

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

CRA-D-362-DB-2013

Date of decision:04.10.2016

Emeka Ugo @ God's Power Osademe and another

.....Appellants

Versus

State of Punjab

.....Respondent

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

Present: Mr. Davinder Bir Singh, Advocate
for the appellants.

Mr. S.S. Dhaliwal, Addl. A.G., Punjab.

GURMIT RAM, J.

This appeal is instituted on behalf of abovesaid appellants-
Emeka Ugo @ God's Power Osademe and Igba Odili Benneth against the
judgment and order of sentence dated 02.04.2013 passed by learned
Judge, Special Court, Amritsar in criminal case bearing FIR No.27 dated
31.01.2009 under Sections 22/61/85 of the Narcotic Drugs and
Psychotropic Substances Act, 1985 (in short "NDPS Act"), 14 of the
Foreigners Act, 1946, 3/34/20 of the Passport Act, 1967 and 417 and 419
of the Indian Penal Code (in short "IPC") vide which they (appellants)
were held guilty for the offence punishable under Section 21 of the NDPS
Act, and awarded the sentences as detailed below:-

Name of the Convict	U/s.	Sentence	In default of payment of fine
Emeka Ugo alias God's Power Osademe	21 of the NDPS, Act.	Rigorous imprisonment for twelve years and to pay a fine of ₹1,00,000/-	In default of payment of fine, the convict shall undergo rigorous imprisonment for a further period of one year.
Igba Odili Benneth	21 of the NDPS, Act.	Rigorous imprisonment for eleven years and to pay a fine of ₹1,00,000/-	In default of payment of fine, the convict shall undergo rigorous imprisonment for a further period of one year.

2. The case of prosecution in nutshell as projected before the learned trial Court was that on 31.01.2009, Avtar Singh, Inspector, Incharge Narcotic Cell, Amritsar (Rural) along with Inspector Suraj Kumar, Incharge C.I.A. Staff, Amritsar (Rural); ASI Gulzar Singh; ASI Tejinder Singh and other police officials was present at link road leading from Rayya town to Railway Station, Rayya in connection with patrolling and search of bad elements on two government vehicles bearing registration Nos.PB02-AK-9640 and PB-02-AY-3053. One Sucha Singh, Ex-sarpanch of village Jalluwal was joined in the police party. At about 5:00 p.m., two persons who were Negros and carrying bags around their necks were detected while coming from main road Rayya to Railway Station, Rayya. They on perceiving the police party tried to retreat, but Inspector Avtar Singh intercepted them with the assistance of his party members, who on enquiring about their names and addresses in English told the same as under:-

Emeka Ugo son of Emka resident of H. No.51 Yare Street Agbor Delta State Nigeria; and

Igba Odili Benneth son of Igba resident of H. No.112 Iyna Ejigb Logos State, Nigeria.

Inspector Avtar Singh apprised them of his identity by telling his status and posting. He further told them individually that - “he suspects that they are having narcotic substance in the bags worn by them around their necks”, he wants to search them physically but they have a legal right to get their physical search conducted in the presence of a Magistrate or a Gazetted Officer in whom they have full faith. On this, both of them spoke in English individually that they had no faith in him. They want to get their physical search conducted from a Gazetted Officer. Accordingly, their non-consent memos were recorded in English.

Then Inspector Avtar Singh requested Sh. Ranbir Singh, PPS, DSP(D) Amritsar (Rural) to reach at the spot immediately by informing him about the circumstances of the case. So on his request, the said Police Officer reached at the spot at about 6:00 p.m. along with his staff who was again apprised of the circumstances of the case. He disclosed his identity to abovesaid both the persons that he is PPS posted as DSP (Detective) Amritsar (Rural). He is a Gazetted Officer in Police Department. He further informed them that “he wants to get the physical search of their bags conducted, since he has suspicion that they are carrying objectionable narcotic substance in their bags, but they have a legal right to get their search conducted in the presence of a Magistrate or any Gazetted Officer in whom they have full faith”. Upon this, both the said persons disclosed separately in English language that they have full faith

in him, he could get them physically searched. In accordance thereto, their consent memos were prepared.

