

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

(1) **CRA-S-2154-SB-2004**
Date of decision:-25.4.2018

Kulwant Singh @ Kanti
...Appellant

Versus

State of Punjab
...Respondent

(2) **CRA-S-2189-SB-2004**

Shamsher Singh @ Bulla
...Appellant

Versus

State of Punjab
...Respondent

CORAM : HON' BLE MR. JUSTICE H.S. MADAAN

Argued by :Mr.Mandeep Singh Bains, Advocate as
Legal Aid Counsel for the appellant in
CRA-S-2154-SB-2004.

Mr.Jagpal Singh, Advocate as
Legal Aid Counsel for the appellant in
CRA-S-2189-SB-2004.

Mr.Rakeshinder Singh Sidhu, AAG, Punjab.

H.S. MADAAN, J.

Vide this judgment, I propose to dispose of two appeals i.e.

CRA-S-2154-SB-2004 filed by appellant Kulwant Singh @ Kanti and

CRA-S-2189-SB-2004 filed by appellant Shamsher Singh @ Bulla, both

of them being accused, who were tried and convicted by the Court of Judge, Special Court, Barnala vide judgment dated 4.9.2004 for an offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**') and vide order of the same date, they were sentenced to undergo rigorous imprisonment for ten years each and to pay a fine of ₹1,00,000/- each and in default thereof to further undergo rigorous imprisonment for a period of six months each.

The accused-convicts, who are appellants before this Court pray that the appeals be accepted, the impugned judgment of their conviction and order of sentence be set aside and they be acquitted of the charge framed against them.

Briefly stated, the prosecution story is that on 10.5.2002 a police party from Police Station Mehal Kalan headed by SI Gurmukh Singh (hereinafter referred to as the Investigating Officer/I.O.) had received a secret information that truck bearing No.PB-04-2123 loaded with bags of salt and poppy husk was to come from the said of Barnala with Kulwant Singh as its driver and Shamsher Singh @ Bulla as cleaner and on receipt of the said information, the Investigating Officer had sent ruqa to the police station for registration of the FIR and thereafter the police party travelling in official vehicle was going to put picket near Nihalu Wala High Way; DSP, Barnala was requested to reach the spot as DSP Mehal Kalan was not available; when the police party had reached near Gurdwara Sahib of Mehal Kalan, they came across Gurnam Singh, who was joined with the police party; near bus stand of Mehal Kalan, another police party headed by SI Paramjit Singh

was present; both the police parties had joined hands; while holding picket near Nihalu Wala Highway, Sh.Ashok Bath, DSP came there along with his gunman; at about 4:00 a.m., a truck No.PB-04-2123 was spotted coming from the side of Barnala; it was signalled to stop with the help of torch light; the truck came to a halt; it was being driven by Kulwant Singh with Shamsher Singh as Cleaner, however, both of them after alighting from the truck succeeded in running away; accused were however, identified by ASI Malkiat Singh and Gurnam Singh; the truck was checked at the asking of DSP and it was found to be loaded with 421 plastic bags of salt and 14 bags of poppy husk; two samples of 250 gms. each were drawn from each plastic bag and converted into parcels; on being weighed, the residue in each bag came out to 38 kgs. 500 gms. of poppy husk; the samples and bags containing residue poppy husk were sealed with seal of the Investigating Officer and seal of the DSP; the sample parcels, residue parcels along with plastic bags containing salt besides the truck in question were taken into police possession; registration certificate of the truck along with billties recovered from the truck were also seized vide recovery memo; rough site plan of the place of recovery was prepared; on return to the police station, the case property was produced before SHO Amarjit Singh, who checked the same and verified the investigation; SHO put his own seal on the case property having impression 'AS'; specimen seal impression was prepared and then SHO Amarjit Singh deposited the case property with MHC Gurtej Singh. On 22.5.2002, when the police party was present near bus stand Gangor, then both the accused found to be present there and they were apprehended; they were arrested in accordance with law,

preparing requisite documents, thereafter, the accused along with the case property were produced before the Magistrate; statements of witnesses were recorded; during the course of investigation sample parcels were sent to the office of FSL, Punjab and as per report received therefrom those were found to be that of poppy husk.

After completion of investigation, challan against the accused was presented in the Court.

Copies of documents relied upon in the challan were supplied to the accused free of costs as provided under Section 207 Cr.P.C.

Learned Judge, Special Court, Barnala finding that charge for an offence under Section 15 of the Act was disclosed against the accused, charge-sheeted the accused for the said offence, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

To bring home guilt to the accused, the prosecution examined as many as eleven witnesses, namely, Inspector Gurmukh Singh as PW1, Ashok Bath, SP(D) as PW2, Inspector Amarjit Singh as PW3, HC Gurtej Singh as PW4, C Gurmel Singh as PW5, Ram Avtar Singh as PW6, Radhe Shiam Sharma as PW7, Malkiat Singh ASI as PW8, Cash Kumar as PW9, Nadeem as PW10 and Sham Lal as PW11.

With that the prosecution evidence stood closed.

Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them, but they denied the allegations contending that they were innocent and had been falsely involved in this

case.

Further accused Kulwant Singh pleaded that the police from CIA Staff, Barnala had visited his house while he was not available and told that truck was required on WAGAR (without payment of charges); his driver was not present, therefore, his family members told that they could not give the truck as the same was loaded but the police offended over and had an altercation with his family members and took away the truck with them; the matter was brought to the notice of DSP, Barnala but to no effect and for the said reason, he has been falsely implicated in this case.

