

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

1. CRA-S-1030-SB-2000 (O&M)

Satpal

..... Appellant

Versus

State of Haryana

..... Respondent

2. CRA-S-1466-SB-2003(O&M)

Rishipal

.....Appellant

Versus

The State of Haryana

.....Respondent

Date of decision :24.10.2017

CORAM : HON'BLE MR.JUSTICE H.S. MADAAN

Present : Mr. Manoj Bajaj, Advocate with
Ms. Jagriti Kalia, Advocate
for the appellants.

Mr. Neeraj Poswal, AAG, Haryana.

H.S. MADAAN, J.

Vide this judgment I propose to dispose of two appeals, first
one arising out of judgment of conviction and order of sentence dated

18.08.2000 bearing **CRA-S-1030-SB-2000** filed by appellant – Satpal and second one arising out of judgment of conviction dated 11.07.2003 and order of sentence dated 15.07.2003 bearing **CRA-S-1466-SB-2003** filed by appellant – Rishipal.

Appellant – Satpal was convicted by learned Additional Sessions Judge, Fatehabad and was sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of ₹1 lac, in default of payment of fine, to undergo further rigorous imprisonment for a period of one year for offence punishable under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (“NDPS Act” - for short).

Appellant – Rishipal was convicted by learned Additional Sessions Judge, Fatehabad and was sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of ₹1 lac, in default of payment of fine, he shall undergo further rigorous imprisonment for a period of two years for offence punishable under Section 15 (c) of the NDPS Act.

The accused / appellants pray that appeal filed by them be accepted and order of sentences be set aside and they be acquitted of the charge framed against them.

Briefly stated the facts of the prosecution story are that on 05.11.1997 a police party from Police Station Ratia headed by ASI Ghisa Ram was on patrol duty, present in the area of village Lathera where the said ASI received a secret information that truck bearing No.UP-24-2143 covered with a yellow tarpaulin was coming from Ratia side with poppy straw loaded in it; that the police party accordingly proceeded towards village Bamanwala, where they were joined by HC Suresh Kumar, UGC

Duni Chand, HC Dharambir, C. Rajender Singh and Daya Nand, that a picket was laid there, after some time truck No.UP-24-2143 was spotted coming from side of Ratia; that on observing the police party, the truck driver stopped it about 100 yards short of the police party and tried to turn it back, however, the police personnel rushed towards the truck on observing that two persons alighted from the truck and managed to run away, accused Satpal was found driving the truck whereas accused Rishi Pal cleaner was also there; that both of them were apprehended and they told that of the two persons, who managed to run away one was Gian Singh wife's brother of Nawab Singh truck owner whereas the second person was a Sikh belonging to Ratia area, who had boarded the truck from Bhim Hotel in the area of Hansi; that ASI Ghisa Ram gave notice to Satpal informing him that he intended to search truck No.UP-24-2143, since he suspected it to be carrying poppy straw and if he so desired search could be conducted in the presence of a Gazetted Officer or a Magistrate. ; that accused - Satpal gave his option that search be conducted in the presence of a Gazetted Officer. Similarly notice was given to accused Rishi Pal who also gave similar option. Then a message was sent to Sh. Charanjit Singh, DSP, Fatehabad through wireless system requesting him to reach there. Sh. Charanjit Singh, DSP accordingly arrived there at 5:30 am, he disclosed his identity to accused - Satpal and Rishi Pal and thereafter on his directions police party headed by ASI Ghisa Ram searched the truck after removing the tarpaulin, it was found to be loaded with 50 bags of tobacco whereas beneath the tobacco 78 bags containing poppy straw were found. 100 grams from each bag was taken out, as sample, on being weighed the remaining poppy straw in each bag was found to be 39.900 kgs. the samples and bags containing

remaining poppy straw were converted into parcels sealed with seal of ASI Ghisa Ram having impression "GR" as well as seal of Charanjit Singh, DSP having impression "CS". The sample and bulk parcels were taken into possession vide a seizure memo, 50 bags containing tobacco, truck in question, tarpaulin, registration certificate of truck and rope etc. were taken into possession by ASI Ghisa Ram in the presence of Charanjit Singh, DSP, HC Suresh Kumar and HC Dharambir, ASI Ghisa Ram handed over his seal "GR" to HC Suresh Kumar, DSP Charanjit Singh retained his own seal. Information in writing was sent to police station through C. Rajender Singh on the basis of which formal FIR was registered. The Investigating Officer carried out the necessary investigation preparing requisite documents and recorded statements of the witnesses. On return to the police station, accused along with case property and witnesses were produced by ASI Ghisa Ram before SI Raj Kumar SHO Police Station Ratia. SI Raj Kumar affixed his seal of "RK" on the parcels containing case property i.e. poppy straw. The case property alongwith specimen seal impression were deposited with MHC whereas accused were put in the lock up. MHC Karan Singh had handed over sample parcels along with specimen impression to C. Nihal Singh for taking those to FSL, Madhuban. He accordingly did so, report from FSL, Madhuban was received during investigation of the case. Nawab Singh owner of the truck and Gian Singh brother-in-law of Nawab Singh could not be arrested; that the identity of the Sikh person who run away from the spot after alighting from the truck could not be established. Gian Singh was got declared as a proclaimed Offender. After completion of the investigation and other formalities challan against accused Satpal and Rishi Pal was filed in the Court of Judicial Magistrate Fatehabad.

