

IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

1. CRA-D-623-DB-2016

Phuman Singh

... Appellant

Versus

State of Punjab

... Respondent

2. CRA-D-1035-DB-2016

Gurnam Singh @ Gamma

... Appellant

Versus

State of Punjab

... Respondent

Reserved on : 05.04.2019  
Date of decision : 11.04.2019

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

Present: Mr.D.N.Ganeriwala, Advocate  
for the appellant in CRA-D-623-DB-2016.

Ms.R.K.Manaise, Advocate  
for the appellant in CRA-D-1035-DB-2016.

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

**RAJIV SHARMA, J.**

The aforesaid two appeals are instituted against the judgment and order dated 13.05.2016 rendered by the learned Judge, Special Court, Bathinda, in CIS No.849 of 2013. The appellants Phuman Singh and Gurnam Singh @ Gamma were charged with and tried for offence punishable under Section 15 of the Narcotic Drugs and Psychotropic

Substances Act, 1985 (hereinafter referred to as “NDPS Act”). The appellants have been convicted and sentenced to undergo rigorous imprisonment for a period of 15 years and to pay a fine of Rs.1,50,000/- each and in default of payment of fine, to further undergo simple imprisonment for a period of one year for offence punishable under Section 15(c) of the NDPS Act.

2. The case of the prosecution in a nutshell is that on 14.12.2012 ASI Manjit Singh (PW-2) was posted at C.I. Unit Barnala. He was on patrolling duty at Maur Chowk, Talwandi Sabo. Head Constable Harpreet Singh, Head Constable Major Singh, Constable Ramandeep Singh met him as per instructions of Mr.Ajay Maluja, CI Zone, Bathinda. They were also joined in the police party. When they were present at Chowk of Fatehgarh near bus stand, one Manjit Singh resident of Koreana came. At about 11.30 P.M., one canter of golden cream colour came from the side of village Gurusar. On suspicion the I.O. signaled the canter to stop. As soon as the canter stopped, two persons alighted from the conductor side. ASI Swaran Singh identified those persons as Jassa Singh son of Gurdial Singh resident of village Tajoke and other person as Phuman Singh son of Sajjan Singh resident of Akliia. They managed to escape. I.O. apprehended the person who was driving the vehicle. He disclosed his name as Gurnam Singh @ Gamma son of Inder Singh. I.O. apprised him that he had a legal right to get search of the canter conducted in the presence of a gazetted officer or a Magistrate. Accused Gurnam Singh @ Gamma opted to be searched in the presence of a gazetted officer. Thereafter I.O. contacted DSP Jagdish Kumar Bishnoi. He reached the spot. He also apprised the accused of his right.

Gurnam Singh @ Gamma reposed faith in the DSP. Consent memo was

prepared. Canter was searched. There were two layers of flooring in the canter. After removing floor, 23 gunny bags were found. I.O. checked the gunny bags after opening them. He found poppy husk contained therein. I.O. marked the poppy husk with serial No.1 to 23. He separated two samples each of 250 grams of poppy husk from each of the gunny bag. He converted the bulk gunny bags of poppy husk into parcels. He sealed all the sample parcels and bulk parcels containing 19.500 kg. of poppy husk each. He put his seal impressions 'MS'. I.O. partially filled form No.M-29. The entire case property was taken into possession. I.O. sent requa. I.O. prepared rough site plan. I.O. produced the case property before the Inspector/ SHO Gurpreet Singh. I.O. put his seal impressions 'GS'. Form No.M-29 was filled up. Special report was sent to the DSP concerned. SHO produced the accused before the Illaqa Magistrate. The bulk parcels of case property along with 23 sample parcels were deposited in the NDPS godown. The second set of sample parcels along with sample seal impression were got deposited in the office of Chemical Examiner, Kharar, through ASI Krishan Singh. Accused Jassa Singh was arrested on 28.04.2013. Accused Phuman Singh was arrested on 12.05.2013. Chemical Examiner report was received. The challan was put up after completing all the codal formalities. Accused Jassa Singh died during trial before framing of charge.

3. The prosecution examined a number of witnesses. Statements of appellants were recorded under Section 313 Cr.P.C. They denied the case of prosecution. Appellant Phuman Singh produced DW-1 Pawan Kumar in support of his case. The appellants were convicted and sentenced, as noticed hereinabove. Hence these appeals.

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 ASI Krishan Singh had led his evidence by filing affidavit Ex.PW1/A. According to the contents of the affidavit Ex.PW1/A, he was posted as HC at Police Station Talwandi Sabo on 18.12.2012. The Station House Officer Gurpreet Singh had handed over to him samples weighing 250/250 grams of poppy husk duly sealed bearing seal impression "MS/GS" marked as 1A to 23A through Road No.255/12. He prepared the docket. He deposited the same in the office of the Chemical Examiner, Kharar and got the receipt. He was cross-examined.