During search of the bag worn by accused-Emeka Ugo, made as per rules, three packets of Heroin were recovered. After making arrangements of weights, two samples weighing five grams each were separated from each of the packets and put into plastic *Dibbis* (containers) and the remaining narcotics on weighment of each of bags was found to be 990 grams. Samples and the remaining recovered Heroin were converted into parcels which were duly sealed by Inspector Avtar Singh with his seal bearing impressions "AS" as well as by the DSP with his seal bearing impressions "RS" and the same were taken into police possession alongwith bags vide a memo. Then during search of the bag of accused-Igba Odili Benneth, two packets of Heroin were recovered. Two samples from each of the packets weighing five grams each were separated and put the same into plastic *Dibbis* (containers). The remaining Heroin on weighment of each of packets came to be 990 grams. These samples and the remaining recovered Heroin were also converted into separate parcels duly sealed by Inspector Avtar Singh with his seal bearing impressions "AS" and by DSP as well with his seal bearing impressions "RS" and the same were taken into police possession alongwith bag vide a separate memo. Sample seal was also prepared. FSL form was filled at the spot. The tape which was removed from the abovesaid packets was also taken into police possession vide a memo. Seal after its use was handed over to ASI Gulzar Singh. Since the abovesaid accused could not produce any license or permit for keeping the abovesaid narcotics in their possession, so they were formally arrested in this case. Ruqa was sent to Police

Station, Beas, on the basis of which the instant case was registered against the accused.

Site plan of the place of recovery was prepared. Statements of witnesses were recorded. On returning to the police station, the entire case property along with the accused was produced before Ronki Dass, SI/SHO who put his seal of "RD" on the sample parcels and on parcels containing the remaining Heroin and kept the same in double lock.

On 01.02.2009, accused along with case property were produced before the Court of Duty Magistrate, Amritsar who were remanded to police custody. During interrogation, accused Emeka Ugo suffered disclosure statement regarding the concealment of white colour chemical powder packed in white plastic containers in his rental residential accommodation at Mohali which was used to mix in the Heroin in order to increase its weight. Thereafter, he got recovered the 19 packets containing chemical powder from the above disclosed place. A sample of 10 grams was separated from each of these packets and the remaining contents on weighment of each of the packets were found to be 590 grams. Parcels of these packets containing remaining chemical powder and samples were prepared separately which were sealed by Inspector Avtar Singh with the seal of "AS" and the same were taken into police possession vide a memo. Site plan of the place of recovery was prepared. On the same day, one Upar Singh resident of H. No.853, Phase 3B1, Mohali produced photocopy of a document pertaining to information with regard to tenants which was bearing photograph of accused Emeka Ugo. In the Photostat copy of his passport, his real name was found to be recorded as Osademe Godspower. So the offence u/Ss 417 and 419 of the

IPC, was added in this case. Since he did not get recovered his original passport, so the offences under Section 14 of the Foreigners Act, 1946, and 3/34/20 of the Passport Act, 1967 were also added in this case. Accused Igba Odili Benneth got recovered his passport which was taken into police possession. Further, he also got recovered his identity card and same was also taken into police possession. Samples of the Heroin as well as of the white chemical powder were sent to the office of Chemical Examiner, Chandigarh. On the completion of the investigation, challan against the accused was presented in the Court of Judge, Special Court, Amritsar. Copies of documents were supplied to the accused free of cost as required under the provisions of Section 207, Cr.P.C.

3. Finding a prima facie case punishable under Section 21 of the NDPS Act, against both the accused, they were charge-sheeted accordingly vide order dated 17.8.2009, whereas further a prima-facie case punishable under Section 419, IPC, Section 14 of the Foreigners Act and Section 12 of the Passport Act was also made out against accused Emeka Ugo and he was charge-sheeted accordingly vide the said order. Accused pleaded not guilty to the said charges and claimed trial.

