

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. Criminal Appeal-D No.781-DB of 2011
Date of Decision:-August 30, 2017

Gurnam Singh alias Gama**Appellant**

Versus

State of Punjab**Respondent**

2. Criminal Appeal-D No.242-DB of 2012

Kashmir Singh**Appellant**

Versus

State of Punjab**Respondent**

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

Present : Mr. Tarundeep Kumar and Mr. H.S.Thiara, Advocates
for the appellants.

Ms. Anju Arora, Additional Advocate, General, Punjab.

Gurvinder Singh Gill, J.

1. This judgment shall dispose of the above two appeals as both the said appeals arise out of the same impugned judgment dated 31.01.2011 passed by Special Court, Jalandhar, vide which both the appellants namely Gurnam Singh alias Gama and Kashmir Singh have been held guilty of having committed offence punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act') and have been sentenced to

undergo R.I. for 15 years along with a fine of Rs.1,00,000/- each.

2. The case of prosecution, in nutshell is that on 28.10.2009 the police party headed by Sub Inspector Angrej Singh was present in the area of Shastri Market Chowk, Jalandhar when a secret information was furnished by SP(H) Satinder Singh in respect of the accused. Upon receipt of the said information Sub Inspector Angrej Singh held a '*naka*' at 'T' Point, Ranjit Nagar, Ladowali Road. Subhash Chander son of Anand Ram who met the police party was also associated. It is case of prosecution that at about 12.10 P.M. one Indica car bearing registration No.PB-10-CG-2895, which came from the side of BSF Chowk was intercepted. The driver and the accompanying passenger were asked to come out of the car. While the driver was empty handed, the passenger sitting by his side had kept a heavy bag on his thighs. Upon inquiry, the driver disclosed his name as Kashmir Singh and the passenger disclosed his name as Gurnam Singh alias Gama. Since it was suspected that the said persons were carrying some contraband in their bag, therefore, offer in terms of Section 50 of NDPS Act was extended to them that in case they want their search to be effected in the presence of some Magistrate or a Gazetted Officer then arrangement could be made for the same. Both the said persons opted to be searched in the presence of a Gazetted Officer, upon which DSP(H) Rajjit Singh was requested to reach at the spot. He reached there in 10 minutes. The DSP(H), after introducing himself to the accused apprised them of their right to be searched before some other Gazetted Officer or a Magistrate but the accused reposed faith in the DSP(H). Under the instructions of the DSP(H), search of the bag carried by the accused was

conducted which yielded recovery of 5 kgs of heroin. Two samples weighing 10 gms each were separated from the same and packed into parcels and were duly sealed. The remaining heroin was separately packed into a parcel and sealed. Investigating Officer Angrej Singh as well as the DSP(H) affixed their seals bearing impression 'AS' and 'RS' on the sample parcels as well as on the parcel containing the remaining recovered heroin. Sub Inspector Angrej Singh handed over the seal after use to Assistant Sub Inspector Arjan Singh. However, DSP(H) Rajjit Singh kept the seal with himself.

3. Both the accused were arrested vide arrest memos Ex.P-11 and P-12 which were duly signed by accused Kashmir Singh and Gurnam Singh alias Gama. A ruqa (Ex.P-14) wherein all the proceedings conducted at the spot were detailed, was sent to the Police Station on the basis of which FIR (Ex.P-15) was recorded by Assistant Sub Inspector Balbir Singh. Rough site plan Ex.P-13 of the place of occurrence was prepared. The case property was deposited in the malkhana with MHC Daljit Kumar. On the next day, the case property was produced before the Ilaqa Magistrate and after verification the same was deposited back with the MHC. The sample parcels were sent for analysis to FSL, Punjab, Chandigarh and as per report Ex.PZ the contents of the same were found to be heroin. Upon conclusion of investigation, challan was presented in the Special Court, Jalandhar on 12.03.2010. The learned Special Court upon finding that the facts *prima facie* disclosed commission of offence punishable under Section 21 of NDPS Act, framed charges against the accused to which the accused pleaded not guilty and claimed trial.
4. PW-3 Sub Inspector Angrej Singh who is the Investigating Officer in the

