

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

CRA-D-No.34-DB-of 2015 (O&M)
DATE OF DECISION : 10th DECEMBER, 2018

Kuldip Kumar

.... Appellant

Versus

The State of Punjab

.... Respondent

**CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

* * * *

Present : Mr. Charanpreet Singh, Advocate
for the applicant-appellant.

Mr. H. S. Sullar, Deputy Advocate General, Punjab.

* * * *

A. B. CHAUDHARI, J.

1. Being aggrieved by the judgment and order dated 13.11.2014 passed in Sessions Case No.155 of 30.08.2013 passed by Judge Special Court, Ludhiana, by which the learned trial judge found the appellant-Kuldip Kumar guilty of offence under Section 18(b) of the Narcotics Drugs & Psychotropic Substances Act, 1985 and sentenced him to undergo rigorous imprisonment for fifteen (15) years and to pay fine of ₹2 lacs, the present appeal was filed by the appellant.

FACTS:

2. In brief, the prosecution case is that on 10.03.2013 the police party headed by SI Harbans Singh, were present at T point Fambra Road, near Satsang Bhawan, Ludhiana and at about 8.20 pm SI Harbans Singh stopped one cyclist Ajay Pal. When he was checking the said person, in

the meantime, a clean shaven person came on Honda Activa scooter bearing No.PB-10-DK-3666 carrying a brief case and on seeing the police party, he tried to turn back his scooter but was apprehended. On asking, he disclosed his name and address. SI Harbans Singh apprised him of his legal right regarding personal search by Gazetted Officer. Accordingly, ACP East Dhruvan Harshaday Nimbale, was called who reached the spot at about 9.40pm. Thereafter personal search of the accused so also of the scooter and the briefcase was conducted. The briefcase contained five plastic envelops/bags containing opium in each bag. Two samples of 20 grams each were drawn and total 4 kg 960 grams opium was found. The samples as well as the bulk case property were then sealed and thereafter Ruqa was sent to the police station. The samples were sent for FSL examination. The trial was held and after hearing the evidence the learned trial Court convicted the appellant as stated above. Hence this appeal.

ARGUMENTS:

3. In support of the appeal the learned counsel for the appellant *inter alia* submitted that the prosecution completely and miserably failed to prove the link evidence in relation to the samples received by the laboratory and analyzed by it. He submitted that the trial Court has recorded a finding that, in fact, the report indicated that in place of 20 grams of samples, 5 grams of samples were received and analyzed. The prosecution thus failed to prove that when samples of 20 grams was sent to the FSL how the report indicated that 5 grams of samples were received and analyzed. That may be related to some other case and not to

the one in question. The entire burden was on prosecution to prove its initial burden which it failed to do. He, therefore, submits that the appellant is entitled to be acquitted by giving benefit of doubt.

4. *Per contra*, learned counsel for the State opposed the appeal and stated that there was a typographical mistake as stated by the witness who was examined by the prosecution namely PW-7 Dilbag Singh, Assistant Chemical Examiner. The witness stated on oath before the trial Court that due to typographical mistake the weight of the samples were recorded as 5 grams though it was actually 20 grams. The appellant cannot be allowed to take advantage of bona fide mistake and, therefore, the said argument deserves to be rejected outright. He then submitted that at any rate, the prosecution has fully proved its case beyond any doubt and, therefore, the appeal is required to be dismissed.

CONSIDERATION:

5. We have heard learned counsel for the rival parties at length and we have carefully perused the record and oral as well as the documentary evidence.

6. The FSL report Exhibit PW7/C was not prepared by or made by PW-7 Dilbag Singh. The prosecution did not produce the person who recorded the weight of the sample as 5 grams and also analyzed the said sample and no reason is forthcoming as to why the said person was not examined. The reason given by the trial court that there is no requirement of law that the person who analyzed the samples should be examined as it was a typographical mistake, is clearly preposterous. Whether it was a typographical mistake or not could best be said by only

the person who recorded the weight of the samples and also analyzed the same. To accept the version of PW-7-Dilbag Singh, who has nothing to do with the said process that was undertaken, would again be absurd. Thus the prosecution failed to prove the material link evidence. In this connection it is significant to note the following portion from the evidence of PW-7 Dilbag Singh, Assistant Chemical Examiner:

“x xx... xxx... Thereafter our office received letter from the Commissioner of Police regarding the correction of weight of samples. Photocopy of the same is Ex.PW7/D. Thereafter I gone through the record submitted in my office by the office of Commissioner of Police, Ludhiana and found that in the report due to typographical mistake, the weight of the sample was written as five grams each. Thereafter I made correction in my office copy Ex.PW7/E (Document objected to) and in the report submitted by police Ex.PW7/F (Document objected to) and mentioned the weight as 20 grams by correcting from 5 grams.