4. During trial of the case, prosecution examined seven witnesses in total to prove its case against the accused and further to bring them to book.

5. Then during their examination under Section 313, Cr.P.C., the entire incriminating evidence as brought on the record during trial of the case was put to them, which they denied in toto and pleaded their innocence and false implication. Further, they took the plea that on 31.01.2009 they were watching Australian Open final between Serena

Williams and Venus Williams at about 4:00 p.m. at House No.853, Phase 3B1, Mohali. Two persons in plain clothes knocked their door and asked them as to whether they know someone by the name of Peter to which they replied in negative. Then after about 40 minutes, they came along with more people in uniform heavily armed, who started dragging them along with their one friend named Emmanuel. They were beaten and dragged away in a vehicle, their hands were tied and they were kept in some undisclosed place. Later on they were produced in the Court. They were beaten and further forced to sign on blank papers. Mobile phone number of accused Emeka Ugo @ God's Power Osademe was 9872467410, whereas mobile phone number of accused Igba Odili Benneth was 9888471594. Tower locations of both these mobiles were of Mohali on that particular day and time. Nothing as alleged was recovered from them.

6. In their defence, they also examined Amit Dabra, Alternate Nodal Officer, Vodafone, Mohali as DW-1.

7. After hearing learned counsel for both the parties and going through the record as well, the learned trial Court held both the accused guilty for the offence punishable under Section 21 of the NDPS Act and awarded them sentences as detailed in para No.1 of this judgment.

8. Both the appellants-herein (accused) being dissatisfied with the impugned judgment of conviction and order of sentence have come up before this Court vide the instant appeal, notice of which was given to the respondent-State. Record of learned trial Court was also requisitioned.

9. We have heard learned counsel for both the parties and also analyzed the record thoroughly with their able assistance.

10. Regarding prosecution version PW-3 Avtar Singh, Retd. Inspector stated that on 31.01.2009, he was posted at Narcotic Cell, Rural, Amritsar and on that day he along with Inspector Suraj Kumar Incharge CIA Staff, Amritsar (Rural) and other police officials was present on the link road leading to railway station in the area of Rayya in connection with search of bad elements. Further, he deposed as per the facts as narrated in ruqa Ex.P7. Further, he proved the formal FIR Ex.P8 which was recorded on the basis of ruqa Ex.P7 and site plan Ex.P9 which he had drawn with regard to place of recovery. Then he also deposed about memo Ex.P10 prepared with regard to the personal search of accused Emeka Ugo and memo Ex.P11 prepared with regard to personal search of accused Igba Odilli Benneth. It was further in his statement that on returning to police station, accused along with case property and sample parcels were produced before SHO Ronki Dass, who put his seal of "RD" on the sample parcels, bulk parcels after verifying the same and interrogating the accused. Then he also proved memo Ex.P12 vide which case property was handed over to the SHO.

Then this witness also deposed that after getting the police remand of accused, accused Emeka Ugo during interrogation, suffered disclosure statement Ex.P13 regarding concealment of white coloured chemical powder packed in white plastic containers in his rental accommodation at H. No.853, 3rd B, Phase-I, Mohali in pursuance to which he later on got recovered 19 containers containing white powder from the above disclosed place at Mohali. It was further in his statement that one sample each weighing 10 grams was separated from each of the said containers and the remaining contents of each of the containers were

