

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

CRA-S-298-SB of 2009 (O&M)

Date of decision: 24.02.2018

Surinder Kumar and others

...Appellant(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Vibhu Agnihotri, Advocate for
Ms. Tanu Bedi, Advocate/Legal Aid Counsel and
Mr. S.S. Sidhu, Advocate
for appellant Nos. 1 and 2.

Mr. Satya Vir Singh Yadav, Advocate
for the appellant/Legal Aid Counsel and
Mr. J.S. Sandhu, Advocate
for the appellant No.3.

Ms. Simranjeet Kaur, AAG, Punjab.

Jitendra Chauhan, J.

Convict/appellants have filed the present appeal assailing their judgment of conviction and order of sentence dated 20.01.2009, passed by Judge, Special Court, Bathinda, whereby the appellants were convicted under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the 'Act') and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of ₹1,00,000/- each and in default of payment thereof, to

undergo further rigorous imprisonment for one year.

The brief facts as culled out in para(s) of the judgment of trial Court, is reproduced as under:-

“The brief facts of the case of prosecution are that on 04.08.2007, the police party headed by SI Ranjit Singh of Detective Staff, Bathinda along with HC Tejinder Singh No. 539 and other police officials was proceeding to Rampura in Government vehicle No.PB-03-L-9848, being driven by Constable Harbhajan Singh No.1330, for checking of suspects as per directions of DSP (D) of the area. That when the police party reached at Gurdwara Sahib, Rampura Mandi, one Jagdip Singh son of Gulzar Singh, resident of Nanak Basti, Rampura came there and was joined in the police party. That the police party was present at link road adjoining drain in the area of turning point of Zaid in connection with checking of vehicles and nakabandi. That one car bearing No.HR-51-B-8163, O.P.E.L was spotted coming from main road, Rampura. That SI Ranjit Singh and HC Tarjinder Singh gave signal to stop the car. That the driver of the car tried to run away on seeing them, but he was in a bay by the police and he stopped the car. That SI Ranjit Singh ascertained the name of the driver and other occupants of the car and the driver of the car disclosed his name as Karamjit Singh son of Gurdev Singh, resident of Sidhana, whereas two persons sitting on the back seat of the car disclosed their names as Vijay Kumar son of Sarup Chand, resident of village Gumti Kalan at present resident of Surinder General Store, Phul

Bazar, Rampura and the person sitting with him disclosed his name as Surinder Kumar son of Sarup Chand, resident of Gunit Kalan, at present resident of Surinder General Store, Phul Bazar, Rampura Mandi. That SI Ranjit Singh disclosed his identity to them. That he suspected some contraband articles with them in the above car. That he gave the option of search thereof to them before a gazetted officer or a Magistrate. That all the accused insisted upon their search before gazetted officer and memos to this effect was prepared separately. That DSP (D) Surinder Pal Singh was called on the spot of recovery and he reached there at 1.45 a.m. in government vehicle along with his paraphernalia. That photographer HC Balraj Singh No.523 also reached thereat. That SI Ranjit Singh briefed DSP Surinder Pal Singh about the circumstances of the case. That DSP Surinder Pal Singh disclosed his identity as gazetted officer of the police department to the accused. That he further gave the option of search to accused of car in question before other gazetted officer or Magistrate. That all the accused reposed confidence in him with regard to search thereof, whereupon their consent memo was prepared. That SI Ranjit Singh searched car No.HR-51-B-8163 on the directions and under supervision of DSP(D) Surinder Pal Singh. That from a satchel lying in between the back seat of the car, opium wrapped in a glazed paper was recovered therefrom, without any licence. That on weighment, the bulk opium was found to be 4 kgs 500 grams. That 10 grams was separated as sample therefrom and was put in a Dabi plastic,

whereas the residue 4 Kgs 490 grams of opium was wrapped in the same glazed paper and was put in satchel and thereafter was put in a separate daba plastic. That sealed parcels were prepared thereof on the spot by sealing them with seal bearing impression RS on the spot of SI Ranjit Singh. That he also prepared sample seal on the spot and seal after use was handed over to independent witness Jagdip Singh. That from further search of car in question, the registration certificate in the name of one Saroj Taneja wife of I. Taneja, resident of 477, Jawahar Colony, Faridabad, was recovered. That old super deck and stiphney were also recovered therefrom. That the entire case property along with above referred car and articles was taken into police possession, vide separate recovery memo, which was attested by the witnesses on the spot. That from personal search of accused Karamjit Singh, one mobile Nokia was recovered. That from further personal search of Surinder Kumar accused, the currency notes of Rs.15,000/- were recovered from his left pocket of shirt and one old mobile was also recovered from him. That from further personal search of accused Vijay Kumar, the currency notes of Rs.20,000/- were recovered from his left pocket of shirt and one old mobile set was also recovered from right pocket of his pant. That they were taken into police possession, vide separate memo, which was attested by the witnesses. That the accused failed to produce any licence to possess the opium. That ruqa was sent to PS Rampura by SI Ranjit Singh, whereupon the FIR of this case was registered by ASI Jaswant Rai

