

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

(1) **CRA-S-1360-SB of 2004**
Date of decision:-22.11.2017

Binder Singh and another

...Appellants

Versus

State of Punjab

...Respondent

(2) **CRA-S-310-SB of 2005**

Sukha Singh

...Appellant

Versus

State of Punjab

...Respondent

(3) **CRA-S-534-SB of 2005**

Gurmit Singh

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Mr.P.S. Ahluwalia, Advocate
for the appellants in CRA-S-1360-SB-2004 and
CRA-S-534-SB-2005.

Mr.Satnam Singh Gill, Advocate
for the appellant in CRA-S-310-SB-2005

Ms.Samina Dhir, DAG, Punjab.

H.S. MADAAN, J.

Vide this judgment, I propose to dispose of three appeals i.e. **CRA-S-1360-SB of 2004** filed by appellants Binder Singh and Jagtar Singh, **CRA-S-310-SB of 2005** filed by appellant Sukha Singh and **CRA-S-534-SB of 2005** filed by appellant Gurmit Singh, all of them being accused, who were tried and convicted by the Court of learned Judge, Special Court, Mansa for an offence punishable under Section 15 of Narcotic Drugs & Psychotropic Substances Act, 1985 vide judgment/order dated 14.5.2004 and sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1,00,000/- each and in default thereof, to further undergo rigorous imprisonment for a period of one year each.

The accused-convicts, who are appellants before this Court pray that the appeals be accepted, the impugned judgment of their conviction and order of sentence be set aside and they be acquitted of the charge framed against them.

Briefly stated, the prosecution story is that on 31.1.2000, a police party from Police Station Jhunir headed by ASI Gurjant Singh (hereinafter referred to as the Investigating Officer/I.O.) travelling in a official canter was present on the bridge of Bhakhra canal situated within the revenue estate of village Mofar in connection with checking of vehicles and suspects when the party was joined by Charna Singh son of Tota Singh, resident of village Jhunir; that a jeep bearing No.PB-04E-2131 Mohindra & Mohindra having soil colour was spotted coming from village Pilsian side; that it was intercepted; that on being inquired, the person driving the jeep disclosed his name as Gurmit Singh son of

Mukhtiar Singh, whereas the person sitting with him on the front seat gave his name as Binder Singh son of Leela Singh and other person sitting on the middle seat gave his name as Jagtar Singh son of Jangir Singh, whereas Sukha Singh was sitting on the rear seat; that the Investigating Officer suspected the two bags lying on the rear side of the jeep to contain contraband and wanted to search the same; that he informed the accused that they had a right to get the search conducted in presence of some gazetted officer or a Magistrate; that the accused opted to get the search conducted in presence of a gazetted officer, therefore the Investigating Officer accordingly flashed a message at Police Station Jhunir to send some Gazetted Officer to the spot; that after some time Sh.Amarjit Singh, DSP, Sub Division along with his gunmen reached at the spot; that the Investigating Officer informed him about the facts of the case; that thereafter DSP disclosed his identity to all the four accused asking from them whether they wanted search of the gunny bags lying on the rear seat of the jeep to be conducted in his presence or that of some Magistrate, however, the accused reposed faith in the DSP; that memos in that regard were prepared; that on the direction of Sh.Amarjit Singh, DSP, Sub Division, Sardulgarh and in presence of HC Harbans Singh and witness Charna Singh, the bags were unloaded from the jeep and those were searched; that they were found to contain poppy straw; that the bags were given number (1) and (2); that from each of the bag, two samples of 100 gms. each were drawn; that on being weighed the remaining contents in bag No.1 were found to be 25 kgs and remaining contents in bag No.2 were found to be 26 kgs.; that the bags and the samples were converted into parcels which were sealed;

that poppy straw were sealed with seal bearing impression 'GS' of the Investigating Officer; that the sample seal impression was prepared, the seal after use was handed over to Charna Singh, then the case property in the form of four samples, two gunny bags containing residue poppy straw, sample seal impression, jeep were taken into possession vide recovery memo; that personal search of all the four accused were conducted and relevant memos in that regard were prepared; that on return to the police station, the Investigating Officer produced the accused along with the case property and witnesses before Inspector Chuhar Singh, SHO Police Station Jhunir, who checked the case property, verified investigation and then put his seal having impressions 'CS' on the case property; that sample seal impression was prepared, special reports were sent to concerned Magistrate and Gazetted officers.

On 1.2.2000, Inspector Chuhar Singh produced the accused persons along with the case property before Judicial Magistrate and inventory memo and application for depositing of the case property were submitted. The case property was ordered to be kept in Malkhana according to rules. As there was no space in the Malkhana, so the case property could not be deposited there. On return to the police station, SHO kept the case property in his custody.

On 7.2.2000 samples marked 1 and 3, which had been drawn from both the gunny bags were sent to FSL, Punjab, Chandigarh and report therefrom was received.

After completion of investigation and other formalities, challan against accused was filed in the Court.

On presentation of challan in the Court, copies of

documents relied upon in the challan were supplied to the accused free of costs as provided under Section 207 Cr.P.C.

Learned Judge, Special Court, Mansa observing that charge for offence under Section 15 of the Act was disclosed against the accused charge-sheeted them accordingly, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

During the course of its evidence, the prosecution has examined as many as six witnesses, namely, PW1 Sukhwinder Pal Singh, Clerk Office of D.T.O. Mansa, PW2 Shri Amarjit Singh, DSP, PW3 Chuhar Singh, Inspector/SHO, PW4 HC Dial Singh, PW5 HC Harbans Singh and PW6 ASI Gurjant Singh.

With that the prosecution evidence stood closed.

Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the allegations contending that they are innocent and have been falsely involved in this case.

