foot. It shows that the story of their running away from the spot has been falsely introduced only to implicate them in the presence case.

13. He further contended that there is no evidence to establish the identity of the two persons who are alleged to have escaped from the spot. The disclosure statement made by accused-appellant Dayanand with respect to the identity of the appellants is not legally admissible. It is an admitted fact that both these appellants were not previously known to any of the member of the police party. No test identification parade has been held after their arrest. None of the prosecution witness has stated that they had seen the accused at the spot. So, the identification of the appellants Krishan Kumar and Virender Singh @ Dhirender Singh @ Billu for the first time in the Court in such circumstances carries no evidentiary value. He further contended that there are material contradictions in the statements of the prosecution witnesses with respect to the manner of escape and chasing of these two appellants. He further contended that the disclosure statements of both these appellants recorded after their arrest and pointing out of the place are also not admissible in evidence as no recovery in consequence of the aforesaid disclosure statements have

been made and the place of recovery was already known to the Investigating Officer.

14. He further contended that the case of the prosecution is also doubtful as the story of the prosecution is entirely based on the testimony of the official witnesses and there are certain discrepancies in their statements.

15. On the other hand Mr. R.S.Doon, Learned Assistant Advocate General, Haryana has pleaded that mere non joining of the independent witness is no ground to discard the prosecution story. Moreover, the Investigating Officer has made the efforts but nobody agreed to join. He further contended that the particulars of appellants Krishan Kumar and Virender Singh @ Dhirender Singh @ Billu were disclosed by appellant Dayanand. Thereafter, they were apprehended by the Investigating Officer. They have suffered the disclosure statements and pointed out the place of recovery. They have also been identified by the prosecution witnesses in the Court. So, there is no doubt about their identity. He further contended that there is no question of any false implication as the Investigating Officer and the other prosecution witnesses were not having any enmity with the appellants. Such huge quantity of the poppy straw can not be planted by the police officials from their own sources. Thus, he pleaded that the conviction of the

appellants has been rightly recorded by the learned trial Court.

16. I have duly considered the aforesaid contentions.

17. The recovery in this case has been effected by chance. The Investigating Officer was not having any prior secret information against the appellants. He was just present at Pabra-Balak Road in connection with patrolling when Tata 709 bearing registration no. RJ-02-G-3621 was spotted coming from the side of village Balak. The said vehicle was intercepted on the basis of suspicion and consequently from the search of the vehicle 9 bags containing poppy straw were recovered. So, the recovery in this case has been effected suddenly by chance. The Investigating Officer had no opportunity in that eventuality to associate any independent witness. Moreover, in the cross-examination he has stated that he tried to join the public witness who were passing over nearby, but they refused to join. But, he further deposed that he did not mention their names and addresses in their record nor took any action against them. But, it is well settled principle of law by this time that mere non-association of the independent witness is itself is no ground to throw away the prosecution case. The testimonies of the official witnesses are also required to be treated in the same manner as the

testimony of any other witness. The presumption that a person had acted honestly applies as much in favour of a police personnel as that of any other person. It is not a proper judicial approach to distress and suspect them without any good ground. The Hon'ble Supreme Court in case **Ram Swaroop Vs. State (Government of N.C.T of New Delhi) (2013) 14 Supreme Court Cases 23** has laid down that there is no absolute rule that police officials can not be cited as a witness and their depositions should be treated with suspicion since generally publicmen are reluctant to come forward to depose before the Court and therefore prosecution case can not be doubted for non-examination of the independent witness. The similar ratio of law has been laid down by the Hon'ble Apex Court in case **Kashmiri Lal Vs. State of Haryana (2013) 6 Supreme Court Cases 595**, wherein it has been laid down as under:-

“As far as the first submission is concerned, it is evincible from the evidence on record that the police officials had requested the people present in the “dhaba” to be witnesses, but they declined to cooperate and, in fact, did not make themselves available. That apart, there is no absolute command of law that the police officers cannot be cited as witnesses and their testimony

should always be treated with suspicion. Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and trustworthy, the Court can definitely act upon the same. If in the course of scrutinizing the evidence, the Court finds the evidence of the police officer as unreliable and untrustworthy, the Court may disbelieve him but it should not do so solely on the presumption that a witness from the Department of Police should be viewed with distrust.”