found to be 590 grams on weighment which were converted into separate parcels duly sealed with seal of “AS” and the same were taken into police possession vide memo Ex.P14. Then he also stated that owner of the house where accused Emeka Ugo was residing produced the photostat copy of his passport, Mark-A in which his name was found as Osateme son of Godspower r/o Nigeria along with police verification Mark B regarding residence of this accused in the aforementioned house. Then from the rental accommodation of this accused, weights and scales were also taken into police possession vide memo Ex.P16. Site plan of the place of this recovery Ex.P21 was prepared. Then from the search of rental accommodation of accused Igba Odilli Benneth, his identity card Ex.P18 was recovered which was taken into police possession vide memo Ex.P17. Then he also proved the memo Ex.P19 vide which passport Ex.P20 of this accused was taken into police possession. Site plan Ex.P22 of the place of this recovery was also prepared. Since accused Emeka Ugo told his wrong name, so offences under Sections 417 and 419, IPC; Section 3/34/20 of the Passport Act, 1967 and Section 14 of the Foreigners Act, 1946, were added in this case vide rapat No.33, Ex.P23. On returning to police station, case property was handed over to the SHO. Then he proved the case property recovered from accused Emeka Ugo i.e. bulk parcels as Ex.MO/1 to Ex.MO/3 and sample parcels Ex.MO/4 to Ex.MO/7 and the case property recovered from accused Igba Odili Benneth i.e. bulk parcels Ex.MO/8 and Ex.MO/9 and sample parcels as Ex.MO/10 and Ex.MO/11. Then he also proved 19 plastic containers containing chemical powder recovered from accused Emeka Ugo as Ex.MO/13 to Ex.MO/32. Ex.MO/33 was the parcel of small bags of cloth

and plastic tape, whereas Ex.MO/34 was the parcel of weights and scales. Then he proved the gold ring Ex.MO/35, chain Ex.MO/36 recovered from the personal search of accused Emeka Ugo alongwith two dollars and Rs.210/- Indian currency notes.

PW-5, Gulzar Singh (SI) was posted as ASI, CIA staff, Amritsar (Rural) on 31.01.2009 and on that day, he was present at link road leading to railway station Rayya in the police party of Inspector Avtar Singh. He was one of the attesting witnesses of all the material recovery memos with regard to the recovery of the narcotics in question, i.e. Heroin from the bags of the accused. He lent full corroboration to above discussed statement of PW-3 Inspector Avtar Singh, the IO, in order to support prosecution version. In addition to this, he also proved the disclosure statements Ex.PW5/A and Ex.PW5/B suffered by both the accused during interrogation on 03.02.2009.

PW-4 Ronki Dass Retd. Inspector was posted as SHO, Police Station Beas on the date of alleged recovery. After the alleged recovery, bulk parcels containing remaining Heroin 990 gms. each and sample parcels containing Heroin five grams each were produced before him along with accused, who affixed his seal of "RD" on said bulk parcels and sample parcels and took the same into police possession vide memo Ex.P12. He kept the case property in double lock in his custody. On the next day, he produced the accused along with case property before the Duty Magistrate, Amritsar with seals intact vide applications Ex.PW4/A and Ex.PW4/B on which the Court passed orders Ex.PW4/C and Ex.PW4/D. It was further in his statement that as per the orders of the Court, bulk parcels and five sample parcels were deposited in judicial

malkhana with seals intact. On returning to police station, he kept the five sample parcels with him in the double lock. On 06.02.2009, he handed over these sample parcels with sample seals to PW-Tirath Singh, who deposited the same in the office of Chemical Examiner, Chandigarh on the same day. So long as the case property remained in his custody, he kept the same in intact condition.

Then on 05.02.2009 Inspector Avtar Singh produced before him 19 bulk parcels and 19 sample parcels of chemical powder sealed with seal of "AS" along with sample seals, which he kept in double lock. He handed over the sample parcels to C.Tirath Singh in intact condition on 24.02.2009 who deposited the same in the office of Chemical Examiner on the same day against proper receipt.

PW-6 Ranbir Singh, Superintendent of Police (Traffic) was posted as DSP (D), Amritsar (Rural) on 31.01.2009. On receipt of telephone call from Inspector Avtar Singh, Incharge Narcotic Cell, Amritsar with regard to the present case, he reached at the spot of recovery on the same day at about 6:00 p.m.. He was the Gazetted Officer in whom the accused reposed confidence and the search of their bags was conducted in his presence which led to the alleged recovery of Narcotics from their bags. Further, he proved the consent memo of Igba Odili Benneth Ex.P3 and of Emeka Ugo Ex.P4 prepared in English language. Then he also proved memo Ex.P5 vide which the Heroin recovered from the bag of accused Emeka Ugo after its search as per rules after sampling and weighing the same and preparing parcels thereof was taken into police possession. Then he also proved memo Ex.P6 vide which the Heroin recovered from the search of bag of accused Igba Odili Benneth, after

taking out samples, weighing the remaining Heroin and preparing parcels thereof was taken into police possession. In all respects, he supported the version of prosecution with regard to recovery of narcotics in question from the accused persons out and out.