thereat. The investigating officer SI Ranjit Singh recorded the statements of the witnesses. That usual investigation was completed on the spot by S.I. Ranjit Singh. That on return to PS Rampura on the same day, the investigating officer SI Ranjit Singh produced the entire case property along with sample seal and car and registration certificate and personal search articles together with accused, before SHO Jaswant Rai. That officiating SHO Jaswant Rai verified the facts of case and put his seal bearing impression JR on entire case property and sample seal. That he received them in his safe custody. That on 05.08.07, officiating SHO Jaswant Rai produced the entire case property before concerned Judicial Magistrate at Bathinda and moved applications for preparation of inventory report and under Section 52-A of the Act and obtained the orders of the Magistrate thereupon. That as per orders of Judicial Magistrate, the case property was again ordered to be produced before Illaqa Magistrate on 6.8.07. That officiating SHO Jaswant Rai again produced the case property before Illaqa Magistrate and Illaqa Magistrate passed orders thereupon. That one sample of 10 grams of opium was also drawn in the presence of Magistrate and case property was sealed with seal bearing impression RLC by the Illaqa Magistrate. That sample seal was also prepared by him. That on receipt of the report of Chemical Examiner, Patiala regarding contents of samples to be opium and on completion of investigation of this case, challan was presented against both the accused by SHO of PS Rampura.”

On presentation of challan, the trial Court finding prima

facie case against the accused-appellants, framed the charge for the offence under Section 18 of the Act. The accused pleaded not guilty to above charge and claimed trial.

In order to prove the guilt of accused, the prosecution examined PW-1 HC Chiman Lal who tendered his affidavit Ex.PA;

PW-2 ASI Jaswant Rai, the officiating SHO, recorded the FIR and corroborated the facts of the case.

PW-3 SI Ranjit Singh, Investigating Officer, deposed regarding the manner of investigation and corroborated version of other recovery witnesses;

PW-4 DSP Surinder Pal Singh, had also testified the recovery of contraband from the accused.

The statements of the accused under Section 313 Cr.P.C., were recorded. They pleaded innocence and alleged false implication. In defence, they examined DW-1 HC Sarwan Singh and thereafter closed their evidence.

After hearing the Addl. Public Prosecutor for the State, the counsel for the accused and after going through the evidence on record, the trial Court convicted and sentenced the accused/appellants, as stated hereinbefore.

Feeling aggrieved, against the judgment of conviction delivered by the trial Court, the instant appeal was filed by the accused/appellants which was admitted on 05.02.2009.

Learned counsel for the appellants have contended that the accused have been falsely implicated in the present case. The complainant, SI Ranjit Singh himself is the investigating officer who appeared as PW-3, therefore, when the complainant himself performed the duties of the investigating officer, the chance of non-transparency in the investigation cannot be ruled out. In support of his assertion, learned counsel has placed reliance upon **Gannu and another** Vs. **State of Punjab**, 2017(3) RCR (Criminal) 566, **Laltu Prasad** Vs. **State of West Bengal**, 2017(2) RCR (Criminal) 237 and **State of Himachal Pradesh** Vs. **Atul Sharma and others**, 2015(6) RCR (Criminal) 949.

The independent witness Jagdip Singh son of Gulzar Singh was joined in the police party but he was not examined by the prosecution for the reasons best known to it. Therefore, the case of the prosecution solely rests upon the testimonies of the official witnesses, who are, interested in the conviction of the appellants to get reward. Recovery was planted upon the accused.

It is further submitted that as per the prosecution story the alleged recovery was effected from the bag lying on the rear seat of the car whereas the accused/appellant Karamjit Singh was driving the car while accused Vijay Kumar and Sarup Chand were sitting on the back seat of the car bearing registration No.HR-51-B-8163. The appellants were not the owner of the car in question. Learned

counsel further states that the original owner of the car was not examined by the prosecution, therefore, the conscious possession of the contraband was also not proved. Furthermore, no question was put to the appellants about the conscious possession while recording their statements under Section 313 Cr.P.C. However, subsequently, the statements of accused under Section 313 Cr.P.C., were again recorded which is not justifiable in the eyes of law. The link evidence is incomplete.

