

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

**CRA-S-2443-SB-2017
Date of decision: 15.09.2018**

Ajaib Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Rajeev Sharma, Advocate for
Mr. Kamaldeep Singh Sodhi, Advocate (Legal Aid Counsel) &
Mr. Vivek Goel, Advocate
for the appellant.

Mr. Dhruv Dayal, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

1. This appeal is directed against the judgment of conviction dated 17.02.2017 and order of sentence dated 20.02.2017, passed by the Judge, Special Court, Ferozepur, vide which, the appellant was convicted for committing offence punishable under Section 15 of the Narcotic Drugs and Substances Act, 1985 (*for short 'NDPS Act'*) and was sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of ₹1,00,000-; in default of the payment of fine, he was directed to further undergo rigorous imprisonment for a period of one year.
2. This appeal has been filed through legal aid counsel. Since the appellant is in custody, this appeal is listed in the roster of Specially Constituted Bench for taking it up on Saturdays for its disposal.
3. Brief facts of the case, as per the statement of PW-3 SI Tara Singh (at the time of offence he was ASI), as recorded from his

examination-in-chief, reads as under:

“On 29.6.2000, I was posted as CIA Staff Zira as ASI. On that day, I along with ASI Balbir Singh, HC Baljinder Singh and other police officials were holding *nakabandi* on the crossing in the area of village Amir Shah in connection with night checking on a private jeep. At about, 4 A.M., one canter bearing registration No. PB-05-F-9727 came from the side of Fatehgarh Panjtoor and was signaled to stop and the canter was stopped. **The driver of the canter succeeded in escaping away who was identified by me as Ajaib Singh son of Harnam Singh r/o Kot Ise Khan which was earlier know to me.** Two persons who were sitting in the body of the canter also managed to escape away from the spot. Thereafter, I conducted search of the canter and I suspect some intoxicating material is lying in the bags five in number. Then I sent a wireless message to Pardeep Kumar, DSP, Sub Division Zira requesting him to reach at the spot i.e. in the area of village Amir Shah. Accordingly, DSP Pardeep Kumar reached at the spot along with his personal staff on his govt. zypsy. Then I conducted the search of the canter in the presence of DSP and recovered five bags containing poppy husk therein. After arranging the weighing material, one sample weighing 250 grams was taken from each bag and their parcels were prepared. Remaining poppy husk on weighment came to 35/35 kgs. in each bag and their separate parcels were prepared. All the five bags were numbered 1 to 5. Similarly, sample parcels were numbered 1 to 5. I sealed all the five sample parcels and bulk parcels with my seal bearing impression TS. Sample seal Exh. P2 was prepared separately and seal after use was entrusted to ASI Balbir Singh by me.

DSP also affixed his seal on all the five sample parcels, bulk parcels and sample seal bearing impression PK and kept his seal with him. The entire case property was taken into possession vide memo Exh. P5 along with canter which was attested by ASI Balbir Singh and HC Baljinder Singh and DSP Pardeep Kumar. I recorded the statement of witnesses and sent *ruqa* Exh. P6 to the police station through constable Baljit Singh, on the basis of which formal FIR Exh. P7 was registered by SI Gurmit Singh whose signatures, I identify. Then I prepared rough site plan Exh. P8 of the place of recovery. On return to the police station, I handed over the entire case property and sample seal to SI Gurmit Singh who also affixed his seal bearing impression GSR on the sample parcels and bulk parcels and sample seal and took the entire case property along with canter into his possession vide memo Exh. P1 which was attested by me and ASI Balbir Singh. During the period, the case property remained in my custody, I did not tamper with it nor I allowed anybody to tamper with. On 8.7.2000, I was present at bus stop Shah Bukkar in connection with patrolling where accused Ajaib Singh now present in Court was standing who on seeing the police party, he sat down under the pretext of urinating who was apprehended by me with the assistance of ASI Balbir Singh and HC Baljinder Singh. I intimated the grounds of arrest to accused Ajaib Singh vide memo Exh. P9 which was thumb marked by accused Ajaib Singh and attested by abovesaid witnesses. From the personal search of accused Ajaib Singh, currency notes of Rs. 25/- were recovered and were taken into possession vide memo Exh. P10 which was thumb marked by him and attested by aforesaid witnesses. The relations of the accused were intimated vide memo Ex. P11. The accused

was formally arrested in this case and was lodged in police station Makhu. On 18.7.2000, I along with HC Pushpinder Singh, C-II Manjit Singh and other police officials were going towards Kot Isse Khan Road, when we reached near the gas agency of Zira, then Mukhtiar Singh Ex-Sarpanch of Village Sukhewala produced accused Harnam Singh now present in Court today before me. I intimated him about his grounds of arrest vide memo Exh. P12 which was thumb marked by him and attested by aforesaid witnesses. Nothing was recovered from the personal search of accused Harnam Singh and a memo Exh. P13 in this regard was prepared. Relations of accused Harnam Singh were intimated vide memo Exh. P14. Accused was formally arrested in this case. On return to the police station Makhu, he was lodged in lock up. I recorded the statements of witnesses. On receipt of report of Chemical Examiner Exh. P15, report u/s 173 Cr.P.C. was prepared by SI Bachan Singh, whose signatures, I identify.”

