

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

**Criminal Appeal No. S-2659-SB of 2010**

Date of Decision : July 15, 2015

Gurtej Singh .....Appellant

**VERSUS**

State of Punjab .....Respondent

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

Present : Mr. Gorakh Nath, Advocate

Mr. R.S. Randhawa, Additional Advocate General, Punjab

**T.P.S. MANN, J.**

Appellant Gurtej Singh, alongwith Gurnam Singh @ Gama and Bikramjit Singh @ Kala, was tried for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act'), whereas their co-accused Lakhwinder Singh @ Lakha was charged for an offence under Section 25 of the NDPS Act. Vide judgment and order dated 17.9.2010, learned Judge, Special Court, Sangrur acquitted Gurnam Singh @ Gama and Bikramjit Singh @ Kala of the charge against them by giving them the benefit of doubt. However, appellant Gurtej Singh was held guilty under Section 15 of the NDPS Act and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,00,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one year. Lakhwinder Singh @ Lakha was also held guilty under Section 25 of the NDPS Act and sentenced to undergo rigorous imprisonment for ten years and to pay

a fine of Rs.1,00,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one year. The period of detention already undergone by them during the investigation and the trial of the case was ordered to be set off against the substantive sentence imposed upon them.

Aggrieved of his conviction and sentence, appellant Gurtej Singh has filed the present appeal, whereas Lakhwinder Singh @ Lakha has filed Criminal Appeal No.S-2601-SB of 2010 in order to challenge his conviction and sentence. As both the appeals have arisen out of one and same judgment of conviction and sentence passed by the trial Court, they are being disposed of by a common judgment.

In brief, the prosecution case is that on 10.6.2007, a police party headed by SI Harvinder Singh was present at the drain bridge of village Alisher. One Ajaib Singh of village Chural Khurd had reached there, with whom SI Harvinder Singh started interacting. At about 6.00 a.m., one Zen car bearing registration No.HR-29-G-2298 of white colour was seen coming from the side of village Kharryal Shekhupur. It was signalled to stop. After stopping the vehicle, one clean shaven person got down from the driver side of the car and started running away. He was identified as Bikramjit Singh @ Kala son of Gurdev Singh, resident of Matran, Police Station Bhawanigarh. Another person got down from the conductor seat and also started running away. SI Harvinder Singh called the person by his name Kalua Singh and asked him to stop. HC Mukhtiar Singh and HC Amarjit Singh gave

a chase to the escapees. HC Mukhtiar Singh was successful in overpowering one of the escapees. On being interrogated by SI Harvinder Singh, the captive disclosed his name as Gurtej Singh son of Kaur Singh, while the other who had absconded from the spot as Bikramjit Singh @ Kala. SI Harvinder Singh informed Gurtej Singh that he suspected him to be carrying some contraband in his car and, thus, the car was required to be searched. However, Gurtej Singh expressed that the search of the car be conducted in the presence of a Gazetted Officer. Accordingly, DSP Balraj Singh Sidhu was summoned at the spot, who also asked Gurtej Singh that the search of his car was required to be conducted as there was a suspicion of contraband lying in the same. Gurtej Singh was also informed that he had a legal right to get the search of his car effected either in the presence of any other Gazetted Officer or a Magistrate. Gurtej Singh reposed faith in DSP Balraj Singh Sidhu. Consent memo. in that regard was prepared. Under the directions of DSP Balraj Singh Sidhu, the search of the car was effected which led to recovery of eight bags containing poppy husk. From each of the eight bags, two samples of 250 grams each were taken out. The remainder, when weighed, came to be 39½ kgs. in each of the eight bags. 16 sample parcels and eight bags containing poppy husk were sealed with the seal bearing inscription 'HS'. Separate seal impression was also prepared. The seal after use was handed over to ASI Jarnail Singh. Entire case property was taken into possession by preparing a memo. in that regard. The Zen car was also taken into possession vide separate recovery memo.

