

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

(1)

CRA S-1020-SB of 2009.

Date of Decision: 07.04.2017.

Mandeep Singh

... Appellant

Versus

State of Punjab

... Respondent

(2)

CRA S-1113-SB of 2009.

Ravinder Kumar

... Appellant

Versus

State of Punjab

... Respondent

(3)

CRA S-1343-SB of 2009.

Atma Singh

... Appellant

Versus

State of Punjab

... Respondent

(4)

CRA S-1748-SB of 2009.

Rakesh Kumar

... Appellant

Versus

State of Punjab

... Respondent

CORAM :

Hon'ble Mr. Justice Jitendra Chauhan

Present :

Mr. R.K. Girdhar, Advocate,
for the appellant in CRA S-1020-SB of 2009.

Mr. A.S. Sivia, Advocate,
for the appellant in CRA S-1113-SB of 2009.

Mr. A.K. Khunger, Advocate,
for the appellant in CRA S-1343-SB of 2009.

Mr. Sachin Kapoor, Advocate,
for the appellant in CRA S-1748-SB of 2009.

Mr. Mehardeep Singh, Addl. AG, Punjab.

JITENDRA CHAUHAN.J.

This judgment shall dispose of afore-mentioned four appeals bearing CRA S-1020-SB of 2009, CRA S-1113-SB of 2009, CRA S-1343-SB of 2009 and CRA S-1748-SB of 2009 as they have arisen out of common judgment and order dated 17.04.2009 passed by Judge, Special Court, Muktsar vide which the accused-appellants were convicted and sentenced as under:-

Offence	Sentence	Fine	In default
15 of NDPS Act	RI for 3 years	Rs.10,000/-	SI for three months

In brief the case of the prosecution as mentioned in the judgment passed by the trial Court is as under:-

“The prosecution story as alleged in the challan form, is that on 27.11.05 SI Gurmail Singh along with ASI Inderjit Singh and other police officials on official gypsy No. PB-34-9231 in connection with patrolling and Nakabandi was present at bridge canal minor in the area of village Daula. ASI Mohinderjit Singh and C. Sukhdev Singh of P.S. Kot Bhai came on a private car to him and they were associated with the police party. At about 9.30 AM one Bolero No. PB-30-C-7351 came from the side of Kot Bhai which stopped on his signal. Accused Ravinder Kumar was driving the said Bolero. Accused Rakesh Kumar was sitting on the front seat of the Bolero. Accused Atma Singh

and Mandip Singh were sitting on the back seat. In the meantime, PW Amarjit Singh also came on the spot and was associated with the police party. He told all the accused that he suspected some intoxicating substance in their possession and search was to be conducted, but they have legal right of search from some Gazetted Officer or Magistrate. Accused opted for search from some Gazetted Officer. On this, he prepared their dissent memo Ex.P7 of all the accused which was thumb marked/signed by the accused and attested by PW Amarjit Singh and ASI Inderjit Singh. He sent wireless message to DSP Gurdip Singh who came on the spot within 15/20 minutes. He disclosed his identity to the accused and further gave option to the accused regarding search and accused consented for search by DSP. On this, DSP Gurdip Singh prepared consent memo Ex.P8 of the accused in this regard which was thumb marked by accused Atma Ram and signed by the remaining accused and attested by aforesaid PWs. On the directions of DSP, he conducted search of the Bolero and one plastic bag containing poppy husk was recovered in between front seats of the Bolero. One more plastic bag containing poppy husk was recovered from the back

seat of the Bolero. Out of both the plastic bags, 250 grams each of poppy husk was separated as sample and converted into separate parcels. The parcels were serially marked as 1 and 2. On weighment, the plastic bags containing remaining poppy husk came to 19 kgs. 750 grams each which were also converted into a parcel before they were serially marked as 1 and 2. All the four parcels were sealed by him with his seal bearing impressions 'GS'. Sample seal chit Ex.P-9 was separately prepared and seal after use was handed over to ASI Inderjit Singh. DSP Gurdip Singh further sealed all the parcels as well as sample seal chit with his seal bearing impression 'GS'. The case property along with Bolero was taken into possession vide memo Ex.P-10, attested by aforesaid PWs. On further search of the Bolero, Rs.26000/- was recovered from its tool box which were also taken into possession vide memo Ex.P-13, attested by aforesaid PWs and DSP Gurdip Singh. He sent ruqa Ex.P-14 to the police station through LC Chamkaur Singh, on the basis of which, formal FIR Ex.P-15 was recorded.”

On the presentation of challan, copies of documents as required under Section 207 Cr.P.C were supplied to the accused free

of cost.

Charge under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the Act”) was framed against the accused to which the accused pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined PW-1, ASI Banta Singh, PW-2, ASI Inderjit Singh, PW-3 C. Jagraj Singh, PW-4 SI Gurmail Singh (retired), PW-5 MHC Sadhu Singh and thereafter closed its evidence.