present case stated in detail regarding the entire proceedings conducted at the spot right from apprehension of the accused leading to recovery of heroin upto the filing of challan against the accused. The prosecution in order to establish charges framed against the accused examined PW-1 Assistant Sub Inspector Arjan Singh who was part of the police party headed by PW-3 SI Angrej Singh. PW-1 stated in corroboration to the statement made by the Investigating Officer PW-3 Angrej Singh. PW-2 Head Constable Daljit Singh is a formal official witness who has tendered his affidavit Ex.PA in evidence. PW-4 Inspector Satish Malhotra deposed that on 28.10.2009 when he was working as SHO, Police Station Division No.4, then SI Angrej Singh produced the accused and the case property before him and he verified the facts and affixed his seal bearing impression 'SK' upon the case property. PW-5 Baljinder Singh, Clerk, DTO Office, Ludhiana produced the summoned record pertaining to vehicle bearing registration No.PB-10-CG-2895 and showing that the vehicle stands registered in the name of Manjit Singh resident of Ludhiana and that the registration certificate is of a scooter. He proved the photocopy of the same as Ex.PW-5/A. PW-6 Rajjit Singh, SP(H) deposed that on 28.10.2009 he was working as DSP(H), Jalandhar and upon receipt of a telephonic call from Sub Inspector Angrej Singh, he along with his gunmen went to the spot near railway crossing of Ladowali Road where Sub Inspector Angrej Singh produced both the accused before him and he after disclosing his identity apprised them of their legal right to opt for their search before some other Gazetted Officer or a Magistrate but the accused reposed faith in him and then under his instructions Sub Inspector Angrej Singh conducted search of the bag, carried by the accused which yielded recovery of 5 kgs of heroin.

He has further deposed regarding drawing of two samples from the recovered heroin and sealing the sample parcels as well as the remaining heroin. PW-7 MHC, Head Constable Daljit Kumar tendered his affidavit Ex.PW-6/A in his evidence wherein he has deposed that as long as the case property remained in his possession, the same was not tampered with.

5. After conclusion of the prosecution evidence statements of the accused were recorded in terms of Section 313 Cr.P.C. wherein entire incriminating evidence appearing against them was put to them to enable them to explain the same but the accused denied the entire prosecution case in toto and pleaded false implication by the police at the instance of Sarpanch Bhupinder Singh who had murdered a cousin of accused Gurnam Singh alias Gama as both the accused were pursuing the case registered against Bhupinder Singh.
6. The accused in their defence examined DW-1 head Constable Palwinder Singh who produced the original summoned record and proved a copy of FIR bearing No.764 dated 17.08.2005 registered at Police Station Ajnala as Ex.D. The accused also examined DW-2 Jagtar Singh who stated that he knows accused Gurnam Singh alias Gama and Kashmir Singh as they belong to his village and are his cousins and bear a good moral character. He deposed that they are having enmity in the village with Bhupinder Singh alias Bhinda, Narinder Singh and others. Criminal cases were pending against Bhupinder Singh and others in which they were the complainant and due to which Bhupinder Singh had killed his brother Angrej Singh. He has deposed that both the accused have been implicated falsely at the instance of Bhupinder Singh as they were helping him in his case against Bhupinder Singh.

7. The learned trial Court, upon appreciation of the evidence, held that the prosecution has been able to establish charges framed against both the accused and accordingly convicted both the accused for having committed offence under Section 21 of NDPS Act vide impugned judgment dated 31.01.2011. The appellants being aggrieved, have challenged the same by filing separate appeals.
8. The learned counsel for the appellants, while assailing the impugned judgment, have submitted that the false implication of the appellants is evident from the fact that though one independent witness is stated to have been associated at the time of effecting recovery but the said witness namely Subhash Chander has not been examined by the prosecution. The learned counsels have submitted that the present case in the absence of examination of Subhash Chander is rendered bereft of independent corroboration and that since the accused have led evidence to prove motive for their false implication, their conviction cannot sustain solely on the basis of official witnesses.
9. The learned counsel have further submitted that since there is gross delay of about three weeks in sending the samples for analysis, therefore, no sanctity can be attached to the report of the FSL. Learned counsel have also submitted that it was incumbent upon prosecution to have examined SP(H) Satinder Singh from whom Investigating Officer Angrej Singh (PW-3) had received secret information regarding the accused and in the absence of his examination, the case of the prosecution is rendered doubtful.
10. It has additionally been argued on behalf of accused Kashmir Singh that since

no contraband has been recovered from his possession, he cannot be attributed conscious possession of any contraband recovered from the bag carried by Gurnam Singh alias Gama and as such he cannot be held guilty for having committed any offence under Section 21 of the NDPS Act.