8. PW-2 ASI Manjit Singh deposed the manner in which the canter was intercepted. Two accused Jassa Singh and Phuman Singh ran away from the spot. The person who was driving the vehicle, i.e. Gurnam Singh was arrested. He was apprised of his legal right. Thereafter the DSP came on the spot. He reposed faith in the DSP. There were two layers of flooring in the canter. By removing the floor, 23 gunny bags were found. He checked the gunny bags by opening them. He found poppy husk. He took two samples of 250 grams each of poppy husk from each recovered gunny bag. These were converted into parcels and marked the sample number with serial No.1A to 23A and 1B to 23B. He converted the bulk gunny bags of poppy husk into bulk parcels. He sealed the sample parcels and bulk parcels. Each bulk parcel was containing 19 kg. 500 gram of poppy husk.

He partially filled form No.M-29. He took into possession the parcel and case property. He sent ruqa Ex.P6. FIR Ex.P7 was registered. On 15.12.2012 the case property was produced before Inspector/SHO Gurpreet Singh. He also put his seal bearing seal impression 'GS'. Special report was sent to the DSP. In his cross-examination he deposed that he was having weight and scale with paper, cloth, lakh, match box and spring balance. They searched 10 vehicles on the way near Rampura. Independent witnesses could not be joined since they were not available. They were on routine checking.

9. PW-4 Bhupinder Singh deposed that he had purchased canter from Satish Kumar. He later on sold the same to Phuman Singh. He produced the original affidavit regarding sale. The photocopy of the same is Ex.PW4/A.

10. PW-6 Inspector Gurpreet Singh deposed that the entire case property was produced before him. He put his seals on the same. The application Ex.PW6/D was moved for depositing the bulk parcels in NDPS godown. The orders of the Court were Ex.PW6/E to Ex.PW6/H. Bulk parcels and 23 sample parcels were deposited with the Incharge, NDPS godown, Bathinda. He kept 23 sample parcels and specimen seal slip in his safe custody. On 18.12.2012 he handed over the case property and form No.29 Ex.P3 to HC Krishan Singh with a direction to get the docket forwarded from the office of SSP, Bathinda. Challan was put up after receiving the Chemical Examiner's report.

11. PW-7 DSP Jagdish Kumar also testified that he was summoned on the spot. Accused Gurnam Singh reposed faith in him. The canter was searched in his presence. There were two layers of flooring in the canter.

I.O. removed the floor. 23 gunny bags were found. He opened them. Poppy husk was found in it. I.O. completed all the codal formalities on the spot.

12. The canter was intercepted on 15.12.2012 at 11.30 P.M. at Bus Stand, Fatehgarh Nau Abad. Gurnam Singh was driving the canter. Jassa Singh and Phuman Singh travelling in the canter managed to escape. Gurnam Singh was apprised of his legal right. Canter was searched in the presence of PW-7 DSP Jagdish Kumar Bishnoi. 23 gunny bags of poppy husk were recovered. Samples were drawn. Bulk was also converted into parcels. Bulk parcels and sample parcels were deposited in the NDPS godown. Samples were handed over by PW-6 SHO Gurpreet Singh to PW-1 ASI Krishan Singh. He deposited the same in the office of Chemical Examiner, Kharar. According to the Chemical Examiner's report, samples were found to be of poppy husk. Morphine and Meconic Acid were found present in the samples.

13. Learned counsel for the appellant Gurnam Singh has vehemently argued that he was merely a driver. Learned counsel appearing on behalf of the owner of truck has argued that his client was innocent. The fact of the matter is that the canter was intercepted on 15.12.2012. Gurnam Singh was driving the vehicle. He knew about the contraband being carried in the canter. Phuman Singh was also aware that cavity had been created in the canter. The cavity could not be created without his consent. It is huge quantity of narcotics. Phuman Singh was also travelling along with Jassa Singh and Gurnam Singh. Phuman Singh was consequently arrested since he ran away from the spot. He was identified by Swaran Singh as per statement of PW-2 ASI Manjit Singh. Swaran Singh witness died during the pendency of trial.

14. Statement of DW-1 Pawan Kumar that Phuman Singh was present in the house in the month of December, 2012 does not inspire confidence. According to him, he was falsely implicated. In his cross-examination, he has admitted that he had not moved any application that Phuman Singh was falsely implicated. He has not produced any medical record regarding short eye vision of Phuman Singh.

15. PW-4 Bhupinder Singh has categorically stated that he had sold the canter to Phuman Singh on the basis of affidavit Ex.PW4/A. There was no occasion for PW-4 Bhupinder Singh to depose falsely against Phuman Singh. The case property remained in the safe custody from its seizure till its production before the Chemical Examiner. Appellant Phuman Singh has not led any evidence that he was not owner of the canter. The Chemical Examiner's report is Ex.PW6/I.

16. Accordingly there is no merit in the appeals and the same are dismissed.

**(RAJIV SHARMA)**  
**JUDGE**

**(HARINDER SINGH SIDHU)**  
**JUDGE**

**April 11, 2019.**  
*Davinder Kumar*

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No