

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-873-DB-2015 (O&M)

Date of decision: 28.08.2018

Gurmail Singh alias Harpreet Singh alias Gurpreet Singh alias Ghona
and anotherAppellants

versus

State of Punjab

.....Respondent

CRA-D-613-DB-2015 (O&M)

Harpal Singh

.....Appellant

versus

State of Punjab

.....Respondent

CORAM: Hon'ble Mr.Justice A.B.Chaudhari
Hon'ble Mr.Justice Kuldeep Singh

Present: Mr.Sanjeev Sharma, Advocate for the appellants
in CRA-D-873-DB-2015
Mr.J.S.Bhatia, Advocate for the appellant
in CRA-D-613-DB-2015
Ms.Anju Arora, Additional A.G. Punjab

1. *Whether Reporters of Local newspapers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldeep Singh, J.

By this common judgment, we shall dispose of CRA-D-873-DB-2015 filed by appellants Gurmail Singh alias Harpreet Singh alias Gurpreet Singh alias Ghona & Lakhwinder Singh and CRA-D-613-DB-2015 filed by appellant Harpal Singh against the judgment of conviction and order of sentence dated 8.4.2015 passed by learned Judge, Special Court, Sangrur, vide which, the appellants were convicted and sentenced as under:-

Sr. No.	Name of Convict	Offence	Sentence
1	Gurmail Singh	U/s 15(c) of NDPS Act	To undergo rigorous imprisonment for 15 years and to pay fine of Rs.2,00,000/- and in default of payment of fine, to further undergo rigorous imprisonment for two years
2	Lakhwinder Singh	U/s 15(c) of NDPS Act	To undergo rigorous imprisonment for 15 years and to pay fine of Rs.2,00,000/- and in default of payment of fine, to further undergo rigorous imprisonment for two years
3	Harpal Singh	U/s 25 read with 15(c) of NDPS Act	To undergo rigorous imprisonment for 15 years and to pay fine of Rs.2,00,000/- and in default of payment of fine, to further undergo rigorous imprisonment for two years

On 29.5.2009, SI Baljinder Singh, SHO Police Station Sadar Sunam along with ASI Pritpal Singh, ASI Bhupinder Singh, ASI Gurbhajan Singh, ASI Nirmal Singh and other police officials were present at Mehlan Chowk on government vehicle within the revenue limits of village Mehlan. At about 6.00 a.m. Inspector Malkiat Singh along with ASI Amrik Singh, Counter Intelligence, Jalandhar Zone came on government vehicle bearing No.PB-07-N-3758 and imparted secret information to SI Baljinder Singh that one truck-tralla of 10 tyres bearing registration number PB-10-BQ-0502 is coming from Patran side on Patran Sangrur road. The truck-tralla belongs to Harpal Singh son of Jaspal Singh, resident of village Barundi, District Ludhiana, in which, huge quantity of poppy husk is being brought to Punjab State. It was further informed that on 29.5.2009 Harpal Singh along with two other persons are coming from Patran side and that if Nakabandi is conducted on Mehlan Patran road, they can be caught red handed. On this, SI Baljinder Singh sent Ruqa (Ex.PC) to Police Station where a formal FIR (Ex.PC/1) was registered. The police party then laid a naka. A truck-tralla bearing registration number PB-10-BQ-0502 was seen coming. The police party signalled the truck-tralla to stop. However, the driver of the truck-

tralla slowed down at the distance of 100 yards from the police party and three persons wearing kurta pajayama and of medium height alighted from the truck and succeeded in running away from the spot. Search of the truck was carried out, from which, 580 plastic bags of detergent powder, 180 packets of detergent soap were recovered. Beneath the said bags of detergent powder and detergent soap, 64 bags, each weighing 35 kgs poppy husk were also recovered. Two samples of 250 grams were separated from each bag. From truck-tralla, RC was found, which was in the name of Harpal Singh. The samples and the case property was taken into possession through recovery memo (Ex.PA) and the detergent was taken into possession through recovery memo (Ex.PB). Site plan (Ex.PD) of the place of recovery was prepared. The case property was then produced before the SHO and ultimately deposited in the Malkhana of CJM vide recovery memo (Ex.PA).

