

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(1)	CRA-S-241-SB of 2004 Date of decision:-18.4.2018
Darshan Singh	...Appellant
Versus	
State of Punjab	...Respondent
(2)	CRA-S-881-SB of 2004
Anwar	...Appellant
Versus	
State of Punjab	...Respondent
(3)	CRA-S-1020-SB of 2004
Raj Kumar	...Appellant
Versus	
State of Punjab	...Respondent
(4)	CRA-S-1442-SB of 2004
Ranjit Singh	...Appellant
Versus	
State of Punjab	...Respondent

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

Argued by :Mr.J.S. Bhatia, Advocate
for the appellant in CRA-S-241-SB-2004.

Mr.Jagpal Singh, Advocate as
Legal Aid counsel for the appellant in
CRA-S-881-SB-2004.

Mr.R.K. Bagga, Advocate as
Legal Aid counsel for the appellant in
CRA-S-1020-SB-2004.

Mr.P.S. Brar, Advocate
for the appellant in
CRA-S-1442-SB-2004.

Mr.Rakeshinder Singh Sidhu, AAG, Punjab.

H.S. MADAAN, J.

Vide this judgment, I propose to dispose of four appeals i.e. **CRA-S-241-SB of 2004** filed by appellant Darshan Singh, **CRA-S-881-SB of 2004** filed by appellant Anwar, **CRA-S-1020-SB of 2004** filed by appellant Raj Kumar and **CRA-S-1442-SB of 2004** filed by appellant Ranjit Singh, all of them being accused, who were tried and convicted by the Court of Judge, Special Court, Ludhiana vide judgment dated 15.1.2004 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 one year 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 27.7.2001, the police party from Police Station Sahnewal headed by SI Dogar Ram (hereinafter referred to as the Investigating Officer/I.O.) had laid a picket on culvert of canal minor, where PW Sham Lal arrived and was associated with the police party; at about 1:10 p.m., a Cargo Tempo No.HR-015-GA-0699 coming from the side of G.T. Road was made to stop; it was being driven by Raj Kumar and accused Anwar was sitting beside him on the front seat; a tarpaulin of blue colour had been put on the body of the said vehicle; accused Ranjit Singh and Darshan Singh were sitting on the gunny bags, which were loaded in the tempo; SI Dogar Ram informed the accused that he suspected that there was some intoxicant material in the gunny bags and wanted to search the same and if the accused so desired, then Gazetted Officer or Magistrate would be called to the spot; all the accused opted for the search to be conducted in presence of a Gazetted Officer; their statements in that regard were recorded; thereafter the Investigating Officer sent a wireless message to Sh.Shiv Kumar Verma, ASP, who arrived at the spot and disclosed his identity to the accused giving them an option of getting the search conducted before some Magistrate but all the accused reposed confidence in him; their consent statements in that regard were recorded; then under directions of Sh.Shiv Kumar, ASP, the Investigating Officer carried out search of the tempo and 20 gunny bags loaded therein were found to contain poppy husk; two samples of 250 gms. each were drawn from each gunny bag and converted into parcels; on being weighed, the residue in each gunny bag came out to 34 kgs. 500 gms. of poppy husk;

the gunny bags were serially marked from 1 to 20; similarly sample parcels were serially marked from 1-A, 1-B to 20-A, 20-B and all the 40 sample parcels and 20 gunny bags containing residue poppy husk were sealed by SI Dogar Ram with his seal bearing impression 'DR' and ASP Shiv Kumar Verma with his seal bearing impression 'SK'; sample seal chit was separately prepared; SI Dogar Ram handed over his seal to ASI Manjit Singh, whereas ASP Shiv Kumar Verma retained the seal with him; the case property was taken into possession vide recovery memos, attested by witnesses; the registration certificate of the vehicle found from its dash board was also seized vide a memo; the Investigating Officer sent ruqa to the police station, on the basis of which formal FIR was recorded; the Investigating Officer prepared rough site-plan of the place of recovery with correct marginal notes and recorded statements of witnesses; accused were arrested in this case and necessary memos were prepared in that regard. On return to the police station, the Investigating Officer produced the accused and case property before ASI Prem Nath, Officiating SHO, who verified the facts of the case and put his seal having impressions 'PN' on the case property. Thereafter, he deposited the case property with MHC Ranjit Singh. On the following day, ASI Narinder Kumar as per directions of SI Dogar Ram produced the accused along with the case property in the Court moving application on which Illaqa Magistrate had passed an order. The samples were sent to FSL, Punjab and as per report received therefrom, those were found to be 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, Ludhiana 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 prosecution.