Further, accused Gurmit Singh took up a plea that he has been falsely implicated in this case; that he was plying his jeep as Taxi; that on 29.1.2000, he along with his co-accused was going to village Fatta Maluka and on return they all were under the influence of liquor; that police of Police Station Jhunir was holding naka near turning of village Fatta Maluka; that police asked for his driving licence and R.C. of the jeep; that he was not possessed with driving licence and R.C.; that they all under the influence of liquor abused ASI Gurjant Singh and as a

result of which, he took them to the police station and gave them beatings; that he (ASI Gurjant Singh) demanded Rs.20,000/- from them; that they all threatened ASI Gurjant Singh that they would appear before the higher authorities against his behaviour; that for that reason ASI Gurjant Singh planted this false case of poppy husk upon him and his co-accused and that nothing was recovered from him or his jeep.

Accused Binder Singh, Jagtar Singh and Sukha Singh also adopted the plea as taken by accused Gurmit Singh.

During the course of defence evidence, the accused examined Charna Singh son of Tota Singh as DW1.

With that the defence evidence got concluded.

After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned supra, which left them aggrieved and they have filed the present appeals.

I have heard learned counsel for the appellants-accused-convicts and learned Deputy Advocate General for the State of Punjab besides going through the record.

Learned counsel for the appellants has pointed out that link evidence in this case is missing inasmuch as after the recovery of the contraband, the Investigating Officer had produced the same before the Illaqa Magistrate on the next day of the recovery. The Illaqa Magistrate had passed an order directing that the case property be kept in malkhana in accordance with law but it was not so done. The reason put forward by the SHO concerned is since there was no space in the malkhana, the case property could not be deposited there, as such on return to the police station, he kept the case property in his custody and when

samples were sent to FSL, Punjab, Chandgarh on 7.2.2000, he had given those to the official taking the samples from his own custody. According to the learned counsel for the appellants since the case property had remained in custody of Inspector Chuhan Singh, SHO of the police station, he had ample opportunity to tamper with the same. My attention has been drawn to the testimony of Inspector Chuhan Singh appearing as PW3 wherein in his cross-examination, he had stated that he has a separate malkhana and no permission was obtained from the higher police officers to keep the separate malkhana; that there is only one register for both the malkhanas; that there is no specific noting in the register No.19 with regard to depositing of different type of case property in different malkhana. He had further stated that there is no specific permission and writing for depositing the case property in police malkhana. It being so, the case property according to Inspector Chuhan Singh was kept in his private malkhana, which he had maintained without the permission of higher police officers and he had not sought any permission from the Illaqa Magistrate for keeping the case property in his own custody what to talk of police malkhana for the reason of paucity of space in the judicial malkhana. Danger of tampering with the case property was certainly there. Inspector Chuhan Singh has nowhere stated that he had handed over his seal to some other person. Thus, there was every opportunity available to him to tamper with the seals of the case property.

Furthermore, the prosecution has not examined MHC of the police station concerned to show that he was custodian of the case property and no tampering of seals had taken place from the time of

deposit in the private malkhana of Inspector Chuhan Singh till the sample parcels were sent to the Chemical Examiner. Entries in register No.19 had also not been proved in evidence in that regard.

Another contention of learned counsel for the appellants was that the independent witness said to have been associated with the investigation had not been examined and rather he was given up as having been won over by the accused. He had appeared as a defence witness instead, which also causes a dent in the prosecution story.

Learned counsel for the appellants has further contended that the case property was not produced during the trial, again raising a doubt in the mind about truthfulness of the prosecution story. He has pressed into service a few authorities, which are as under:

- (1) **Jitendra and another Versus State of M.P., 2003(4) R.C.R.(Criminal) 360** by Hon'ble Supreme Court, wherein the Apex Court had taken non-production of case property during the trial to be one of the grounds for setting aside conviction of the accused.
- (2) **Ashok @ Dangra Jaiswal Versus State of M.P., 2011(5) SCC 123** by Hon'ble Supreme Court, which was a case of recovery of 175 grams of heroin from the accused on receipt of secret information. The accused had been acquitted on following grounds:

- (i) Narcotic substance deposited in Malkhana 2 months after seizure – No explanation where the seized substance was kept in the meanwhile.
- (ii) Samples taken out deposited with FSL after 6

days – Not made clear where the samples were laid or were handled by how many people and in what ways.

(iii) Narcotic powder seized from possession of accused not produced before trial Court and there is no explanation for its non-production.

(3) *Sukhdev Singh Versus State of Punjab, 2011(1) R.C.R.(Criminal) 486* by a Coordinate Bench of this Court. In that case, the Investigating Officer had not obtained any order from the Area Magistrate for keeping the case property in his custody and there was no evidence that samples and the case property was not tampered with when those remained in the police station. Those two grounds along with other factors formed basis for acquittal of the accused.

Learned State counsel though tried to justify Inspector Chuhar Singh retaining custody of the case property but in view of the detailed discussion above, the same cannot be defended and thus create a reasonable doubt in the mind providing a missing link in the prosecution story. In that way, the prosecution had been unable to prove its charge against the accused beyond shadow of reasonable doubt. As per law, benefit of doubt goes to the accused. Though the trial Court had noticed these facts but did not give due weightage to the same, rather by unconvincing reasoning accepted the prosecution version.

In the light of above discussion, the appeals stand accepted.

The impugned judgment of conviction and order of sentence under

CRA-S-1360-SB of 2004;
CRA-S-310-SB of 2005; and
CRA-S-534-SB of 2005

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appeals as a result thereof are set aside. The appellants – accused are acquitted of the charge for which they have been held guilty and convicted vide the impugned judgment. The appellants are on bail and as such they and their sureties also stand discharged from their liability of bail bonds and surety bonds.

Necessary intimation be sent to the quarter concerned.

22.11.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No