

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

Crl. Appeal No.S-1040-SB of 2002(O&M)

Date of Decision: 29.10.2015

Kewal Singh

.. Appellant

Vs.

State of Punjab

.. Respondent

with

Crl. Appeal No.S-1071-SB of 2002(O&M)

Buggar Singh & Ors.

.. Appellants

Vs.

State of Punjab

.. Respondent

and

Crl. Appeal No.S-172-SB of 2006(O&M)

Tarsem Singh @ Sema

.. Appellant

Vs.

State of Punjab

.. Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Argued by:- Mr. G.S. Kaura, Advocate for
the appellant Kewal Singh.**

**Mr. Abhilakh Grover, Advocate-
Amicus Curiae for the appellant
Kewal Singh and Tarsem Singh @ Sema.**

**Mr. S.S. Grewal, Advocate
for appellant Buggar Singh.**

**Mr. Mandeep Kaushik, Advocate
for appellant Bhola Singh.**

**Mr. J.S. Gill, Advocate
for the appellant Ajaib Singh.**

**Appellant Bhola Singh son of Jagmail
Singh already died.**

Mr. Deep Singh, AAG Punjab

ANITA CHAUDHRY, J.

Through the instant petition, the appellants have laid challenge to the judgment of conviction and sentence passed by the Judge, Special Court, Mansa dated 27.04.2002 vide which they have been held guilty under Section 15 of the Narcotic Drugs & Psychotropic Substances Act (for brevity, 'the Act') and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. One lac each. In default of payment of fine, they were sentenced to further undergo rigorous imprisonment for one year

The prosecution case, in nutshell, is that on 03.11.1993 at about 4 p.m., a police party headed by Inspector Budh Singh was on patrol duty in an official mini bus. The Inspector received secret information that a truck bearing registration No. HR01A-8475 loaded with poppy straw and the driver, Kewal Singh was standing near the fields of Buggar Singh and Tarsem Singh, Bhola Singh son of Raghbir Singh were getting the bags unloaded through Bhola Singh son of Jagmail Singh, Buggar Singh and Ajaib Singh. If a raid is conducted then aforesaid persons could be caught. The information was reduced into writing (Ex.PB) and sent to police station for registration of the case, upon which FIR (Ex.PB/1) was registered. Private witness Jagga Singh was joined in the raiding party and it proceeded towards the pointed place. Information was also given to DSP(D), Mansa on wireless. Four persons fled with the truck, on seeing the police party. Buggar Singh and Bhola Singh were

found sitting on the stack of bags. They were apprehended. They were given option for their search before the Gazetted Officer. Buggar Singh and Bhola Singh son of Jagmail vide statements, Ex.PC/1 and Ex.PC/2 respectively opted for their search before the Gazetted Officer. DSP(D) Mohinder Singh reached the spot. Search of the bags was carried out in the presence of DSP(DP Mohinder Singh and poppy straw was recovered. A sample of 100 grams was separated from each 24 bags and the remainder on weighment was found to be 34 Kgs and 900 grams each. Sample parcels and bags were sealed with the seal impression 'BS' and were taken into possession vide separate memos, attested by SI Sulakhan Singh, SI Surat Singh and Jagga Singh. The seal after use was handed over to SI Sulakhan Singh. The persons who fled on the truck carrying the remaining bags were identified by Constables Paramjit Singh and Lakhwinder Singh as Kewal Singh, driver, Bhola Singh son of Raghbir Singh, Tarsem Singh and Ajaib Singh.

The police party returned from the spot and accused along with case property were produced before Inspector Gurjit Singh. Special report Ex.PJ was sent to the higher authorities. It reached the Judicial Magistrate at 6.15 p.m. Application Ex.PA was moved before the Court, upon which order Ex.PA/1 was passed.

Accused Bhola Singh son of Raghbir Singh was arrested on 22.11.1993. On 11.03.1994 accused Ajaib Singh, who was in custody in some other case, was arrested in this case

by ASI Mangal Singh. Kewal Singh was arrested on 14.01.1994. Tarsem Singh was arrested on 24.03.1994. His confessional statement was recorded. Initially, a request for conducting test identification parade was made by accused Bhola Singh, upon which Jatinder Singh, Tehsildar Mansa was deputed, but later the accused refused it. On completion of investigation, final report was filed.