As per police version, on 9.9.2009, accused Gurmail Singh alias Harpreet Singh alias Gurpreet Singh alias Ghona was arrested in another case bearing FIR No.122 dated 9.9.2009, Police Station Raikot. Therefore, the police after obtaining permission of the Court, arrested the said Gurmail Singh alias Harpreet Singh in this case on 10.2.2010 vide memo (Ex.PW3/A and Ex.PW8/A). It also comes out that during investigation, uncle of the Harpal Singh accused moved an application before Senior Superintendent of Police, Sangrur, alleging that Harpal Singh has been falsely implicated. It also comes out that an inquiry was carried out by SI Bhagwan Singh, SHO Police Station Sadar Dhuri, who submitted the report (Ex.PW16/A) and Ex.DA. In the inquiry, SHO found that as per call details of Harpal Singh, he was not present at the spot at the time of

crime and that he was found present in UP. He further found that truck bearing registration number PB-10-BQ-0502, in which 64 bags of poppy husk were recovered on 29.5.2009, was though in the name of Harpal Singh but as per agreement dated 15.7.2009, it was given to Jaswinder Singh son of Avtar Singh, as the loan was taken in the name of Harpal Singh. Therefore, Harpal Singh has no concern with the truck. Accordingly, he recommended that Harpal Singh accused-appellant is innocent. Jaswinder Singh and Lakhwinder Singh could not be arrested and were declared proclaimed offender. Therefore, challan was presented only against Gurmail Singh.

However, when the case was at trial stage, Lakhwinder Singh was also arrested and supplementary challan was presented against the accused. Thereafter, challan was framed against Lakhwinder Singh and Gurmail Singh under Section 15 of Narcotic Drugs and Psychotropics Substances Act, 1985 (for short, "NDPS Act"). However, after examining one witness, on the application moved by Additional PP under Section 319 Cr.P.C., accused Harpal Singh, who was mentioned in column No.2 of the challan, was also summoned to face trial. In this way, all the three accused appellants Gurmail Singh alias Harpreet Singh alias Gurpreet Singh alias Ghona, Lakhwinder Singh and Harpal Singh were tried.

In support of its case, the prosecution examined PW1 Pritpal Singh, SP, PW2 Inspector Malkit Singh, PW3 Inspector Baljinder Singh, PW4 Sukhdev Singh, PW5 HC Rajinderpal Singh, PW6 HC Subash Chand, PW7 C-II Kulwant Singh, PW8 SI Shashi Kapoor, PW9 Inspector Waryam Singh, PW10 Sarwan Kumar, PW11 Shashi Bhushan, PW12 Parveen Kumar, PW13 DSP Malkit Singh, PW14 Balvir Singh, PW15 SI Surinder

Kumar, PW16 SI Bhagwant Singh.

When examined under Section 313 Cr.P.C., accused pleaded innocence. Accused led no evidence in defence.

After hearing the prosecution and accused and going through the trial Court convicted and sentenced the accused as aforesaid.

We have heard learned counsel for the parties and have also carefully gone through the record.

The prosecution story as reproduced above, shows that on the secret information, a naka was laid. The truck-tralla bearing registration number PB-10-BQ-0502 was signalled to stop. However, the truck-tralla stopped at a distance of 100 yards and three occupants who were of medium height and wearing kurta-pajayama and parna escaped from the spot. The time of recovery is 6.00 a.m. In this way, all the accused were not identified at the spot. Harpal Singh was named as accused as the truck stood in his name. Harpal Singh was found innocent during investigation, as the police found that the truck-tralla was given by him through agreement to one Jaswinder Singh. Said Jaswinder Singh could not be apprehended. Not only this, the police produced the witness of the said agreement during trial to prove that the said agreement is genuine. Avtar Singh (PW2), witness of the agreement dated 15.7.2008 proved that Harpal Singh had given the truck-tralla to Jaswinder Singh and that both Harpal Singh and Jaswinder Singh signed on the agreement dated 15.7.2008 (Ex.PW2/A). Prosecution also examined Stamp vendor Sarwan Kumar (PW10), who testified that on 15.7.2008, he had sold the stamp papers of Rs.25/- to Harpal Singh, regarding which, he made an entry at serial no.3101. He brought the original register and produced a copy thereof. In this way, the police tried to support

its investigation by producing the witnesses to show that in fact truck-tralla was handed over by Harpal Singh to Jaswinder Singh. Harpal Singh is sought to be made liable under Section 25 of NDPS Act, which is reproduced as under:-