4. The case of the prosecution is that SI Tara Singh, when he was holding a *Nakabandi* along with other police officials, a canter bearing registration No. PB-05-F-9727 was seen coming from the side of Fatehgarh Panjtoor and when it was stopped, he saw that the driver of the vehicle is Ajaib Singh, resident of Amritsar Road, Kot Isse Khan as he was earlier known to him and there were two other persons who could not be identified and they ran away from the spot. The prosecution subsequently arrested the appellant Ajaib Singh on 08.07.2000 from the bus stop Shah Bukkar and as per the statement of PW-3, another co-accused Harnam Singh (who faced trial with the present appellant upto the stage of recording of the defence evidence when the appellant fled away from the process of the Court) was

produced before the Investigating Officer by one Mukhtiar Singh, Ex-Sarpanch of village Sukhewala. Thereafter, the police recorded memo Ex. P9 for informing the grounds of arrest to the appellant and a similar memo was recorded with regard to Harnam Singh i.e. Ex. P12.

5. Thereafter, as stated by PW-3, on completion of the investigation, the challan, under Section 173 Cr.P.C., was produced before the Court and after framing of charges against both the accused persons under Section 15 of the NDPS Act, they faced trial.

6. The prosecution in its evidence recorded the statement of PW-1 Constable Gurbachan Singh who stated that on 03.07.2000, SI Bahadur Singh handed over five samples and sample seal duly sealed with 'TS', 'PK' and 'GSR' for depositing the same in the office of Chemical Examiner, Jalandhar. The samples were of 250 grams of poppy husk each. He also stated that he was also directed by SI Bahadur Singh to get the docket forwarded from the office of SSP, Ferozepur and after getting the same forwarded from the office of SSP, Ferozepur on 04.07.2000, he deposited the samples and sample seal, with the seals intact in the office of Chemical Examiner, Jalandhar and on return to police station, he handed over the receipt to SHO Bahadur Singh.

7. Thereafter, the public prosecutor had given up PW-1 Constable Gurbachan Singh, who had come to Court, on the ground that he was won over by the accused persons. PW-2 SI Gurmit Singh, Incharge of Anti Fraud Squad, Ferozepur, deposed that on 29.06.2000, he was posted as Additional SHO at Police Station Makhu and ASI Tara Singh, CIA Staff, Zira, produced before him both the accused along with the five bags of poppy

husk each weighing 35 kgs. and five samples each weighing 250 grams duly sealed with seals bearing initials 'TS' and 'PK' along with sample seal and a canter. This witness sealed the bags and sample parcels with his seal bearing initials 'GSR' and took in possession the same, vide recovery memo Ex. P1 and sample seal as Ex. P2. The recovery memo was attested by SI Tara Singh and ASI Balbir Singh and on the same day, he produced the case property in the Court of Illaqa Magistrate by moving an application Ex. P3, on which, the Illaqa Magistrate passed an order Ex. P4 directing him to keep the case property in the Malkhana in his custody and on return to the police station, he deposited the case property in the Malkhana and thereafter, on 03.07.2000, he had handed over the case property to SHO Bahadar Singh. In the cross-examination, this witness stated that he was in possession of the keys of the Malkhana and MHC was not having the keys; no accused person was produced before him on that day and SI Tara Singh came to the police station on the Canter which was produced by him and the Canter was also left with him. He denied the suggestion that the case property was not deposited with him by SI Tara Singh on 29.06.2000. In further cross examination by accused Ajai Singh, this witness stated that he did not remember that he had made any entry in register No. 19 himself or not.

8. Thereafter, the public prosecutor had given up PW SI Bachan Singh, who was part of the police party along with other police officials and SI Tara Singh.

9. PW-3 SI Tara Singh stated that on 29.06.2000, when he was posted in CIA Staff and he along with ASI Balbir Singh, HC Baljinder Singh and other police officials have laid barrier in the area of village Amir

Shah for night checking and at about 4:00 AM, he had seen a Canter, bearing registration No. PB-05-F-9727, coming from the side of Fatehgarh Panjtoor and it was signaled to stop, however, the driver of the said canter succeeded in escaping and he was identified by him as Ajaib Singh (appellant herein) as he was earlier known to him. The other two persons, sitting on the body of the canter, also managed to escape from the spot. The examination-in-chief of the this witness is reproduced above, in which, he has explained that subsequently on 08.07.2000, while he was present at bus stop in Shah Bukkar, in connection with patrolling, he saw accused Ajaib Singh standing there. On seeing the police party, he sat down under the pretext of urinating and he was apprehended by him with the assistance of ASI Balbir Singh and HC Baljinder Singh. Accused Ajaib Singh was intimated the grounds of his arrest and a memo Ex. P9 was prepared in this regard which was thumb marked by SI Tara Singh. Thereafter, his personal search Ex. P10 was prepared and his relatives were informed vide memo Ex. P11 and he was formally arrested and was kept in the police lock up. Similarly, on 18.07.2000, Mukhtiar Sigh, Ex. Sarpanch of village Sukhewala, produced other co-accused Harnam Singh and he was also informed the grounds of his arrest, vide memo Ex. P12. It was thumb marked by him and attested by other witnesses and the memo with regard to giving information to his relatives was also prepared as Ex. P13 and this accused was also formally arrested. In cross-examination, PW-3 SI Tara Singh deposed as under:

“There is no seal on the bags and the chits on the bags are not legible. It is correct that at present jute thread with which the bags were tied can be untied and

anything can be inserted or taken away from the bags. I did not try to apprehend owner of the canter and did not try to investigate about the owner of the canter. Till today, I do not know the owner of the canter.”