Further accused Shamsheer Singh took up a plea that nothing was recovered from him and he has been falsely involved in this case.

During the course of defence evidence, the accused examined Gurnam Singh as DW1.

With that the defence evidence got concluded.

After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned supra, which left them aggrieved and they have filed the present appeals.

I have heard learned counsel for the appellants-accused-convicts and learned Assistant Advocate General for the State of Punjab besides going through the record.

Here all the witnesses of recovery, namely, PW1 Inspector Gurmukh Singh, PW2 Ashok Bath, SP(D) and PW8 ASI Malkiat Singh have fully supported the prosecution story as regards the recovery of the poppy husk from the vehicle in question. All three of them were cross-examined at length on behalf of the accused but they remained

unshattered and unanimous regarding material details of the episode. A few minor contradictions in their statements do not go to the root of matter since those are bound to occur due to difference in power of perception, observation and retention of events in various persons and so also due to lapse of memory due to passage of time etc. Their presence at the spot at the relevant time cannot be doubted.

The accused cannot possibly feign ignorance with regard to the contraband being carried in the vehicle.

As regards the independent witness Gurnam Singh being not examined rather he had appeared as a witness for the accused stating that accused were not known to him; they were not arrested in his presence; no recovery was effected from them and that claiming that his thumb impressions had been obtained by the police on blank papers, the trial Court has discussed all these aspects in detail in the impugned judgment finding that he had not filed any complaint against the police officials regarding taking of his thumb impressions on blank papers and further his thumb impressions were obtained about 1 ½ years back whereas he appeared in the Court on 30.4.2004 when the recovery was effected on 10.5.2002, therefore, appearance of Gurnam Singh as a defence witness is not fatal to the prosecution story because earlier to the present recovery, accused had no enmity with the police. It has further been observed that if thumb impressions of Gurnam Singh were obtained on blank papers about 1 ½ years back then he should have filed complaint to the higher authorities against the police officials since the accused were arrested on 22.5.2002 and there was no reason for him to keep mum. Therefore, the defence version stands shattered. The trial

Court has dealt with all the contentions which are now being put forward by learned counsel for the appellants observing that since FIR had been recorded on the basis of secret information and message had been sent to a Gazetted Officer to reach the spot, there was no violation of Section 42 of the Act since it applies to a situation where a specific or identifiable building, conveyance or place is intended to be searched and further in the instant case on receipt of secret information, FIR was recorded, copy thereof was sent to Illaqa Magistrate on the same day which was received by him at 9:30 a.m.

As regards there being no independent corroboration to the depositions of official witnesses, independent corroboration is a rule of prudence and not requirement of law. It is nowhere provided in any statute that independent corroboration is a must and in absence thereof, the case of the prosecution is to be rejected outrightly. It is a matter of common knowledge that now-a-days people generally hesitate to come forward to appear as a witness for the prosecution against the criminals apprehending that such criminals may not turn towards them and cause harm to them or their near relatives. Then there are hassles of going to the police station in connection with investigation and to attend hearings in the Court, therefore, people mostly avoid joining the investigation and offering themselves as witnesses.

Further, recovery involved in this case is quite heavy ruling out possibility of false plantation. One of the contentions put forward by learned counsel for the appellant was that identity of the accused is not established. But this argument is devoid of any merit since it is a specific case of the prosecution that ASI Malkiat Singh had identified the

accused. He had appeared as PW8 and deposed in that regard. Therefore, no doubt is left in the mind about the identity of the accused.

Another argument put forward was that no test identification parade was got arranged, therefore, prosecution has failed to prove as to how the accused were identified. Again there is no merit in the argument since the accused were specifically named in the FIR and as per the prosecution story after stopping the truck, they had alighted therefrom and had run away but were identified by ASI Malkiat Singh. There was no necessity of arranging any test identification parade and the prosecution case is not effected adversely for that reason.

As regards PW2 Ashok Bath SP(D) being summoned to join the investigation instead of DSP Halqa Mehal Kalan, the prosecution has given a satisfactory explanation stating that it was for the reason that DSP Halqa Mehal Kalan was not available at the relevant time. Similarly, the prosecution story cannot be doubted simply for the reason that the truck in which the accused were travelling had been stopped on 10.5.2002 and recovery of contraband was effected therefrom but accused had been arrested after 12 days i.e. on 22.5.2002. If the accused managed to escape the police for 12 days, they cannot take advantage of that fact coming with a plea that prosecution story should be doubted for that reason.

As regards the delay in sending of the sample to FSL, Punjab, in view of the evidence adduced by the prosecution that no tampering of seals had taken place during the period the samples had reached FSL, Punjab, the delay if any, is not of much significance. Furthermore, poppy husk is not such type of material, which experiences

a change in its composition with passage of time.

The link evidence in this case is complete to show that no tampering of seals had taken place.

The prosecution has successfully proved its case against the accused beyond shadow of reasonable doubt.

I do not find any illegality or infirmity with the impugned judgment.

In view of the above discussion, the said judgment of conviction and sentence is upheld whereas appeals are found to be without any merit and the same are dismissed accordingly.

Appellants are stated to be on bail granted to them by this Court while suspending their sentence. Their bails are cancelled. Chief Judicial Magistrate, Barnala is directed to issue arrest warrant to get them arrested so as to make them undergo the remaining sentence.

Necessary intimation be sent to the quarter concerned.

25.4.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No