The accused were charge-sheeted under Section 15 of the Act, to which they pleaded not guilty and claimed trial.

The prosecution produced 12 witnesses, namely, PW1 Cons. Gurcharan Singh, PW2 Inspector Budh Singh, PW3 Const. Paramjit Singh, PW4 SI Mukhtiar Singh, PW5 SI Kuldeep Singh, PW6 ASI Mangal Singh, PW7 Jatinder Singh Tehsildar, PW8 Mohinder Singh, DSP(D), PW9 Const. Lakhwinder Singh, PW10 SI Surat Singh, Inspector Budh Singh was again produced as PW11 and Inspector Gurjit Singh as PW.12. Independent witness Jagga Singh was given up as being won over by the accused.

In their statements under Section 313 Cr.P.C., the accused denied any recovery from them and pleaded false implication.

Buggar Singh submitted the plea in writing that he was tortured by the police and they demanded Rs.10,000/- as illegal gratification. Since he had not paid the amount to Inspector Budh Singh, he was falsely implicated in the case.

Bhola Singh son of Jagmail Singh took the plea that he was picked by the police on 30.10.1993 on suspicion. Inspector

Budh Singh had demanded Rs.10,000/- and when he threatened to inform the higher authorities, he was falsely implicated in this case.

Bhola Singh son of Raghbir Singh took the stand that he did not run away and on coming to know about registration of case, he himself surrendered before the Court and asked for test identification parade and in police station he was shown to the witnesses.

In defence, they examined Mukhtiar Singh as DW1. His fields adjoin the fields of Buggar Singh. He deposed that Buggar Singh was taken away by the police on 1.11.1993 when he was working in the fields along with labourers and Rs.10,000/- were demanded as bribe for releasing Buggar Singh, which was not paid. DW.2 Harmesh Singh deposed on the same lines. DW3 Rajpreet Singh, Clerk proved the copy of order of DGP, Punjab and certificate regarding taking over of charge by DSP Mohinder Singh.

The trial Court held the appellants guilty under Section 15 of the Act and sentenced them in the manner noticed above. Dis-satisfied with the same, the instant appeals.

Learned counsel for the appellants Buggar Singh and Bhola Singh had urged that the prosecution had failed to prove 'conscious possession'. Elaborating the arguments, it was urged that by merely sitting on the bags, it cannot be inferred that the appellants were owner of those bags or the same belonged to them and once the ingredients of exclusive and conscious

possession were missing, the appellants were entitled to benefit.

Reference was made to **Hoshiar Singh Vs. State of Haryana 2008(3) RCR(Crl.) 683.**

Learned counsel had referred to consent memo Ex.PC and had urged that joint offer was made to both the accused which had caused prejudice to them and as per Section 50 of the Act, every accused must be individually informed about his right to be searched before a Gazetted Officer or Magistrate. Reference had been made to **Jaswinder Singh & Anr. Vs. State of Punjab 2013(1) RCR(Crl.) 257** and **State of Rajasthan Vs. Parmanand & Anr. 2014(2) RCR(Crl. 41.** It was contended that PW Mohinder Singh was called at the spot was not the DSP at the time of alleged recovery and hence it was a case of violation of Section 50 of the Act.

The submission on behalf of the appellants was that there was non-compliance of Section 42 of the Act as there was prior secret information with the police, but the same was not sent to the officer immediate to IO Budh Singh. Support had been sought from Hoshiar Singh's case (supra).

It was further urged that the investigating officer had drawn one sample of 100 grams each from 24 bags, whereas two samples should have been drawn and thus, there was violation of Section 55 of the Act and the whole recovery stood vitiated. Reliance had been placed on **Pappu Singh & Ors. Vs. State of Haryana 2013(4) RCR(Crl.) 402.** It was urged that seal after its use was not handed over to the independent witness and

there was inordinate delay of 9 days in sending the samples to the chemical examiner. He further contended that non-examination of independent witness Jagga Singh had caused a serious dent in the prosecution story and the prosecution case did not get support from an independent source.