10. It would be relevant to reproduce the relevant part of the cross-examination of PW-3 SI Tara Singh regarding identity of the accused appellant, which reads as under:

“I have got no relation or dealing with accused Ajaib Singh and I am not on visiting terms with Ajaib Singh accused. I do not know about the brothers of accused Ajaib Singh and their names and their children also nor do I know about the children and their names of accused Ajaib Singh. Accused Ajaib Singh ran away towards opposite direction. We also chased the accused but he managed to escape and he was about 25 ft. away from us. Police party did not chase the other two accused who were sitting in the body of the canter. No raid was conducted on the house of accused on 29.6.2000 by the police party. I do not remember the dates on which I raided the house of accused Ajaib Singh. Again said I raided the house of accused on 2.7.2000, 3.7.2000 and 5.7.2000. When the raid was conducted no independent person was joined by us.”

11. PW-4 Balbir Singh also deposed on the line of SI Tara Singh and with regard to identity of the appellant, he stated that appellant Ajaib Singh was identified by SI Tara Singh as he was earlier known to him. In the cross-examination, this witness stated that police party did not make any entry in the DDR when the son of Ajaib Singh was called in the police

station and further stated that the driver of the canter was not known to this witness and he ran away towards eastern side whereas the other two accused persons, who were sitting on the body of the canter, ran away towards the southern side and they could not be chased because it was pitch dark.

12. PW-5 Amrit Pal Singh, Clerk, DTO Office, Amritsar deposed that as per the registration certificate, Canter bearing registration No. PB-05-F-9727 stands in the name of Sukhwinder Singh son of Baj Singh and PW-6 Sukhwinder Singh stated that he has purchased the aforesaid vehicle in his own name and thereafter he had sold the same to one Gurcharan Singh son of Hazura Singh, r/o village Galoti, Tehsil Moga.

13. PW-7 DSP Pardeep Kumar stated that investigation was conducted at the spot as noticed in the statement of PW-3 SI Tara Singh and further stated that he reached at the spot at 5:15 A.M. on receiving a message from SI Tara Singh.

14. In the statement of the appellant, recorded under Section 313 Cr.P.C., though in question No. 1 it is stated that SI Tara Singh identified him as he was earlier known to him, however, in the subsequent questions, it is nowhere stated that appellant Ajaib Singh or co-accused Harnam Singh were found in conscious possession of the contraband. In a question, put to the appellant regarding his involvement in the case, it is stated as under:

“I am innocent. I and Harnam Singh had enmity with Piara Singh Sarpanch and Kikkar Singh. Actually, Kikkar Singh, son of Baj Singh, nephew of Piara Singh Sarpanch of village Dolewala, was apprehended by the police and after getting some money from Piara Singh Sarpanch on behalf of Kikkar Singh, the police released Kikkar Singh and falsely implicated me and Harnam

Singh in this case by planting false recovery.”

A similar statement of co-accused Harnam Singh was recorded.

15. In defence, the accused persons produced DW-1 Constable Harshinder Singh who produced on record Register No. 19, pertaining to the year 2000, in which, as per entry at Sr. No. 873 dated 29.06.2000, there was no signature of the SHO regarding sending of the samples to the office of the Chemical Examiner on 03.07.2000.

16. It is worth noticing that at this stage, when the statement of the DW-1 was recorded, appellant Ajaib Singh had absconded from the court proceedings and the Judge, Special Court, Ferozepur, vide judgment dated 10.10.2005, acquitted the co-accused Harnam Singh. The operative part of the judgment of acquittal dated 10.10.2005 is reproduced below:

“4. After closure of the prosecution evidence statements of both the accused U/s 313 Cr.P.C. were recorded. The accused denied the entire incriminating circumstances appearing against them in the prosecution evidence and alleged false implication. Version unfolded by both the accused was that they had enmity with Piara Singh Sarpanch and Kikkar Singh. Actually Kikkar Singh son of Baj Singh and nephew of Piara Singh Sarpanch of Village Dolewla was apprehended by the police and after getting some money from Piara Singh Sarpanch, on behalf of Kikkar Singh, the police released Kikkar Singh and falsely implicated them in the present case.

5. In their defence the accused examined DW1 CII Harshinder Singh. During trial accused Ajaib Singh has absconded.

6. I have heard the Ld. Addl. Public Prosecutor, Ld. Defence counsel and have also gone through the prosecution evidence, pleas of the accused and defence

evidence very minutely.

7. The only point for determination in the present case qua accused Harnam Singh is as to whether the prosecution has been able to prove his identity beyond reasonable doubt. From the very inception of the ruqa Ex. P6, it is the case of the prosecution that two unidentified persons had run away from the spot. Only accused Ajaib Singh (since absconded) was identified by ASI Tara Singh at the time of alleged fleeing of the accused from the Canter, from which the contraband was recovered. There is nothing either in the statement of PW3 ASI Tara Singh or in the statement of PW4 ASI Balbir Singh that any of them identified accused Harnam Singh at the spot at the time of his alleged fleeing from the spot. There is nothing in their statements that any of them was having any prior acquaintance with accused Harnam Singh. They even did not depose in court that accused Harnam Singh was the same person who had run away after jumping from the body of the canter. Once none of these two material witnesses of recovery have deposed that one of the alleged escaped accused was accused Harnam Singh and they were not having any prior acquaintance with him, I am afraid to hold that the prosecution has been in any manner able to prove the identity of accused Harnam Singh in order to connect him with one of the alleged escaped accused from the body of the canter. The only evidence against accused Harnam Singh is that he was produced before ASI Tara Singh by one Mukhtiar Singh Ex. Sarpanch of Village Sukhewala. However, this part of the evidence of the prosecution is not sufficient to connect the accused with the one alleged escaped accused from the body of the canter. Even otherwise none of the documents prepared by ASI Tara Singh regarding the arrest of the accused

