

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRA-S-2465-SB-2012

Date of decision: 11.08.2015

Buta Singh

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Ms. C.L. Verma, Advocate for the appellant.

Ms. Harpreet Kaur Athwal, AAG, Punjab.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment dated 10.07.2012, passed by the learned Judge, Special Court, Ludhiana, vide which accused-appellant Buta Singh has been held guilty and convicted for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (here-in-after called the 'Act') and the order on quantum of sentence of the even dated, vide which the appellant has been sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.10,000/-, in default of

payment of fine, to further undergo rigorous imprisonment for three months.

2- As per the prosecution case, on 05.10.2003, Sub Inspector Raminder Singh along with Assistant Sub Inspector Teja Singh and other police officials was going towards village Boparai Kalan in connection with patrolling. When they reached at the bridge of minor canal, Sudhar, Paramjit Singh son of Amar Singh met them and SI Raminder Singh was talking with him. At about 10:00 A.M., one scooter of light green colour, driven by one Hindu man, was seen coming. A plastic white bag was loaded on the rear seat of the scooter. On seeing the police party, he tried to turn back the scooter but he was apprehended by SI Raminder Singh with help of other police officials. On inquiry, he disclosed his name as Buta Singh son of Pritam Singh. One another bag was lying on the front foot rest of the scooter. SI Raminder Singh disclosed his identity to the accused and also stated him that he wants to make search of plastic bags. The Investigating Officer also informed the accused that he has legal right of his search in the presence of a Magistrate or a Gazetted Officer. The accused reposed faith in SI Raminder Singh vide his consent memo Ex.PC. The bags in possession of the accused were searched, which were found containing poppy straw. Two samples, each of 25 grams, were separated from each bag and the residue was weighed, which was found in one bag 25.950 kilograms and in another bag 23.950 kilograms. Sample parcel and bulk parcel were prepared and sealed by the Investigating Officer with his seal bearing impression 'RS'. Sample seal

was separately prepared and seal after use was handed over to ASI Teja Singh. Case property was taken into police possession vide recovery memo Ex.PD along-with scooter and sample seal chit. FSL form was completed on the spot. The Investigating Officer sent Ruqqa Ex.PH to the Police Station. On the basis of which, FIR Ex.PJ was registered. The Investigating Officer prepared the site plan of the place of recovery Ex.PK. The accused was arrested vide arrest memo Ex.PF. The Sarpanch of village Bhodey was informed. On returned to the Police Station, the Investigating Officer produced the accused, witnesses and case property before ASI Gurnam Singh, the officiating SHO. He inquired from the accused and witnesses and verified the case property and affixed his seal 'GS' on the parcels and sample seal chit. The case property was deposited in the Malkhana. On 06.10.2003 case property was produced before learned Illaqa Magistrate vide application Ex.PL. On 09.10.2003 the case property was again produced before learned Illaqa Magistrate vide application Ex.PM for the purpose of proceeding under Section 52A of NDPS Act, on which learned Magistrate passed the necessary orders. Samples were sent for chemical examination. On receipt of the report of the Chemical Examiner Ex.PX and completion of formalities of the investigation, the report under Section 173 of Code of Criminal Procedure, 1973 (here-in-after called the 'Cr.P.C.') was presented in the Court.

3- The accused appellant was charge sheeted for the offence punishable under Section 15 of the Act vide order dated 03.02.2004 by

the learned trial Court, to which the appellant pleaded not guilty and claimed trial.

4- In order to substantiate its case, prosecution examined as many as five witnesses.

5- When examined under Section 313 Cr.P.C., accused pleaded false implication. He stated that he did not commit any offence and no recovery was effected from him.

6- No evidence was adduced by the accused in his defence.

7- Appreciating the evidence on record and the contentions raised by learned counsel for the parties, the accused appellant was held guilty for the offence punishable under Section 15 of the Act and was awarded the sentence as mentioned in the upper part of the judgment.

8- Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

9- I have heard Mr. C.L. Verma, Advocate, learned counsel for the appellant, Ms. Harpreet Kaur Athwal, learned Deputy Advocate General for the State of Punjab and have meticulously examined the record of the case.

10- Initiating the arguments, learned counsel for the appellant contended that Paramjeet Singh, the independent witness, was associated in this case but he has not been examined by the prosecution and the entire case of the prosecution is based on the statement of the official witnesses, which should not be relied upon without independent corroboration.