It was urged that on the consent memo etc., the FIR number was written, whereas the FIR was registered subsequently and thus it seriously reflects upon the integrity of the prosecution version and PW Budh Singh was the complainant and he himself investigated the case with a biased mind. Support was sought from **Ajay Malik & Ors. Vs. State of U.T. Chandigarh 2009(3) RCR(Cr.) 649.**

Learned counsel for appellant Tarsem Singh, Ajaib Singh and Kewal Singh had urged that they were not arrested at the spot and no recovery was effected from them. It was contended that the story put forth by the prosecution that the other persons ran away is doubtful when number of police personnel were present. Reliance had been placed on Pappu Singh's case (supra). It was further urged that the prosecution case was that they were identified by Const. Paramjit Singh and Const. Lakhwinder Singh, but Const. Paramjit Singh was declared hostile. He further contended that the owner of the truck was not associated in the investigation and the prosecution had failed to prove any connection.

Before dealing with the submissions, it is necessary to refer to the evidence led by the prosecution. PW1 Const.

Gurcharan Singh tendered his affidavit Ex.PA regarding deposit of samples; PW2 Inspector Budh Singh was the investigating officer of the case and deposed about the investigation carried out by him. This witness was again examined as PW.11; PW3 Const. Paramjit Singh was member of the raiding party and he identified accused Kewal Singh, Bhola Singh, Ajaib Singh and Tarsem Singh, who ran away from the spot; PW4 SI Mukhtiar Singh partly investigated the case and arrested accused Kewal Singh; PW5 SI Kuldeep Singh tendered his affidavit Ex.PW5/A and proved the FIR (Ex.PB/1) which was recorded on the basis of ruqa (Ex.PB); PW6 ASI Mangal Singh arrested accused Bhola Singh, Ajaib Singh and Tarsem Singh; PW 7 Tehsildar Jatinder Singh was deputed to conduct test identification parade of Bhola Singh, but the same could not be conducted due to refusal by the accused; PW8 DSP Mohinder Singh deposed about the recovery of poppy straw effected in his presence from the accused Buggar Singh and Bhola Singh; PW9 Const. Lakhwinder Singh supported the prosecution case and identified accused Bhola Singh, Ajaib Singh, Tarsem Singh and Kewal Singh; PW10 SI Surat Singh was also a witness to the recovery and PW12 Inspector Gurjit Singh was SHO of Police Station Bhikhi. The case property, samples and accused Buggar Singh and Bhola Singh were produced before him by the investigating officer. He produced the case property before the Illaqa Magistrate.

The first submission of learned defence counsel was regarding conscious possession.

In **Kulwinder Singh & Anr. Vs. State of Punjab, 2016(6) SCC 674**, while dealing with "conscious possession"

Hon'ble Apex Court had held as under:-

"15. In this context reference to the decision in **Madan Lal Vs. State of H.P., 2003(4) RCR(Crl.) 100: (2003)** would be fruitful 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. & Remembrancers 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., (1072) 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 (seen **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.**)"

16. In **Dharampal Singh V. State of Punjab,**

2010(4) RCR(Criminal) 504: 2010 (5) Recent Apex Judgments (RAJ) 432: (2010) 9 SCC 608, it has been ruled that the expression "possession" is not capable to 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) RCR (Criminal) 779: 2015(3) Recent Apex Judgments (RAJ) 72: (2015) 5 SCALE 330**, after referring to certain authorities, this Court as held as follows:-

16. 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 "chattel" 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."

From the aforesaid enunciation of law, it is clear that once the possession is found, the accused is presumed to be in conscious possession and if the accused takes a stand that he was not in conscious possession, he had to establish it. In the instant case, PW2 Inspector Budh Singh deposed about the receipt of secret information, pursuant to which he reached the fields of Buggar Singh. Four accused ran away from the spot while Buggar Singh and Bhola Singh son of Jagmail Singh were arrested on the spot. The bags on which both of them were sitting, were checked and poppy straw was recovered from it. His statement was corroborated by PW3 Const. Paramjit Singh, PW9 Const. Lakhwinder Singh and PW10 SI Surat Singh who deposed that the poppy straw was recovered from the bags lying in the fields of Buggar Singh, on which they (Buggar Singh and Bhola Singh) were sitting. Their statements were consistent and have been corroborated. It is apparent that the recovery of poppy straw was effected from the fields of Buggar Singh. The four accused who ran from the spot along with truck were identified by PW3 Const. Paramjit Singh and PW9 Const. Lakhwinder Singh. The evidence on record is suggestive of the fact that the accused were in conscious possession of the contraband. In Hoshiar

Singh's case (supra), as relied upon by defence, the recovery was effected from Panchayat land and it was held that the accused cannot be said to be in exclusive possession of the same. But in the instant case, recovery was effected from fields of Buggar Singh. He along with other accused were found sitting on the bags containing poppy straw. They failed to submit any explanation. Thus, there remains no doubt that they were in conscious possession.