was attested by Ex. Sarpanch Mukhtiar Singh. Therefore it cannot be said beyond reasonable doubt that accused Harnam Singh was produced before ASI Tara Singh by Ex. Sarpanch Mukhtiar Singh. It is therefore held that the prosecution has miserably failed to connect accused Harnam Singh with one of the alleged escaped accused from the spot. Once identity of accused Harnam Singh is not proved beyond reasonable doubt, it is held that the prosecution has failed to prove his guilt beyond reasonable doubt. Hence accused Harnam Singh is acquitted by way of giving benefit of doubt. The case property be kept intact until the arrest of accused Ajaib Singh (since absconded). File be consigned to record room and may be taken up as and when accused Ajaib Singh is arrested. Separate proceedings for confiscation of the vehicle in question are going to be initiated against the owner of the vehicle.”

17. Thereafter the appellant was arrested in an FIR No. 156 dated 27.10.2009, under Section 15 of the NDPS Act, registered at Police Station Zira and vide judgment dated 29.03.2011, he was convicted and sentenced to undergo rigorous imprisonment for a period of twelve years and to pay a fine of Rs. 1,00,000/-; in default of payment of fine, he was directed to further undergo rigorous imprisonment for a period of six months.

18. The appellant is presently undergoing the sentence in the said case and as on today, he has undergone actual sentence of eight years and twenty four days, as per the custody certificate filed in Court.

19. In the present FIR, the appellant was produced on production warrant on 26.12.2016 and thereafter, the trial Court, vide judgment dated 17.02.2017 held the appellant guilty of commission of offence punishable

under Section 15 of the NDPS Act and sentenced him, vide order of sentence dated 20.02.2017, as noticed in the first paragraph of this judgment.

20. Learned counsel for the appellant has argued that the identity of the appellant could not be proved by the prosecution. It is also argued that on the same set of evidence, while appreciating the defence set up by both accused persons that they have been falsely implicated at the instance of Piara Singh and his nephew Kikkar Singh, with whom the appellant as well as Harnam Singh were having enmity, accused Harnam Singh stands acquitted and it was also noticed that it is the defence set up by the appellants that in fact Kikkar Singh son of Baj Singh, nephew of Piara Singh Sarpanch, was apprehended by the police and after taking some money, he was let off and the appellants were falsely implicated in this case.

21. Learned counsel for the appellant further argued that on the same set of evidence, co-accused Harnam Singh stands acquitted, vide judgment dated 10.10.2005, and as the appellant had fled away from the process of justice at the stage when even defence evidence was concluded, hence, no fresh evidence has been led in the present case. Therefore, the conviction of the appellant, on the same set of evidence, is not a correct approach of the trial Court.

22. Learned counsel for the appellant further argued that the conviction of the appellant is solely based on the statement of PW-3 SI Tara Singh and except his statement, none of the police officials has either identified the appellant at the spot or at its subsequent stage.

23. It is also argued that no other connecting evidence has been

collected by the Investigating Officer during investigation to hold that in fact the appellant was present at the spot along with co-accused Harnam Singh as even PW-4 ASI Balbir Singh has not stated that Ajaib Singh is the same person who was driving the vehicle and his evidence based on information given by PW-3 SI Tara Singh is only informative.

24. Learned counsel for the appellant laid much stress on the cross-examination of PW-3 SI Tara Singh wherein this witness clearly admitted that he had no relation or dealing with accused Ajaib Singh and he is not on visiting terms with appellant Ajaib Singh and even he does not know about the brothers of Ajaib Singh or their names or the names of their children. This witness further stated that he even does not know the names of the children of Ajaib Singh and further stated that no raid was conducted in the house of accused on 29.06.2000, the date of occurrence. However, though he stated that the raid was conducted on 2.7.2000, 3.7.2000 and 5.7.2000 by this witness, yet he could not produce any record or memo or DDR/Roznamcha that the police party had gone to the house of the accused.

25. Learned counsel for the appellant, in this regard, has relied upon a judgment rendered by a Division Bench of this Court in **2005 (2) R.C.R. (Criminal) 127, Harpreet Singh vs. State of Punjab**. The operative part of the judgment reads as under:

“11. From the testimony of PW-1 SI Hardevinder Singh and PW-4 ASI Gurtej Singh, in our opinion, the involvement of accused-appellants Harpreet Singh and Albel Singh at the spot does not stand proved on record, beyond reasonable doubt. As referred to above, nothing has come on the record to show as to how ASI Gurtej Singh knew accused-appellants Harpreet Singh and

