

**IN THE HIGH COURT OF JUDICATURE FOR THE STATES OF
PUNJAB AND HARYANA, AT CHANDIGARH.**

Date of Decision: July 31, 2015

Criminal Appeal D-677-DB of 2010

Mehboob Khan son of Wazir Khan ---Appellant

Versus

State of Punjab ---Respondent

WITH

Criminal Appeal D-811-DB of 2010

Sanjay Rathore son of Ram Parkash and others ---Appellants

Versus

State of Punjab ---Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN

HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present: Shri Sanjeev Manhas, Advocate for the appellant
(In Criminal Appeal D-677-DB of 2010)

Shri R.K. Rana, Advocate for the appellants
(In Criminal Appeal D-811-DB of 2010)

Shri S.S. Dhaliwal, Additional Advocate General, Punjab, for
the respondent -State

1. *Whether Reporters of local papers may be allowed to see the Judgment?
Yes/No*
2. *To be referred to the Reporter or not? Yes/No*
3. *Whether the judgment should be reported in the Digest? Yes/No*

MAHAVIR S. CHAUHAN, J.

To assail judgment of conviction/order of sentence dated

February 15, 2010 whereby learned Judge, Special Court, Patiala (here-in-after referred to as the 'trial court') has convicted and sentenced them to rigorous imprisonment for a term of eleven years with fine amounting to Rs. 1,50,000/- and in default of payment of fine to further rigorous imprisonment for one year, each, under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act'); and to seek their acquittal, appellant Mehboob Khan has preferred Criminal Appeal D-677-DB of 2010 and appellants Sanjay Rathore son of Ram Parkash, Sameer Khan, Sanjay Rathore son of Ram Charan and Mukesh Rathore have brought Criminal Appeal D-811-DB of 2010. In view of commonality of facts and circumstances and provisions of law attracted to the matter, both these appeals are being disposed of by this common judgment being passed in Criminal Appeal D-677-DB of 2010.

Factual matrix:

02. On November 12, 2008 Sub Inspector Bikramjit Singh Brar (later promoted as Inspector) (PW5) (here-in-after referred to as 'the Investigating Officer'), accompanied by a few police personnel, had laid a picket near Ambala Octroi Post, Rajpura. At or around 10.30 a.m., while talking to Vijay Kumar (PW), he spotted a military truck bearing No. 08D178898E coming from the side of Ambala being driven by a Hindu gentleman in civvies. Another Hindu gentleman in civil dress was occupying the seat by driver's side. On suspicion he, with the help of his fellow police officials, made the truck to stop and found that four more persons, in civil clothes, were sitting over plastic bags loaded in the hind portion of the truck. Investigating Officer made the occupants of the truck to

board down. On his asking the person who was on the wheel disclosed his name as Mehboob Khan, the one who was occupying the seat by the side of the driver revealed his name as Rajat Bansal (Juvenile), and the four others, who were sitting over the bags in the hind portion of the truck disclosed that they were named Sameer Khan, Mukesh Rathore, Sanjay Rathore son of Ram Parkash and Sanjay Rathore son of Ram Charan. They could not produce any proof to establish their identity as army personnel. Investigating Officer told the accused that he suspected them to carry some contraband in the truck and intended to frisk it but they had a right to get the frisking done in the presence of a Gazetted Officer or a Magistrate. Accused opted to have the truck frisked in the presence of a Gazetted Officer. Investigating Officer prepared a memorandum, Exhibit PB, and requested on phone Dy. S.P. Bhupinder Singh (PW4) who reached the spot and after disclosing his identity, told the accused that he intended to have the bags loaded in the truck frisked. Accused consented to have the bags frisked in his presence. A memorandum, Exhibit PC, was recorded in this regard. Under the supervision of Dy. S.P. Bhupinder Singh (PW4) Investigating Officer recovered eighteen bags containing Poppy Husk from the truck; and separated two samples, each weighing 250 grams, from each of the eighteen bags. Remainder weighed 27.5 kilograms, each bag. Investigating Officer sealed the sample parcels and bags containing the remainder with his seal bearing impression 'BS', prepared sample seal, Exhibit P1, and took the sealed parcels of samples and remainder, as also the truck, in police possession vide memorandum, Exhibit PD.

