

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-494-SB of 2008

DATE OF DECISION: AUGUST 20, 2015

BOOTA SINGH & ANOTHER

...APPELLANTS

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MS. G.K.MANN, ADVOCATE FOR THE APPELLANTS.
MR. PREMJIT SINGH HUNDAL, ADDL.A.G., PUNJAB.

M. JEYAPPAUL, J.

1. Accused Boota Singh, Bakhshish Singh and Bhagwan Singh were convicted under Section 15(c) of the Narcotics & Psychotropic Substances Act, 1985 (for short 'NDPS Act') and were each sentenced to undergo 10 years R.I. and to pay a fine of ₹1 lac and in default, to undergo a further period of 1 year R.I. each. Accused Boota Singh and Bhagwan Singh have jointly challenged the above judgement of conviction and sentence passed by the trial Court. A separate appeal preferred by accused Bakhshish Singh in CRA-S-581-SB of 2008 abated on 23.4.2015 as he had died.

2. It is the case of the prosecution that accused Boota Singh, Bakhshish Singh and Bhagwan Singh were found in conscious possession of 45 bags of poppy husk each containing 35 kgs. without holding any valid permit or licence.

3. On 2.6.2005, at about 12.00 noon, PW2 SI Major Singh

proceeded alongwith the police party in connection with patrolling duty. When the police party reached the area of village Walayat Shahwala, a truck bearing registration No.PB10-C-9535 came from the side of village Varpal. The driver of the truck stopped the vehicle at a distance of 30 karams behind the railway crossing and tried to run away from the spot after getting down from the truck. PW2 apprehended the driver of the truck at the spot with the help of other police officials. Two more persons also were sitting in the cabin of the truck. They were also apprehended by PW2. On enquiry, it was found that the truck was driven by accused Boota Singh. Two other persons sitting near accused Boota Singh were accused Bakhshish Singh and Bhagwan Singh.

4. PW2, having suspected that some intoxicant materials were kept loaded in the truck, disclosed to the accused that he intended to search the truck. As the accused informed PW2 that search should be conducted in the presence of a gazetted officer, PW1 DSP Jasdeep Singh was contacted. After his arrival, PW2 made a search of the truck in his presence and found 45 bags of poppy husk each containing 35 kgs. Two samples of 200 gms. of poppy husk from each of the bags were lifted and separately parceled. The bulk contents were separately packed. The samples and the bulk contents were separately parceled and sealed. The entire case property alongwith the truck was taken into possession. One Lakhwinder Singh, an independent witness, was also associated for recovery of material objects. PW2 prepared rough site plan Ex.P14. After disclosing the grounds of arrest, all the three accused were arrested by PW2. On 3.6.2015, PW2 produced the accused and the entire case property alongwith the inventory Ex.P12 before the

learned Judicial Magistrate who drew one sample of 200 gms. of poppy husk from each of the bags. The respective sample parcels and the parcels of bulk contents were properly packed and sealed. PW3 ASI Jaswant Rai, one of the witnesses to the recovery and PW4 Constable Nirvail Singh who deposited the sample parcels alongwith CFSL form and sample seal chit with the FSL were examined by the prosecution.

5. The accused have contended that they were falsely implicated in this case in spite of the fact the they were innocent.

6. The trial Court having adverted to the evidence on record arrived at a conclusion that the accused were found transporting 45 bags of poppy husk each containing 35 kgs.

7. PW2 has categorically deposed that the accused having spotted the police party got down from the truck bearing registration No.PB10-C-9535 and made an attempt to escape from the clutches of the police party. The accused were apprehended on the spot. The vehicle was checked by PW2 in the presence of PW1. The truck contained 45 bags of poppy husk each containing 35 kgs. The samples had been drawn and sent for examination. The Forensic Science Laboratory report would disclose that all the samples were found intact. The FSL report would disclose that the samples contained poppy husk. PW3 has spoken to the recovery effected by PW2 in his presence. PW4 deposed that it was he who took the samples from the malkhana and entrusted to the Forensic Science Laboratory for test.

8. There is no reason to reject the above evidence adduced by the prosecution. The recovery of the contraband from the truck driven by

accused Boota Singh and occupied by accused Bhagwan Singh was established by the prosecution. The FSL report would demonstrate that the samples contained poppy husk.