Albel Singh prior to the present occurrence. If that be so, there was absolutely no occasion for PW-4, ASI Gurtej Singh to identify accused Harpreet Singh and Albel Singh and to have given their names and parentage to SI Hardevinder Singh. Furthermore, on the facts and circumstances of the present case, it is highly doubtful if PW-4 ASI Gurtej Singh would have identified accused-appellants Harpreet Singh and Albel Singh, who allegedly ran away from the body of the truck from behind and no police official was present there at that time. In our opinion, accused Harpreet Singh and Albel Singh could not have been identified from their wearing apparels and as such testimony of PW-1 SI Hardevinder Singh in this regard cannot be accepted. PW-1 SI Hardevinder Singh had not identified accused-appellants Harpreet Singh and Abel Singh at the spot and his information was based on the information supplied to him by ASI Gurtej Singh. However, as referred to above, nothing has come on the record to show as to how ASI Gurtej Singh knew these accused previously. Furthermore, PW-1 SI Hardevinder Singh had deposed that accused Harpreet Singh was earlier known to him as he had conducted the verification of the earlier case and that case was registered with regard to the inflicting injuries on his father and had volunteered to state that the said case was cancelled. If that be so, SI Hardevinder Singh would have identified accused Harpreet Singh at the spot, if he knew him. However, there is nothing to show that SI Hardevinder Singh had identified accused Harpreet Singh at the spot. ”

26. Learned counsel for the appellant also relied upon a judgment rendered by a Single Bench of this Court in **2009 (5) R.C.R. (Criminal)**

747, Raja alias Raj Singh alias Sukhmeet Singh vs. The State of Haryana,

wherein a similar view has been taken. The operative part of the judgment is reproduced below:

“10. The Counsel for the appellant, at the very outset, submitted that the identity of the accused, as the perpetrator of crime, was not established by the prosecution, beyond a reasonable doubt. He further submitted that the accused, according to the, prosecution story, allegedly escaped from the spot, and could not be caught hold. He was, ultimately, arrested on 01.01.2006. No doubt, the name of the accused was mentioned in the ruqa: Kawaljeet Singh, ASI, during the course of examination-in-chief, stated that he was knowing the accused earlier to the present incident. However, his statement, in this regard, is not corroborated by any other evidence or circumstance, which. could go to prove that he actually knew the accused earlier to the instant incident. It was stated by Kawaljeet Singh, ASI, during the course of cross-examination, that the accused was never arrested by him, in any other case. He further stated that the accused was not cited as a witness, in any case by him. He further stated that he never received any complaint, against the accused. He could not tell whether the accused owned any land, in his village, because this fact was not investigated by him, during the course of investigation. He further stated that he did not know that accused Raja, had been a panch, Sarpanch or a Nambardar of his village. He further stated, in his cross-examination, that he did not study with him nor he could tell about his education. He could not tell as to how many children, the accused was having. He could not tell about the brothers or sisters, if any, of the accused. He had not seen any photograph of accused Raja, in the Police Station. From the statement of Kanwaljeet Singh,

ASI, made by him, during the course of cross-examination, one cannot possible conclude that the accused was either known to him earlier or was identified by him at the spot. It is evident from the evidence, on record, that the back of the accused was towards the Police party, when they were half an acre away from Dhani. They noticed that one person, who was sitting on the heap, on hearing the noise of the gypsy, succeeded in running away. The Police party chased him for some distance, but he could not be caught hold. It appears that the name of the accused was written, in, the ruqa, by ASI Kanwaljeet Singh, on the basis of some information that might have been provided to him either by his wife or by Daljit Singh, against whom, he took up the plea under Section 313 Criminal Procedure Code, that he was inimical towards him. The accused was not earlier known to any of the members of the Police party. Had the accused been known to any of the members of the Police Party earlier, to the alleged recovery, he would have been immediately arrested after the same. The alleged recovery was effected on 09.05.2005, whereas, the accused was arrested on 01.01.2006, which clearly showed that he was not known to the Police party and was only arrested on suspicion, after about eight months. The identity of the accused, as the perpetrator of crime, therefore, did not stand proved, in the instant case, beyond a reasonable doubt. It was a fit case, in which the identification parade should have been held. It was held in ***Budhsen and another v. State of U.P., AIR 1970 Supreme Court 1321*** that the facts, which establish the identity of an accused person, are relevant under Section 9. As a general rule, the substantive evidence of a witness, is a statement, made in Court. The evidence of mere identification of the

accused person, at the trial, for the first time, is from its very nature, inherently of a weak character. The evidence of the witnesses, in order to carry conviction, should ordinarily clarify, as to how, and, under what circumstances, they came to pick out the particular accused person, and the details of the part, which the accused played, in the crime, in question, with reasonable particularity. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of the witnesses in Court, as to the identity of the accused, who are strangers to them, in the form-of earlier identification proceedings. There may, however, be exceptions to this general rule, when, for example, the Court is impressed by a particular witness, on whose testimony it can safely rely,. without such or other corroboration. The identification parades belong to the investigation stage. They are generally held, during the course of investigation, with the primary object of enabling the witnesses, to identify persons concerned, in the offence, who were not previously known to them. This serves to satisfy the investigating officers of the *bona-fides* of the prosecution witnesses, and also to furnish evidence, to corroborate their testimony in Court. Identification proceedings, in their legal effect, amount simply to this that certain persons are brought to jail, or some other place, and make statements either express or implied, that certain individuals, whom they point out, are persons, whom they recognize, as having been concerned in the crime. They do not constitute substantive evidence. These parades are essentially governed by Section 162 Criminal Procedure Code The principle of

law, laid down, with regard to the test identification parade in *Ramanathan v. The State of T.N. AIR 1978 Supreme Court 1204* was as under :

"Identification parades have been in common use for a very long time, for the object of placing a suspect in a line up with other persons for identification is to find out whether he is the perpetrator of the crime. This is all the more necessary where the name of the offender is not mentioned by those who claim to be eye-witnesses of the incident but they claim that although they did not know him earlier, they could recall his features in sufficient details and would be able to identify him if and when they happened to see him. The holding of a test identification in such cases is as much in the interest of the investigating agency or the prosecution as in the interest of the suspect or the accused. For while it enables the investigating officer to ascertain the correctness or otherwise of the claim of those witnesses who claim to have seen the perpetrator of the crime and their capacity to identify him and thereby fill the gap in the investigation regarding the identity of the culprit, it saves the suspect or the accused from the sudden risk of being identified in the dock by the self same witnesses during the course of the trial. The line up of the suspect in a test identification parade is therefore a workable way of testing the memory and veracity of witnesses in such cases and has worked well in actual practice."