The next contention was regarding violation of Section 50 of the Act on account of joint offer for search being given to both the accused and PW Mohinder Singh was not the DSP at that time. It has come in evidence that the recovery was effected from the bags lying in the fields of Buggar Singh. Buggar Singh and Bhola Singh were found sitting on the bags. It was not a case of personal search of a person.

In Kulwinder Singh's case (supra), the Hon'ble Apex Court while dealing with the issue of non-compliance of Section 50 of the Act, held as under:-

*"18. The next contention that has been raised by the learned counsel for the appellants relates to non-compliance of Section 50 of the NDPS Act. It is undisputed that the bags containing poppy husk were seized from the truck. Thus, it is not a case of personal search of a person. In **Megh Singh v. State of Punjab 2003(4) RCR(Cr.) 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 of a container or a bag of*

premises.

19. In **State of H.P. v. Pawan Kumar, 2005(2) RCR(Crl.) 622: (2005) 4 SCC 350**, it has been held that:-

9. 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 commonsense 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 civilized 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 clothings". In a civilized 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.

10. 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) RCR(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) RCR(Criminal) 946: 2013(4) Recent Apex Judgments (R.A.J.) 594: (2013) 14 SCC 235.***

20. *In view of the aforesaid, the submission that non-compliance of Section 50 vitiates the conviction, leaves us unimpressed."*

The perusal of offer for search (Ex.PC) would reveal that both the accused were asked jointly for their search and both of them separately replied to the offer and their consent for search before a Gazetted Officer was reduced into writing separately. PW Budh Singh and PW SI Surat Singh had deposed in this regard. Both the accused one after the another opted to get themselves searched before the Gazetted officer. DSP Mohinder Singh who came at the spot disclosed his identity to both the accused and both of them opted to get themselves

searched before him. Both the accused were properly apprised of their right of search. So long as the right to be searched by a Magistrate or a Gazetted officer is given to the accused, it is irrelevant whether it is through a single notice or a joint notice. It cannot be said that there was violation of provisions of Section 50 of the Act. Clear and unambiguous offer was given to the accused Buggar Singh and Bhola Singh and search was carried out in presence of PW Mohinder Singh, who was not part of the raiding party. He had reached the spot later. The accused cannot get any support from the cases of Jaswinder Singh and Parmanand (supra).

Coming to the contention of non-adherence of the provisions of Section 42 of the Act, it is apparent that the secret information about the contraband was received by Inspector Budh Singh. He reduced the same into writing vide Ex.PB and sent the same to the police station, upon which FIR Ex.PB/1 was registered. It has come on record that special report Ex.PJ was sent. Apart therefrom, as is evident from the written information Ex.PB, a message was flashed on wireless for DSP Mohinder Singh to come to the spot. He also reached the spot and joined the investigations. It cannot be said that there was violation of Section 42 of the Act. In Hoshiar Singh's case (supra) the information was not reduced into writing by the officer himself who had received it, but by the other officer. In that context, it was held that it ought to have been reduced into writing by the same officer who had received it, which is not the situation in the

case in hand.

The next submission was that there was violation of Section 55 of the Act. Admittedly, the investigating officer had drawn one sample of 100 grams from each of the bags. In the considered opinion of this Court, failure to take second sample will not vitiate the conviction. The intent of the legislation in enacting the provision for drawing second sample is to make available to the accused an opportunity for fresh chemical examination if he is not satisfied with the examination report as produced by the prosecution. The provisions appear to be directory in nature. Moreover, no attempt was made by the defence to show that accused had any grouse with the report of chemical examination(Ex.PK). No prejudice had been shown by taking only one sample.

