

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Appeal No.S-2375-SB of 2003 (O&M)

Date of decision : May 31, 2018

Jeetu alias Rohi alias Jarnail

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. K.P.S.Virk, Advocate for
Mr. K.S.Dhaliwal, Advocate
for the appellant.

Mr. Karanbir Singh, AAG, Punjab.

RAJ SHEKHAR ATTRI, J.(Oral)

The instant appeal is directed against the judgment of conviction and order of sentence dated 13.12.2003, passed by the learned Judge, Special Court, Sangrur vide which the appellant-accused (hereinafter referred to as 'the accused') was convicted and sentenced to undergo rigorous imprisonment for a period of 02 years and to pay a fine of Rs.5,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 03 months under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985.

Briefly stated, the case of the prosecution is that on 12.07.1999, ASI Joginder Singh alongwith posse of police officials was on patrolling duty. At about 1:00 p.m., they held blockade (installed a picket) of the road (in common parlance nakabandi) for the purpose of checking of the suspicious persons. Rajan Singh, a passerby, was being searched in the

meanwhile one person was noticed coming while plying a bicycle towards the nakabandi and was holding a bag. He became perplexed on witnessing at the police party and tried to retreat but was apprehended. On inquiry, he told his name as Jeetu alias Rohi alias Jarnail son of Narain, resident of Village Chamchak, District Kaithal, (Haryana). The Investigating Officer suspected some incriminating substance in possession of the accused. He made up his mind to search the bag. Therefore, he had given an offer to the accused to be searched before him or before a Gazetted Officer or a Magistrate but the accused reposed confidence upon the Investigating Officer and opted the search in his presence. His consent statement Ex.PA was recorded to this effect. After search, poppy husk was recovered from the bag. Out of which, two samples of 250 grams each were separated and converted into separate parcels. The weight of remaining poppy husk came to be 29 ½ kgs which was put in the same gunny bag and was also converted into a parcel. All the three parcels were sealed by the Investigating Officer with his seal bearing impression 'JS'. Sample seal chit Ex.P1 was prepared and seal after use was handed over to said Rajan Singh. Recovery memo Ex.PB was prepared. Ruqa Ex.PD was sent to police station through Constable Gurcharan Singh on the basis of which FIR Ex.PD/1 was registered. The rough site plan Ex.PE of the place of recovery was prepared and the statements of witnesses were recorded.

On return to the police station, the accused as well as the contraband were produced before the SHO who verified the facts of the case and thereafter affixed his own seal bearing impression 'HS'. After completion of investigation, challan was presented in the Court of learned Special Judge.

In order to prove its case, the prosecution examined **PW1** ASI Joginder Singh, **PW2** Hardeep Singh, **PW3** Head Constable Jarnail Singh, **PW4** Head Constable Gurdarshan Singh, **PW5** Head Constable Ram Chand and **PW6** Rajan Singh.

The trial court, after appreciation of evidence, convicted and sentenced the accused, as aforesaid.

I have heard learned counsel for the appellant as well as learned State counsel and have gone through the record.

Learned counsel for the appellant has submitted that there are material discrepancies which caused dent in the prosecution story; that the case property was never produced before a Magistrate or before a gazetted officer; nor special report was sent to the concerned authority; that link evidence is missing; that the presence of police party at the spot is not established rather it has come into evidence that the police party had never gone to the place of recovery; that form No.29 was not prepared and that **PW6** Rajan Singh is a stock witness of the police and that the learned trial court failed to appreciate the evidence.

On the other hand, learned State counsel has submitted that the petitioner was found in possession of 30 kgs. poppy husk; that the independent witness has supported the prosecution case; that there is no material discrepancy in the evidence; and prosecution has proved its case beyond shadow of doubt.

This court has given thoroughful consideration to the rival contentions and critically examined the evidence on record.

The Narcotic Drugs & Psychotropic Substances Act, 1985, contemplates severe and deterrent punishment and numerous offences have

been provided with minimum term of imprisonment.

First of all coming to the fact regarding the presence of police party at the spot, the presence of police party at the spot is highly doubtful. After completion of investigation, the written intimation (ruqa) Ex.PD was sent to the police station. A bare perusal thereof transpires that it was prepared at 4:10 P.M. PW1 ASI Joginder Singh has categorically stated that ruqa was sent to police station at 2:10 p.m. Similar is the version of independent witness PW6 Rajan Singh, who has also stated that ruqa was sent at 2:10 p.m. This is not only a material discrepancy but also cast doubt in the prosecution version. When ruqa was prepared at 4:10 p.m., sending it to the police station at 2:10 p.m. turns the entire prosecution story doubtful and it establishes that the police party did not visit the spot.

Sealing the case property at the spot is an important factor for the purpose of fair trial and to safeguard the interest of the accused. It is claimed by the Investigating Officer that after sealing the samples as well as bulk parcel and after preparation of sample chit Ex.P1, the sample seal was handed over to the independent witness PW6 Rajan Singh. But this witness has categorically stated that the seal after use was kept by the Investigating Officer with him. In this situation, there was every likelihood of tampering with the case property. This fact establishes that sample seal was not handed over to any witness rather it was kept by the Investigating Officer with him and it caused grave prejudice to the accused. In the peculiar circumstances, when case property was neither produced before the Magistrate during investigation nor produced at the time of cross examination of the witnesses, this Court is of the view that it is a doubtful circumstances.

In this case, the case property was not produced before the Magistrate during investigation as required under the provisions of Section 52-A of the Act. Surprisingly, there is an overwriting in the recovery memo Ex.PB with regard to weight of the bulk. The said cutting/overwriting has not been attested by any person. PW3 Head Constable Jarnail Singh has admitted that it appears that earlier the weight was mentioned as 25 kgs. and after overwriting it was converted into 29 kgs. To remove this discrepancy, it was paramount duty of the prosecution to place on record an extract from daily diary register and store room register but non-production of the same itself creates a doubt in the prosecution version. To the mind of this Court in the peculiar circumstances of the case, non-production of the case property before the Magistrate within 24 hours of its recovery itself a doubtful circumstance and benefit of doubt goes to the accused.

Form No.29 was not prepared at the spot, rather it was first time prepared on 19.07.1999. No reason has been assigned as to why it was not prepared at the spot.

It is further the case of the prosecution that case property was sent to chemical examiner on 20.07.1999 but on that date it was returned with certain objections. The prosecution failed to establish as to what were those objections. The prosecution was duty bound to place on record the documents which were sent to forensic science laboratory, copy of roznamcha and store room register but nothing has been produced to establish the same.

In this view of the matter, this Court is of the view that the link evidence is missing. On critical examination, this Court reaches to the

conclusion that the prosecution has not been able to prove the charge framed against him beyond shadow of doubt. It is revealed that the learned trial court has failed to appreciate the evidence available on the record. Therefore, the judgment of conviction and order of sentence are not sustainable in the eyes of law and are liable to be set aside.

As a result, the instant appeal stands accepted. Consequently, the impugned judgment of conviction and order of sentence dated 13.12.2003 are set aside and the appellant is acquitted of the charge(s) framed against him. His bail/surety bonds stand discharged.

May 31, 2018
mamta-M

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No