Further case of the prosecution is that a ruqa was, thereafter, sent by SI Harvinder Singh to the Police Station through Constable Ranjit Singh and on its basis, FIR under Section 15 of the NDPS Act was registered. During the investigation, SI Harvinder Singh prepared rough site plan of the place of recovery and recorded statements of the witnesses. During interrogation of Gurtej Singh, it came to light that Gurnam Singh @ Gama son of Kaur Singh and Lakhwinder Singh @ Lakha son of Sukhdev Singh had driven Esteem Car No. PB-15-3000 ahead of Zen car as pilot vehicle to ensure safe transportation of the contraband. Accordingly, Gurnam Singh @ Gama was arrested on 1.7.2007. Upon completion of the investigation, challan was presented against Gurtej Singh and Gurnam Singh @ Gama. Proceedings under Section 82 Cr.P.C. were initiated against Bikramjit Singh @ Kala and Lakhwinder Singh @ Lakha. However, later on, they were also arrested and challans presented against them. All the four accused were charged, as mentioned above, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined ten witnesses. PW1 DSP Balraj Singh Sidhu deposed that on 16.2.2007, on receiving of a message from SI Harvinder Singh, he reached the place of recovery, where one car bearing No.HR-29-G-2298 belonging to accused Gurtej Singh was also standing. Plastic bags were lying in that car containing some substance. After disclosing his identity, he told the accused that he had suspicion of some contraband substance lying in the car and wanted to conduct its search. He also apprised the accused about his right of search in the presence of any Gazetted

Officer or a Magistrate, but the accused reposed faith in him. Consent statement of accused Ex.PA was recorded. Thereafter, search of car was conducted and eight plastic bags were found in the car, which were taken out and numbered 1 to 8. He further deposed that SI Harvinder Singh conducted search of plastic bags and found poppy husk in them. Out of each plastic bag two samples of 250 grams each were taken out and the remaining poppy husk was weighed alongwith the plastic bags, which came to be 39.5 kgs. in each plastic bag. Separate parcels of the samples and remaining bulks were prepared and sealed by SI Harvinder Singh with his seal bearing inscription 'HS'. Separate impression of seal was also prepared by SI Harvinder Singh and seal after use was handed over to ASI Jarnail Singh. This witness further proved the sample seal as Ex.P1. All the bulk parcels were taken into possession vide memo. Ex.PB. Car No. HR-29-G-2298 was also taken into possession vide memo. Ex.PC. This witness further proved special report scribed at the spot by SI Harvinder Singh as Ex.PD, sample parcels Ex.P2 to Ex.P9, bulk parcels Ex.P10 to Ex.P17 and car Ex.P18.

PW2 Parminderpal Singh, Junior Assistant in the office of DTO, Sangrur proved the ownership of the Zen car by deposing that in their record the relevant entry is Ex.PE and vide the said entry No.10550 dated 21.1.2005 car No.HR-29-G-2298 stood transferred in the name of Lakhwinder Singh @ Lakha son of Sukhdev Singh r/o village Karryal, Tehsil Sunam, District Sangrur.

PW3 HC Randeep Singh tendered into evidence his duly sworn affidavit Ex.PW3/A, stating therein that the same may be read as part of his statement.

PW4 SI Harvinder Singh is the Investigating Officer of this case and this witness while deposing on oath in the Court, gave minute details of investigation apart from proving the relevant documents on record. This witness duly deposed about the time, place and manner of recovery and other related incidents of the present case. This witness further proved documents i.e. non-consent statement of accused Gurtej Singh Ex.PW4/A, consent statement of accused Gurtej Singh Ex.PA, recovery memo. Ex.PB, recovery memo. of Zen car Ex.PC, personal search memo. of accused Gurtej Singh Ex.PW4/B, grounds of arrest memo. of accused Gurtej Singh Ex.PW4/C, information memo. Ex.PW4/D, ruqa Ex.PW4/E, FIR Ex.PW4/F, site plan Ex.PW4/G, report under Section 57 of the NDPS Act Ex.PD, personal search memo. of accused Gurnam Singh @ Gama Ex.PW4/H and information memo. regarding arrest of accused Gurnam Singh @ Gama Ex.PW4/J.