PW-1 HC Tirath Singh had deposed about the depositing of five parcels of Heroin weighing 5 gms. each along with sample seals with seals intact in the office of Chemical Examiner, Punjab, Chandigarh on 06.02.2009 against proper receipt and his duly sworn affidavit in this regard was Ex.P1. Then as per his affidavit the special report of this case was handed over to him, which he delivered to Illaqa Magistrate and other higher officers in time. Then on 24.02.2009, SHO Ronki Dass handed over to him 19 parcels of this case of chemical powder sealed with seal of "AS" who deposited the same in the office of Chemical Examiner, Punjab, Chandigarh on the same day against proper receipt. So long as the sample parcels along with sample seals remained in his custody, he kept the same in intact condition.

PW-2 HC Gurminder Singh was posted as MHC of Police Station, Beas on the date of alleged recovery. He tendered his duly sworn affidavit Ex.P2 as a part of his statement. It was mentioned in his affidavit that case property of this case i.e. 5 packets of Heroin weighing 990 grams each and 10 sample parcels of Heroin weighing 5 grams each duly sealed with the seals of "AS" and "RS" were deposited with him by Inspector Avtar Singh, Incharge Narcotics Cell, Amritsar (Rural) on 31.01.2009. Then it was further in his affidavit that on 05.02.2009 Inspector Avtar Singh, Incharge Narcotics Cell abovesaid handed over to him 19 packets of chemical powder. He kept the entire case property in

intact condition so long as it remained in his custody. Then it was also recorded in his affidavit that 5 parcels of heroin weighing 5 grams each were handed over to PW Tirath Singh, Constable on 5.2.2009, whereas 19 packets of chemical powder were handed over to PW Tirath Singh, Constable on 24.2.2009 by SHO Ronki Dass by taking keys of Malkhana from him on both the said dates, who deposited the same in the office of Chemical Examiner, Punjab, Chandigarh on abovesaid respective dates.

11. Learned counsel for the appellants has contended that the alleged recovery of narcotics was effected as per the case of prosecution on the basis of a secret information against the appellants-herein (accused). It is further his contention that PW-3 Inspector Avtar Singh, the IO, did not record the alleged secret information in writing nor did he send the same to his Senior Officers and as such, it is clear case of non-compliance of mandatory provisions of Section 42 of the NDPS Act. In order to further elaborate his contention, he also contends that even there was sufficient time available with PW-3 for sending the secret information to his immediate seniors, but he did not bother to do the same which is a flagrant violation of the provision of abovesaid Section 42 of the Act, and consequently entire process of the alleged recovery of the narcotics stands vitiated, the benefit of which is to be given to the appellants. In support of his contention, he has referred to the cross-examination of PW-3 Avtar Singh Inspector, the IO and PW-5 SI Gulzar Singh. Besides, he also referred to case laws as delivered by the Hon'ble Apex Court in ***Karnail Singh vs. State of Haryana, 2009 (5) RCR (Crl.) 515*** and ***Darshan Singh vs. State of Haryana, 2016 (1) R.C.R. (Crl.) 333***.

PW-3, Avtar Singh, Retd. Inspector in his cross-examination

stated that they had specific information on 31.01.2009 against the accused, but he did not reduce it into writing nor did he send any intimation in this regard to his seniors. Then it was further in his cross-examination that they spotted the accused at about 5:00 p.m., whereas he left the police station around 8:45 a.m.. PW-5 Gulzar Singh (SI) in this regard also stated in his cross-examination that he joined the raiding party at about 8:45 a.m. whereas accused were spotted by the raiding party at about 5:00 p.m.