Investigation:

03. As unauthorized possession of Poppy Husk amounts to an offence punishable under Section 15 of the Act, Investigating Officer wrote a note (commonly called 'Ruqa'), Exhibit PM, and despatched it, through Head Constable Satnam Singh, to the Police Station. Based upon note, Exhibit PM, ASI Sadha Singh recorded a formal First Information Report (for short 'FIR'), Exhibit PM/1, at Police Station, City, Rajpura.

04. Investigating Officer arrested the accused; drew a visual site plan (Exhibit PN) of the place of recovery; recorded statements of witnesses; deposited the case property with Moharrir Head Constable Nahar Singh (PW3); and on the following day produced the accused and Inventory, Exhibit PQ/2, before the learned Duty Magistrate who passed order, Exhibit PQ/3, certifying the Inventory to be correct.

05. One set of sealed sample parcels was sent to Chemical Examiner through Head Constable Daler Singh (PW1). After chemical examination of the contents of the sample parcels, Chemical Examiner, vide report, Exhibit PN, opined that contents of the sample parcels were "Chura Poppy Heads" (say Poppy Husk).

06. As regards the appellants, on completion of investigation, Officer-in-charge of the Police Station prepared a report in terms of sub-section (2) of Section 173 of the Code of Criminal Procedure, 1973 (herein-after referred to as 'the Code') and presented it before learned trial court.

07. Rajat Bansal being a juvenile, case pertaining to him was forwarded to Juvenile Justice Board for inquiry.

Proceedings before the learned trial court:

08. Learned trial court, on hearing the prosecutor and the defence

and appraisal of the report and its enclosures formed an opinion that there were grounds for presuming that the appellants had committed an offence punishable under Section 15 of the Act and charged them accordingly. Appellants pleaded not guilty to the charge and claimed to be tried.

09. During trial, Inspector Bikramjit Singh Brar (PW5) reiterated on solemn affirmation the whole prosecution story while Dy. S.P. Bhupinder Singh (PW4) and SI Amrik Singh (PW2) supported him to the extent of recovery of Poppy Husk from possession of the accused. HC Nahar Singh (PW3) stated in his affidavit, Exhibit PM, that the case property, including the sealed bags containing the remainder and sealed sample parcels, were deposited with him and he had handed over one set of sealed sample parcels to HC Daler Singh (PW1) for being taken to the Chemical Examiner. HC Daler Singh (PW1) in his affidavit, Exhibit PA, deposed that he delivered one set of sealed sample parcels, with seals intact, in the office of the Chemical Examiner. As aforesaid, Chemical Examiner reported vide report, Exhibit PN, that chemical analysis of the contents of sample parcels revealed that these were “Chura Poppy Heads”.

10. All the incriminating circumstances appearing in the evidence of the prosecution, when put to the appellants in terms of Section 313 of the Code, were denied by them and plea of their innocence and false implication was reiterated.

11. By way of evidence in defence, appellants examined Mohammed Hapheej (DW1) to say that appellant Mehboob Khan is a labourer; he has never been involved in any criminal case; and in the month of December 2008 he (DW1, Mohammed Hapheej) learnt that police had

falsely implicated him (appellant Mehboob Khan) in the instant case; Head Constable Karnail Singh (DW2) to bring on record an entry, Exhibit DA, in Register No. 19; and same Head Constable Karnail Singh (DW3) to bring on record copy of FIR No. 09 of 2008 (Exhibit DX) recorded at Police Station, City, Rajpura under Section 18 of the Act to show that Vijay Kumar (PW) was associated as a witness in that case as well.

12. Learned trial court, on hearing the prosecutor and the defence and on appraisal of the evidence, came to the conclusion that the prosecution was able to prove appellants' guilt beyond reasonable doubt and, accordingly, vide judgment of conviction/order of sentence dated February 15, 2010, convicted and sentenced them as here-in-before stated.

In criticism and defence of impugned judgment/order.

