

**CRA-S-2805-SB of 2009 (O&M) with
CRA-S-3088-SB of 2009 (O&M)**

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CRA-S-2805-SB of 2009 (O&M)
Date of Decision : January 14, 2015**

Subhash @ Bhura

..... Appellant

Vs.

State of Haryana

..... Respondent

With

**CRA-S-3088-SB of 2009 (O&M)
Date of Decision : January 14, 2015**

Satguru

..... Appellant

Vs.

State of Haryana

..... Respondent

CORAM: HON'BLE MRS. JUSTICE RAJ RAHUL GARG

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

Argued by :Mr. R.S.Mamli, Advocate
for the appellant in CRA-S-2805-SB-2009.

Mr. Ashwani Verma, Advocate
for the appellant in CRA-S-3088-SB-2009.

Ms. Mahima, AAG, Haryana.

RAJ RAHUL GARG, J

By this judgment two criminal appeals bearing No CRA-S-
2805-SB of 2009 filed by Subhash @ Bhura son of Raja Ram against State

of Haryana and another appeal bearing No. CRA-S-3088-SB of 2009 filed by Satguru son of Harnek Singh against State of Haryana, shall be decided.

Both the aforesaid appeals have been instituted against the judgment dated 19.10.2009 rendered by Sh. Jagbir Singh Dahiya, the then Additional Sessions Judge, Fatehabad, whereby, both the appellants were held guilty for committing an offence punishable under Section 15 of the Narcotic Drugs & Psychotropic Substances Act 1985 and vide order of the even date they were sentenced to undergo rigorous imprisonment for a period of ten years each and to pay a fine of Rs. 1 lac each . In default of payment of fine to further undergo simple imprisonment for a period of one year each for the aforesaid offence.

Brief facts of the prosecution case are like this; that on 22.12.2007 Ganga Ram SI along with other police officials, was present at bus stand Chimo in connection with patrol duty. They were also having a Bolero vehicle bearing registration No. HR-22C-2424. Surender Kumar EHC No. 652 security agent met them at that place. Police party along with Surender Kumar were proceeded towards Buraj via Chimo to Kalandargarh. When they reached near the turn of Dhani Guljar Singh, a Maruti car colour white was seen coming from the side of village Buraj. On seeing the police party, the driver of the car reversed his car and accelerated the speed. The Investigating Officer of the case chased the aforesaid vehicle. When the driver of the car all of a sudden turned his car towards his right side, the car over turned on the berm of the Dhani as he could not control the car, therefore, it turned turtle in the fields. Both the front windows of the car had

opened and the front glass of the car fell on the ground. The glass of the driver side window has also been broken and fell down. After opening the windows, two young boys came out from the car and had tried to run away. Further Ganga Ram SI with the help of other police officials could apprehend both the aforesaid boys at some distance. The Investigating Officer tried to join some independent witnesses from the Dhani Guljar Singh and the workers who were working in the nearby fields but they expressed their inability. The driver of the car disclosed his name as Subhash @ Bhura son of Raja Ram and also furnished his complete address whereas the other boy who was sitting by the side of the driver disclosed his name as Satguru son of Harnek Singh and also furnished his complete address. Suspecting some intoxicants in the car bearing No. DL-2CS-3174, notices under Section 50 of the NDPS Act were given to both the appellants separately Exs. P-7 and P-9 stating therein that suspecting some narcotic substance in the aforesaid car, he (I.O) intended to search the car. The appellants had a right to get the search of the car effected in the presence of some Gazetted Officer or a Magistrate who can be called at the spot. Both the appellants gave reply to the aforesaid notices Ex.P-8 and P-10 exercising their option in favour of a Gazetted Officer. Investigating Officer through wireless message, called DSP (Headquarters), Fatehabad. DSP reached at the spot. He was made acquainted with the facts of the case and then on the directions of the DSP; Investigating Officer, checked the Maruti Car bearing No. DL-2CS-3174 and found two plastic bags on the rear seat of the car and one plastic bag in the Diggi of the car. On opening the mouth

of the aforesaid plastic bags, poppy husk was found in the same. Two samples of 100 grams each were taken out from each bag whereas the remaining poppy husk was weighed to 40 kg in each bag. Samples were separately made into the parcels and sealed with the seal of 'GR'. DSP also affixed his seal 'SS' on each parcel. The remainder poppy husk was also sealed with the seal of 'GR and SS'. Ganga Ram, SI handed over his seal 'SS' to Hans Raj ASI whereas DSP kept his seal with him. The case property along with Maruti Car was taken into police possession vide memo. Ex.P-6. Ruqa Ex.P-1 was sent to the Police Station Ratia on the basis of which formal FIR Ex.P-2 was registered against the accused. Rough site plan of the spot Ex.P-11 was prepared. Accused were arrested.