11. Both the learned counsel for the appellants have thus prayed for acceptance of the appeals and for acquittal of the accused by setting aside the impugned judgment.
12. On the other hand, learned counsel representing the State has submitted that the impugned judgment is a well reasoned judgment and has been passed after appreciation of the evidence on record. It has been submitted that the factum of recovery of contraband was duly established from the testimony of PW-3 Sub Inspector Angrej Singh and PW-6 SP(H) Rajjit Singh. The learned State counsel has further submitted that all the statutory safeguards mandated by law were duly adhered to at the time of effecting recovery of contraband and that in these circumstances mere omission to examine an independent witness would not cause any dent in the case of prosecution. It has been submitted that circumstances under which both the accused were apprehended in a car bearing fake registration number and the fact that they are known and related to each other shows that both knew about the heroin in the bag recovered from their possession. Learned State counsel has further submitted that the plea of false implication of the accused does not stand established and the evidence led by prosecution fully establishes the charges framed against both the accused. It has thus been submitted that the judgment in appeal does not suffer from any infirmity. Learned counsel for the State has thus prayed for

dismissal of the appeals.

13. We have considered the rival submissions addressed before this Court and with assistance of learned counsel have also perused the record of the case.
14. The prosecution in order to establish the factum of recovery of contraband from the possession of the accused relied upon the testimony of the Investigating Officer, PW-3 Sub Inspector Angrej Singh. PW-3 Sub Inspector Angrej Singh, while in the witness box, stated that on 28.10.2009 when he along with other police officials was present in the area of Shashtri Market Chowk, Jalandhar, he received a telephonic message from SP(HQ) Satinder Singh that Gurnam Singh alias Gama and Kashmir Singh are traveling in Indica car bearing registration No.PB-10-CG-2895 and are having heroin in their possession which they have to supply to somebody in Jalandhar. PW-3 Sub Inspector Angrej Singh deposed that upon receipt of said information he held a '*nakabandi*' on Ladowali Road. One Subhash Chander was associated as an independent witness. He deposed that at about 12.10 P.M. a car bearing registration No.PB-10-CG-2895 came from the side of BSF Chowk. The occupants of the car were asked to step out of the car. The person who was sitting besides the driver seat was holding a black coloured bag on his thighs. He has deposed that the driver of the car disclosed his name as Kashmir Singh while the passenger disclosed his name as Gurnam Singh alias Gama. PW-3 stated that since he suspected that there is some narcotic in the bag, therefore, he apprised the accused of their legal right to get their search effected in the presence of a Magistrate or a Gazetted Officer and the accused opted to be searched in the presence of a Gazetted Officer. The

memos in this respect were prepared as Ex.P-1 and P-2 duly signed by accused Kashmir Singh and Gurnam Singh alias Gama. PW-3 requested DSP(H) Rajjit Singh to come at the spot. PW-3 stated that DSP(H) Rajjit Singh after reaching at the spot disclosed his identity to both the accused and he also apprised both the accused about their legal right to be searched before some other Gazetted Officer or a Magistrate but both the accused reposed faith in him and their consent memos to this effect were prepared as Ex.P-3 and Ex.P-4. PW-3 further deposed that under the instructions of the DSP(H) Rajjit Singh he conducted search of both the accused and which yielded recovery of 5 kgs of heroin. PW-3 further stated that he took out two samples weighing 10 gms each from the recovered heroin and put them into small plastic boxes and prepared separate parcels of the same. He further stated that the residue recovered heroin was prepared into a separate parcel which on weighing was found to be 4 kgs and 980 gms. He has specifically deposed that all the three parcels were sealed with his seal bearing impression 'AS' and with the seal of DSP(H) bearing impression 'RS'. He has further stated that recovered case property along with the bag and Indica car were taken into possession vide recovery memo Ex.PB.

15. The aforesaid version regarding recovery of heroin finds corroboration from the testimony of PW-1 Assistant Sub Inspector Arjan Singh who was part of the police party headed by Sub Inspector Angrej Singh. PW-1 Arjan Singh also stated in detail regarding the apprehension of both the accused and the entire proceedings conducted at the spot leading to recovery of 5 kgs of heroin from the bag carried by the accused.