Keeping in view the principle of law, laid down, in the aforesaid authorities, now let us see, as to whether, the prosecution, was able to prove that the appellant was the perpetrator of crime. The appellant was identified, in the Court, at the time of his evidence, for the first time, and that identification was hardly of any consequence, to pinpoint his identity, as the perpetrator of crime. With a view to prove its case, against the accused, it was obligatory upon the prosecution, to prove his identity, as the perpetrator of crime beyond a reasonable doubt. In the instant case, the prosecution miserably failed to prove the identity of the accused, beyond a reasonable

doubt, as the perpetrator of crime. Since the identity of the accused, as the perpetrator of crime, was not proved, beyond a reasonable doubt, he was not connected with the present case. He was, thus, liable to be acquitted. The trial Court was wrong in convicting him.”

27. Similar view has been taken by Single Bench of this Court in **2013 (4) R.C.R. (Criminal) 402, Pappu Singh and others vs. State of Haryana**. The operative part is as under:

“15. In this case, none of the accused was arrested from the spot. There is no explanation on record as to how the police officials identified the accused. There is nothing on record to suggest that the members of the police party knew the accused earlier, if so, the context as to how the police party knew them has not been cited. No test identification parade was got conducted by the prosecution. So, the identity of the accused, who ran away from the spot, could not be matched with the present accused, who were suspected to be the actual culprits. There are chances of mistaken identity in this case. The ASI who allegedly recognised the accused, was not having any friendship or thick relations with the present accused leaving no doubt about the identity of the ran away accused. There is possibility of framing the present accused merely on suspicion.”

28. Learned counsel for the appellant has further argued that at the time when the appellant was arrested and the memo Ex. P9 was prepared informing him the grounds of his arrest, neither any independent witness was joined nor the complete details of the date and the manner of the occurrence are given in the same. Learned counsel for the appellant further submitted that a perusal of the said memo would show that it is thumb

marked by the appellant and signed by ASI Balbir Singh, HC Baljinder Singh and PW-3 SI Tara Singh. The contents of this documents reads as under:

“In the presence of following witnesses, Ajaib Singh was informed that from your possession, five bags of poppy husk weighing 35.25 Kg each are recovered from Canter bearing registration No. PB-05-F-9727 and after leaving canter you succeeded in running away. A case was registered under Section 15/61/85 of the NDPS Act at PS Makhu and in the above noted case, you are arrested. He was asked, which of his family members should be informed and Ajaib Singh replied that his father Harnam Singh be informed. Thereafter the arrest memo was prepared.”

29. It is thus argued by learned counsel for the appellant that even on a plain perusal of this document, it is clear that the appellant was never informed that he was found in conscious possession of the alleged contraband which was recorded much before his arrest and the case property was never shown to accused while preparing this document.

30. Learned counsel for the appellant further argued that a perusal of the statement of the appellant, recorded under Section 313 Cr.P.C., shows that nothing has been put to the appellant that in what manner SI Tara Singh was known to the appellant and no specific question has been put to the appellant as to how he came in possession of Canter bearing registration No. PB-05-F-9727, and further no specific question has been put to him that he was found in conscious possession of the contraband at the spot. Learned counsel for the appellant, in this regard, has relied upon **2002 (4) R.C.R. (Criminal) 180, Avtar Singh vs. State of Punjab**, wherein, Hon'ble

Supreme Court has held as under:

"6. Possession is the core ingredients to be established before the accused in the instant case are subjected to the punishment under Section 15. If the accused are found to be in possession of poppy straw which is a narcotic drug within the meaning of Clause (xiv) of Section 2, it is for them to account for such possession satisfactorily; if not, the presumption under Section 54 comes into play. We need not go into the aspect whether the possession must be conscious possession. Perhaps taking clue from the decision of this Court in *Inder Sain v. State of Punjab, 1983(2) SCC 372* arising under the Opium Act, the learned trial Judge charged the accused of having conscious possession of poppy husk. Assuming that poppy husk comes within the expression of poppy straw, the question, however, remains whether the prosecution satisfactorily proved the fact that the accused were in possession of poppy husk. Accepting the evidence of PW4- the Head Constable, it is seen that appellant No.3 (accused No.4) was driving the vehicle loaded with bags of poppy husk. Appellants 1 and 2 (Accused Nos. 1 and 2) were sitting on the bags placed in the truck. As soon as the vehicle was stopped by ASI (PW2), one person sitting in the cabin by the side of the driver and another person sitting in the back of the truck fled. No investigation has been directed to ascertain the role played by each of the accused and the nexus between the accused and the offending goods. The word possession' no doubt has different shades of meaning and it is quite elastic in its connotation. Possession and ownership need not always go together by the minimum requisite element which has to be satisfied in custody or control over the goods. Can it be said, on the basis of the