18. Thus, mere non joining of the independent witness is no ground to discard the prosecution version.

19. Learned counsel for the appellants has not been able to point out any material contradiction with respect to the recovery of the contraband from the possession of appellant Dayanand and his apprehension at the spot alongwith Tata 709 carrying nine bags containing poppy straw. Learned counsel for the appellants has also not been able to point out any motive for the false implication of appellant Dayanand. PW-2 ASI Dharam Singh, PW-3 ASI Karan Singh the witnesses of recovery and PW-9 Kapoor Singh the Investigating Officer of the case have given the

consistent version about the apprehension of appellant Dayanand at the spot and the recovery of the contraband from his possession.

20. However, I found substance in the contentions raised by learned counsel for the appellants qua appellant Krishan Kumar and Virender Singh @ Dhirender Singh @ Billu. Admittedly, both these appellants were not apprehended at the spot. It was alleged that they fled away from the spot. It is further alleged that their particulars were disclosed by appellant Dayanand, the driver of the Tata 709.

21. As per the prosecution version, Inspector Kapoor Singh was accompanied by ASI Dharam Singh, ASI Karan Singh, PHC Ranvir Singh, Constable Ram Kumar and constable Satyawan, the driver of the police vehicle. So, there were six members of the police party. The occurrence has taken place at the day time i.e. at about 4.00.p.m on 20.05.2007 i.e. in broad day light. ASI Dharam Singh and Investigating Officer have stated that they were armed with the weapons. The police party was also having the police vehicle. As per the trial Court record, the age of appellant Krishan Kumar was about 60 years. In these circumstances, the story projected by the prosecution that appellant Krishan Kumar and Virender Singh @ Dhirender Singh @ Billu had managed to escape from the spot is not reliable.

22. The prosecution witnesses have even given the discrepant version about the manner of escape and chasing to these appellants. PW-2 ASI Dharam Singh has stated that appellants Krishan Kumar and Virender Singh @ Dhirender Singh @ Billu ran away from the spot towards village Balak in opposite directions to each other. But, PW-3 ASI Karan Singh stated that appellant Krishan Kumar and Virender Singh @ Dhirender Singh @ Billu ran towards north side. PW-9 Inspector Kapoor Singh stated that two persons ran from the place of occurrence towards west side of the road. So, all the three witnesses have given the discrepant version about the manner and direction of running away of appellants Krishan Kumar and Virender Singh @ Dhirender Singh @ Billu. PW-2 ASI Dharam Singh has stated that appellant Dayanand was apprehended at 50-60 (50/60) yards from the place where they were standing. But, PW-3 ASI Karan Singh stated that the driver of Tata 709 stopped the vehicle at a distance of 4-5 acres on seeing the police party. So, even the place from where appellant Krishan Kumar and Virender Singh @ Dhirender Singh @ Billu have alleged to escape is discrepant. PW-2 ASI Dharam Singh could not tell as to who had chased these appellants and up to how much distance they were chased. PW-3 ASI Karan Singh has stated that accused Virender Singh @ Dhirender

Singh @ Billu and Krishan Kumar were chased by Raj Kumar and Ranvir Singh. The Investigating Officer has also stated that he could not tell the name of the police officials who had chased them. The escape of the accused from the place of occurrence is a serious matter. But, the answers given by the prosecution witnesses in the cross-examination renders their escape itself doubtful. What to talk of the other prosecution witnesses even the Investigating Officer is not able to tell the name of the police officials who has chased appellants Krishan Kumar and Virender Singh @ Dhirender Singh @ Billu. All these facts indicates that the story of fleeing away of appellants Krishan Kumar and Virender Singh @ Dhirender Singh @ Billu has only been introduced to implicate them in the present case.

23. The prosecution has also not led the cogent and convincing evidence about the identity of these appellants. It is an admitted case that appellants Krishan Kumar and Virender Singh @ Dhirender Singh @ Billu were not earlier known to the Investigating Officer or any of the member of the police party. It is neither mentioned in the FIR nor in the statement of any of the prosecution witnesses that they had an opportunity to see appellant Krishan Kumar and Virender Singh @ Dhirender Singh @ Billu at the spot before they escaped. So, non of the prosecution witness had seen

appellants Krishan Kumar and Virender Singh @ Dhirender Singh @ Billu at the spot so that they could identify him later on. PW-3 ASI Karan Singh has stated that they were chased by Raj Kumar and Ranvir Singh. But, both these witnesses have not been examined by the prosecution. They were the witnesses who could have identified them in the Court as they might had some opportunity to see the accused while they were chasing them. But, they have been withheld by the prosecution. It is an admitted fact that no test identification parade of the appellants has been held after their arrest.