Xxxmn by Sh. P.K. Ghai, Adv. Counsel for the accused.

“In the office of Chemical Examiner, Kharar I had not personally received the samples from the police personnel who had taken the same from Ludhiana to Kharar. I cannot tell the name of the person of the office of Chemical Examiner, Kharar who had personally received the samples from the police personnel of Ludhiana of Police Commissionerate.

The person in the office of Chemical Examiner compare the seal with the specimen seal when he receives the samples from the person of Ludhiana Commissionerate who takes them to office of Chemical Examiner, Kharar. It is correct that Ex. PW7/B does not bear my signature anywhere. On Ex. PW7/B no column is written with my hand. It is wrong to suggest that in Ex. PW7/B the name of the person who brought the samples is written as Parminder Singh. I cannot say in whose hands words HC Parminder Singh no.655 dated 13.03.2013 is written. A stamp has been made in our office. Whenever samples have been received in our office the stamp is affixed and the name of the person bringing the samples, his number and date is filled in the blanks in that stamp by the person who receive the samples in the office of Chemical Examiner, Kharar. It is not mentioned in Ex. PW7/B anywhere that the weight of the sample matches the weight mentioned in Form No.29. It is also not written in Ex. PW7/B that weight of the samples were weighed/measured and the weight matched. I cannot tell the time at which the samples were produced before me. I cannot tell the name of official who produced the samples before me. I did not give note on Ex. PW7/B (its original) that I have compared the seals, documents, and the particulars of the case on Form No.29 and samples. I cannot

tell the time when the samples were opened before the analyst. On 13.03.2013 there were ten analysts in the office of Chemical Examiner. The name of analyst is Parminder Singh in whose presence I opened the sample and in this regard there is an entry in the register of Parminder Singh. Parminder Singh is still in the service of Chemical Examiner, Kharar and is posted there. The Lab and my office were situated in same premises. I did not sign in the register of analyst Parminder Singh to the effect that samples were opened in my presence. I signed the report of Parminder Singh. I cannot tell the date on which I signed the report of Parminder Singh. I cannot tell the date on which Parminder Singh analyzed the samples. There is a procedure to analyze the samples. It takes approximately four days to analyze the sample of opium. I did not remain present in the Lab or in my presence the sample was not analyzed by Parminder Singh for four days. Volunteered Parminder Singh had applied the test and shown the same to me. I cannot tell the particular date on which particular test was applied by Parminder Singh and shown to me. It is wrong to suggest that the sample were not analyzed in my presence. The name of analyst is not written in Ex. PW7/E, Ex.PW7/C and Ex.PW7/E. xxx.....”

7. Perusal of the above clearly shows that the prosecution did not bring on record satisfactory and correct evidence, which would

constitute the proof contemplated by Evidence Act. To our mind, therefore, it is crystal clear that the impugned judgment and order is illegal and will have to be set aside. In the result we make the following order:

ORDER

- (i) The CRA-D-No.34-DB-of 2015 filed by Kuldeep Kumar son of Ramesh Kumar, is allowed.
- (ii) The impugned judgment of conviction and order of sentence dated 13.11.2014 passed by learned Judge Special Court, Ludhiana in Sessions Case No.155 of 30.08.2013, by which the appellant was convicted and sentenced for offence punishable under Section 18 (b) of the Narcotics Drugs & Psychotropic Substances Act, 1985, is set aside.
- (iii) Appellant-Kuldeep Singh is acquitted of the charge framed against him.
- (iv) He be released forthwith from the jail, if not required in connection with any other case.

(A. B. CHAUDHARI)
JUDGE

10TH DECEMBER, 2018
'raj'

(HARNARESH SINGH GILL)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>