25. Punishment for allowing premises, etc., to be used for commission of an offence.— *Whoever, being the owner or occupier or having the control or use of any house, room, enclosure, space, place, animal or conveyance, knowingly permits it to be used for the commission by any other person of an offence punishable under any provision of this Act, shall be punishable with the punishment provided for that offence.*

The perusal of the aforesaid section shows that owner or occupier or person having the control over the conveyance, should knowingly permits is to be used for the commission of offence by any other person. Here, except the fact that the name of Harpal Singh is found mentioned in the RC, there is no other evidence to show that Harpal Singh knowingly permitted the co-accused to use the said conveyance for the commission of crime under NDPS Act. Even during investigation, police found that Harpal Singh had handed over the truck-tralla to Jaswinder Singh under an agreement dated 15.7.2008. Therefore, even as per police investigation, Harpal Singh was not in the control of the said vehicle at the time of commission of crime. Rather, he was present in U.P. as per location of mobile tower on the day of crime. Therefore, he cannot be held liable under Section 25 read with Section 15 of NDPS Act.

So far as accused Gurmail Singh alias Harpreet Singh alias Gurpreet Singh alias Ghona is concerned, he was arrested more than three

months later in FIR No.122 by Raikot police, where he made the confession that he was one of the occupants of the truck-tralla, which was left at the spot on 28.5.2009, regarding which, present FIR No.101 was registered. He also named his co-accused Lakhwinder Singh. The prosecution witnesses namely Inspector Baljinder Singh (PW3) as well as DSP Malkit Singh (PW13) stated that on the lines of the prosecution story. However, regarding identification, their only statement is that three persons wearing kurta pajayama alighted from the truck and ran away. In this way, none of the accused was identified. Even Harpal Singh was named but he was found to be not present at the spot.

Now, the question would arise as to whether on the basis of the confession made by the accused in some other case after little less than four months, he could be held guilty in the present case? We find the reply in negative.

None of the member of the police party claim that they knew any of the accused or identified them at the spot. The police later on tried to introduced the story of Gurmail Singh and Lakhwinder Singh being identified later on in police station. However, the said statement cannot be believed as gospel truth. In the First Information Report, only description given of the accused is of medium height. No other description is given to match the same with the features of the accused. The offence carries minimum sentence of ten years. Therefore, merely, on the basis of suspicion and weak evidence of confession by the accused Gurmail Singh regarding his role and role of the co-accused Lakhwinder Singh, they cannot be held guilty. The prosecution has also produced witnesses regarding arrest of Gurmail Singh in FIR No.122 dated 9.9.2009, Police Station Raikot.

However, the said arrest has nothing to do with the present case. It merely proves that Gurmail Singh was arrested in other case and his fate in the said case is to be separately decided. No adverse inference against him can be drawn in the present case.

It being so, we come to the conclusion that the prosecution has miserably failed to prove its case againsts all the accused beyond all reasonable doubts. Accordingly, we pass the following order:-

1. CRA-D-873-DB-2015 and CRA-D-613-2015 are allowed.
2. The impugned judgment of conviction and order of sentence dated 8.4.2015, passed in SC No.327 of 2010, BT No.003 of 2013, by learned Judge, Special Court, Sangrur, convicting and sentencing appellants Gurmail Singh alias Harpreet Singh alias Gurpreet Singh alias Ghona and Lakhwinder Singh (CRA-D-873-DB-2015) for offence under Section 15(c) of NDPS Act, 1985 and appellant Harpal Singh (CRA-D-613-DB-2015) for offence under Sections 25 and 15(c) of NDPS Act, 1985, are set aside.
3. Appellants Gurmail Singh alias Harpreet Singh alias Gurpreet Singh alias Ghona and Lakhwinder Singh (CRA-D-873-DB-2015) and appellant Harpal Singh (CRA-D-613-DB-2015) are acquitted of the charges framed against them.
4. They be set at liberty forthwith, if not required in any other case. Fine, if any paid, be refunded to them.
5. Photocopy of this order be placed on connected case file.

(A.B.Chaudhari)
Judge

(Kuldip Singh)
Judge

28.08.2018

gk

Whether speaking/ reasoned:
Whether Reportable:

Yes
No