

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

CRA-S-251-SB-2002

Date of decision: 06.01.2016

Krishan Kumar

..... 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: Mr. Angel Sharma, Advocate for the appellant.

Mr. P.S. Bajwa, Deputy Advocate General
for the State of Punjab.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment of conviction dated 19.11.2001, passed by the learned Judge, Special Court, Fatehgarh Sahib, vide which accused-appellant Krishan Kumar has been held guilty and convicted for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act') and the order on quantum of sentence of the even dated, vide which he has been sentenced to undergo rigorous imprisonment for a period of ten years and was further ordered to pay a fine of ₹ 1,00,000/-, in default of payment of fine to further undergo rigorous imprisonment for a period of six months.

2- The brief facts giving rise to this prosecution are that on 03.08.1993 PW6 Inspector Rajinderpal, SHO Police Station Amloh along with other police employees after joining Amar Singh son of Diwan Chand, resident village Gurdanpur, was holding a Nakabandi at the bridge of canal distributary Ghullu Majra. At about 01:30 A.M., one truck bearing registration No.PAT-7341 came from the side of village Ghullu Majra. The Investigating Officer signalled the truck to stop with the help of a torch. The persons travelling in the truck tried to run away but they were apprehended. The driver of the truck disclosed his name as Surinder Singh. The persons sitting with him disclosed his name as Kaur Singh. The persons who were sitting on the bags in the rear side of the truck disclosed their names as appellant Krishan Kumar alias Bittu, Raj and Baljinder Singh. The Investigating Officer made aware the accused that he suspected the poppy husk loaded in the truck and if they desire the truck can be searched in the presence of some gazetted officer or a magistrate. However, all the accused reposed confidence in the Investigating Officer to take the search. The Investigating Officer with the help of his fellow police officials conducted the search of the truck. 35 bags containing poppy husk were recovered from the truck. A sample weighing 250 grams poppy husk was separated from each bag. The remaining poppy husk came to be 34 kilograms 750 grams in each bag. Separate sealed parcels of the samples and remainder were prepared and sealed with seal bearing impression 'RP'. After preparing the sample seal, the seal was entrusted to ASI Tikka Singh. All the recovered articles along with truck were taken into possession vide memo Ex.PK. The

Investigating Officer sent ruqqa Ex.PD/1 to the Police Station, on the basis of which the FIR Ex.PD was registered. The Investigating Officer also prepared the site plan of place of recovery Ex.PM. The present appellant along with his co-accused was arrested. On return to the police station, the case property was deposited in intact condition with the Moharir Head Constable. The sample parcels were sent to the Chemical Examiner for examination. On completion of the investigation of the case, the report under Section 173 Cr.P.C. (hereinafter referred to as 'Cr.P.C.') was presented in the Court.

3- The present appellant along with his co-accused was charge-sheeted for the offence punishable under Section 15 of the Act, to which he pleaded not guilty and claimed trial.

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

5- When examined under Section 313 Cr.P.C., the accused-appellant pleaded that he is innocent and has been falsely implicated in this case at the instance of Dr. Soni of Dorbha.

6- In the defence evidence, accused examined Head Constable Nirmal Singh as DW1.

7- It is pertinent to mention that during the pendency of the case, the present appellant absented and was declared as proclaimed offender vide order dated 12.07.2000. The trial was proceeded against the remaining four co-accused. On apprehension of the appellant, the supplementary challan was filed and the proceedings initiated against him.

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

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

10- I have heard Mr. Angel Sharma, Advocate, learned counsel for the appellant, Mr. P.S. Bajwa, learned Deputy Advocate General for the State of Punjab and have meticulously examined the record of the case.

11- Initiating the arguments, learned counsel for the appellant contended that as per the prosecution story Amar Singh was associated as an independent witness in the investigation of the case but he has not been examined by the prosecution, which renders the prosecution story doubtful and the statements of the official witnesses cannot be relied upon. He further contended that the seal after use has been entrusted to the official witness instead of the independent witness, which further renders the prosecution case doubtful.

12- He further contended that there is delay of 14 days in sending the samples to the Chemical Examiner, which has not been satisfactorily explained. There is the possibility of the tampering with the case property and this delay in sending the sample is fatal to the prosecution case.

13- He further contended that the appellant has been falsely

implicated in this case at the instance of Dr. Soni. He has nothing to do with the alleged recovery of contraband. Thus, he pleaded that the conviction of the appellant has been wrongly recorded by the trial Court.