PW5 ASI Jarnail Singh is the witness, who was a part of the police party, headed by SI Harvinder Singh while effecting recovery from the accused and this witness while appearing in the witness box fully reiterated the version of PW4 SI Harvinder Singh on all material particulars.

PW6 HC Ranjit Singh was also part of the police party led by SI Harvinder Singh on the relevant day and while entering into the

witness box, this witness deposed that after effecting recovery from accused Gurtej Singh, he was handed over a ruqa to be delivered at the Police Station and, accordingly, he went to the Police Station and delivered the said ruqa to MHC Randeep Singh, which resulted into registration of present FIR. This witness further deposed that on 11.6.2007, HC Randeep Singh handed over sample parcels, each of which weighed 250 grams to him and after getting docket from the office of SSP, Sangrur, on the next date, he proceeded to Chandigarh and deposited the sample parcels with the office of Chemical Examiner, Chandigarh. This witness further deposed that he did not tamper with the sample parcels nor he allowed anyone else to tamper with the same till the same remained in his possession.

PW7 ASI Jaspal Singh deposed that on 29.4.2008, he, alongwith other police officials was present at Bus Stand of village Kheta and at that time a car bearing No. PB-15-A-3300 make Esteem came from Patran side, being driven by accused Lakhwinder Singh @ Lakha. On being asked to stop, the car was stopped and whereabouts of accused Lakhwinder Singh @ Lakha were sought to be verified. On being told that this very Lakhwinder Singh is proclaimed offender in FIR No.64 dated 10.6.2007 under Section 15 of the NDPS Act, Police Station Moonak, he confirmed this fact on telephone from Police Station Moonak and, thereafter, accused Lakhwinder Singh @ Lakha was arrested. His personal search memo. Ex.PW7/A was prepared. Information memo. regarding his arrest is Ex.PW7/B. The above said car was also taken into possession vide recovery memo. Ex.PW7/C and site plan of place of recovery is Ex.PW7/D.

PW8 ASI Angrej Singh deposed that on 11.1.2008, he, alongwith HC Balwinder Singh and PHG Chaina Singh, reached at Court complex, Sangrur and after taking permission from the Court of Sh. D.S. Malwai, Judge, Special Court, Sangrur, accused Bikramjit Singh @ Kala was arrested. His personal search memo. is Ex.PW8/A and arrest memo. is Ex.PW8/B.

PW9 Lakhbir Singh deposed that on 10.6.2007 at 9.00 a.m. when he was irrigating his fields, one white Esteem car came from side of village, Alisher, which was being driven by Lakhwinder Singh @ Lakha accused and accused Gurnam Singh @ Gama was sitting with him. Accused Gurnam Singh @ Gama was earlier known to him being married at village Bakhshiwala. Both of them came to him and told that there was a poppy husk in one Zen car belonging to them but the police officials were holding Nakabandi and they asked him to help them if he was having some connection with the police. They further stated that they have brought eight bags of poppy husk from Rajasthan. Accused Gurnam Singh @ Gama revealed that in total they were four persons involved in the smuggling of poppy husk.

PW10 HC Karamjit Singh is the witness who was present alongwith ASI Jaspal Singh on 29.4.2008 at Bus Stand of village, Khetla and where ASI Jaspal Singh arrested accused Lakhwinder Singh @ Lakha and this witness while deposing on oath in the Court fully reiterated the version of PW7 ASI Jaspal Singh.

Report Ex.PX of the Chemical Examiner was tendered in evidence.

