

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

CRA-S-No.1218-SBA OF 2006
DATE OF DECISION : 15th NOVEMBER, 2017

State of Haryana

.... Appellant

Versus

Ramdhari alias Dhari

.... Respondent

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

* * * *

Present : Mr. Chetan Sharma, AAG, Haryana.

None for the respondent.

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A. B. CHAUDHARI, J. (Oral)

Being aggrieved by the judgment and order dated 21.09.2005 passed in Sessions Case No.116 of 19.07.2003 arising out FIR No.71 dated 22.05.2003 registered under Section 20 of NDPS Act, 1985, the present appeal was filed by the State of Haryana in this Court against the acquittal of the respondent-accused.

Heard learned counsel for the State.

In support of the appeal learned State counsel vehemently argued that the learned trial Court was wrong in holding that there was delay in sending the samples. As a matter of fact the samples were taken on 22.05.2003 and were sent for analysis on 20.06.2003 i.e. within a month. In that view of the matter he submits that the finding in para 8 of the judgment is absolutely wrong.

Learned State counsel further submitted that the trial Court committed error in holding that two seals of 'BS' and two seals of 'BY'.

However, the FSL report shows the correct position. But then PW-3 Balwant Singh SI wrongly deposed. According to learned State counsel the accused cannot be given benefit thereof in the wake of FSL report.

He then submitted that the trial Court has found that no independent witness was joined at the relevant time, which is not correct, since one witness Lakhi Ram was joined but he was not examined in the Court.

None has appeared for the respondent-accused.

Upon hearing learned State counsel, I find that the trial Court has given following reasons in paras 9 and 10, which read thus:

“9. Sh. M.P. Jain, learned defence counsel has further argued before me that there are material contradictions in the statements of the prosecution witnesses because PW-3 Balwant Singh, Sub Inspector has stated that there were two seals of BS and three seals of BY but according to the report Ex.PJ there were three seals of BY and one seal of BS on the samples. Thus it can be safely held that the samples which were taken were not the same which were tested by the Forensic Science Laboratory. PW-6 Bharat Singh, ASI has stated that the place of recovery is a common place but no body was passing at that time. He has also admitted that the abadi of the village is at a distance of 300 yards from the place of recovery and there are also shops near the place of recovery. He has also admitted the

presence of the shop keepers. Thus it can be safely held that the prosecution was having ample opportunity to join independent eye witnesses in the investigation but since no independent witness has been joined despite availability, so an adverse inference is drawn against the prosecution for non-joining the independent witnesses in view of the dictum laid down in Dharminder Kumar Jain Vs State of Punjab 2001(4) Recent Criminal Reports 9.

10. PW-5 Randhir Singh, Head constable has stated that 2-3 persons of the village had come at the time of apprehending the accused but PW-6 Bharat Singh has totally denied this fact. PW-5 Randhir Singh has failed to tell the distance from where the accused was seen by them. Thus it is clear that there are material contradictions in the statements of the witnesses which makes the case of the prosecution doubtful. Moreover in this case the prosecution witnesses have not stated about the preparation of the seal impression. Thus Shounath Vs. State of Rajasthan 1998(1) CCJ 541 (Rajasthan) is fully applicable in the present case.

Upon perusing the above reasons, I find that the findings recorded by the trial Court in paras 9 and 10 above are proper, possible and there is no need to take other view of the matter.

In that view of the matter, it would not be possible to interfere with the order of acquittal since the order of acquittal is based on evidence and no perversity is seen therein. In the result, there is no merit in the present appeal and the same is therefore, dismissed.

15th NOVEMBER, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>