24. In the FIR, it has been mentioned that names of appellants Krishan Kumar and Virender Singh @ Dhirender Singh @ Billu were disclosed by appellant Dayanand. But, such disclosure by co-accused is not admissible in evidence. To support this view reference can be made to case **Union of India Vs. Bal Mukand and others, 2009(2) RCR (Criminal) 575.**

25. There is no dispute with the proposition of law that the identification of an accused in the Court is the substantive evidence and can be relied upon. But, the identification of an accused for the first time in the Court by the witnesses is always the weak evidence. To support this view reference can be made to case **Niranjan @ Niranjan**

Singh Vs. State of Haryana, 2008(2) PLR 197. The Hon'ble Supreme Court in case **Rabindra Kumar Pal @ Dara Singh Vs. Republic of India, 2011(1) RCR (Criminal) 641** has laid down that identification of an accused by the witness in dock for the first time though permissible but can not be given credence without further corroborative evidence. Similarly, in case **Musheer Khan @ Badshah Khan & Anr. Vs. State of Madhya Pradesh, 2010(1) RCR(Criminal) 817,** the Hon'ble Supreme Court has laid down that evidence of the identification of accused for the first time in the Court is inherently weak in character. The Hon'ble Supreme Court in Case **Kanan and others Vs. State of Kerela, AIR 1979 S.C 1127** has laid down that the identification of the accused for the first time in the Court by the witness who was not previously known to him is valueless.

26. But, at the same time the identification of an accused in the Court being the substantive evidence can be relied upon in the cases where the accused were previously known to the witnesses, they had sufficient opportunity to observe and see the features of the culprit at the scene of crime or the victim or the witnesses had any encounter or interaction with the accused during the course of occurrence affording sufficient opportunity to them to note

down the appearance of the accused. In the instant case, admittedly appellants Krishan Kumar and Virender Singh @ Dhirender Singh @ Billu were not earlier known to the Investigating Officer or any of the prosecution witness. They have also not stated anywhere that they had seen both these appellants at the place of occurrence before they escaped or even while escaping. Their name in the FIR has only been mentioned on the basis of disclosure made by appellant Dayanand, which is not admissible in evidence. Investigating Officer Kapoor Singh was even silent about the identity of these appellants at the time of making the statement in the Court. In these circumstances, there are serious doubt about the identity of appellants Krishan Kumar and Virender Singh @ Dhirender Singh @ Billu.

27. Thus, the story projected by the prosecution with respect to the escape of the appellants Krishan Kumar and Virender Singh @ Dhirender Singh @ Billu is highly improbable and no cogent evidence has been adduced by the prosecution to establish their identity. It appears that appellant Krishan Kumar has only been implicated as he was the registered owner of the Tata 709 which was being used to transport the contraband. But, the learned trial Court has framed the charges only under Section 15 of the Act. No charge has been framed against appellant Krishan

Kumar by the learned trial Court under Section 8, 25 or 29 of the Act. Nor, it is the case of the prosecution that appellant Krishan Kumar had voluntarily allowed his vehicle to be used for transporting the contraband and had thereby abetted or conspired with appellant Dayanand. Rather, the prosecution has projected the story that he himself was carrying the contraband, but had escaped from the spot which is not established from the material on record.

28. Thus, keeping in view of my aforesaid discussion, there is no escape from the conclusion that appellant Dayanand was found in conscious possession of 369 kg of poppy straw being carried in Tata 709 bearing registration No. RJ-02-G-3621 on which he was driving. But, the prosecution has not been able to establish beyond shadow of reasonable doubt the charges against appellants Krishan Kumar and Virender Singh @ Dhirender Singh @ Billu. The sentence awarded to appellant Dayanand is also just and appropriate.

29. Consequently, the appeal against conviction qua appellants Krishan Kumar and Virender Singh @ Dhirender Singh @ Billu is hereby allowed. Their conviction and sentence is hereby set aside and they stands acquitted of the charges. Their bail bonds stand discharged. However, the appeal qua appellant Dayanand has no merits and the

same is hereby dismissed. His conviction and sentence as recorded by the learned trial Court is hereby maintained. The accused-appellant Dayanand is on bail. His bail stand cancelled. He shall surrender within 15 days from the date of this judgment before the learned Chief Judicial Magistrate, Hisar, who shall send him to jail to undergo the remaining part of his sentence. If, he fails to surrender, the learned Chief Judicial Magistrate, Hisar, shall take coercive steps to secure his presence and send him to jail to undergo the remaining part of the sentence.

May 14, 2015
s.khan

(DARSHAN SINGH)
JUDGE