13. We have heard learned counsel for the parties besides examining the record.

14. On behalf of the appellants impugned judgment/order has been subjected to a multi-faceted severe attack saying that these cannot be allowed to sustain because the learned trial court, while recording a finding of conviction against the appellants, has turned a blind eye towards the following aspects:

- a) provisions of Section 50 of the Act would have been sufficiently complied with only if each of the appellants was individually apprised of his legal right to have search of the truck and his person before a Gazetted Officer or a Magistrate but the offers, Exhibits PB and PC, given by the Investigating Officer (PW5) and Dy. S.P. Bhupinder Singh (PW4), respectively, undeniably are joint offers and, as such, are illegal. Thus, recovery of the contraband, if any, and the trial, stand vitiated;

- b) appellants are labourers by avocation and no evidence, whatsoever, has been adduced by the prosecution to show that appellant Mehboob Khan was employed as a driver on the truck in question and if and how the other appellants came to occupy it;
- c) case of the prosecution is manifestly false as is apparent from the fact that only police witnesses have been examined to support it and the only public witness, namely Vijay Kumar is a stock witness of the prosecution as is clear from the fact that in another FIR (Exhibit DX) also he was associated as a witness by the police and has been kept away from the witness stand in this case for fear of truth being revealed by him;
- d) as admitted by SI Amrik Singh (PW2), FSL Form was not filed on the spot and thereby a very important link in the story of the prosecution has been allowed to remain unsupplied;
- e) conscious possession of the appellants over the contraband has remained unproved; and
- f) even if case of the prosecution is held to be proved beyond any doubt still the appellants deserve leniency they being poor labourers and only bread winners for their respective families.

15. Learned State counsel, nevertheless, has defended the impugned judgment/order and has argued with equal intensity that the contraband having been recovered from a truck and not from person of the accused, provisions of Section 50 of the Act were not attracted to the case in hand; it has remained undisputed that when the truck in question was intercepted, appellant Mehboob Khan was driving it while the other appellants were sitting over the bags full of Poppy Husk in the hind portion thereof; Vijay Kumar (PW) cannot be termed as stock witness only because he happened to be associated with another case of the prosecution and no adverse inference can be drawn against the case of the prosecution on account of this witness having been given up more so in view of the fact that case of

the prosecution has been proved to the hilt in the evidence of police witnesses who are as good witnesses as any one else and have passed the acid test of cross-examination successfully; statement of SI Amrik Singh (PW2) that FSL Form was not prepared on the spot is without any basis and is inconsequential because Investigating Officer (PW5) has not been questioned by the defence in this regard; circumstances available on record are sufficient to reach a conclusion that the appellants were in conscious possession of the contraband; and in view of the facts and circumstances of the case appellants do not deserve any leniency.

16. No other or further argument has been raised on either side.

Compliance of Section 50 of the Act:

17. The very first contention that has been raised by the learned counsel for the appellants relates to non-compliance of Section 50 of the Act as the offers, Exhibits PB and PC, are joint offers. It is undisputed that the bags containing poppy husk were seized from a truck carrying registration number and description of a military vehicle which was being driven by appellant Mehboob Khan and the other appellants were sitting over the bags full of Poppy Husk in the rear portion thereof. Thus, it is not a case of personal search of the appellants. In ***Megh Singh v. State of Punjab, 2003(4) R.C.R.(Criminal) 319 : (2003) 8 SCC 666***, it has been held that Section 50 only applies in case of personal search of a person, but it is not extended to a search of a vehicle or a container or a bag or premises.

18. In ***State of H.P. v. Pawan Kumar, 2005(2) R.C.R. (Criminal) 622: (2005) 4 SCC 350***, it has been held that:

"10. We are not concerned here with the wide definition of the word "person", which in the legal world includes corporations, associations or body

of individuals as factually in these type of cases search of their premises can be done and not of their person. Having regard to the scheme of the Act and the context in which it has been used in the section it naturally means a human being or a living individual unit and not an artificial person. The word has to be understood in a broad common-sense manner and, therefore, not a naked or nude body of a human being but the manner in which a normal human being will move about in a civilised society. Therefore, the most appropriate meaning of the word "person" appears to be - "the body of a human being as presented to public view usually with its appropriate coverings and clothing". In a civilised society appropriate coverings and clothings are considered absolutely essential and no sane human being comes in the gaze of others without appropriate coverings and clothings. The appropriate coverings will include footwear also as normally it is considered an essential article to be worn while moving outside one's home. Such appropriate coverings or clothings or footwear, after being worn, move along with the human body without any appreciable or extra effort. Once worn, they would not normally get detached from the body of the human being unless some specific effort in that direction is made. For interpreting the provision, rare cases of some religious monks and sages, who, according to the tenets of their religious belief do not cover their body with clothings, are not to be taken notice of. Therefore, the word "person" would mean a human being with appropriate coverings and clothings and also footwear.