12. But in a criminal case, ruqa as well as subject matter of the FIR are the basic documents on the basis of which the entire investigation of the case is to be conducted. In the case in hand, the said ruqa had come on the record as Ex.P7 and the FIR recorded on its basis as Ex.P8. A bare perusal of both these documents evinces it very clearly that it was not a case of any secret information since there is no mention of it in both these documents. Statement suffered by PW3 in his cross-examination that they had a definite information against the accused is not to override the contents of ruqa Ex.P7 and FIR Ex.P8 in order to hold that it was a case of secret information or that the alleged recovery of narcotics was made on its basis. When the documentary evidence on record does not spell out the present case to be of any secret information, then the question that either it was not recorded in writing or was not sent to the immediate seniors becomes quite immaterial. The case in hand is a case of per chance recovery, sansing any secret information. Then it is also worthwhile to mention here that PW-5 Gulzar Singh (SI) in his cross-examination stated very clearly that they did not have any specific information, but the conduct of the accused made them to believe that they (accused) were

carrying narcotics.

So far as Karnail Singh's case and Darshan Singh's case cited (supra) are concerned, in both these cases the alleged recovery of narcotics was effected on the basis of secret information and as such, the same have no bearing on the facts of the case in hand nor the principles laid down therein can be attracted to the case in hand. As a result thereof, the above contention of learned counsel for the appellants is declined and disposed of accordingly.

13. The learned counsel for the appellants has further assailed the prosecution version on the ground that in the case in hand after alleged search of the bag of the accused which led to the recovery of narcotics in question, the personal search of both the accused was also conducted. There is no denial to the fact that personal search of both the accused was conducted by the IO after the alleged recovery of narcotics during search of the bags which they were carrying at that time around their necks. Herein the learned counsel for the appellants has submitted that since the personal search of the accused was conducted after the alleged recovery of narcotics, so the investigation agency was bound to make compliance of provisions of Section 50 of the NDPS Act which is lacking in the case in hand and on this score also, the appellants are entitled to its benefit. In support of his contention, he has also relied upon the principles as laid down by the Hon'ble Apex Court in *Union of India vs. Shah Alam and another 2009(3) RCR (Criminal) 158* and *State of Rajasthan vs. Parmanand and another 2014(2) Law Herald (SC) 913*.

Now let us see the facts and evidence of the case in hand in order to hold as to how far the above contention of learned counsel for the

appellants is correct or applicable to this case. PW3-Avtar Singh (Retd. Inspector) the IO, very clearly disclosed to both the accused on their apprehension individually that he suspects that they are carrying some narcotics substance in their bags and as such their search is to be conducted but under the law they have right to get it conducted either in the presence of any Gazetted Officer or Magistrate in whom they had full faith. Thereupon both the accused expressed that they did not have faith in him (PW-3) and they wanted to get their physical search conducted from any Gazetted Officer, resultantly their non-consent memos Ex.P1 and Ex.P2 were prepared. Then on the request of this witness Sh.Ranbir Singh, PPS, DSP (D), Amritsar (Rural), reached at the spot who introduced himself to the accused by disclosing his identify and status. He also apprised them that search of their bags is to be conducted, but they have a legal right to get it conducted either in his presence or a Magistrate or other Gazetted Officer in whom they had full faith. Thereupon both the accused expressed their faith in him and as a result thereof, their consent memos Ex.P3 and Ex.P4 were prepared. Accused signed their respective non-consent memos and consent memos and thereafter, the alleged search of the bags of both the accused was conducted and in this search process, three packets of Heroin weighing one kg. each were recovered from the bag of accused Emeka Ugo and two packets of heroin weighing one Kg. each were recovered from the bag of Igba Odili Benneth which were taken into police possession vide memos Ex.P5 and P6, respectively after completing the process of sampling and weighment etc. along with other material articles. We have gone through the abovesaid non-consent memos Ex.P1 and Ex.P2 and consent memos Ex.P3 and Ex.P4 of both

accused and found the same perfect as per provision of Section 50 of the Act. So the above contention of learned counsel for the appellants that personal search of the accused was conducted after the alleged recovery of the narcotics from their bags does not cause any convulse to the case of prosecution from any angle since both the accused were given valid offer as required under the law before the search of their bags as well as their personal search. So this contention of learned counsel for the appellants is held to be misconceived being against the abovesaid documentary evidence on the record. Consequently *Shah Alam's* case and *Parmanand's* case cited (supra) are out of place and cannot deliver the goods to serve the purpose of the appellants in the case in hand in any manner.