To bring home guilt to the accused, the prosecution examined as many as nine witnesses i.e. PW1 S.P. Shiv Kumar Verma, PW2 ASI Prem Nath, PW3 SI Doger Ram, PW4 ASI Narinder Kumar, PW5 HC Ranjit Singh, PW6 Ajit Singh, Clerk, RTO, Faridabad, PW7 Dharampal, Registration Clerk, Faridabad, PW8 SI Manjit Singh and PW9 HC Nirmal Singh.

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.

During the course of defence evidence, the accused examined HC Inderjit Singh as DW1, Gurdeep Singh as DW2, HC Jaswant Singh as DW3, Sham Lal as DW4 and Ajaib Singh as DW5.

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 SP Shiv Kumar Verma, PW2 ASI Prem Nath and PW3 SI Doger Ram have fully supported the prosecution story as regards the recovery of the poppy husk from the vehicle in question. All the four accused are to be taken as in conscious possession of the contraband inasmuch it was accused Raj Kumar, who was driving the said vehicle, whereas Anwar was sitting beside him on the front seat and other two accused Ranjit Singh and Darshan Singh were sitting on the gunny bags. The accused cannot possibly feign ignorance with regard to the contraband being carried in the vehicle. 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.

From the testimony of PW4 ASI Narinder Kumar, it came out that he had produced the case property along with the accused in the Court on 28.7.2001 as per directions of the Investigating Officer SI Doger Ram, on which the Magistrate concerned had passed the order. PW5 HC Ranjit Singh, a formal witness has tendered in evidence his

affidavit Ex.PW5/A providing the link evidence. PW9 HC Nirmal Singh by furnishing his affidavit Ex.PW9/A had also done so. From the statement of PW4 ASI Narinder Kumar, PW5 HC Ranjit Singh, PW9 HC Nirmal Singh and report from FSL, it comes out that no tampering of seals had taken place while the case property remained in *malkhana* and had reached the FSL, Laboratory. Though PW6 Ajit Singh, Clerk, RTO, Faridabad stated that record of tempo No.HR51-GA-0699 is not available in their office and PW7 Dharam Pal, Registration Clerk, stated that record was destroyed in the fire, which took place in the office of DTO Faridabad on 11.5.2002 but he had identified signatures of Sh.Ram Chander, Asstt. Secretary on the transfer entry in favour of Kashmira Singh in certificate of registration. In that way, the prosecution had successfully proved its charge against the accused.

As regards the contention raised by learned counsel for the appellants that though Sham Lal, an independent witness was joined with the police party but he was not examined by the prosecution, rather he appeared as a defence witness, that does not seem to have much merit.

Furthermore, 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. Since as discussed above, the official witnesses did not have any axe to grind with the accused, therefore, their depositions are to be taken at par with independent witness and cannot be doubted simply for the reason that they are official witnesses.

As regards non-examination of Sham Lal by the prosecution that does not give any jolt to the prosecution story merely because a witness has chosen to shift his sides and appeared as a witness for accused does not show that whatever he stated is correct because there are many incidents when people tend to tell lies for petty considerations even.