evidence available on record, that the three appellants one of whom was driving the vehicle and other two sitting on the bags were having such custody or control? It is difficult to reach such conclusion beyond reasonable doubt. It transpires from evidence that the appellants were not the only occupants of the vehicle. One of the persons who was sitting in the cabin and another person sitting at the back of the truck made themselves scarce after seeing the police and the prosecution could not establish their identity. It is quite probable that one of them could be the custodian of goods whether or not he was the proprietor. The persons who were merely sitting on the bags, in the absence of proof of anything more, cannot be presumed to be in possession of the goods. For instance, if they are labourers engaged merely for loading and unloading purposes and there is nothing to show that the goods were at least in their temporary custody, conviction under Section 15 may not be warranted. At best, they may be abettors, but, there is no such charge here. True, their silence and failure to explain the circumstances in which they were travelling in the vehicle at the odd hours, is one strong circumstance that can be put against them. A case of drawing presumption under Section 114 of the Evidence Act could perhaps be made out then to prove the possession of the accused, but, the fact remains that in the course of examination under Section 313 Criminal Procedure Code, not even a question was asked that they were the persons in possession of poppy husk placed in the vehicle. The only question put to them was that as per the prosecution evidence, they were sitting on the bags of poppy husk. Strangely enough, even the driver was questioned on the same lines. The object of examination under Section 313, it is well known, is to

afford an opportunity to the accused to explain the circumstances appearing in the evidence against him. It is unfortunate that no question was asked about the possession of goods. Having regard to the charge of which appellants were accused, the failure to elicit their answer on such a crucial aspect as possession, is quite significant. In this state of things, it is not proper to raise a presumption under Section 114 of the Evidence Act nor is it after to conclude that the prosecution established beyond reasonable doubt that the appellants were in possession of poppy husk which was being carried by the vehicle. The High Court resorted to the presumption under Section 35 which relates to culpable state of mind, without considering the aspect of possession. The trial Court invoked the presumption under Section 54 of the Act without addressing itself to the question of possession. The approach of both the courts is erroneous in law. Both the courts rested their conclusion on the fact that the accused failed to give satisfactory explanation for travelling in the vehicle containing poppy husk at an odd hour. But, the other relevant aspects pointed out above were neither adverted to nor taken into account by the trial Court and the High Court. Non-application of mind to the material factors has thus vitiated the judgment under appeal."

31. Learned counsel for the appellant has also relied upon a judgment of this Court rendered in **2010 (6) R. C. R. (Criminal) 1824, Sewak Singh vs. State of Haryana**, wherein, while relying upon the judgment of Hon'ble Supreme Court in **Avtar Singh's** case (supra), the accused was acquitted as the prosecution failed to put a question to him in his statement recorded under Section 313 Cr.P.C. about the conscious

possession of the contraband as well as the identity of other accused persons who had run away.

32. Learned counsel for the appellant further submitted that the evidence of the prosecution is silent about the identity of the third accused person and at no stage of investigation, the police was able to establish that who was the third person, who was sitting on the body of the Canter and ran away from the spot along with Harnam Singh. It is also argued that prosecution has further failed to conduct the proper investigation to prove the source from where the alleged contraband came in possession of the accused persons. Learned counsel for the appellant has relied upon *State of Punjab vs. Balkar Singh, 2004 (3) SCC 582* to submit that where police fail to make investigation as to ownership of the poppy husk, the prosecution has failed to discharge the duty.

33. It is next argued that as per statement of the Investigating Officer PW-3 SI Tara Singh, there was no seal on bags and chits were not legible. This witness admitted that the jute thread, with which the bags were tied, can be untied and anything can be inserted. Therefore, even the identity of case property is not proved.

34. In reply, learned State counsel has submitted that PW-3 SI Tara Singh has given a very natural version in giving the name of appellant Ajaib Singh as he had identified him at the spot when Ajaib Singh was seen at the driver seat of the Canter at the time when the same was stopped and nothing has been attributed about the false implication of the appellant.

35. Learned State counsel has further argued that from the entire evidence of the prosecution, it is established that after the accused persons

ran away from the spot, DSP Kuldeep Kumar was called at the spot and the case property was taken in possession by the police. Thereafter, the same was produced before the SHO and the SHO, in turn, has produced the same before the Illaqa Magistrate and after obtaining an order from the Illaqa Magistrate, it was kept in the Malkhana of the police station and then the samples were sent to the FSL and on receiving the report from the FSL, the challan was presented.

36. Learned State counsel has relied upon **2014 (4) R.C.R. (Criminal) 75, Union of India and another vs. Sanjeev V. Deshpande** to submit that where an accused has committed an offence punishable under the NDPS Act, there can be no presumption of innocence in favour of the accused as per Section 37 of the Indian Evidence Act.

37. Learned counsel has further relied upon a judgment rendered by a Single Bench of this Court in **CRA-S-230-SB-2004** titled as **Baljinder Singh vs. State of Punjab**, decided on 03.09.2014, to submit that the identify of an accused, who ran away from the spot and was recognized by one of the police officials on the basis of the statement of said police official, can be proved.