When examined under Section 313 Cr.P.C., all the four accused denied prosecution allegations and claimed to have been framed in a false case. In his defence, accused Gurnam Singh @ Gama examined DW1 ASI Ranbir Singh, who brought the summoned record. As per the record, Charanjit Kaur wife of accused Gurnam Singh had filed Criminal Writ Petition No.41961 of 2007, in the Hon'ble High Court of Punjab and Haryana, which was disposed of vide order dated 28.5.2008 directing the Deputy Inspector General to conduct an enquiry and an enquiry was conducted by ADGP (Investigation Crime), Punjab in pursuance of directions of Hon'ble High Court. The said enquiry report dated 19.2.2009 is EX.D1. This witness further identified the signatures of DIG Shri R.P.S. Brar on inquiry report having worked with DIG. The accused Gurnam Singh @ Gama also tendered into evidence the copy of judgment dated 1.2.2009 as Ex.D2.

As mentioned above, the trial Court convicted and sentenced Gurtej Singh as well as Lakhwinder Singh @ Lakha for committing offences under Sections 15 and 25 of the NDPS Act, respectively, whereas Gurnam Singh @ Gama and Bikramjit Singh @ Kala were acquitted of the charge against them.

Learned counsel for the two convicts i.e. Gurtej Singh and Lakhwinder Singh @ Lakha had been heard and so also the learned State counsel. With their able assistance, the Court had scanned the evidence minutely.

The plea of the appellants that there is no independent corroboration to the prosecution case cannot be accepted. Ajaib

Singh of village Chural Khurd, who was associated by SI Harvinder Singh while effecting recovery of the contraband, was given up by the prosecution as having been won over. Statement in this regard was made by the Additional Public Prosecutor before the trial Court on 4.2.2010. The reason for giving up Ajaib Singh was an application submitted by HC Chand Singh mentioning therein that said Ajaib Singh had joined hands with the accused. The defence has not been able to show any prejudice having been caused due to non-examination of the independent witness. In case the accused were sure about Ajaib Singh deposing in their favour, they could have produced him before the trial Court and examined him in their defence. Even otherwise, the law is well settled that merely because the prosecution is relying upon the testimony of official witnesses is no ground to reject the prosecution case. It is a matter of common knowledge that the independent witnesses stay away from the Courts so as to avoid incurring wrath of the accused.

Coming to the main case, PW4 SI Harvinder Singh testified before the trial Court that after noticing a Zen Car coming from the side of village Kharryal he had given it a signal to stop. After bringing the car to a halt, accused Gurtej Singh got down from the driver's seat and started running away. He was, however, overpowered and brought back to the place where the police party was standing. Accused Gurtej Singh was, thereafter, given an option of having his car searched in the presence of a Gazetted Officer or a Magistrate. He opted for the search to be conducted in the presence of a Gazetted Officer. Accordingly, PW4 SI Harvinder Singh

requested DSP Balraj Singh Sidhu to reach the spot. Once again, an offer was made to accused Gurtej Singh of getting the car searched in the presence of some other Gazetted Officer or a Magistrate. This time accused reposed confidence in DSP Balraj Singh Sidhu. The search of the car led to recovery of eight bags, each containing 40 kgs. of poppy husk. Two samples were drawn from each of the eight bags. All the samples, 16 in number, and eight bags were then taken into possession. Separate impression of the seal used for sealing the aforementioned samples and the bags was also prepared. The entire case property was taken into possession vide recovery memo Ex.PB. Car from which the contraband was recovered, was also taken into possession vide recovery memo. Ex.PC. Accused Gurtej Singh was arrested and his personal search memo. was prepared. Information regarding his arrest was forwarded. The testimony of PW4 SI Harvinder Singh stands duly corroborated by PW1 DSP Balraj Singh Sidhu, PW5 ASI Jarnail Singh and PW6 HC Ranjit Singh.

On 11.6.2007, PW3 HC Randeep Singh had collected eight samples of poppy husk, each weighing 250 grams and deposited them with the Forensic Science Laboratory on 12.6.2007. In the report Ex.PX of the Chemical Examiner, it was specifically mentioned that each of the samples was found to contain meconic acid and, thus, opined them to be poppy husk.