14. Then learned counsel for the appellants has further argued that in some material documents i.e. non-consent memos and consent memos as well (Ex.P1 to Ex.P4), FIR number and the offence under Sections' are recorded in the same pen, ink and running hand in which body of these documents are drafted which goes to show that either these documents were prepared already and this case was planted against the accused subsequently or these documents were not prepared at the spot and rather the same were prepared while sitting in the police station. In order to strengthen his contention, the learned counsel for the appellants has referred to the cross-examination of PW-3 Avtar Singh (Retd. Inspector) wherein he admitted that he did not add anything from his own and only wrote down whatever was dictated by him to PW-5 Gulzar Singh (SI) on the non-consent memos abovementioned. Nothing was added or deleted in non-consent memo, whatever was written in these non-consent

memos was written at the spot.....

The FIR number in non-consent memos and consent memos has been scribed with the same ink as the bodies of these memos. Handwriting of the FIR number and contents of these memos is the same. In this regard PW-5 SI Gulzar Singh stated that Inspector Avtar Singh (PW-3) dictated him non-consent memos which were reduced into writing by him. He prepared documents in one go and there was no alteration or deletion in the same thereafter. But if the FIR number and the offence under Section in the abovesaid memos are found to be in the same ink and in the same hand as the contents thereof, that also does not make any difference. It is admitted case of prosecution that non-consent memos Ex.P1 and Ex.P2 were scribed by PW-5, SI Gulzar Singh as dictated to him by PW-3, Inspector, Avtar Singh and the consent memos Ex.P3 and Ex.P4 were also scribed by him (PW5) as dictated to him by PW6 Ranbir Singh DSP (D), Amritsar (Rural). Then as per the record, ruqa Ex.P7 was sent to the Police Station, Beas at 7:30 p.m. on 31.1.2009 which was received at the said Police Station at 7:50 p.m. and FIR Ex.P8 in this case was concluded at 9:30 p.m. on the same very date. Then the offence u/S 21/61/85 of NDPS Act is mentioned very clearly in ruqa Ex.P7 itself. So if the offence u/S 21/61/85 of the NDPS Act is recorded in the abovementioned memos Ex.P1 to Ex.P4 in the same ink and in the same running hand as the contents thereof, that does not mean that these documents are either ante-dated or the same were not prepared at the spot. So far the FIR number is concerned, the same might have been inquired from the said police station on mobile phone and inserted the same in the title of these memos. So the above contention of learned counsel for the

appellants loses its ground and turned down accordingly.

15. Then it was contended by learned counsel for the appellants that accused were picked up from their residential accommodation Phase 3B1, Mohali by the police and the alleged recovery of narcotics was thereafter foisted upon them falsely. Herein he has also contended that as per the mobile phones of both the accused, the tower locations of their mobiles on the date and time of alleged recovery was of Mohali which also falsifies the stand of prosecution that accused were apprehended by the police in the area of Rayya and the alleged recovery of the narcotics was made from them on 31.1.2009. But appellants-herein (accused) did not bring on the file any record of their call details from the concerned mobile company in order to substantiate their abovesaid plea. As per the record, both the accused were duly represented by their Lawyers throughout trial of the case before the trial Court. It was not the case that they were not provided proper legal assistance during trial of the case which would have rendered them helpless to move the application before the Court for the preservation of the record of their mobile phone call details. Both the accused were foreign nationals as well as educated. In their defence accused examined DW-1 Amit Dabra, Alternate Nodal Officer, Vodafone, who simply stated that call record and tower positioning of mobile number 9780003373 for 31.01.2009 are not available being older than one year. So the above plea of the appellants-herein (accused) also remained unsubstantiated on the record.