On reaching the Police Station, Ratia, Investigating Officer produced the case property, accused and witnesses along with report Ex.P-14 before Jaipal Singh Inspector/SHO who verified the facts from the accused and the witnesses and affixed his seal 'JP' on all the sample parcels and residue bags. Thereafter, the case property was deposited with the MHC of the Police Station.

On the next day after taking the case property from the MHC of the Police Station, the same as well the accused were produced before the Court of learned Sub Divisional Judicial Magistrate (SDJM), Ratia by moving an application under Section 52-A of the NDPS Act on which the learned SDJM, Ratia passed the order dated 23.12.2007, copy of which is Ex.P-15. The certified copy of the order passed by learned SDJM is Ex.P-16. After preparation of inventory, three sample parcels, three residue bags

and car were deposited with MHC of the Police Station, Fatehabad and three sample parcels along with sample seal were deposited with the MHC of Police Station, Ratia on the same day. After obtaining report which is Ex.P-18 from FSL Madhuban, Karnal wherein the contents of the sample parcels were identified as poppy straw (choora post) of *papaver somniferum* L, the challan against the appellants was filed in the Court.

Finding a prima-facie case against both the accused for committing an offence punishable under Section 15 read with section 9 of the NDPS Act, both the accused were charge sheeted accordingly to which accused did not plead guilty but claimed trial.

After taking prosecution evidence, statements of accused under Section 313 Cr.P.C. were recorded wherein the accused denied each prosecution allegation and pleaded his innocence. By way of defence, it was pleaded that the accused have been falsely implicated in this case; further that the recovery was planted upon them; and they had no concern with the alleged recovery.

After hearing learned counsel for the parties and appraising the entire evidence and material coming on record, both the accused were held guilty for committing an offence punishable under Section 15 of NDPS Act and also sentenced them as mentioned above in the earlier part of the judgment.

I have heard Sh. R.S.Mamli, Sh. Ashwani Verma, Advocates for the appellants and Ms. Mahima, AAG, Haryana and also appraised the entire material and evidence coming on record.

With the statements of SI Ganga Ram, PW-6 (Investigating Officer of the case), SI Hans Raj (PW-5) and Satyavir Singh, DSP (PW-4), prosecution succeeded in bringing home guilt against the accused as these three witnesses have supported the prosecution case. As per the prosecution story HC Dalip Singh (PW-1), HC Jeet Singh (PW-2) and Constable Aad Ram (PW-3) by way of their affidavits Exs.P-3 to P-5 coupled with the statements of SI Ganga Ram (PW-6) proved the link evidence on the file. Jaipal Singh, (PW-7) who was working as SHO, Police Station Ratia, on the day of commission of this crime proved the compliance of the Section 55 of the N.D.P.S.Act. Report of FSL Ex.P-18, however, shows that the contents of sample sent for test to FSL, Madhuban were that of poppy straw. Thus, with this evidence on the file, prosecution succeeded in bringing home guilt against the accused. So has been held by the learned Additional Sessions Judge, Fatehabad vide impugned judgment dated 19.10.2009.

Learned counsel for the appellants assailed the impugned judgment only on three counts. First of all, it was argued that in the present case commercial quantity of poppy straw is involved. The offence is very serious in nature. It provides stringent punishment i.e. minimum punishment of 10 years and a fine of Rs. 1 lac. As such the Court has to scrutinize the statements of prosecution witnesses with utmost care and caution.