11. A bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even remotely be treated to be part of the body of a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a thaila, a jhola, a gathri, a holdall, a carton, etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. In common parlance

it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word "person" occurring in Section 50 of the Act."

Similar view has been expressed in *Jarnail Singh v. State of Punjab*, 2011(1) R.C.R. (Criminal) 925 : 2011(1) Recent Apex Judgments (R.A.J.) 603 : (2011) 3 SCC 521 and *Ram Swaroop v. State (Government of NCT of Delhi)*, 2013(3) R.C.R.(Criminal) 946 : 2013(4) Recent Apex Judgments (R.A.J.) 594 : (2013) 14 SCC 235.

19. Another circumstance that needs mention here is that the Investigating Officer did not have prior information that the contraband was being taken by the accused in the truck. It was, in fact, intercepted on suspicion because inspite of it having a number and description of a military truck, was being driven by a person (appellant Mehboob Khan) in civvies and the person sitting by his side was also not wearing a military uniform. When the truck stopped the other appellants were found sitting over the eighteen bags and were wearing civilian clothes. To put it straight, it was a chance recovery.

20. As revealed by Exhibits PG, PH, PJ, PK and PL, personal search of the accused, undeniably, yielded no incriminating material.

21. In view of the aforesaid, the submission that non-compliance of Section 50 of the Act vitiates the recovery and trial leaves us unimpressed.

Non examination of public witness and examination of police witnesses only:

22. Another submission of the learned counsel for the appellants is that no independent witness has been examined to substantiate the case of the prosecution and it is based on the depositions of police witnesses and

that the only public witness shown to be associated with the investigation happens to be a stock witness of the police and has been kept away from the witness box. True, Vijay Kumar, who was associated with the proceedings in the instant case was also a witness in another case arising out of FIR No. 09 of 2008 (Exhibit DX) and has not been examined as a witness by the prosecution. Explanation offered by the prosecution is that the investigating agency was of the view that he had been won over by the appellants. There is no material to indicate that statement of the prosecutor to give up Vijay Kumar (PW) was not bona fide and honest. The very fact that this witness has been given up as won over by the defence should suffice to negate appellants' plea that he is a stock witness of the police. Even otherwise, a person cannot be termed as a stock witness only because he happens to be associated with another case of the prosecution. Contention of the appellants, perhaps, could carry substance if PW Vijay Kumar was shown to be associated as a witness in a number of cases. Further, were it that the appellants believed that Vijay Kumar's evidence was likely to demolish case of the prosecution and prove their innocence, they could examine him as a witness in their defence but they have not been audacious enough to bring him as a witness in defence. In such a situation, no adverse inference can be drawn for non-examination of the said witness. That apart, the case of the prosecution cannot be rejected solely on the ground that independent witness has not been examined when, on perusal of the evidence on record, it is found that the case put forth by the prosecution has been established by the police witnesses whose evidence is found to be worthy of credit. When evidence of the police witnesses is trustworthy and credible, there is no

reason not to base the conviction on their evidence. In this regard, it is profitable to reproduce a passage from *State (Govt. of NCT of Delhi) v. Sunil, 2001(1) R.C.R. (Criminal) 56: (2001) 1 SCC 652*, which reads as follows:

"We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust. We are aware that such a notion was lavishly entertained during the British period and policemen also knew about it. Its hangover persisted during post-independent years but it is time now to start placing at least initial trust on the actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognized even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions."

23. Similarly in *Karamjit Singh V. State, AIR 2003 SC 1311* ,

Hon'ble Supreme Court observed as under:

"The testimony of police personnel should be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon. The presumption that a person acts honestly applies as much in favour of police personnel as of other persons and it is not a proper judicial approach to

distrust them without good grounds.”