16. Then it was also plea of both the accused that when they were picked up by the police from the abovesaid rental residential accommodation at Mohali, they were beaten up by the police and taken to

some undisclosed place in a vehicle by the police. But in this regard also, they failed to bring on the record any medical evidence in the shape of deposition of doctor to show any injury on their person allegedly caused to them due to beatings given by the police.

17. Then it also came in the statement of both the accused recorded u/S 313 of Cr.P.C. that when they were picked up by the police from Mohali, they were accompanied by their friend Emmanuel. This Emmanuel was also not examined by them in their defence in order to tell about the actual version regarding the place from which they were picked up and to support their plea as taken by them in their said statements u/S 313, Cr.P.C.

18. Learned counsel for the appellants has also contended that PW6 Ranbir Singh, Superintendent of Police, who was posted as DSP (Rural), Amritsar at the relevant time was not well conversant in English script and hence the plea that he had given offer to both the accused individually regarding their legal right qua the alleged search in English does not seem to be logical or tenable. Herein he has referred to the consent memos Ex.P3 and Ex.P4 of both the accused in order to show that the same had been signed by above-said PW6 in Punjabi script. But his this plea is also held to be not sustainable since it is very much apparent to the naked eye that PW6 had signed both the memos in English script and not in Punjabi.

19. Then in the case in hand, alleged recovery of narcotics was effected on 31.01.2009 and as per affidavit Ex.P1 of PW-1 HC Tirath Singh, he deposited the sample parcels duly sealed along with sample seal in the office of Chemical Examiner Punjab, Chandigarh on 06.02.2009.

So it cannot be treated to be any inordinate delay in depositing the samples in the office of chemical examiner nor anything came on record to hold that any prejudice was caused to the appellants-herein (accused) due to this delay in depositing the sample parcels in the abovesaid office.

So far as depositing of the sample parcels of white coloured chemical powder in the abovesaid office of Chemical Examiner on 24.02.2009 was concerned, it also did not have any effect on the merits of case of prosecution since nothing objectionable was found during the testing of these samples in the office of Chemical Examiner.

20. So far as the weight of 5 gms. as pointed out by learned counsel for the appellants which was allegedly used for taking out the samples from the bulk was concerned, it could be already available with the Investigating Officer along with the testing kit.

21. Then as abovesaid, both the appellants-herein (accused) are foreign nationals belonging to Nigeria country. There was neither any animosity nor any vice against them with the police and as such it is difficult to say that they were ensnared in this case falsely after picking them up from Mohali.

22. Then it is settled law that deposition of any official witness is as good as that of any private/independent person. If in the case in hand, independent witness Ex-Sarpanch Sucha Singh was not examined by the prosecution during the trial of the case that also has no adverse effect on the case of prosecution. In the case in hand the abovementioned witnesses examined by the prosecution are held to be neither inimical towards the appellants in any manner nor they had any motive for deposing against them falsely to secure their conviction.

23. In the light of above discussion, the conviction of appellants -herein (accused) vide the impugned judgment is upheld. Since the appellants are foreign nationals and are in custody since the date of their arrest, so the substantive sentence of appellant – herein (accused) Emeka Ugo alias God's Power Osademe is reduced from rigorous imprisonment of 12 years to rigorous imprisonment of 10 years whereas substantive sentence of appellant – herein (accused) Igba Odili Benneth is reduced from rigorous imprisonment of 11 years to rigorous imprisonment of 10 years, but sentence of fine as imposed upon them is upheld.

With the above modification of sentence, this appeal stands accepted to that extent only and disposed of accordingly.

04.10.2016
Brij / Gaurav Sorot

(T.P.S.MANN)
JUDGE

(GURMIT RAM)
JUDGE

1. Whether reportable? No/Yes
2. Whether reasoned / speaking? No/Yes