During the commitment proceeding accused Rishi Pal and Satpal were released on bail by Illaqa Magistrate in terms of provisions of Section 167(2) Cr.P.C. Since both the accused had absented themselves, their bails were cancelled. Accused – Satpal was arrested and case against him was committed to the Court of Sessions by Judicial Magistrate Ist Class, Fatehabad vide order dated 01.10.1999. The case had been assigned to Additional Sessions Judge, Hisar who framed formal charge for offence under Section 15 of the NDPS Act against accused – Satpal, to which he pleaded not guilty. During the course of prosecution evidence, prosecution had examined C. Lal Chand as PW-1, HC Karan Singh as PW-2, C. Nihal Singh as PW-3, Sh. Charanjit Singh DSP as PW-4, SI Raj Kumar as PW-5, HC Suresh Kumar as PW-6 and ASI Ghisa Ram as PW-7 and tendered FIR Ex.P1, affidavit of HC Karan Singh as Ex.P2, affidavit of C. Nihal Singh as Ex.P3, seizure memo Ex.P4, arrest memo Ex.P5, report of Forensic Science Laboratory Ex.P6, notices Ex.P7 to Ex.P10 to prove the charge against Satpal accused. 78 bags containing poppy straw Ex.P11 to Ex.P88 and tarpaulin Ex.P90 and Ex.P91 were also produced during the trial.

Thereafter, statement of accused – Satpal under Section 313 Cr.P.C. was recorded in which all the incriminating circumstances appearing against him was put to him, which he denied and pleaded his false implication. In addition to that he further pleaded that he did not know driving of any vehicle and he had not obtained any driving licence; that Rishipal was a trained driver and he came to his house two days before the occurrence and asked him to accompany him to Haryana in a truck loaded with tobacco; that he also showed his transportation bill regarding carriage of tobacco; that he accepted his request and accompanied him on the truck

to Haryana as he was interested in learning the driving and on their way to Ratia they crossed as many as 30 barriers of police and when the truck was stopped on these barriers, either Gian Singh who was brother of wife of Nawab Singh truck owner or Rishipal used to show registration certificate and transportation bills to the police; that at the time of his arrest, the truck was being driven by Gian Singh and he was sitting in the cabin of the truck; that he has no knowledge about poppy straw being transported in truck beneath the bags containing tobacco; that he had no reason to believe that poppy straw was loaded in that truck; that after they were arrested they were brought to Police Station, Ratia at night; that search of the truck had not been taken in the presence of DSP Fatehabad, that he further stated that the police has tried to save the real culprits and challaned him in this false case.

During his defence evidence, accused – Satpal examined his wife Uma who supported the defence version stating that she had been residing with her husband – Satpal at village Ladsia District Aita (U.P.); that Satpal has been doing work of repairing bicycles, he is not a trained driver and cannot drive even a motorcycle; that Rishipal is also resident of village Ladsia; that he had come to Satpal on one day asking him to accompany him to Haryana stating that he would teach him truck driving since such driving is a profitable job than job of repairing bicycles; that he told her husband that he was carrying tobacco to Haryana and showed transportation bills, that she received information that her husband Satpal and Rishipal were arrested by Haryana Police; that she further stated that her husband is innocent and he had been unnecessarily implicated in this case.

Accused – Satpal was tried and convicted vide judgment dated

18.08.2000 passed by the Court of Additional Sessions Judge, Fatehabad.

Subsequently accused Rishipal was arrested and vide order dated 12.04.2001 case against him was committed to Court of Sessions by Judicial Magistrate Ist Class, Fatehabad on receipt of challan by way of commitment. Additional Sessions Judge, Fatehabad to whom the case had been assigned charge-sheeted the accused under Section 15 of the NDPS Act, to which he pleaded not guilty and claimed trial.

During the course of prosecution evidence, prosecution examined as many as seven witnesses namely C. Lal Chand as PW-1, Raj Kumar R/Inspector as PW-2, HC Karan Singh as PW-3, Nihal Singh as PW-4, Charanjeet Singh DSP as PW-5, Suresh Kumar ASI as PW-6 and Ghisa Ram retired ASI / IO as PW-7 in addition to that prosecution tendered into evidence report of FSL Ex.P6/A. With that the prosecution evidence got concluded.

Statement of accused – Rishipal under Section 313 Cr.P.C. was recorded, in which all the incriminating circumstances appearing against the accused were put to him to which he denied and pleaded his false implication in this case.

Accused did not lead any evidence in defence despite available opportunities.

After hearing arguments learned trial Court convicted and sentenced accused – Rishipal as detailed above.

