

In the High Court of Punjab and Haryana at Chandigarh.

Criminal Appeal No.D-1086-DB of 2010

Date of Decision:- August 23, 2017

Satyampuri

.....Appellant

Versus

State of Haryana

....Respondent

CORAM: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. Jagdish Manchanda, Advocate.
for the appellant.

Mr. Ankur Mittal, Additional Advocate General, Haryana
with Mr. Manoj Dhankhar, Assistant Advocate General, Haryana.

Gurvinder Singh Gill, J.

1. Satyampuri has filed the present appeal challenging judgment dated 24.9.2010 passed by the Additional Sessions Judge-cum-Special Judge, Fatehabad vide which he has been held guilty for having committed offence under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the NDPS Act") and has been sentenced to undergo rigorous imprisonment for 12 years and to pay fine amounting to ₹ 1 lac.
2. The prosecution story, in nutshell, is that on 1.8.2009 when a police party headed by Inspector Telu Ram (PW-3) was present at ITI Chowk, Tohana then appellant Satyampuri was noticed coming from the side of railway crossing

carrying a plastic bag on his right shoulder, who upon seeing the police party turned back and started walking briskly. On suspicion he was apprehended by the police. Upon inquiry, he disclosed his name as Satyampuri. Since it was suspected that he was carrying some narcotics, Inspector Telu Ram (PW-3) served him with a notice under Section 50 of the NDPS Act extending him option of getting his search effected in the presence of a Gazetted Officer or a Magistrate. The appellant Satyampuri opted to be searched in the presence of a Gazetted Officer. Inspector Telu Ram, accordingly contacted DSP Harish Kumar Dutta telephonically and requested him to come to the spot. After a shortwhile DSP Harish Kumar Dutta came there and under his directions and in his presence Inspector Telu Ram searched the bag carried by the appellant Satyampuri which was found to contain '*charas*'. Two samples weighing 50 grams each were separated from the recovered charas and upon weighment of the remaining recovered '*charas*' the same was found to be weighing 9 kgs. and 900 grams. The samples as well as the remaining '*charas*' were packed into separate parcels and were duly sealed with the seal of Inspector Telu Ram bearing initials 'TR'. The seal after use was handed over to ASI Manphool Singh. The DSP Harish Kumar Dutta also affixed his seal bearing initial 'HK' on both the sample parcels as well as the parcel containing the remaining recovered '*charas*'.

3. Upon interrogation, Satyampuri disclosed that one Rajbir @ Rajinder of Uklana and one doctor of Patran had supplied the said '*charas*' to him. The aforesaid proceedings were recorded in the shape of a '*ruqa*' (Ex.P-6) duly signed by Inspector Telu Ram and the said '*ruqa*' was sent to police station

through Constable Rajinder, on the basis of which FIR (Ex.P-7) was lodged at Police Station City Tohana, Fatehabad on the same day itself.

4. The accused Satyampuri was arrested at the spot and arrest memo (Ex.P-11) stating the grounds of arrest was prepared and intimation regarding his arrest was furnished to Biru Son of Kashmiri Puri resident of Tohana. Rajesh resident of Uklana was also arrested by the police on 31.8.2009 and arrest memo (Ex.P-16) containing the grounds of arrest was prepared and intimation regarding his arrest was furnished to Birupuri Son of Kashmiri Puri resident of Tohana. One of the sample of the recovered '*charas*' was sent to FSL for chemical examination. Upon receipt of the report of the chemical examiner and conclusion of investigation, challan was presented against both the accused in the Court of Sub Divisional Judicial Magistrate (SDJM), Tohana on 24.9.2009. The learned SDJM, Tohana committed the case to the Court of Sessions, Fatehabad vide order dated 8.10.2009. The case was assigned to the Court of Additional Sessions Judge, Fatehabad, who upon finding sufficient grounds to presume that the accused Satyampuri had committed offences under Sections 20 and 27-A of the NDPS Act and that Rajesh had committed an offence under Section 27-A of the NDPS Act framed charges against both the accused in respect of the said offences to which the accused pleaded not guilty and claimed trial.
5. The prosecution in order to establish its case examined as many as six witnesses. PW-1 Head Constable Kuldeep Singh is an official witness who tendered his affidavit Ex.P-1 in evidence wherein he deposed that on 1.8.2009 he was posted as MHC and that Inspector Telu Ram had deposited case

