

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-1533-DB-2014
Reserved on : 11.03.2019
Date of decision : 19.03.2019

Lakhwinder Singh alias Lakha and others

... Appellants

Versus

State of Punjab

... Respondent

CORAM: *HON'BLE MR. JUSTICE RAJIV SHARMA*
HON'BLE MR.JUSTICE KULDIP SINGH

Present: Mr.A.P.S. Shergill, Advocate
for the appellants.

Mr. S.P.S. Tinna, Addl.A.G. Punjab.

RAJIV SHARMA, J.

This appeal arise out of the judgment and order dated 01.08.2014 and 04.08.2014 rendered by the learned Judge, Special Court, Amritsar, in Sessions Case No.23645 dated 23.02.2012 whereby appellants, who were charged with and tried for offences punishable under Sections 21, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “NDPS Act”) have been convicted and sentenced as under:-

Name of the convict	Under Section	Sentence
Lakhwinder Singh @ Lakha	21 of the NDPS Act	Rigorous imprisonment for 15 years, fine to the tune of Rs.2,00,000/- & in default of pay-ment of fine he shall further un-dergo rigorous imprisonment for two years.

	29 of the NDPS Act	Rigorous imprisonment for 15 years, fine to the tune of Rs.2,00,000/- & in default of payment of fine he shall further undergo rigorous imprisonment for two years.
Mohinder Singh @ Shinda	21 of the NDPS Act	Rigorous imprisonment for 15 years, fine to the tune of Rs.2,00,000/- & in default of payment of fine he shall further undergo rigorous imprisonment for two years.
	29 of the NDPS Act	Rigorous imprisonment for 15 years, fine to the tune of Rs.2,00,000/- & in default of payment of fine he shall further undergo rigorous imprisonment for two years.
Rakesh Kumar @ Billa	21 of the NDPS Act	Rigorous imprisonment for 15 years, fine to the tune of Rs.2,00,000/- & in default of payment of fine he shall further undergo rigorous imprisonment for two years.
	29 of the NDPS Act	Rigorous imprisonment for 15 years, fine to the tune of Rs.2,00,000/- & in default of payment of fine he shall further undergo rigorous imprisonment for two years.

Both the sentences were ordered to run concurrently.

2. The case of the prosecution in a nutshell is that on 29.08.2011, I.O. Inspector Harvinderpal Singh was present and posted at P.S. SSOC, Amritsar. He received a secret information regarding smuggling activities of Lakhwinder Singh, Mahinder Singh and Rakesh Kumar. Informer further informed that trio were involved in cross border smuggling and were sending the contraband across different cities. They were connected to some notorious Pak Heroin Smugglers. The informer further informed that three of them were present on raod going from Pul Taranwala to Kot Mit Singh

near a T-point adjoining flats in their Maruti Alto No.PB46F-8839 for a deal of Heroin. I.O. immediately brought the information to the notice of Sh.Kastub Sharma, AIG, SSOC, Amritsar and on his directions, I.O. constituted police party. They proceeded towards the spot in government mini bus. Police party was briefed regarding the information. Police party reached near the flats situated near Bhai Manjh Road. Three persons were noticed standing near white Maruti Alto car. One of them was carrying a bag around his shoulder. On seeing the police party, they became perplexed. They tried to run away. They were nabbed. On asking of I.O., the person sitting on driver seat disclosed his name as Lakhwinder Singh, the person sitting on co-driver seat disclosed his name as Mahinder Singh and person sitting on back seat of car disclosed his name as Rakesh Kumar. I.O. introduced himself separately to all the apprehended persons saying that he was Inspector Harvinderpal Singh. He told them that their car was to be searched. I.O. further told them that they had a legal right that they could get their search conducted in the presence of a Gazetted Officer or a Magistrate of their choice. The accused opted for their search in the presence of a Gazetted Officer. Non-consent memo of all the three accused was prepared separately. I.O. called Sukhdev Singh, DSP, PPS, SSOC to join the police party on the spot. After some time, DSP Sukhdev Singh came at the spot. I.O. apprised him regarding the facts of the case. DSP Sukhdev Singh introduced himself separately to the apprehended persons. He further told all the accused separately that he had been called at the spot for the search as per their option for recovery of some narcotic substance said to be in their possession and in their car. He further told them of their legal right to be searched in the presence of any other gazetted officer or Magistrate.