It is further asserted that in the instant case only one sample of 10 gms had been taken instead of 24 gms. In support of contentions, learned counsel cites **Jaswinder Singh and another Vs. State of Punjab**, 2013(1) RCR (Criminal) 257. There were also some material contradictions in the testimony of the prosecution witnesses.

In support of contentions, learned counsel also cites **Gurcharan Singh Vs. State of Punjab**, 2005(4) RCR (Criminal) 681, **Karam Singh @ Karma and another Vs. State of Punjab**, 2015(3) RCR (Criminal) 632, **Parminder Singh Vs. State of Haryana**, 2006(4) RCR (Criminal) 495 and **State of Punjab Vs. Dharampal Singh**, 2008(2) RCR (Criminal) 402.

Lastly, the learned counsel for the appellants have contended that the appellants have faced the agony of trial since long as the FIR was registered on 04.08.2007, therefore, a lenient view

may be taken, if this Court finds that this appeal has no merit.

On the other hand, the learned State counsel, has submitted that the accused/appellants were apprehended having alleged contraband i.e. 4 kgs and 500 grams of opium without any valid permit or licence. The case property was duly sealed on the spot and on the next day, the same was produced before the Magistrate. The recovery was effected from the car and the accused had knowledge about the same. There was no previous enmity of any of the official witnesses with the accused before registration of the present FIR. The link evidence is complete. The appellants/accused have rightly been convicted by the trial Court.

This Court has heard the arguments of learned counsel for the parties and has carefully gone through the record of the case.

The present case was registered on 04.08.2007 against the accused/appellants while they were coming in car bearing registration No.HR-51-B-8163 from main road, Rampura and were apprehended on the basis of suspicion by SI Ranjit Singh, the Investigating Officer who along with other police officials were present at the link road of turning point of Zaid in connection with checking of vehicles after nakabandi. As per the case of the prosecution, the car was driven by accused Karamjit Singh and other two were sitting on the back seat of the car. After disclosing the name and rank, the Investigating Officer gave the option of search

before a gazetted officer or a Magistrate. The search was conducted before DSP Surinder Pal Singh and a bag lying on the back seat of the car was found containing 4 kgs and 500 gms of opium. In most of the cases registered under the Act, the accused gets benefit on account of non joining of independent witness(es) but in the instant case, one Jagdip Singh son of Gulzar Singh was joined as an independent witness, however, he was not examined by the prosecution is fatal to the case of the prosecution. There must be some corroboration by the independent witness, particularly when the all the witnesses including the complainant SI Ranjit Singh are official witnesses.

The argument of learned counsel that only one sample of 10 gms was taken which has force in view of Section 2.3 of Sample and classification etc, of drugs which is reproduced as under:-

“2.3. Quantity to be drawn for the sampling – The quantity to be drawn in each sample for chemical test shall not be less than 5 grams in respect of all narcotic drugs and psychotropic substances same in the case of opium, ganja and charas (hanish) where a quantity of 24 gms in each case is record for chemical test. The same quantities shall be taken for the duplicate sample also. The seized drugs in the packages/containers shall be mixed to make it homogeneous and representative before the sample (in duplicate is drawn.”

Whereas, in the present case, only one sample of 10 gms was taken whereas two samples of 24 grams each had to be taken.

There is no explanation on record as to why no investigation was done by the investigating officer with regard to

original owner of the vehicle and source of the alleged contraband. No official from the office of DTO was examined. In the absence of non examination of the owner, the fact as to how the appellants came in possession of the vehicle and contraband remained unexplained. Admittedly, the word conscious is missing in the first version of the statements of accused recorded under Section 313 Cr.P.C, however, vide zimni order dated 17.01.2009, the statements of accused were again recorded which had caused prejudice to the case of the appellants. There are definite loop holes in the investigation and material discrepancies in the testimonies of the prosecution witnesses which cannot be brushed aside. Thus, the conscious possession is not proved.

In view of the foregoing discussion, this appeal is allowed. The judgment of conviction and order of sentence dated 20.01.2009, passed by the trial Court are hereby set aside. The appellants are acquitted of the charge levelled against them. They be set at liberty if not required in any other case.

24.02.2018
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No