14- On the other hand, learned State counsel contended that from the consistent testimonies of PW5 ASI Bhupinder Singh the witness of recovery and PW6 Inspector Rajinderpal Singh, the Investigating Officer, it is established that 35 bags containing 35 kilograms poppy husk each have been recovered from the possession of the present appellant and his co-accused. The case property had remained intact, so mere delay in sending the sample parcels to the Chemical Examiner will not cause any prejudice to the accused. Amar Singh, the independent witness, was won over by the accused, so he was given up on the basis of an application moved by the police. The non-entrustment of the seal to the independent witness is itself no ground to discard the prosecution case. Moreover, the accused has not been able to show that the case property was tampered with at any point of time.

15- He further contended that all the four co-accused were also convicted in this case on the basis of the same set of evidence. They preferred Criminal Appeal No.1042-SB of 2000 against their conviction. The said appeal has already been dismissed by this Court on 22.08.2002. Thus, he pleaded that there is no legal infirmity in the conviction of the appellant.

16- I have duly considered the aforesaid contentions.

17- Amar Singh, the public man, was associated in the investigation of the case. He has also attested the seizure memo Ex.PK.

But this witness has not been examined by the prosecution and was given up by learned Additional Public Prosecutor vide his statement dated 27.11.2010 as having been won over by the accused on the basis of the application moved by the police. Thus, said Amar Singh has not been examined by the prosecution as he was won over by the accused. It is a fact of common knowledge that the public 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. There is no illegality if the Public Prosecutor has given up the witness who was not likely to support the prosecution case. To support this view reference can be made to cases ***Banti alias Guddu Vs. State of Madhya Pradesh 2003(4) RCR (Criminal) 911***. In a latest case titled as ***Kulwinder Singh & Anr. Vs. State of Punjab 2015(2) RCR (Criminal) 918***, two independent witnesses were associated in the investigation but they were not examined by the prosecution as they were won over by the accused. The Hon'ble Apex Court held that no adverse inference can be drawn for non-examination of the said witnesses and the case of the prosecution cannot be rejected solely on the ground that those independent witnesses have not been examined when on perusal of the evidence the Court finds that the case put forth by the prosecution is trustworthy. The Hon'ble Apex Court further held that there is no reason not to rest the conviction on the basis of the statements of the official witnesses when they were trustworthy and credible. It is further the settled principle of law that testimonies of the official witnesses carries

the same evidentiary value as that of any other witness. Their statements cannot be discarded simply on account of their official designation. There is no statutory or absolute rule that their deposition should be treated with suspicion. They cannot be viewed with distrust every time. Reference can be made to case ***Ram Swaroop Vs. State (Government of NCT of Delhi) (2013) 14, Supreme Court cases 235***. Thus, the non-examination of PW Amar Singh, who was won over by the accused, is no ground to reject the prosecution case.

18- The recovery in this case was effected on 03.08.1993. As per the report of the Chemical Examiner Ex.PM, the sample parcels were received in the Laboratory on 17.08.1993, so there was delay of 14 days in sending the sample parcels to the Chemical Examiner. The Hon'ble Apex Court in case ***State of Orrisa Vs. Kanduri Sahoo 2004(1) RCR (Criminal) 196*** has 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. The same ratio of law was reiterated by the Division Bench of this Court in case ***Mohan Singh Vs. State of Punjab 2007(4) RCR (Criminal) 705*** and ***Baggar singh alias Gaggi Vs. State of Haryana 2009(4) RCR (Criminal) 183***. Thus, as per the ratio of law laid down in the cases mentioned above, mere delay in sending the sample to the Chemical Examiner will not render the prosecution case doubtful, if the seals remained intact when the sample parcels reached the Chemical Examiner and those were not tampered with at any point of time.

19- In the instant case also, the prosecution has adduced

cogent and convincing evidence to establish that the case property has remained intact. PW6 Inspector Rajinderpal Singh, the Investigating Officer of the case, has categorically deposed that he sealed all the parcels of the case property with his seal bearing impression 'RP'. He further deposed that on return to the Police Station, he deposited all the sample parcels and case property parcels and the specimen seal Ex.P36 prepared at the spot with seals intact with MHC Malkiat Singh on the same day i.e. 03.08.1993. MHC Malkiat Singh has stepped into witness box as PW3 and filed his affidavit Ex.PC, wherein he has also deposed that the parcel sealed with the seal bearing impression 'RP' along with the specimen seal impression were deposited with him. He handed over the sample parcels to Constable Devinder Singh on 17.08.1973 for taking the same to the Chemical Examiner. He further categorically deposed that neither he nor he allowed anybody else to tamper with the parcels till those remained in his possession. Constable Devinder Singh has stepped into witness box as PW2 and filed his affidavit Ex.PB. He also deposed that the sample parcels remained intact during the transit to the office of the Chemical Examiner. In the report of the Chemical Examiner Ex.PN also, it has been categorically mentioned that the seals on the exhibits were intact and agreed with the sample seal sent and it remained in his safe custody till analysis was completed. So, from the aforesaid evidence the chain of the link evidence is completed and it is established that the case property remained intact throughout and was never tampered with at any point of time. Thus, mere delay of 14 days in sending the sample parcels to the Chemical Examiner is of no legal consequences.