property in the malkhana. He further deposed that on 4.8.2009 he had handed over one sealed parcel weighing 50 grams of '*charas*' to EHC Krishan Kumar for depositing the same in FSL and that as long as the case property remained in his possession the same was not tampered with. PW-2 EHC Krishan Kumar tendered his affidavit Ex.P-2 in evidence wherein he deposed that on 4.8.2009 MHC Kuldeep Singh had entrusted a sealed parcel to him and he deposited the same with FSL Madhuban and that as long as the parcel remained in his possession the same was not tampered with.

6. PW-3 Inspector Telu Ram, who is the investigating officer in the present case stated in detail regarding entire proceedings conducted in the case right from apprehension of the accused on 1.8.2009 and regarding recovery of '*charas*' from his possession upto the filing of challan. PW-4 ASI Manphool Singh who was comprised in the police party headed by Inspector Telu Ram (PW-3) stated in corroboration to the statement made by PW-3 Inspector Telu Ram and deposed about the proceedings conducted in the matter in respect of the recovery of '*charas*' from the appellant. PW-5 SI Ram Kumar is a formal official witness who deposed to the effect that on receipt of '*ruqa*' (Ex.P-6), the FIR (Ex.P-7) was lodged. PW-6 Head Constable Ajaib Singh deposed that he had remained posted as a Reader to DSP Harish Dutta from 22.2.2009 to 17.1.2010 and had seen DSP Harish Dutta signing while working with him as a Reader. PW-6 identified signatures of DSP Harish Dutta on Ex.P-5 and Ex.P-10.
7. Upon conclusion of the prosecution evidence, entire incriminating evidence appearing against the accused was put to the accused to enable them to explain

the same but the accused denied the prosecution case in toto and pleaded false implication. The accused were afforded opportunity to lead evidence in their defence but none of the accused led any evidence.

8. The learned trial Court, upon perusal of the evidence on record, held that the prosecution has been unable to establish charges framed against the accused Rajesh and consequently acquitted him. However, accused Satyampuri was found guilty for having committed offence punishable under Section 20 of the NDPS Act and was sentenced to undergo rigorous imprisonment for 10 years and to pay fine amounting to ₹ 1 lac vide judgment dated 24.9.2010 passed by the Special Judge, Fatehabad.
9. The appellant, aggrieved by the aforesaid judgment dated 29.4.2010 has challenged the same by way of filing this appeal.
10. The learned counsel for the appellant, while assailing the impugned judgment, submitted that the false implication of the appellant is evident from the fact that no independent witness was associated at the time of recovery though the recovery was not effected from any isolated place. The learned counsel submitted that the prosecution has been unable to establish compliance of Section 50 of the NDPS Act inasmuch as DSP Harish Dutta in whose presence the search of the appellant was allegedly effected has not been examined. The learned counsel has further submitted that there are various inconsistencies in the statement of PW-3 Inspector Telu Ram and PW-4 ASI Manphool Singh and which clearly show that the accused has been falsely implicated. The learned counsel for the appellant, thus, prayed for acceptance of his appeal and

for acquittal of the appellant by setting aside the impugned judgment.

11. On the other hand, the learned counsel representing the State submitted that the impugned judgment does not suffer from any infirmity and that all the statutory safeguards mandated by law were duly adhered to at the time of effecting recovery from the appellant. The learned State counsel has further submitted that the testimony of the Investigating Officer PW-3 Inspector Telu Ram finds ample corroboration from the testimony of PW-4 ASI Manphool Singh who was part of the police party and in whose presence recovery had been effected and that there is nothing on record to doubt the factum of recovery and that since the report of FSL establishes that the recovered contraband was '*charas*', therefore, the learned trial Court has correctly held the accused guilty for having committed offence punishable under Section 20 of the NDPS Act.
12. We have heard the rival submissions addressed before this Court and with able assistance of learned counsel have also perused the record of the case.
13. The foremost contention raised by learned counsel for the appellant is that no independent witness was joined at the time of effecting recovery from the appellant. It is correct that no independent witness was associated at the time of effecting recovery but there is no mandate of law that recovery in the absence of an independent witness is rendered doubtful under all circumstances. Associating an independent witnesses is a rule of prudence not a rule of law. During the course of cross-examination of PW-3 he has stated that no public person was ready to join investigation though he had tried to