They reposed faith in him. Search of the car was conducted in the presence of witnesses. One gunny bag from the dickey of car was recovered. It contained 8 packets of Heroin packed in polythene bags. On weighing, each packet came out to be of 1 kg. each. Two samples of 5 grams each were taken out from each of parcel and packed in different plastic containers. These were converted into parcels which were given marks SIA, SIB to SVIIIA, SVIIIB. Remaining bulk parcels of 990 grams each were packed in same packing by putting the same into different plastic containers and were converted into parcels. Seals were put. Search of Rakesh Kumar was also carried out. A black bag around his shoulder was searched. It contained four packets of Heroin. On weighing, the packets came out to be of one kg each. Two samples of 5 grams each were taken out from each of the bulk parcels. These were converted into parcels after putting the same into different plastic containers. Seals were affixed. No intoxicant material was recovered from the personal search of accused Lakhwinder Singh and Mohinder Singh. FIR was registered. All the codal formalities were completed on the spot. On the next day, i.e. 30.08.2011, I.O. being SHO of Police Station SSOC operated double lock and took out case property. He produced the same before the Illaqa Magistrate. Illaqa Magistrate ordered the bulk parcel and one set of sample parcels to be deposited in Judicial Malkhana and ordered the other set of sample parcels to be sent for chemical examination. I.O. deposited the case property in the Judicial Malkhana. On 09.09.2011, he again operated double lock and handed over 12 sample parcels duly sealed and Form M29 in intact condition to HC Amandeep Singh for depositing the same at FSL, Chandigarh. The challan was put up after receiving the FSL report.

3. The prosecution examined as many as 5 witnesses. Statements of appellants were recorded under Section 313 Cr.P.C. Appellant Rakesh Kumar examined DW-1 Darshna Kumari; appellant Rakesh Kumar examined DW-2 Sukhdev Singh and DW-3 Sewa Singh; whereas appellant Lakhwinder Singh examined DW-4 Jaswinder Singh in support of their case. The appellants were convicted and sentenced, as noticed hereinabove. Hence this appeal.

4. Learned counsel appearing on behalf of the appellants have vehemently argued that the prosecution has failed to prove the case against the appellants.

5. Learned counsel appearing on behalf of the State has supported the prosecution case.

6. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

7. PW-1 Inspector Balbir Singh testified that on 29.08.2011 he was working at PS State Special Operation Cell, Amritsar. He was joined by Inspector Harvinderpal Singh. The raiding party proceeded towards the destination given by secret informer in government mini bus. The raiding party was headed by Inspector Harvinderpal Singh. An Alto car No.PB-46-F-8839 was seen parked at T Point and three persons were standing near the car. One of them was carrying a black coloured bag on his shoulder. On seeing the police party, they tried to run away. They were apprehended. Inspector Harvinderpal Singh introduced himself separately to all the accused. He apprised all the three persons of their legal right to be searched in the presence of a gazetted officer or a Magistrate of their choice. Rakesh Kumar, Lakhwinder Singh and Mohinder Singh separately opted for their

search in the presence of a gazetted officer vide non consent memos Ex.PA to PC. Accused Rakesh Kumar and Lakhwinder Singh signed the memos and accused Mohinder Singh thumb marked the same. DSP reached the spot. He apprised the accused of their legal right to be searched in the presence of a gazetted officer or a Magistrate of their choice. They opted to be searched by the DSP vide consent memos Ex.PD to PF. The car was searched. From the dickey of car, 8 packets were recovered. These packets were weighed. Each packet was found to be of 1 kg. each. Two samples of 5 grams each were separated from each packet and were put into separate plastic containers. Remaining 8 bulk packets of 990 grams each were also put in separate plastic containers. Personal search of accused Rakesh Kumar was carried out. Inspector Harvinderpal Singh conducted search of black coloured bag carried by Rakesh Kumar on his shoulder. It contained 4 packets wrapped in polythene envelopes of heroin. These packets were marked by I.O. These weighed 1 kg each. Two samples of 5 grams each were separated from each packet and were put into separate plastic containers. Remaining 4 bulk packets of 990 grams each were also put in separate plastic containers. Form M-29 was filled up. The seal after use was handed over by the I.O. to him. DSP kept his seal with him.

8. PW-3 DSP Sukhdev Singh testified that he was summoned to the spot. He apprised the accused of their legal right to be searched in the presence of any other gazetted officer or Magistrate of their choice. They reposed faith in him. Consent memos of Rakesh Kumar, Lakhwinder Singh and Mohinder Singh were prepared vide Ex.PD to PF. I.O. conducted the search of the car. The contraband was recovered in the shape of 8 packets.

All the codal formalities were completed on the spot. Inspector

Harvinderpal Singh also conducted the search of black bag carried by accused Rakesh Kumar. Four packets wrapped in polythene envelopes of heroin were recovered. Samples were drawn. In his cross-examination he deposed that he left his office at 08.20 A.M. He had not advised I.O. to join independent witness from nearby place. Consent memos Ex.PD to PF was scribed by I.O. Harvinderpal Singh.