20- The seal after use in this case has been entrusted to ASI Tikka Singh and not to Amar Singh, the public witness, that is also not a ground to throwaway the prosecution case. A Division Bench of this Court in case ***Jeet Singh alias Gohli and others Vs. State of Punjab 2013(3) RCR (Criminal) 204*** has laid down that handing over of the seal to the police official instead of independent witness has no bearing on the merits of the case when no circumstance has come on record to show that the case property was tampered with. As discussed above, in the instant case also it is established from the evidence adduced by the prosecution that the sample parcels and the other articles of the case property remained intact and were never tampered with. Thus, the entrustment of the seal to the police official will not create any dent in the prosecution case.

21- PW6 Inspector Rajinderpal Singh, the Investigating Officer, has deposed in detail about the apprehension of the appellant along with his co-accused and resultant recovery of the poppy husk. In nutshell, he deposed that on 03.08.1993 at about 01:30 A.M., the truck was seen coming from the side of Ghullu Majra. He signalled and the truck stopped at a distance of 10 karams. He saw some persons alighting from the truck after opening the windows. They immediately rushed towards the side of truck and apprehended those persons, who were Surinder Singh, who was found driving the truck, Kaur Singh was sitting along with the driver. The other accused namely Raj Kumar, Krishan Kumar and Baljinder Singh were found coming out of the truck from the side of Dala from the backside. They all were apprehended at the spot.

Thereafter, he deposed about the formalities of search and further categorically deposed that on the search of the truck 35 bags containing 35 kilograms poppy husk each were recovered from the said truck. This version of PW6 Inspector Rajinderpal Singh is fully corroborated from the testimony of PW5 ASI Bhupinder Singh the witness of recovery. Learned counsel for the appellant has not been able to point out any material contradiction in their statements on the point of apprehension of the appellants along with his co-accused, search and seizure and the resultant recovery of the contraband. Both these witnesses have been cross-examined at considerable length but even in the cross-examination their testimonies could not be shattered. So, from the cogent, consistent and reliable evidence in the shape of statements of PW6 Inspector Rajinderpal Singh, the Investigating Officer of the case and ASI Bhupinder Singh the witness of recovery, it is established that 35 bags containing 35 kilograms poppy husk in each, were recovered which were loaded in truck No.PAT-7341. The accused-appellant was found sitting on the bags in the rear side/body of the truck. So, the appellant is proved to be in possession of the aforesaid contraband.

22- Once it is established that the appellant was in possession of the contraband, it was for him to show that he was not in conscious possession thereof because how he came to be present in the truck and sitting on the bags containing contraband is within his special knowledge. Section 54 of the Act creates a legal fiction and presumes that the person in possession of the illicit article, to have committed the offence in case he fails to account for the possession. Possession is a mental state and

Section 35 of the Act gives statutory recognition to culpable mental state. Once the possession is established, the Court can presume that the accused has culpable mental state and has committed the offence. To support this view reference can be made to cases *Karnail Singh Vs. State of Rajasthan 2000(4) RCR (Criminal) 171*, *Madan Lal & Anr. Vs. State of Himachal Pradesh 2003(4) RCR (Criminal) 100*, *Dharampal Singh Vs. State of Punjab 2010(4) RCR (Criminal) 504* and *Gian Chand & Ors. Vs. State of Haryana 2013 (3) RCR (Criminal) 916*. Thus, the appellant is proved to be in conscious possession of the contraband.

23- I do not find any substance in the plea of false implication raised by the accused. The accused-appellant has not led evidence to show as to what grudge Dr. Soni had against the appellant and similarly what influence he was having over the local police for the false implication of the appellant in such a serious case. 35 bags containing 35 kilograms poppy husk in each bag have been recovered from the possession of the present appellant and his co-accused. It is not possible that such a huge quantity of the contraband can be planted by the police from its own source, that too, just for the false implication, as the said object can be achieved even by planting the lesser quantity. The appellant has not led any evidence to substantiate its plea of false implication. Thus, the defence plea raised by the appellant is not proved and seems to be an afterthought.

24- Thus, keeping in view my aforesaid discussion, it is established beyond shadow of reasonable doubt that the present appellant was found in conscious possession of 35 bags containing 35 kilograms

poppy husk each along with his co-accused. So, the conviction of the appellant and the sentence awarded to him does not suffer from any legal infirmity and are hereby maintained and upheld.

25- Consequently, the present appeal is devoid of any merits and is hereby dismissed.

Dated: 06.01.2016.

sunil yadav

**(DARSHAN SINGH)
JUDGE**