24. In the case at hand, the evidence of PWs Inspector Bikramjit Singh Brar, Dy. S.P. Bhupinder Singh and Sub Inspector Amrik Singh is unimpeachable and beyond reproach as they have passed the litmus test of cross examination and creditworthiness successfully and the defence has failed to bring anything on record either in the cross examination of these witnesses or by bringing evidence in defence that they were either inimical towards the appellants or, by falsely implicating the appellants, have derived any benefit for themselves or for someone they might be interested in. Therefore, their evidence has been rightly relied upon by the learned trial court to record a finding of conviction against the appellants. It is well settled law that what is necessary for proving the prosecution case is not the quantity but the quality of the evidence. Evidence of Vijay Kumar would have served no purpose except adding to multiplicity of witnesses.

Non preparation of FSL Form at the spot:

25. No doubt SI Amrik Singh (PW2) has stated in his cross examination that FSL Form was not prepared on the spot but his statement to this effect is without any basis and is against record. FSL Form (say Form No. 29) and specimen seal are available on record as Exhibits PL and P1, respectively. Inspector Bikramjit Singh Brar (PW5), the Investigating Officer of the case has not been cross examined with regard to this and he has not been confronted with a suggestion that no FSL Form was prepared on the spot. Plea of the defence, therefore, fails and is rejected.

Appellants' connection with the recovered truck and their conscious possession over the contraband:

26. The next ground of attack against the impugned judgment/order

pertains to factum of conscious possession. The submission of the learned counsel for the appellants is that they were only moving in the truck and had no knowledge what the bags contained. As the evidence on record would show, one of the accused, namely Mehboob Khan was on the wheel and another (juvenile, Rajat Bansal) was sitting by the side of the driver while the rest of the accused were sitting over eighteen bags of Poppy Husk, weighing 504 kilograms, in the hind section of the truck which carried the registration number and description of a military vehicle. The appellants have not taken the plea that they had taken lift in the truck and were not aware of the contents of the bags. Their presence in the truck has been proved by Inspector Bikramjit Singh Brar (PW5), Dy. S.P. Bhupinder Singh (PW4) and SI Amrik Singh (PW2). These witnesses have not been confronted with a suggestion that appellant Mehboob Khan was not driving the truck or that the bags were not loaded in the truck or that the other appellants were not sitting over the bags carrying the contraband or that they were not aware of the contents of the bags. In such a situation statements made by these witnesses have to be taken to have remained unchallenged because it is an age old rule that if you dispute the correctness of the statement of a witness you must give him opportunity to explain his statement by drawing his attention to that part of it which is objected to as untrue, otherwise you cannot impeach his credit. There cannot be any dispute with respect to the settled legal proposition that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his

credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872 (for short 'the Evidence Act'), which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his examination in chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter-alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him, is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach credit of a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses. [See: ***Khem Chand v. State of Himachal Pradesh***, AIR 1994 SC 226; ***State of U.P. v. Nahar Singh (dead)***, AIR 1998 SC 1328; ***Rajinder Pershad (Dead) by L.Rs. v. Darshana Devi (Smt.)***, AIR 2001 SC 3207; and ***Sunil Kumar v. State of Rajasthan***, AIR 2005 SC 1096, ***Laxmibai (Dead) thr. Lrs. & Anr. v. Bhagwantbuva (Dead) thr. Lrs. & Ors.***, Civil Appeal No. 2058 of 2003 decided on January 29, 2013 (SC)]

27. Further, it was not a small bag lying in a corner of the truck that the accused-appellants could advance the plea that they were not aware of it. In the instant case, there were eighteen bags carrying 504 kilograms Poppy Husk being carried in the truck. Appellants' presence, which has been proved, establishes their control over the bags. The circumstances clearly

establish that they were aware of the Poppy Husk inside the bags and in such a situation; it is difficult to accept that they were not in conscious possession of the said bags.

28. In this context reference to the decision in ***Madan Lal v. State of H.P., 2003(4) R.C.R. (Criminal) 100: (2003) 7 SCC 465*** would be profitable wherein it has been held thus:

"22. The expression "possession" is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in ***Supdt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja (1979) 4 SCC 274*** to work out a completely logical and precise definition of "possession" uniformly applicable to all situations in the context of all statutes.