SI Ganga Ram (PW-6) deposed that he tried to join the independent witnesses in the investigation from Dhani and workers who were working in the nearby fields but they showed their helplessness. He further deposed during his cross-examination that he cannot tell the names

and particulars of those 10-12 persons who had refused to join the investigation. He further deposed that he did not initiate any proceeding against them. Even SI Hans Raj (PW-5) deposed that the names of the persons who refused to join the investigation, their names were not recorded anywhere. Even Satyavir Singh, DSP (PW-4) deposed that Investigating Officer had not disclosed the names of those persons who expressed their inability to join as independent witnesses.

Thus with this evidence on the file, it cannot be said that the Investigating Officer could absolve himself of his liability to join the independent witnesses in the investigation of the case.

The above argument of learned counsel for the appellants is not sustainable as right from the very beginning, Investigating Officer had tried to join the independent witnesses in the investigation of this case but none was ready to join. They expressed their inability to join the investigation. They even refused to furnish their names and addresses. Under those circumstances, if any independent witness was not joined in the investigation of this case, it cannot be said to be fatal when the statements of prosecution witnesses are consistent and inspire confidence in the mind of the Court.

Satyavir Singh, DSP (PW-4) deposed that he directed the Investigating Officer to call some independent witnesses from the nearby places but the Investigating Officer told him that no one is ready to join the investigation of the case and they expressed their inability. He further deposed that Investigating Officer had sent some police official to call some

independent witnesses from villages Kalandargarh, Buraj and Dhani Guljar.

He further deposed that he did not issue any direction to the Investigating Officer for taking action against the person who had refused to join investigation.

It is seen that now-a-days general public seldom renders assistance to the Investigating Officer in the investigation of cases. It is true that joining of independent witnesses and their production in the Court as witnesses is necessary so as to know the genuineness of the prosecution case but only on account of the fact that no independent witness was joined or, if joined not-examined, it can not be said that no reliance can be placed on the testimonies of the official witnesses. If that be the case, it would certainly affect the credibility of a Gazetted Officer who are appearing as witnesses. Moreover, it is settled proposition of law that in view of *Mohmmad Iqbal Vs. State of Punjab, 2003 (1) RCR 361 and Kehsar Singh Vs. State of Haryana, 1999 (2) RCR 803*, the statements of official witnesses are at par with the statements of non-official witnesses and conviction can well be based on the testimonies of the official witnesses if the same are consistent and inspire confidence in the mind of the Court regarding guilt of the accused.

Of course the present case is the case in which commercial quantity of poppy husk was recovered from the possession of accused and the punishment provided is stringent punishment yet only on the basis of non-joining of independent witnesses, it cannot be said that no conviction can be based particularly when the statements of official witnesses are

consistent and inspire confidence in the mind of the Court regarding guilt of the accused.

Learned counsel for the State also contended that it is hard to plant commercial quantity of contraband on an accused particularly when the same was recovered from the possession of the accused in the presence of a Gazetted Officer i.e Police Officer of the rank of DSP. This contention of learned counsel for the State carries weight.

It was next argued by learned counsel for the appellants that there is no material on the file to show as to from where they have brought weights and scale. As such prosecution case cannot be said to be free from doubt.

From perusal of the statement of SI Ganga Ram (PW-6), it becomes clear that the weights and scale were available with him in his investigation bag. Even SI Hans Raj (PW-5) deposed that weights and scale were not arranged from anywhere and were not brought from any place because those were already with the Investigating Officer.

Under these circumstances, the above contention of learned counsel for the appellants is devoid of any merit and no benefit of doubt can be given to the accused on this aspect.

It was next argued by learned counsel for the appellants that as per standing instructions the sample has to be sent within 72 hours to FSL for test whereas in this case after 4-5 days the samples were sent. As such possibility of tampering with the samples before test, cannot be ruled out.

The occurrence is of dated 22.12.2007. Investigating Officer, SI

Ganga Ram (PW-6) deposed that he has deposited the case property with seals intact with MHC of the Police Station on the same day. He further deposed that on the following day he had taken out the case property along with sample and produced the same before the Court of learned SDJM, Ratia. Inventory was also prepared in compliance with the provisions of Section 52-A of the NDPS Act. Learned SDJM verified the same and then ordered for depositing the same in the Malkhana. The order is of the date of 23.12.2007. Thereafter, the samples were sent to FSL on 27.12.2007. In fact Jeet Singh who was the MHC of Police Station, was on leave on 22.12.2007. H.C.Dalip Singh (PW-1) proved this fact by clearly depositing in this regard in the Court. MHC Jeet Singh in his affidavit also made a mention regarding his leave.