The statements of accused were recorded under Section 313 Cr.P.C in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused which the accused denied and pleaded false implication.

No defence evidence was led by the accused.

After appraisal of the evidence, the trial Court vide impugned judgment and order dated 17.04.2009, convicted and sentenced the accused as narrated above.

Feeling aggrieved against the judgment and order dated 17.04.2009, passed by the trial Court, the accused have filed the instant four appeals.

On behalf of accused-appellants, it is submitted that DSP Gurdip Singh, who is said to have been present on the spot, was not examined by the prosecution. It is further submitted that though Amarjit Singh, an independent witness was joined by the police party

but the said witness was not examined by the prosecution for the

reasons best known to it. The seal after use was not handed over to the independent witness. Further, there is delay in sending the sample to the office of Chemical Examiner. The recovery was allegedly effected on 27.11.2015 whereas, the sample was deposited in the office of Chemical Examiner on 13.12.2005. Thus, there is delay of 15 days in depositing the sample.

On the other hand, the learned State counsel contends that the prosecution has successfully established its case against all the accused. The Court below has rightly convicted and sentenced the accused/appellants. There is no major contradiction. The accused have not led any evidence to disprove the case of the prosecution.

I have heard the learned counsel for the parties and have gone through the case file.

It is to be noticed that PW-4, SI Gurmail Singh, IO proved the recovery of contraband from the possession of the accused when accused were intercepted coming from the side of Kot Bhai on 27.11.2005 on Bolero No. PB-30-C-7351. Accused Ravinder Kumar was driving the said Bolero. Accused Rakesh Kumar was sitting on the front seat of the Bolero whereas, Atma Singh and Mandeep Singh were sitting on the back seat. Further the factum of recovery stands corroborated from the testimony of PW-2 Inderjit Singh. He also deposed that on 27.11.2005 he was posted at Police Station Gidderbaha. On that day, he along with SI Gurmail Singh and other police officials was holding Naka on bridge canal minor on Daula to

Kot Bhai road in the area of village Daula when at about 9.30 am the Bolero in question was apprehended. The recovery of two bags of poppy husk was effected from the vehicle. PW-1, ASI Banta Singh, SHO deposed that on 27.11.2005 SI Gurmail Singh produced before him two sample parcels of 250 grams of poppy husk each and two plastic bags of 19 kgs. 750 grams of poppy husk each duly sealed with the seals bearing impressions 'GS+GS'. PW-5 Sadhu Singh MHC deposed that on 28.11.2005 ASI Banta Singh deposited with him in the Maalkhana two sample parcel of poppy husk relating to the aforesaid case weighing 250 grams sealed with seal 'GS+GS=BS' and two additional samples parcels weighing 250 grams each sealed with seal 'SDJM Gidderbaha' in intact condition. In view of this clinching evidence, the non-examination of DSP is not fatal to the case of the prosecution. Further, so far as non-examination of independent witness is concerned, it has no effect upon the case of the prosecution because the Public Prosecutor is master of his case. It is for him to decide as to which witness he wants to examine and which witness he does not want to examine. Unless it is shown that the seal was not intact at the time of depositing the sample, the non handing over of seal to the independent witness is not fatal to the case of the prosecution.

As per the case of the prosecution, accused Mandeep Singh and Atma Singh were sitting on the back seat of the vehicle whereas, accused Ravinder Kumar was driving the vehicle and accused Rakesh Kumar was sitting on the front seat. The recovery was effected

from in between front seats of the Bolero and one more plastic bag was recovered from the back seat of the vehicle. Accused Mandeep Singh and Atma Singh cannot be said to be in conscious possession of the contraband as neither the vehicle belongs to them nor were they driving the vehicle at the relevant time.

In view of above, the present appeal filed on behalf of accused Mandeep Singh and Atma Singh is allowed. The impugned judgment and order are set aside qua them. They are acquitted of the charges framed against them.

However, the judgment of conviction in respect of accused Rakesh Kumar and Ravinder Kumar is upheld. Keeping in view the fact that the quantity recovered is 40 kgs of poppy husk, the accused have been facing the agony of protracted criminal proceedings for the last twelve years, they are the sole bread earners of their families, this Court feels that the ends of justice would be better served in case the sentence of the appellants (Rakesh Kumar and Ravinder Kumar) is reduced from three years to one year. However, the sentence of fine is enhanced to Rs.50,000/- over and above the fine imposed by the trial Court. It is ordered accordingly. They are stated to be on bail. They be taken into custody to serve the remaining part of the sentence. Their appeal is partly allowed.

07.04.2017.

SN

(JITENDRA CHAUHAN)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No