11- He further contended that as per the prosecution story, the recovery was effected from the scooter. The said scooter has not been produced in the Court. Preetam Singh was found to be the owner of the said scooter but he has not been associated in the investigation. So, the connection between the appellant and the said scooter is not established.

12- He further contended that there is delay of 22 days in sending the sample to the FSL. There is no explanation for this long delay in sending the sample to the FSL. Thus, the tampering with of the case property cannot be ruled out. Concluding his arguments, he contended that the accused-appellant has been falsely implicated in this case.

13- On the other hand, learned State counsel pleaded that prosecution witness Paramjeet Singh was given up as having been won over by the accused. She further contended that there is no material on record to establish that the sample parcel was tampered with at any stage. So, mere delay in sending the sample has not resulted in any prejudice to the accused. She further contended that the accused-appellant was found in possession of poppy straw, so the non production of the scooter and its owner is of no consequence. She contended that there is no infirmity in the conviction of the appellant recorded by the learned trial Court.

14- I have given my thoughtful consideration to the aforesaid contentions.

15- No doubt, as per the prosecution version Paramjeet Singh was associated as an independent witness in the present case but he has

been given up by the learned Public Prosecutor vide his separate statement dated 16.11.2011 as having been won over by the accused. The Hon'ble Supreme Court in case ***Banti alias Guddu Vs. State of Madhya Pradesh 2003(4) RCR (Criminal) 911*** has laid down that there is no illegality if the Public Prosecutor has given up the witness who was not likely to support the prosecution case. In case ***Masalti Vs. State of Uttar Pradesh, AIR 1965 SC 202***, it was held that it is, undoubtedly the duty of the prosecution to lay before the Court all material witnesses, available to it, whose evidence is necessary for unfolding the case, it would be unsound to lay down it as a general rule that every witness must be examined even though his evidence may not be material or even if it is known that he has been won over or terrorised. In ***Roop Singh Vs. State of Punjab 1996 (1) RCR (Criminal) 146***, the Division Bench of this Court held that no adverse inference can be drawn, when the only independent witness was given up by the prosecution, as won over by the accused. It was further laid down that the panch witnesses, being human beings, are quite exposed and vulnerable to human feelings of yielding, browbeating, threats and inducements and giving up of the public witnesses as won over, is fully justified in the present day situation, prevailing in the society. The same rule of law has been reiterated by another Division Bench of this Court in case ***Karnail Singh Vs. State of Punjab 1983 Criminal Law Journal, 1218***.

16- In view of the consistent rule of law laid down in the cases referred above, the non-examination of Paramjeet Singh as having

been won over by the accused is no ground to reject the prosecution version.

17- The non-production of the scooter in the Court during the trial is also no ground to enlarge any benefit to the present appellant. As per the prosecution version, one bag was loaded on the rear seat of the scooter and the other bag was placed on the front footrest of the scooter and the said scooter was being driven by the present accused. The plea raised by learned counsel for the appellant that the prosecution could not establish any connection between the said scooter and the appellant is without any substance. The documents available on the record shows that Preetam Singh son of Inder Singh, resident of village Bhodey is the father of the present appellant. He had moved an application on 04.04.2008 in the Court of learned Special Judge for seeking exemption of the personal appearance of accused-appellant Buta Singh, wherein he has categorically mentioned that he is the father of accused Buta Singh. Said Preetam Singh son of Inder Singh has also moved the application to the learned trial Court for releasing the scooter in question on *superdari*. The said scooter was ordered to be released on *superdari* in favour of Preetam Singh son of Inder Singh resident of village Bhodey, the father of the appellant, by the learned trial Court vide order dated 29.11.2003. In the said application Preetam Singh son of Inder Singh has categorically mentioned that he is the owner of the said scooter. In this way the scooter in question was owned by Preetam Singh, the father of present appellant. The said scooter was released on *superdari* in favour Preetam Singh the

father of the appellant. It was the duty of the *superdar* i.e. the father of the appellant to produce the scooter in the Court. If he has not produced the scooter in the Court during the trial, that is not a ground to render the prosecution case doubtful. The registered owner of the scooter is the father of the accused/appellant, so his connection with the said scooter is clearly established.