23. The word "conscious" means awareness about a particular fact. It is a state of mind which is deliberate or intended.

24. As noted in ***Gunwantlal v. State of M.P., (1972) 2 SCC 194*** possession in a given case need not be physical possession but can be constructive, having power and control over the article in the case in question, while the person to whom physical possession is given holds it subject to that power or control.

25. The word "possession" means the legal right to possession (see ***Heath v. Drown (1972) 2 All ER 561***). In an interesting case it was observed that where a person keeps his firearm in his mother's flat which is safer than his own home, he must be considered to be in possession of the same. (See ***Sullivan v. Earl of Caithness (1976) 1 All ER 844.***)"

29. In ***Dharampal Singh v. State of Punjab, 2010(4) R.C.R. (Criminal) 504 : 2010(5) Recent Apex Judgments (R.A.J.) 432 : (2010) 9 SCC 608***, it has been ruled that the expression "possession" is not capable of precise and complete logical definition of universal application in the context of all the statutes. Recently, in ***Mohan Lal v. State of Rajasthan, 2015(2) R.C.R. (Criminal) 779 : 2015(3) Recent Apex Judgments (R.A.J.)***

72 : (2015) 5 SCALE 330, after referring to certain authorities, Hon'ble Supreme Court has held as follows:

"From the aforesaid exposition of law it is quite vivid that the term "possession" for the purpose of Section 18 of the NDPS Act could mean physical possession with animus, custody or dominion over the prohibited substance with animus or even exercise of dominion and control as a result of concealment. The animus and the mental intent which is the primary and significant element to show and establish possession. Further, personal knowledge as to the existence of the "battel" i.e. the illegal substance at a particular location or site, at a relevant time and the intention based upon the knowledge, would constitute the unique relationship and manifest possession. In such a situation, presence and existence of possession could be justified, for the intention is to exercise right over the substance or the chattel and to act as the owner to the exclusion of others. In the case at hand, the appellant, we hold, had the requisite degree of control when, even if the said narcotic substance was not within his physical control at that moment. To give an example, a person can conceal prohibited narcotic substance in a property and move out thereafter. The said person because of necessary animus would be in possession of the said substance even if he is not, at the moment, in physical control. The situation cannot be viewed differently when a person conceals and hides the prohibited narcotic substance in a public space. In the second category of cases, the person would be in possession because he has the necessary animus and the intention to retain control and dominion."

30. In view of the aforesaid enunciation of law, once possession is found, the accused is presumed to be in conscious possession as has been held in **Ram Singh v. Central Bureau of Narcotics, 2011(2) R.C.R. (Criminal) 850 : 2011(3) Recent Apex Judgments (R.A.J.) 1 : (2011) 11 SCC 347**. If the accused takes a stand that he was not in conscious possession, he has to establish the same, as has been held in **Dharampal Singh** (supra). As the materials brought on record would show, one of the

appellants was driving, and others were sitting in, the truck; their presence in the truck has been clearly established; and it is also proved that there were eighteen bags of Poppy Husk in the truck and the accused-appellants were in control thereof. Therefore, there can be no iota of doubt that they were in conscious possession of the same. In view of the aforesaid analysis, we do not find any force in the submission of the learned counsel for the appellants that the appellants had no connection with the truck and were not in conscious possession of the contraband.

Quantum of sentence:

31. Last submission that the appellants deserve leniency they being poor labourers and only bread winners for their respective families deserves consideration and substantive sentence awarded to the appellants is liable to be reduced a little as they are not shown to be involved in any other criminal case and, as claimed by them, are the only bread winners for their respective families.

Conclusion:

32. In the consequence, while maintaining the judgment of conviction, substantive sentence awarded to the appellants is reduced to rigorous imprisonment for ten years. Sentence of fine and default clause are, however, maintained.

33. With above modification in the order on quantum of sentence, the appeals fail and are dismissed.

[T.P.S. Mann]
Judge

[Mahavir S. Chauhan]
Judge

July 31, 2015
adhipani