I have heard learned counsel for the appellants / accused, learned State counsel, besides going through the record and I find that there is no merit in the appeals. The main contention of learned counsel for the appellants was that the prosecution has examined only official witnesses to

prove apprehension of accused and recovery of the contraband without any independent corroboration being there. Therefore, the prosecution story becomes doubtful and should be discarded.

The learned State counsel contended that there has not been any previous enmity between official witnesses and the accused. There was no reason for the official witnesses to involve in this case wrongly or to depose against them seeking their conviction.

After hearing rival contentions, I find that in absence of any allegations of previous enmity between the accused and official witnesses the depositions of official witnesses are to be taken at par with independent witnesses. The independent corroboration is just a rule of prudence and not requirement of law. It is nowhere provided that in absence of independent corroboration the statements of official witnesses are not to be acted upon. Though independent corroboration if available lends somewhat more credibility to the prosecution story. Furthermore the recovery involved in this case is very heavy ruling out the chances of false plantation. One more argument put forward by learned counsel for the appellants was that in statements of accused recorded under Section 313 Cr.P.C. it has not been put to them that they were found in conscious possession of the contraband in that way their conviction cannot be sustained. In support of that contention he has referred to citation by a Coordinate Bench of this Court ***Dalbir Singh alias Beera vs. The State of Punjab, 2008(1) R.C.R. (Criminal) 1050*** it was a case of recovery of 55 bags of poppy husk from search of truck which were being carried in a truck, during examination under Section 313 Cr.P.C. no question was put to them that they were in conscious possession of contraband and their conviction was set aside. The

contention of learned counsel for the appellants has been that accused were in conscious possession of contraband, therefore, they could not be held liable for the offence. The counsel pressed into service authority of ***Abdul Rashid Ibrahim Mansuri vs. State of Gujarat 2000(2) SCC 513*** by the Apex Court. However, learned State counsel has contended that accused Satpal was driving the truck whereas Rishi Pal was there in the truck as a cleaner, on seeing the police party the driver had started reversing the truck, two persons had alighted from the truck and run away, all those facts go to show that the accused were aware of the fact that contraband was being carried out in the truck, since otherwise there was no necessity of the truck driver stopping the truck at a distance from the police party and then trying to reverse in an attempt to escape. Accused - Rishi Pal being cleaner is also supposed to know about what was being carried in the truck. I find such explanation by the State counsel to be quite convincing and plausible. In the authority ***Abdul Rashi Ibrahim Mansuri*** (supra) it has been held that according to Section 35 onus to prove absence of culpable mental state lies on the accused, which in this case they have failed to do. Though wife of accused - Satpal appearing as a defence witness has stated that Satpal does not know driving merely by her saying so it cannot be said that Satpal was not driving the truck. As per the specific case of the prosecution, it was Satpal who was driving the truck at the relevant time, whereas accused - Rishi Pal was sitting in the truck as cleaner. If accused - Satpal was not driving the truck then who else was? According to DW-1 Rishi Pal was a trained driver who had come to their house two days before the occurrence and was asking Satpal to accompany him in a truck to Haryana, which was

loaded with tobacco, that rather proves presence of accused - Satpal and Rishi Pal with the Truck at the relevant time. They cannot simply wash their hands off with the matter stating that they were not aware of the fact that contraband was being carried in the truck. Things might have been taken otherwise if the quantity of the contraband recovered was quite small but not when it amounts to 78 bags of poppy straw each having 40 kgs. of poppy straw. As regards the objection that while being examined under Section 313 Cr.P.C. it has not been put to the accused that they were in conscious possession of contraband. This objection does not seem to have much merit. The charge to that effect had been framed against the accused to which they pleaded not guilty. During the trial the prosecution witnesses had deposed in that regard to which they had been cross-examined, such incriminating circumstances regarding recovery of contraband had been put to them while being examined under Section 313 Cr.P.C. They are not shown to have prejudiced in any manner by non-use of the terms conscious possession specifically. The observation in the citation by Co-ordinate Bench had been made on its own fact and circumstances and accused / appellants cannot take advantage of the same. Though another objection was taken by counsel for the accused that investigation has not been conducted in a fair manner, but he could not convince me as to how and which material lapse took place during the investigation which might have caused a serious prejudice to the accused. Even otherwise a small error / omission in the investigation cannot result in the grant of any benefit to the accused by default, more particularly when we are to see that the police of the region is not highly trained in the field of scientific investigation. The main thing to be seen is as to whether the ingredients of the offence are

fulfilled the answer to the same in this case has to be in affirmative. As regards non-compliance of Section 42 of the Act, keeping in view the fact that the truck had been intercepted within about one hour of the secret information, there was hardly any time for the Investigating Officer to reduce the information into writing and if he had indulge in doing so then the accused might have managed to run away along with truck. As such, no prejudice is shown to have caused to the accused in this case.

The judgment passed by the trial Court are well reasoned ones, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity in such judgments which might have called for interference by this Court while hearing appeals. The said judgments of their conviction and order of sentences are upheld, whereas appeals are found to be without any merit and the same is dismissed accordingly.

24.10.2017
Gaurav Sorot

(H.S. MADAAN)
JUDGE

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