associate them, who showed their inability due to paucity of time. In any case law in this regard is well settled by Hon'ble the Supreme Court in 2015(4) R.C.R. (Criminal) 1014 titled as Badev Singh Versus State of Haryana wherein it has been held that when there is satisfactory explanation for non-examination of independent witnesses, conviction can be based solely on the testimony of official witnesses if evidence of such official witnesses inspires confidence. The relevant extract of the same is reproduced hereunder:-

“On the midnight of 16/17.09.1990, when the police party was holding Nakabandi on both sides of Kacha path leading to village Kingre from G.T. Road, the tractor was intercepted and the driver of the tractor—appellant was apprehended under suspicion at odd hours of midnight, prosecution cannot be expected to examine independent witnesses. In his cross-examination, PW-1 stated that two persons had come at the place of Nakabandi in the midnight and they were asked to join, but they refused to join. In the circumstances of the case, when there is satisfactory explanation for non-examination of independent witnesses, conviction can be based solely on the testimony of official witnesses if evidence of such official witnesses inspires confidence.”

14. In the present case PW-3 Inspector Telu Ram stated in detail in respect of entire proceedings conducted by him as regards recovery of ‘charas’ from the appellant. He specifically deposed that on 1.8.2009 when he along with ASI Manphool Singh, Constable Rajinder Singh, Constable Rupesh, Constable Anil Kumar and Constable Roshan Lal were present at ITI Chowk, Tohana for

patrolling, then they noticed the appellant coming from the side of railway crossing carrying a plastic bag on his right shoulder, who upon seeing the police party turned back and started walking briskly. PW-3 deposed that on the basis of suspicion, the appellant was apprehended and was served with a notice under Section 50 of the NDPS Act (Ex.P-3) vide which he was extended offer of being searched in the presence of a Magistrate or a Gazetted Officer. The accused opted to be searched in the presence of a Gazetted Officer. PW-3 deposed that he requested DSP Harish Dutta telephonically to reach at the spot, who reached there along with the staff. PW-3 deposed that under the directions of DSP Harish Dutta he conducted the search of the bag carried by the accused which yielded recovery of '*charas*'. He deposed that two samples weighing 50 grams each were separated and packed into parcels and the remaining '*charas*' was packed into a separate parcel and all the three parcels were duly sealed with his seal bearing initials 'TR' and also with the seal of DSP Harish Dutta bearing initials 'HK'. He further deposed that the seal after use was handed over to ASI Manphool Singh while the DSP retained his seal. PW-3 further stated that a '*ruqa*' (Ex.P-6) prepared at the spot was sent to the police station through constable Rajinder Singh, on the basis of which formal FIR (Ex.P-7) was lodged. He further deposed that he prepared the report in terms of Section 57 of the NDPS Act (Ex.P-10) at the spot and produced the same before DSP Harish Dutta who attested the same.

15. The aforesaid details of recovery as disclosed by the Investigating Officer PW-3 Insepctor Telu Ram find ample corroboration from the testimony of PW-4 ASI Manphool Singh who was present in the police party headed by PW-3

Inspector Telu Ram. Both the witnesses were cross-examined at length on behalf of the accused but nothing substantial could be elicited during their cross-examination so as to doubt the veracity of their statements.

16. The learned counsel has attempted to assail the case of prosecution on the ground that the Gazetted Officer i.e. DSP Harish Dutta in whose presence search of the appellant was effected has not been examined. It is evident from the testimony of PW-6 that DSP Harish Dutta had expired. However, PW-6 Head Constable Ajaib Singh has specifically deposed that he remained posted as a Reader to DSP Harish Dutta and had seen him signing while working with him and that he identified his signatures on Ex.P-5 and P-10. Ex. P-5 is the recovery memo prepared at the spot vide which recovery of 5 Kgs. of '*charas*' had been effected from the appellant. The said recovery memo bears the signatures of PW-3 Inspector Telu Ram as well as of DSP Harish Dutta which have been identified by PW-6 Head Constable Ajaib Singh. Ex.P-10 is the report prepared by PW-3 Inspector Telu Ram in terms of Section 57 of the NDPS Act wherein he has stated in detail regarding the proceedings conducted at the spot at the time of effecting search of the accused which yielded recovery of 10 Kgs. of '*charas*' from the accused Satyampuri. The said report has been attested by DSP Harish Dutta. PW-6 Head Constable Ajaib Singh identified the signatures of DSP Harish Dutta on Ex.P-10 as well. PW-6 was briefly cross-examined on behalf of the accused but nothing significant could be elicited during his cross-examination so as to doubt his credibility.
17. In these circumstances where the non-examination of DSP Harish Dutta is on account of his death and his signatures have been duly identified by his