18- The recovery in this case has been effected on 05.10.2003. As per the report of the F.S.L., the sample parcel has been received in the laboratory on 22.10.2003. So, there is delay of 17 days in sending the sample to the laboratory. In case ***Mohan Singh Vs. State of Punjab 2007(4) RCR (Criminal) 705***, there was delay of 10 days in sending the sample to the F.S.L. The Division Bench of this Court held that mere delay in sending the sample to the laboratory is not fatal where there is evidence that the seized articles were kept in proper and safe custody. The Hon'ble Apex Court also in case ***State of Orrisa Vs. Kanduri Sahoo 2004(1) RCR (Criminal) 196*** has also laid down that mere delay in sending the sample to the laboratory is not fatal where there is evidence that the case property was kept in proper and safe custody. In case ***Baggar Singh alias Gaggi Vs. State of Haryana 2009(4) RCR (Criminal) 183***, there was delay of 18 days in sending the sample to the F.S.L. and the another Division Bench of this Court held that it would not render the case of the prosecution doubtful if the seals remain intact when the sample reached to the F.S.L. In the instant case also, there is no material on record to establish that the sealed articles were tampered

with. Rather, from the evidence on record it comes out that the sealed articles were kept in proper and safe custody and reached the F.S.L. in intact condition. PW5 Inspector Raminder Singh, the Investigating Officer of the case, has stated that the case property was deposited with A.M.H.C. Angrej Singh. On the next day, the Investigating Officer produced the case property before learned Illaqa Magistrate vide application Ex.PL. The learned Magistrate, being busy in other Court work, directed the Investigating Officer to produce the case property on 09.10.2003. On 09.10.2003, the case property was again produced before learned Illaqa Magistrate. Vide order dated 09.10.2015, the learned Magistrate allowed the application under Section 52-A of the Act, wherein it is categorically mentioned that the seals were intact and the seals of the case property agreed with the sample. So, the order passed by the learned Judicial Magistrate shows that the seals on the case property/seized articles were intact and tallied with the specimen seal impression. Then the prosecution examined the then A.M.H.C. Angrej Singh as PW-2, who has filed his affidavit Ex.PB and deposed that the case property remained intact in the Malkhana. PW1 Constable Bhagwant Singh, who has carried the sample parcels to the Chemical Examiner, has filed his affidavit Ex.PA mentioning therein that the sample parcels remained intact. Ex.PX is the report of the F.S.L., which also depicts that the sample parcel was properly sealed and seals tallied with the specimen seal impression. Thus, from the aforesaid evidence, it is established that the sample parcel remained intact and was not tampered with at all at any

stage of the proceedings. So, mere delay of 17 days in sending the sample will not create any dent in the prosecution case.

19- PW4 ASI Teja Singh, the witness of recovery and PW5 Inspector Raminder Singh, the Investigating Officer of the case, have consistently deposed about the manner in which the accused-appellant was apprehended and the recovery of the bags containing poppy straw from the possession of the appellant. Learned counsel for the appellant has not been able to point out any serious discrepancy/contradiction in their statements. The statements of both these witnesses qua apprehension, search, seizure and recovery of the contraband from the possession of the appellant are cogent, consistent and reliable. The plea raised by learned counsel for the appellant that accused has been falsely implicated is not supported from any material on record. The accused appellant has not alleged and proved any ill-will or motive on the part of PW5 Inspector Raminder Singh the Investigating Officer of the case to falsely implicate the appellant in the instant case. There was also no reason for PW4 ASI Teja Singh to falsely depose against the appellant. It is also the settled principle of law by this time that the testimonies of police officials cannot be discarded simply on account of their official designation. In the absence of any animosity towards the accused, there is no absolute rule that police officials cannot be cited as a witness and their depositions should be treated with suspicion. The police witnesses cannot be viewed with distrust every time. Reliance can be placed on cases ***Ram Swaroop Vs. State (Government of NCT of Delhi) (2013) 14,***

Supreme Court Cases 235 and Kashmiri Lal Vs. State of Haryana 2013

(6) Supreme Court Cases 595.

20- Thus, from the cogent, convincing and reliable evidence adduced by the prosecution, it is established beyond shadow of reasonable doubt that the accused-appellant was found in conscious possession of 50 kilograms poppy straw. So, there is no legal infirmity in the conviction of the appellant recorded by learned trial Court and the sentence awarded to him. The same are hereby maintained and upheld.

21- Consequently, present appeal has no merits and the same is hereby dismissed.

Dated: 11.08.2015
sunil yadav

(DARSHAN SINGH)
JUDGE