9. PW-5 Harvinderpal Singh deposed that he received secret information. He immediately brought the information to the notice of Sh.Kastub Sharma, AIG, SSOC, Amritsar. He constituted police party. Accused were apprehended. They were apprised of their legal right to be searched in the presence of a gazetted officer or a Magistrate of their choice. Accused opted for their search in the presence of a gazetted officer. Thereafter search was conducted in the presence of DSP Sukhdev Singh. The contraband was recovered from the car. All the codal formalities including drawing of samples were completed on the spot. Samples were duly sealed. Personal search of accused Rakesh Kumar was also carried out. The contraband was recovered from the bag carried by accused Rakesh Kumar. He was also apprised his legal right to be searched before a gazetted officer or a Magistrate. He opted to be searched before a gazetted officer.

10. DW-1 Darshana Kumari deposed that she was mother of accused Rakesh Kumar. She deposed that on 28.08.2001 at about 10.30 P.M., some police officials came to their house in civil dress and enquired about Rakesh Kumar. They forcibly took Rakesh Kumar along with them for recording of statement. In her cross-examination, she admitted that she did not know the name of police official to whom she met. She submitted application to the police but she was not in possession of copy of the same.

11. DW-2 Sukhdev Singh deposed that he was Sarpanch of the village at the relevant time. On 28.08.2001 at about 10.30 P.M. mother of Rakesh Kumar came to his house and informed him that some police officials had come to their house in civil dress. They wanted to take away Rakesh Kumar along with them. In his cross-examination, he deposed that in his presence police had not taken away Rakesh Kumar with them as disclosed to him by Darshana Kumari. An application was moved by family member of Rakesh Kumar for enquiry but he did not know by whom this application was moved. His statement was never recorded in any enquiry.

12. DW-3 Sewa Singh deposed that on 28.08.2011 at about 10.30 P.M. he heard noise outside the house. He came out of his house and noticed some police officials who had come to the house of Rakesh Kumar in civil dress, wanted to take Rakesh Kumar along with them for some statement. In his cross-examination, he deposed that he along with mother of Rakesh Kumar and two other persons had gone to the police station but they did not go inside the police station. He had never appeared before any police or administrative official that accused Rakesh Kumar was falsely implicated.

13. DW-4 Jaswinder Singh deposed that he knew Lakhwinder Singh. He used to get up for daily morning walk at Skatari Bagh in the area of Chatiwind. On 28.08.2001 he was on morning walk with Lakhwinder Singh. Some police officials had come there in civil dress. They wanted to take Rakesh Kumar with them for some statement. They had forcibly taken away Rakesh Kumar with them. In his cross-examination he deposed that he went to the office of SSP in Ranjit Avenue but he did not go inside the office and returned home. His statement was never recorded. He never

appeared before any higher authorities.

14. What emerges from the discussion of the evidence hereinabove is that the appellants were apprehended. The appellants were apprised of their legal right to be searched in the presence of gazetted officer or Magistrate. They had opted to be searched by DSP. They were searched in the presence of PW-3 DSP Sukhdev Singh. The vehicle was searched. The contraband was recovered from the dickey of the car. The case property was produced before the concerned officer. The same was sent to FSL for examination. The FSL report is Ex.PW5/H. On the basis of analysis the diacetylmorphine (heroin) was found in the samples. The case of the prosecution has been duly supported by PW-1 Inspector Balbir Singh, PW-3 DSP Sukhdev Singh and PW-5 Harvinderpal Singh. The non-examination of independent witnesses has not in any way caused prejudice to the appellants. Statements of the official witnesses can be relied upon if these inspire confidence. Heroin was recovered from the conscious possession of the appellants. The appellants had also tried to run away, however they were nabbed. The delay in sending the samples is not detrimental to the case of the prosecution, since the samples remained intact throughout till they reached Forensic Science Laboratory. The prosecution has fully complied with Section 50 and Section 42 of the NDPS Act. The accused were told of their legal right to be searched in the presence of a gazetted officer or a Magistrate. I.O. had sent information to Sh.Kastub Sharma, AIG, SSOC, Amritsar, as per Section 42 of the NDPS Act. The plea of the appellants of false implication cannot be accepted. Huge quantity of 12 kg. of heroin could not be planted on the appellants. PW-3 Harvinderpal Singh had informed Sh.Kastub Sharma, AIG, SSOC, Amritsar about the information.

Thereafter the raiding team was constituted.

15. Accordingly there is no merit in the appeal and the same is dismissed. Appellants No.1 & 3 are on bail. The police is directed to take appellants No.1 & 3 into custody to undergo remaining sentence imposed by the trial Court vide judgment and order 01.08.2014 and 04.08.2014.

(RAJIV SHARMA)
JUDGE

(KULDIP SINGH)
JUDGE

March 19, 2019.
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No