16. The prosecution has also examined PW-6 SP(H) Rajjit Singh who deposed that on 28.10.2009, upon receipt of a telephone call from Sub Inspector Angrej Singh, he reached the spot and disclosed his identity to the accused who had been apprehended and informed them about their right to be searched before some other Gazetted Officer or a Magistrate and thereafter upon their consent to be searched before him, the accused were searched under his instructions by Sub Inspector Angrej Singh and heroin weighing 5 kgs was recovered from bag carried by the accused.
17. All the aforesaid three witnesses, who were cross-examined at length on behalf of the accused but nothing substantial could be elicited so as to doubt the veracity of their statements.
18. The learned counsels have however assailed the case of prosecution on the ground that the only independent witness namely Subhash Chander who is stated to have been associated as an independent witness by the police party has not been examined by the prosecution and that the said omission renders the case of the prosecution highly doubtful.
19. We have considered the aforesaid submission. It is no doubt correct that Subhash Chander has not been examined by the prosecution. However, associating an independent witness is a rule of prudence and not rule of law. The Act does not mandate that in every case of recovery an independent witness has to be associated. Even if an independent witness has been associated but not examined would not cause a dent in the case of prosecution. A reference in this context may be made to a judgment of Hon'ble the Supreme Court reported as (2013) 14 SCC 235 Ram Swaroop Vs. State (Government of

NCT of Delhi) wherein it was held that prosecution case cannot be doubted for non-examination of independent witnesses especially when there is nothing on record to show that evidence of police officials is untrustworthy.

20. In yet another case reported as (2013) 6 SCC 595 Kashmiri Lal Vs. State of Haryana, it was held as follows:

“That apart, there is no absolute command of law that the police officers cannot be cited as witnesses and their testimony should always be treated with suspicion. Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and trustworthy, the court can definitely act upon the same. If in the course of scrutinising the evidence, the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him but it should not do so solely on the presumption that a witness from the Department of Police should be viewed with distrust.”

21. In the present case, search of the accused was effected in the presence of a Gazetted Officer. All the three witnesses including the Gazetted Officer have stated consistently regarding the manner in which the search was conducted. The provisions of Section 50 of the NDPS Act have been duly complied with. There is nothing on record to doubt the trustworthiness of police witnesses who had conducted the search in discharge of their official duties. In these circumstances the mere fact that no independent witness has been examined by the prosecution cannot be held to be fatal to the case of the prosecution. The prosecution has thus fully established the factum of recovery of heroin wherein 5 kgs from the bag carried by the accused in their car.
22. It has next been submitted by learned counsels for the appellants that since

there is a delay of about three weeks in sending the sample of the recovered contraband to FSL for its chemical examination, therefore, no sanctity can be attached to the report of FSL as it is evident that the time gap had been utilized by the police to tamper with the samples so as to procure a favourable report from FSL.

23. We have considered the aforesaid submission. In the present case the recovery was effected on 28.10.2009. The sample was sent to FSL on 19.11.2009 i.e. after about three weeks. PW-2 Head Constable Daljit Singh, in his affidavit, deposed that on 19.11.2009 MHC Daljit Kumar handed over one sample parcel weighing 10 gms duly sealed with seals bearing impression 'AS', 'RS' and 'SK' for depositing the same in Forensic Science Laboratory and accordingly, he deposited the same in Forensic Science Laboratory, Chandigarh. He further deposed that as long as the sample remained in his possession the same was not tampered with.
24. The prosecution has also examined PW-7 Head Constable Daljit Kumar who deposed that on 28.10.2009 he was posted as MHC in Police Station Division No.4, Jalandhar and on the said day Inspector Satish Malhotra handed over the case property to him. He deposed that on 19.11.2009 he handed over one sealed sample parcel weighing 10 gms to Head Constable Daljit Singh for depositing the same with Forensic Science Laboratory, Chandigarh and who after depositing the same handed over the receipt to him. PW-7 deposed that as long as the case property remained in his possession, the same was not tampered with. A perusal of the report of FSL (Ex.PZ) shows that it is specifically recorded therein that seals on the sample parcels were found intact

and tallied with the specimen seal impression. In these circumstances there is hardly any room to doubt that the samples had ever been tampered with and thus, the delay, if any, in sending the sample to Forensic Science Laboratory would lose significance. Hon'ble the Supreme Court in a case reported as 2008(8) SCC 557 Hardip Singh Vs. State of Punjab wherein there was a delay of 40 days in sending the sample for its chemical examination but the seals were found to be intact when it reached the office of the chemical examiner, held that the delay could not have caused any prejudice to the appellant. In light of ratio of the aforesaid judgment, the delay in the present case in sending the sample cannot *ipso facto* cause any doubt in the case of the prosecution especially when the evidence on record clearly establishes that the sample parcel has not been tampered with and the seal had remained intact. The contention in this regard raised by learned counsel for the appellants is thus found to be devoid of merit and is repelled.

