

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

CRA-S-1349-SB of 2013 (O&M)

Date of decision: 06.10.2018

Surjit Singh and another

...Appellant(s)

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: None for the appellants.

Mr. Rajesh Bhardwaj, Sr. DAG, Punjab
assisted by ASI Mohan Singh.

Jitendra Chauhan, J.

The present appeal is directed against the judgment of conviction and order of sentence date 27.11.2012, passed by learned Judge, Special Court, Patiala, whereby the appellants were convicted under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the 'Act') and sentenced them to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,00,000/- each and in default of payment thereof, to further undergo rigorous imprisonment for one year each.

2. The case of the prosecution as per para No.2 of the judgment of the trial Court is as under:-

"In brief, the case of the prosecution is that on 09.10.2009 SI Sukhdarshan Singh (herein after to be called as Investigating Officer) along with HC Sukhwinder Singh, HC Kulwant Singh,

HC Yashpal, C-I Baljinder Singh, C. Avtar Singh and C. Jaswant Singh on Government vehicle trax bearing No.PB-11Y-8202 driven by C. Balwinder Singh in connection with patrolling and checking of bad elements were present at T-Point, Tepla Road, near Toll Tax Barrier, Mehmampur and he was taking with one Kaur Singh son of Rachan Singh. At about 8.30 AM a car bearing registration No.PB-32B-5811 came from the side of Ambala which was being driven by young person and another person was sitting along with him. The Investigating Officer gave signal to stop the car, but the driver of the car instead of stopping the car slow down the speed of the car and turned towards Tepla cross and thereafter tried to turn towards Ambala side but since there were many vehicles at the spot, the driver of the car could not move the car. On suspicion, the Investigating Officer alongwith other officials proceeded towards the car, but both the occupants of the car came out of the car and fled away towards ditches on left side. HC Yashpal Singh, C. Jaswant Singh and C. Avtar Singh were directed to chase them and Investigating Officer along with remaining police officials conducted the search of the car, wherein two plastic bags lying underneath the rear seat of the car and three plastic bags were recovered from the boot of the car. On checking of the plastic bags, poppy husk was recovered. The poppy husk of all the bags was poured on a Tarpal and was mixed and thereafter two samples of 250 grams each were separated from it and its parcels were prepared. The remaining poppy husk was poured in the same plastic bags in equal quantity and on weighment the remaining poppy husk came out to be 17 kilograms in each bag and were converted into a separate parcels. All the parcels were sealed by Investigating Officer with his seal bearing impression SS. Sample seal was also prepared separately and the seal was handed over to HC Sukhwinder Singh after its use. The case property was taken into possession vide recovery memo. From the subsequent search of the car, two iron number plates were recovered and on one side of number plates PB-7N-5265 was written and on the other side of number plates, PB08-AL-Temp7220 was written. The same

were taken into police possession vide separate memo. Indica Car bearing No.PB-32B-5811 was taken into police possession vide separate memo. Investigating Officer sent ruqa to the police station for registration of the case against unknown persons, on the basis of which, formal FIR was registered. Investigating Officer prepared the rough site plan of the place of recovery. Investigating Officer recorded the statements of witnesses. On return to police station, Investigating Officer produced the case property before SI Amrik Singh, who was officiating as SHO of the police station, who also verified the facts of this case and affixed his seal bearing impression AS on the case property and he deposited the case property with MHC Sukhwinder Singh. On the next day, the case property was produced before the Illaqa Magistrate. Statements of witnesses were recorded in this case, accused were arrested, report of chemical examiner received and after complying with other formalities, challan was presented in this Court.”

3. On presentation of challan, the trial Court finding prima facie evidence against accused-appellants, framed charge for the offence punishable under Section 15 of the Act and Section 473 of the Indian Penal Code to which they pleaded not guilty and claimed trial.

4. In support of its case, the prosecution examined the following witnesses:-

PW-1, HC Amanjit Singh; PW-2 HC Baldev Singh; PW-3 HC Sukhwinder Singh; PW-4 Pankaj Sharma; PW-5 Hari Singh; PW-6 SI Sukhdarshan Singh, PW-7 HC Sukhwinder Singh, PW8 Surinderpal Singh, PW9 C. Jaswant Singh and PW10 SI Amrik Singh.

5. The statements of the accused under Section 313 Cr.P.C., were recorded. They pleaded innocence and alleged false implication. In

defence, the accused examined DW1 C. Sukhdeep Singh who proved the entries No. 29, 26 and 47 of the Daily Diary Register pertaining to the case.

6. After hearing the Addl. Public Prosecutor for the State and learned defence, the trial Court convicted and sentenced the accused/appellants, as stated hereinbefore.

7. Aggrieved against the judgment of conviction and order of sentence passed by the trial Court, the instant appeal was filed by the accused/appellants which was admitted on 05.08.2013.

8. There is no representation on behalf of the appellants.

9. It has been pleaded in the grounds of appeal that the trial Court has acted illegally and arbitrarily in convicting the appellants. The trial Court failed to appreciate the fact that all the witnesses were police officials and no independent witness was joined by the police party nor there is any explanation for the same. As per prosecution story, one Kaur Singh was present along with the Investigating Officer at the time of recovery from the car in question, however, he was not examined by the prosecution. It has been further pleaded that the recovery was effected from a public place and on a busy road; it was not the case of the prosecution that the investigating agency tried to join the independent witness but no one was willing. In fact, the appellants have been falsely implicated in the above said FIR.