As regards the objections raised by learned counsel for the appellants with regard to contradictions and variations in the statements of witnesses, non-compliance of Section 57 of NDPS Act, memo of arrest not signed by any of the accused, accused being not in conscious possession of the contraband, all these aspects have been dealt in detail by the trial Court, that too in a very convincing and satisfactory manner and the counsel raking up those points again do not convince me to doubt the prosecution case. Nevertheless as regards the contradictions and variations in statements of witnesses as regards time, distance and direction etc., 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.

Learned counsel representing appellant Darshan Singh has argued that no question with regard to conscious possession had been put to accused Darshan Singh while being examined under Section 313 Cr.P.C.

Learned State counsel has contended that while being examined under Section 313 Cr.P.C., all the necessary incriminating circumstances have been put and no defect is there in the statement of accused Darshan Singh under Section 313 Cr.P.C.

After hearing the rival contentions, I find that while being examined under Section 313 Cr.P.C., the incriminating circumstances appearing against the accused are to be put to him, which has been so done in the present case. From the facts and circumstances, conscious possession of contraband by all the accused including Darshan Singh come out to be there.

As regards the authorities referred to learned counsel for the appellants i.e. State of Punjab Versus Hari Singh (SC) 2009 (2) RCR(Crl.)(SC) 143, Avtar Singh Versus State of Punjab (SC) 2002(4) R.C.R.(Criminal) 180, Kashmir Singh Versus State of Punjab (P&H)(FB) 2006(2) RCR (Crl.) 477, Sukhdev Singh Versus State of Punjab (D.B.) 2006(4) R.C.R.(Crl.) 263, Raj Kumar Versus State of Punjab, 2005(1) RCR 70(DB), Radhey Sham Versus State of Haryana, 2011(2) RCR (Crl.) 90 and Dalbir Singh Versus State of Punjab 2008(1) RCR 1050, those do not find application to the present case due to different facts and circumstances and the context in which such observations have been made.

Another argument advanced by learned counsel representing appellant Darshan Singh was that report from FSL, Punjab is vague. However, I am not convinced by this contention. After perusing the report, I find the same to be absolutely clear not having any element of ambiguity, therefore, this argument does not carry any merit.

One more argument put forward was that link evidence is missing inasmuch as Constable Rajinder, who had brought the scale had not been produced as a witness. This argument does not make any sense. He was not essential witness and was not required to be examined. The

link evidence in this case is complete as has been discussed earlier.

Learned counsel for the appellants had cited various authorities with regard to the contention that CFSL Form was not prepared at the spot, which are as under:

- 1. Bhola Singh Versus State of Punjab, 2005(2) RCR(Crl.) 520.***
- 2. Balwinder Singh @ Mohinder Singh Versus State of Punjab, 2016(1) R.C.R.(Crl.) 393.***
- 3. Kuldip Singh Versus State of Punjab, 2013 (1) R.C.R.(Criminal) 510.***
- 4. Lachhman Dass Versus State of Punjab 2010(1) R.C.R.(Criminal) 666.***
- 5. Ramu Versus State of Punjab, 2008(3) R.C.R.(Criminal) 506.***
- 6. Ram Sarup Versus State of Haryana, 2006(1) RC.R.(Criminal) 52.***
- 7. Gurcharan Singh Versus State of Punjab, 2005(4) R.C.R.(Crl.) 681.***

However, I find that this argument to be devoid of merit and the authorities referred to be not relevant to the present case.

Learned State counsel has referred to citation **Wazir Singh Versus State of Haryana, 2010(1) R.C.R.(Criminal) 480** by a Co-ordinate bench of this Court wherein while dealing with the aspect of CFSL Form not filled on the spot, it was observed that there is no rule of evidence or procedural rule under Criminal Procedure Code or NDPS Act and every document must be prepared at the spot of recovery.

Since no prejudice is shown to have been caused to the accused by this procedural lapse, he cannot take advantage of this fact.

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, Ludhiana 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.

18.4.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No