9. Learned counsel appearing for the appellants would submit that no question was put to the accused under Section 313 Cr.P.C. as to their being in conscious possession of poppy husk. *Per contra*, learned Addl.A.G., Punjab submitted that accused Boota Singh was found driving the vehicle while accused Bhagwan Singh was found sitting near the driver in the cabin of the truck. Both of them also had made an attempt to run away from the scene after alighting from the truck. Therefore, the conduct of the accused would go to show that they were in conscious possession of the contraband, it was further submitted by him.

10. The truck contained only 45 bags of poppy husk. No other commodity was transported through the truck by the accused. Therefore, accused Boota Singh who drove the vehicle cannot contend that he, in fact, transported some other commodity and a small quantity of contraband had been mixed in the midst of other commodities. Accused Bhagwan Singh had got down from the truck on seeing the police party and started running alongwith accused Boota Singh who drove the vehicle. If at all, accused Bhagwan Singh had no concern with the commodities transported through the truck, he would not have got down from the truck on seeing the police party and made an attempt to run away. Further, accused Bhagwan Singh had come out with a false plea in his statement under Section 313 Cr.P.C. that he was picked up from the house and a false case was foisted on him. Such a defence plea is not at all found acceptable. The above facts and

circumstances would go to establish that accused Boota Singh and Bhagwan Singh were in conscious possession of the poppy husk transported through the truck which was seized by PW2.

11. It is true that no question was put to the accused under Section 313 Cr.P.C. as to the conscious possession of the poppy husk. The witnesses have spoken what they have perceived and witnessed at the place where the truck was recovered. The witnesses cannot speak about the conscious possession of the contraband by the accused. It is only the Court which has to decide whether the accused were in conscious possession in the facts and circumstances spoken to by the witnesses. The trial Court is not supposed to question what was not spoken to by the witnesses. Therefore, the trial Court had no occasion to put any question as regards the conscious possession of the accused. The accused cannot take advantage of such a situation, more especially when there is voluminous evidence to establish that they were in conscious possession of the contraband.

12. It was further submitted by learned counsel appearing for the appellants that independent witness Lakhwinder Singh was not examined by the prosecution. We find that Lakwinder Singh was cited as a witness, but not examined by the prosecution. The prosecution has examined PW3 ASI Jaswant Rai as a witness to the recovery. His evidence is found to be credible and trustworthy. Generally, there is some reluctance on the part of the independent witness to come and depose against the offenders of narcotics drugs and psychotropic substances. Under the above facts and circumstances, I am of the considered view that the case of the prosecution

cannot be disbelieved, just because an independent witness was not examined.

13. Learned counsel appearing for the appellants further submitted that CFSL form was not prepared at the spot. CFSL form was in fact carried by PW4 and entrusted to the laboratory. In the face of clinching evidence adduced by the prosecution, the failure to prepare CFSL form at the place of recovery does not go to the root of the matter. Learned counsel appearing for the appellants brought to the notice of this Court that there was a delay of 7 days in depositing the samples with the Forensic Science Laboratory. I find that the recovery was effected by PW2 in the presence of PW1 and PW3 on 2.6.2005. The samples were despatched through PW4 on 8.6.2005. The Chemical Examiner received the samples on 9.6.2005. The delay of about 7 days cannot be a ground to throw overboard the entire evidence adduced by the prosecution. Further, such a delay is found to be insignificant.

14. In the above facts and circumstances, I find that the prosecution has established beyond reasonable doubt that the accused-appellants were found in conscious possession of 45 bags of poppy husk. The trial Court has awarded only the minimum sentence. I do not find any reason to interfere with the well considered judgement of the trial Court. Therefore, the judgement of conviction and sentence passed by the trial Court qua the appellants stand confirmed and the appeal is dismissed.

15. Both the accused-appellants are on bail. Their bail bonds stand cancelled. They shall surrender within 15 days from the date of this

judgement before the Chief Judicial Magistrate, Ferozepur, who shall send them to jail to undergo the remaining part of their sentence. If they fail to surrender, the learned Chief Judicial Magistrate, Ferozepur shall take coercive steps to secure their presence and send them to jail.

August 20, 2015
Gulati

(M. JEYAPPAUL)
JUDGE