In the instant case, the seal after its use was handed over to SI Sulakhan Singh. It has come in the evidence that it was done so as Jagga Singh, the independent witness had to go outside to see his relative. No suggestion had been given to the witnesses that the case property or samples had been tampered till it reached the office of the chemical examiner for analysis. No suggestion had been given to PW Budh Singh that the samples were not sealed in a proper manner. It has come on record that the case property and accused were produced before PW12 Inspector Gurdit Singh. He had also put his seal "GS" on the case property as well as sample seal. He kept the case property in his possession. No suggestion had been put to this witness that case

property was tampered with. In this situation, the accused cannot derive any benefit from the fact that the samples were sent after nine days to the office of the chemical examiner or that the seal was not handed over to the independent witness. Jagga Singh was given up being won over by the accused. The case of the prosecution cannot be rejected solely on the ground that independent witness had not been examined when, on the perusal of the evidence on record, the Court finds that the case put forth by the prosecution is trustworthy. When the evidence of the official witnesses are trustworthy and credible, there is no reason not to rest the conviction on the basis of their evidence. It is the quality of evidence that matters and not the quantity. In **State (Govt. of NCT of Delhi) v. Sunil, 2001(1) RCR (Criminal) 56: (2001) 1 SCC 652**, the Hon'ble Apex Court held 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 British period and policemen also knew about it. Its hang over 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 recognised 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."

The submission that Inspector Budh Singh being complainant should not have investigated the case, the same is not sustainable in view of the observations made by the Hon'ble Apex Court in **State Rep. by Inspector of Police Vs. V. Jayapaul, 2004(5) SCC 223**, wherein it was held that there is no principle or binding authority to hold that the moment the competent police officer, on the basis of information received, makes out an FIR incorporating his name as the informant, he forfeits his right to investigate.

A perusal of various spot documents reveal that it bear the FIR number thereupon. It has come in the testimonies of PW

Budh Singh and SI Surat Singh that they remained at the spot till about 8:00 p.m. The special report of the case reached the Illaqa Magistrate at 6:15 p.m. and the investigating officer would have come to know about the FIR number of the case. Initially, he had left a blank space for incorporating the FIR number in the offer for search(Ex.PC) and it must have filled afterwards. It must be on account of anxiety on the part of the investigating officer to complete the documents, he had mentioned the FIR number on all the spot documents. The testimonies of recovery witnesses are consistent and trustworthy. It makes no difference that the FIR number was mentioned on the spot documents.

A feeble attempt was made by the defence by examining DW1 Mukhtiar Singh and DW2 Harmesh Singh that demand of Rs.10,000/- was raised by PW Budh Singh was not satisfied and therefore accused Buggar Singh was implicated in this case. Both these witnesses admittedly are neighbours of Buggar Singh. They admitted that no complaint was made regarding demand of bribe by PW Budh Singh. In order to help the accused both of them stepped into the witness box and it is an after-thought.

Accused Bhola Singh, Ajaib Singh and Tarsem Singh ran away from the spot on the truck which was driven by accused Kewal Singh. To ascertain the identification of these accused, the prosecution examined PW3 Const. Paramjit Singh and PW9 Const. Lakhwinder Singh. It is apparent that PW3 Const. Paramjit Singh was declared hostile. But a perusal of his testimony reveals

that he was consistent and categoric about the identity of the accused who ran from the spot. Even in the cross-examination conducted by the State counsel, he categorically identified accused Bhola Singh, Ajaib Singh, Tarsem Singh and Kewal Singh as the persons who fled on seeing the police party. His statement was corroborated by PW9 Const. Lakhwinder Singh. It has come on record that both the police officials were acquainted with them because they used to come to police station and were involved in other cases. There is no reason to doubt the testimonies. No ill-will or motive had been attributed to them. It has come in evidence that they were on the truck and on seeing the police party coming, Kewal Singh drove away. The police party chased them, but they managed to run away. In Pappu Singh's case (supra) all the accused fled from the spot on foot on seeing the police party and none of them was apprehended at the spot, whereas in the case in hand four accused fled in the truck while two were apprehended at the spot.

The inevitable conclusion of the aforesaid discussion is that the evidence of prosecution witnesses had been correctly appreciated by the trial Court while recording conviction. There is no reason to take a different view.

The appeals are dismissed. The conviction and sentence of the appellants is maintained. Their bail bonds and surety bonds stand cancelled. The appellants are directed to surrender before the Court of CJM concerned within 20 days from today to undergo the remaining part of the sentence. In case

they fail to surrender before the Court within the stipulated time,
the CJM would take appropriate steps to procure their presence.
A copy of this order be sent to the CJM concerned for compliance.

October 29, 2015
Jiten

(ANITA CHAUDHRY)
JUDGE