Under these circumstance, if sample was sent to FSL for test by MHC Jeet Singh on 27.12.2007 which was duly handed over by Constable Aad Ram in the Forensic Science Laboratory, Madhuban on the same day with seals intact, the possibility of tampering with the sample cannot be presumed. Report FSL Ex.P18 clearly shows that the seals were intact on all the sample parcels and the same tallied with the specimen seal as per Forwarding Authority's letter.

Thus with this definite evidence on the file, only on the basis of presumption accused cannot be acquitted and this contention of learned counsel for the appellants is devoid of any force.

It was further contended by learned counsel for the appellants that no question was put to the accused in their statements recorded under

Section 313 Cr.P.C. that they were found in conscious possession of 120kg and 600 grams of poppy husk. As such on this count, the appellants are entitled to acquittal.

So far as the above proposition of law is concerned there is no dispute. In the case in hand commercial quantity of poppy husk was recovered from the car No. DL-2CS-3174. The aforesaid car was occupied by the appellants. On seeing the police party, appellants turned back their car and accelerated the speed of the car. When car was turned towards their right side, it turned turtle and at that time the appellants came out from the car and tried to make good their escape but they were apprehended at the spot by the police. Appellant Subhash @ Bhura was driving the car at the relevant time. Thus both the appellants occupying the car in question were in conscious possession of 120kg and 600 grams of poppy husk. Appellant Satguru did not take the plea that he boarded the car on the way or that he was having no knowledge about the contraband lying in the car.

The aforesaid all the facts have been put to both the appellants to which they simply denied. Under these circumstances, it cannot be said that the question regarding conscious possession of poppy husk, as that of accused, was not put to them. As such, no benefit of doubt can be given to the accused on this count.

Argument of learned counsel for the appellants that there is no material on the file to show that car in question was owned by them as such they cannot be said to be in conscious possession of the poppy husk; is again not sustainable.

Of course, prosecution has succeeded in showing that the appellants were in conscious possession of 120kg and 600 grams of poppy husk without any permit or license. For holding appellants guilty, prosecution has proved the conscious possession of contraband as that of accused. Ownership of the car was not relevant fact to be proved by the prosecution. Even if appellants are not the owner of the car, it hardly makes any difference so far as the question of possession of contraband of the appellants is concerned. Thus, this contention of learned counsel for the appellants is again not sustainable.

It was contended by the learned counsel for the appellants that there was lot of discrepancies yet they failed to point out any material discrepancy appearing in the statements of prosecution witnesses. They contended that Satyavir Singh, DSP (PW-4) deposed that weight and scale were obtained from Dhani Guljar. SI Ganga Ram (PW-6) deposed that no person was available from public in Dhani Guljar. In fact, this discrepancy does not go to the root of the case as I have also discussed that the statements of PW-5 and PW-6 are consistent on this point. Even it does not make any difference if the Investigating Officer of the case has called DSP (Headquarters), Fatehabad whereas Tehsildar and SDM were posted at Ratia as well. Calling of DSP from Fatehabad shows that Investigating Officer must be under impression that since the appellants have exercised their right in favour of a Gazetted Officer, therefore, he could not call Executive Magistrate at the spot as Tehsildar and SDM would be the Executive Magistrates.

For the above said reasons, maintaining the judgment of conviction dated 19.10.2009 and order of sentence of even date, this appeal is ordered to be dismissed. If the appellants are on bail, their bail bonds, shall stand cancelled and they be taken in custody for serving the remaining period of sentence. The concerned Chief Judicial Magistrate, shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 of the Criminal Procedure Code, and submit compliance report, to this Court, within a period of two months, from the date of receipt of a copy thereof.

The District & Sessions Judge, Fatehabad, shall ensure that the directions are complied with, within the time frame, and the compliance report is submitted immediately thereafter.

The Registry shall keep track of the submission of compliance reports, and put up the papers whether the reports are received or not, within the time frame, immediately after the expiry thereof.

**(RAJ RAHUL GARG)
JUDGE**

January 14, 2015
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