38. After hearing learned counsel for the parties at length and perusing the entire material available on trial Court's record, I find merit in the present appeal for the following reasons:

(a) On the same set of evidence, including the defence evidence led by the appellant as well as co-accused Harnam Singh, the Judge, Special Court, Ferozepur, vide judgment dated 10.10.2005, had acquitted the co-accused Harnam Singh. A perusal of the aforesaid judgment shows that the

Court has taken notice of the defence set up by the accused persons, in their statements recorded under Section 313 Cr.P.C., that they have been falsely implicated at the instance of Piara Singh Sarpanch and his nephew Kikkar Singh. It is also noticed in the said judgment that the accused persons have stated that in fact Kikkar Singh, nephew of Piara Singh Sarpanch, was apprehended by the police and after taking some money, he was let off and on account of enmity with the accused persons, they were falsely implicated in this case.

Therefore, the defence set up by the accused was specifically put to PW-3 SI Tara Singh in his cross-examination to which he stated that **“it is incorrect that Kikkar Singh, son of Baj Singh, nephew of Piara Singh Sarpanch, was apprehended by the police and later on, after taking some money from Piara Singh on behalf of Kikkar Singh, the police released him and accused persons were falsely implicated in this case on account of their enmity with Piara Singh and Kikkar Singh”**. The trial Court has totally ignored this defence version set up by the accused appellant whereas it was considered by the Judge, Special Court, Ferozepur while acquitting Harnam Singh on the same set of evidence/defence evidence.

(b) Even otherwise, except the oral testimony of PW-3 SI Tara Singh that he had identified the appellant by giving his parentage and residential address, being know to him earlier, is not corroborated by any other evidence. In the cross-examination, this witness has himself stated that he had neither any direct relation or dealing with the accused persons nor he was on visiting terms with the appellant. On further cross-examination, this

witness has shown ignorance of the family members of appellant Ajaib Singh and even has failed to depose the names of his brothers or their children or the names of the children of the appellant. This witness has failed to prove as to how Ajaib Singh was known to him prior to 29.06.2000, the date of incident as he has failed to produce on record any document that on earlier occasion, the accused was ever wanted in any police proceeding or he was cited as a witness or the accused came in contact with this witness in any other manner. Therefore, the identity of the appellant is not proved.

Moreover, PW-4 nowhere stated that appellant was the same person who was driving the canter and his only deposition is that his name was informed by PW-3 SI Tara Singh. Looking from another angle, even there is no disclosure statement of any of accused which may corroborate the version of PW-3 SI Tara Singh.

In view of the judgments rendered in the case of ***Harpreet Singh, Raja @ Raj Singh and Pappu Singh (supra)***, it is held by this Court that where the evidence of mere identification of accused person is of weak character, the same cannot form basis for convicting the person. From the examination-in-chief as well as cross-examination of PW-3 Tara Singh, the prosecution has miserably failed to prove the identity of appellant Ajaib Singh beyond the shadow of reasonable doubt and, therefore, he is liable to be acquitted.

(c) It is also well settled principle of law that if a specific question is not put to an accused person, while recording his statement under Section 313 Cr.P.C., informing him the evidence which has come on record against

him, it amounts to denying his right to rebut the same. It has been held by Hon'ble Supreme Court in *Avtar Singh's* case (supra) that if a specific question is not asked to an accused person that he was the person who was found in conscious possession of the poppy husk in a vehicle, it will not amount to affording an opportunity to the accused to explain the circumstances appearing in the evidence against him. A perusal of memo Ex. P9 along with the investigation report shows that nothing has come on record as to how the appellant was in possession of the canter and was driving the same.

(d) A perusal of the statement of PW-6 Sukhwinder Singh, the original owner of the vehicle, shows that he has sold the said vehicle to one Gurbachan Singh and the police has miserably failed to collect any evidence by joining said Gurbachan Singh in the investigation to prove that he gave the canter to Ajaib Singh. Rather on 30.06.2003, the Public Prosecutor made a statement that he gave up PW Gurbachan Singh as he has been won over by the accused and, therefore, the prosecution has failed to link evidence to connect that PW-6 has in fact sold the Canter to Gurbachan Singh.

39. There is no dispute about the proposition of law laid down by the Hon'ble Supreme Court in *Sanjeev V. Deshpande's* case (supra) but in the peculiar facts and circumstances of the present case where the prosecution has miserably failed to establish the identity of the appellant especially in view of the fact that in a separate judgment dated 10.10.2005, co-accused stands acquitted on the same set of evidence for the various reasons notice above. Hence, the presumption stands rebutted.

40. A perusal of the facts of *Baljinder Singh's* case (supra), relied

upon by learned State counsel, shows that when the police stopped the vehicle, one person ran away from the spot, who was the driver of the said vehicle, however, another person was apprehended at the spot and on the disclosure statement of the said person, the identity of the said person, who succeeded in running away, was proved. Therefore, the facts of the said case are quite distinguishable from the facts of the present case. Except from bald statement of SI Tara Singh, who has demolished his own case by showing his ignorance to any previous acquaintance with the accused person, there is nothing on record to prove the identity of the appellant. Hence, the identity of the appellant is not proved.

41. Therefore, for the reasons stated above, the present appeal is allowed holding that the prosecution has failed to prove the identity of appellant Ajaib Singh. Accordingly, judgment of conviction dated 17.02.2017 and order of sentence dated 20.02.2017, passed by the Judge, Special Court, Ferozepur, are set aside.

42. Appellant Ajaib Singh as per the custody certificate dated 14.09.2018 has undergone custody of 03 years, 05 months and 05 days in this case and he be released from custody, if his custody is not required in any other case, in accordance with law.

September 15, 2018

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No