10. It has been further averred that no special report was sent to any higher officer from the spot. The Investigating Officer was required to send the information with regard to search and seizure to the superior

officers within 48 hours from the time of recovery and, therefore, there has been a total non-compliance of Section 57 of the Act, entitling the appellants to acquittal. As per prosecution story, the appellants fled away from the spot, therefore, the car ought to have been searched in the presence of a gazetted officer but no such officer was called on the spot, however, learned trial Court failed to appreciate the above said fact. Further the CFSL form was not filled in on the spot and the same was prepared after returning to the police station, thus the Investigating Officer has not followed the instructions and violated the statutory provisions and rules.

11. There is a delay in sending the sample parcels to the CFSL and the same were sent after expiry of 72 hours. The appellants had fled away from the spot as per prosecution version leaving behind the vehicle, therefore, the identification parade was necessary to establish that whether they were the same persons who ran away from the spot, however, no identification parade was conducted by the investigating agency. It has been further pleaded that there are material contradictions in the statements of prosecution of witnesses; the link evidence is also missing.

12. On behalf of the State, it has been asserted that prosecution has fully proved its case. A huge quantity of 87 kg and 500 grams of poppy husk was recovered from the car in which both the accused were present. The counterfeit number plates of the car were also recovered. Learned State counsel has referred to the testimony of PW-4 Pankaj Sharma to submit that the sale of the car to Amritpal Kaur through car

dealer Surinder Pal Singh Dhami has been duly proved. There is nothing on record in support of the assertion that the accused have been falsely implicated; there was no previous enmity of any of the official witnesses against the accused before registration of the present FIR. He has further submitted that the proper procedure has been followed by the investigating agency; the appellants/accused were found in possession of the contraband and have been rightly convicted by the trial Court.

13. After perusing the record and having heard the submission of learned State counsel, the Court feels that the prosecution has failed to prove its case against the accused.

14. In the present case, admittedly, the appellants/accused had fled away from the spot and no test identification parade was conducted by the investigating agency. The identification has been done by relying upon the testimony of PW-5 Hari Singh who heard the conversation between both the accused on 11.10.2009 at the tea stall near Tax barrier Shambu to the effect that their car was apprehended by the police with poppy husk and the accused were making the plan to appear before the police. This witness had also identified the accused in the Court. It is settled position of law that extrajudicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility. Reliance in this regard can be made to **State of Rajasthan Vs. Raja Ram** (2003) 8 SCC 180. But, in the present case, the theory of extrajudicial confession revealed by PW-5 Hari Singh does not get corroboration from the independent witness. The statement of this witness does not inspire the

confidence of the Court and he appears to be a stock witness. As per his testimony, upon hearing the conversation between the accused, he told them that he would produce them before the police. This witness was not known to the accused earlier. On the one hand, it was the case that the accused fled away from the spot while there more than 5/6 police officials were present on the spot and on the other hand, accused Surjit Singh himself appeared before the police on the mere asking of PW-5 Hari Singh. The recovery was effected on a busy road where so many persons were present, however, none of them was inclined to join as witness whereas PW-5 Hari Singh, who is only a hearsay witness being witness of extrajudicial confession had come forward to produce the accused before the police. The testimony of PW-5 Hari Singh fails to inspire confidence of the Court.

15. Further, the place of recovery was an open and public place. 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 Kaur Singh was joined as an independent witness, however, his non examination by the prosecution in the peculiar facts of the case is fatal to the case of the prosecution. There must be some corroboration by the independent witness, particularly when all the witnesses are official witnesses.

16. As regards to delay in the sending the sample is concerned, this Court finds force in the assertion raised in the grounds of appeal. The recovery was effected on 09.10.2009 and the sample parcel was sent to

FSL Laboratory on 23.10.2009. Obviously, there is a delay of 14 days in sending the sample. As observed by a Division Bench of this Court in **Parminder Singh vs. State of Haryana, 2006(4) Recent Criminal Reports (Crl.), 495(DB)**, according to the Narcotic Control Bureau Instructions, the sample parcel should have been deposited within 72 hours with the Chemical Examiner. Herein, the prosecution has not given any explanation for withholding the sample for such a long time. The entire prosecution version is shrouded with mystery.

17. As per prosecution story, the contraband was recovered from the boot of the car, though the earlier owner PW-4 Pankaj Sharma and one Surinderpal Singh PW-8 were examined by the prosecution but it has not been proved that how the accused came into possession of the car. Further, the prosecution has failed to establish the fact with regard to the source of the huge contraband in question and as to who put the contraband in the boot of the car. Thus, the prosecution has failed to connect the appellants with the conscious possession of the case property.

18. As a sequel to the above discussion, the instant appeal is allowed. The judgment of conviction and order of sentence dated 27.11.2012, passed by Judge, Special Court, Patiala, are set aside. The appellants are acquitted of the charge levelled against them by giving them benefit of doubt. The appellants are stated to be in custody. They be set at liberty forthwith, if not required in any other case.

06.10.2018

sumit.k

(JITENDRA CHAUHAN)
JUDGE

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