From the above, it is made out that at the relevant time, accused Gurtej Singh was driving the car from which eight bags, each containing 40 kgs. of poppy husk, were recovered. The act of Gurtej

Singh in trying to escape from the spot also points towards his guilt. He was aware of the fact that there was poppy husk in the car and said contraband was in his actual possession. His culpable mental state can also be presumed under Section 35 of the NDPS Act. Once presumption is drawn, it is for the accused to prove that he had no such mental state with regard to the act of which he has charged for. No such material has been brought on record by accused Gurtej Singh that he had no knowledge of the poppy husk being present in the car. His failure to discharge the burden is sufficient to uphold his conviction for the offence under Section 15 of the Act.

Coming to the case of accused Lakhiwnder Singh @ Lakha, who stands convicted under Section 25 of the Act, it would be worthwhile to advert to the testimony of PW9 Lakhbir Singh, who deposed that on 10.6.2007 at about 9.00 a.m., he was irrigating his fields. At that time, one Esteem car came, which was driven by accused Lakhwinder Singh @ Lakha, whereas accused Gurnam Singh @ Gama was sitting in the same. Gurnam Singh @ Gama was known to him earlier. Both Lakhwinder Singh @ Lakha and Gurnam Singh @ Gama told him that there was poppy husk in one Zen car belonging to them but the police officials had set up a check post. Accordingly, they asked him to help them in case he was having some connection with the police. They further told him that they had brought eight bags of poppy husk from Rajasthan.

Apart from PW9 Lakhbir Singh, the prosecution relied upon the testimony of PW10 HC Karamjit Singh, who deposed that on

29.4.2008 when he was present with the police party, he had seen one car make Esteem bearing registration No.PB-15-A-3300 coming from the side of Patran and on being signalled to stop, the driver stopped the car. The driver told his name as Lakhwinder Singh @ Lakha. HC Bikramjit Singh identified Lakhwinder Singh @ Lakha as he stood involved in a case registered at Police Station Moonak. ASI Jaspal Singh arrested Lakhwinder Singh @ Lakha on 29.4.2008. The Esteem car was also taken into possession.

The charge against accused Lakhwinder Singh @ Lakha was for committing an offence punishable under Section 25 of the NDPS Act as the car, from which the contraband was recovered on 10.6.2007, stood registered in the name of accused Lakhwinder Singh @ Lakha as was so deposed to by PW2 Parminder Pal Singh, Junior Assistant in the office of DTO, Sangrur. Merely because Lakhwinder Singh @ Lakha was not present in the car at the time of recovery of the contraband is no ground to hold that he cannot be convicted under Section 25 of the NDPS Act. While being examined under Section 313 Cr.P.C., accused Lakhwinder Singh @ Lakha denied the ownership of the car. However, as mentioned above, the car stood registered in the name of accused Lakhwinder Singh @ Lakha. There is no document or material from which it could be indicated that accused Gurtej Singh, who was found driving the car at the relevant time, had taken the said vehicle on hire basis and, thus, it can be held that accused Lakhwinder Singh @ Lakha knew about his vehicle being used for transporting the contraband.

Upshot of the aforementioned discussion leads to one and the only conclusion that accused Gurtej Singh was in possession of 320 kgs. of poppy husk on 10.6.2007 when he was apprehended by a police party headed by SI Harvinder Singh. Said Gurtej Singh did not have any licence or permit to carry the contraband. As such, his conviction and sentence under Section 15 of the Act is upheld. Similarly, the car in which the contraband was being transported by accused Gurtej Singh, is proved to be owned by accused Lakhwinder Singh @ Lakha. He had allowed his vehicle to be used for transporting the contraband, making him liable under Section 25 of the Act. Therefore, his conviction and sentence also calls for no interference.

Resultantly, both the appeals, i.e. Criminal Appeal No. S-2659-SB of 2010 filed by accused Gurtej Singh and Criminal Appeal No.S-2601-SB of 2010 filed by accused Lakhwinder Singh @ Lakha against their conviction and sentence are dismissed.

**July 15, 2015**  
satish

**( T.P.S. MANN )**  
**JUDGE**