Reader, non-examination of DSP Harish Dutta would not weaken the case of the prosecution in any manner as PW-6 Head Constable Ajaib Singh having remained posted as a Reader with DSP Harish Dutta was fully competent to identify his signatures as he had seen him working and signing during the course of his official work. The contention raised on behalf of the appellant in this regard is thus devoid of merits and is hereby repelled.

18. During the course of arguments, the learned counsel for the appellant pointed out minor inconsistencies in the statements of PW-3 and PW-4. Learned counsel has pointed out that while PW-3 during cross-examination deposed that ITI Chowk is towards the northern side of the police station but PW-4 deposed that ITI Chowk is towards the western side of the police station. He further pointed out that while PW-3 deposed that railway crossing is about 50 paces away from the ITI Chowk but PW-4 deposed that railway crossing is about 30-40 paces away from the railway crossing. He has further pointed out that while PW-3 deposed that 1-2 persons crossed the chowk at that time but PW-4 deposed that no private person had passed at the spot. He further pointed out that while PW-3 deposed that the accused remained holding the bag on his shoulder till arrival of the DSP but PW-4 stated that when the DSP reached at the place of recovery, the bag was lying on the ground. We have perused the record and do find that the above pointed inconsistencies are there in the statements of PW-3 and PW-4. However, the aforesaid inconsistencies do not pertain to the material aspect of the apprehension of the accused from near the railway crossing or regarding serving him notice under Section 50 of the NDPS Act by Inspector Telu Ram or regarding the factum of recovery of

‘*charas*’ from the bag carried by the accused. The discrepancies pointed out by the learned counsel for the appellant are minor in nature and would not affect the case of the prosecution as such like discrepancies are bound to occur even in case of truthful witnesses when there is some time gap between the occurrence and the time of deposition in Court. In the present case there is a gap of approximately one year between the same and as such the discrepancies which are minor would not render the case of the prosecution doubtful.

19. In the present case the investigating officer has complied with all the statutory requirements as mandated by the law. The accused was duly extended offer in terms of Section 50 of the NDPS Act of being searched before a Magistrate or a Gazetted Officer and the accused did opt to be searched before a Gazetted Officer and consequently a Gazetted Officer was called at the spot and the search was conducted in his presence. The samples of the recovered ‘*charas*’ and the remaining ‘*charas*’ were duly sealed. There is nothing on record to show that the same were tampered with at any point of time. The witnesses i.e. PW-1 MHC Kuldeep Singh and PW-2 EHC Krishan Kumar have both specifically deposed that as long as the parcels remained in their possession the same were not tampered with. The report of the FSL (Ex.P-18) also bears a specific note to the effect that the seals were intact and tallied with the specimen seal. As per the report (Ex.P-18) of FSL the sample was found to be of ‘*charas*’.
20. Though the accused raised plea of false implication but no evidence has been led to establish the said plea. There is nothing to show that the investigating officer or the recovery witness or the police had any enmity with the accused

to implicate him falsely that too with such huge quantity of 'charas'. They had apprehended the accused in discharge of their official duties. As such there is nothing on record to establish the plea of false implication as raised by the accused.

21. As an upshot of our aforesaid discussions we do not find any infirmity in the findings of the trial Court as regards conviction of the accused under Section 20 of the NDPS Act. There is no infirmity in the impugned judgment and the same is upheld. Finding no merit in the appeal, the same is hereby dismissed.

(Rajesh Bindal)
Judge

(Gurvinder Singh Gill)
Judge

August 23, 2017
pankaj

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No