25. The learned counsel representing appellant-Kashmir Singh vehemently argued that he cannot be said to be in conscious possession of the contraband. He was merely a driver of the vehicle in question and the bag allegedly containing heroin was in possession of Gurnam Singh alias Gama who had kept the same in his lap and that in the absence of proof of conscious possession of the contraband accused Kashmir Singh cannot be held liable for having committed any offence.
26. We have considered the aforesaid submission. It is correct that the contraband was found in a bag which was kept in the lap of accused Gurnam Singh alias Gama while Kashmir Singh was driving the car in question. However, there

are many other circumstances which lead to one and only one conclusion that both the accused were hand in glove for commission of the offence in question. First of all it is not a case where both the accused were absolutely strangers to each other. Rather the witness examined by the accused themselves i.e. DW-2 Jagtar Singh, in the very first line stated that he knows Gurnam Singh alias Gama and Kashmir Singh as they belong to his village and both of them are his cousin brothers. Thus, in case both the accused are related to Jagtar Singh it is obvious that they *inter se* are also related. Further the proximity of relation between them is also evident from the plea taken by both the accused in their statement under Section 313 Cr.P.C. wherein both of them had taken a stand that they have been falsely impleaded by the police at the instance of Sarpanch Bhupinder Singh who was inimical to them as Bhupinder Singh had murdered their cousin and the accused were pursuing the case registered against Bhupinder Singh. In these circumstances it cannot be believed that both the accused who were travelling together in a car and are closely related would not be knowing as to what was there in their bag carried by one of the accused.

27. Further, the fact that the car in question was bearing a fictitious registration number also speaks volume about the antecedents of the driver who would have to explain as to how he was in a possession of car bearing a fictitious registration number. The prosecution in this context has examined PW-5 Baljinder Singh, Clerk office of DTO, Ludhiana who had brought the summoned record pertaining to registration of vehicle bearing registration No.PB-10-CG-2895 and deposed that the said registration number is of a

scooter. Still further the accused Kashmir Singh was also found to be carrying three sim cards which is again rather unusual. In any case, the law regarding conscious possession is well settled and once recovery is proved then it is for the accused to establish that he was not in possession. In this context a reference may be made to a judgment of Hon'ble the Supreme Court reported as 2013(14) SCC 420 Gian Chand and others Vs. State of Haryana wherein in a case where the police had apprehended a jeep in which there were three occupants and the jeep was found to be containing 10 bags of poppy husk weighing 41 kg each. It was held that from the conjoint reading of the provisions of Section 35 and 54 of the Act, it becomes clear that if the accused is found to be in possession of the contraband article, he is presumed to have committed the offence under the relevant provisions of the Act until the contrary is proved. It has further been held that the word 'conscious' means awareness about a particular fact and it is a state of mind which is deliberate or intended and that possession in a given case need not be actual physical possession.

28. In 2015(4) RCR (Criminal) 1014 Baldev Singh Vs. State of Haryana it has been held that once the possession of contraband by the accused has been established it is for the accused to discharge the onus of proof that he was not in conscious possession.
29. Thus, in view of the above, it is a settled legal proposition that once possession of the contraband articles from the accused is established, the burden shifts on them to establish that they had no knowledge of the same.
30. When the facts of the present case are examined in light of the ratio of the

above referred judgments we find that the accused who were travelling in a car bearing fictitious registration number and who are known to each other and *inter se* related to each other and have not come out with any explanation to justify their possession of the contraband or to show that any of them was not in conscious possession of the same, we are unable to subscribe to the contention putforth on behalf of the appellant-Kashmir Singh that he was not in conscious possession of the recovered contraband. No other point or argument has been raised or urged before this Court.

31. In view of our aforesaid discussions, we do not find any infirmity in the impugned judgment and the same is hereby affirmed.
32. There is no merit in these appeals and the same are hereby dismissed.

(Rajesh Bindal)
Judge

(Gurvinder Singh Gill)
Judge

August 30, 2017
mohan

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No