

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

(1)

Crl. A. No. D-66-DB of 2012

Vidya Sagar @ Raja @ Rattan Lal

.... APPELLANT

Versus

State of Punjab

..... RESPONDENT

(2)

Crl. A. No. S-2307-SB of 2012

Baldev Singh

.... APPELLANT

Versus

State of Punjab

..... RESPONDENT

Reserved on : 16.01.2019

Date of decision : 21.01.2019

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

Present: Mr. Sanjeev Sharma, Advocate,
for the appellant in Crl. A. No. D-66-DB of 2012.

Mr. Gautam Bhardwaj, Advocate,
for the appellant in Crl. A. No. S-2307-SB of 2012.

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

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RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in both these appeals, therefore, these are taken up together and being disposed of by a common judgment.

2. These appeals are instituted against judgment and order dated 01.09.2011, rendered by learned Judge, Special Court, Amritsar, in Sessions Case No. 119 of 2008, whereby appellants Vidya Sagar alias Raja alias Rattan Lal and Baldev Singh were charged with and tried for the offence punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act' in short). Vidya Sagar alias Raja alias Rattan Lal (appellant in Crl. A. No. D-66-DB of 2012) was convicted and sentenced under Section 21 of the Act to undergo rigorous imprisonment for 12 years and to pay fine of ₹ 1,25,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 2 years. Baldev Singh (appellant in Crl. A. No. S-2307-SB of 2012) was convicted and sentenced under Section 21 of the Act to undergo rigorous imprisonment for 10 years and to pay fine of ₹ 1,00,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 1 ½ years.

3. The case of the prosecution, in nutshell, is that on 30.04.2008, SI Vavinder Kumar, SHO Police Station Maqboolpura, Amritsar, was present in Police Station. He received a secret information that a renowned international smuggler of Heroin, namely Vidya Sagar alias Raja alias Rattan Lal son of Sardar Chand, resident of Gandhi Nagar, Jammu, used to bring contrabands from Pakistan through Jammu border. He used to supply the same to his customers at different places in Punjab. He was coming with the consignment of Heroin from Jammu to Amritsar. He has to supply it to Baldev Singh son of Jeon Singh. This information was brought to the notice of SSP. The selected police officers were directed to form a police party

comprising of SI Vavinder Singh, SHO Police Station “B” Division; SI Sukhwinder Singh, SHO, Police Station Chheharta and others. One Sanjiv Kumar resident of Outer Basti, Lohgarh, Amritsar, was joined as an independent witness. Naka was laid. One person was seen coming from the side of Bus Stand towards City Centre, Guru Nanak Bhawan parking. He was carrying a bag in his hand. He was roaming in the parking. The informer disclosed that he was Baldev Singh. Thereafter, another person came on the spot. He was carrying a bag on his shoulder. He came into the City Centre, Guru Nanak Bhawan. His identity was disclosed by the informer. He was Vidya Sagar. Both the accused went towards the corner of parking. The articles were exchanged. SI made signal to the police party. They were apprehended. They disclosed their identities. SI informed them that he was suspecting that their carry bags were containing intoxicant substance. SI apprised them about their legal right to get search of their carry bags in the presence of a Gazetted Officer or Magistrate. They requested to be searched before a Gazetted Officer. A wireless message was sent to Balkar Singh, DSP, Sub Division-1, Sadar. He came on the spot. DSP disclosed his identity to the accused. He told them that they had legal right to get search of their bags to be made in the presence of a Magistrate. The accused reposed their faith in DSP. Consent memo was prepared. The bag of accused Vidya Sagar was searched. It contained a blanket. 8 packets of Heroin were recovered from the bag. Each packet was weighing 1 Kg. Two samples of 5 grams each were separated from each bag and put in separate plastic boxes and parcels were prepared. Remaining bulk Heroin

was put in separate boxes and parcel was prepared. The samples were sealed with the seals of mark “VK” and “BS”. These were taken into custody. These recoveries were made from appellant Vidya Sagar. Thereafter, the bag carried by accused Baldev Singh was searched. 3 packets, each weighing 1 Kg. of Heroin, were recovered from the bag. Two samples of 5 grams each were separated from each bag. The remaining bulk Heroin was also converted into parcel. The same were sealed. The stamp was handed over to Sanjeev Kumar. The case property was kept in double lock at the Police Station. On 30.04.2008, the Investigating Officer produced the case property and the samples before the Ilaka Magistrate. He deposited the boxes of case property in Judicial Malkhana in intact condition. Samples were sent to the Chemical Examiner through Constable Jaspal Singh on 08.05.2008. Some objections were raised by the Chemical Examiner. Thereafter, after removing the objections, samples were again sent to the Chemical Examiner on 15.05.2008 through Constable Ajit Singh. Investigation was completed and challan was put up after completion of all the codal formalities.

4. The prosecution has examined a number of witnesses. Statements of the accused were recorded under Section 313 Cr.P.C. They pleaded false implication. They were convicted and sentenced, as noticed above. Hence, these appeals.

5. PW.1 HC Santokh Singh deposed that on 30.04.2008, he was working as Malkhana Clerk in Police Station “A” Division. SHO Harminder Singh operated the double lock and case property was produced in the Court.

6. PW.2 Constable Jaspal Singh took the samples to the Chemical Examiner on 08.05.2008. The Chemical Examiner raised some objections. He brought back the samples.

7. PW.3 Constable Ajit Singh deposed that he took sample on 15.05.2008 to the Chemical Examiner.

8. PW.4 Harminder Singh deposed that on 30.04.2008, he was posted as SHO, Police Station Islamabad, Amritsar. Case property i.e. 11 bulk parcels, 22 sample parcels, and sample seal were produced by SI Vavinder Kumar through him. These were sealed with his seal impression "VK". He had affixed his seal impression "HS". He produced the case property from the Malkhana before the Ilaqa Magistrate. These were taken to Chemical Examiner.

9. PW.6 SI Vavinder Kumar deposed that on 29.04.2008, he was posted as SHO, Police Station Maqboolpura, Amritsar. He received a secret information that Vidya Sagar used to bring Heroin from Pakistan via Jammu border. Necessary entries were made in DDR. Naka was laid. One person came from the side of Bus Stand towards City Centre Parking. He was carrying a bag in his hand. The informer disclosed his identity as Baldev Singh. Another person also came on the spot. He was disclosed to be Vidya Sagar. They exchanged their bags. Thereafter, all the codal formalities were completed on the spot. The bags were searched by DSP Balkar Singh. The samples after sealing were deposited with SHO. FIR Ex.P13 was recorded. Case property along with seal was deposited in the Malkhana. These were taken out and produced before the Ilaqa Magistrate. Case property was

deposited in the Judicial Malkhana. The report of Chemical Examiner is Ex.P17. In his cross-examination, he deposed that Police Station "A" Division, Amritsar, was at a distance of 2/2 ½ Kms. from Police Station Maqboolpura, Amritsar. He was sitting in Police Station Maqboolpura, when he received the secret information. Ruqa was sent for registration of the case to Police Station "A" Division. He produced the case property along with accused before the Area Magistrate on the same day. He denied the suggestion that the place of recovery was a thickly populated area.

10. PW.7 Balkar Singh deposed that on 30.04.2008, he was posted as DSP Sadar Amritsar. He received a wireless message from SI Vavinder Kumar SHO, Police Station Maqboolpura. He went to the spot. He inspected the spot. He apprised accused Vidya Sagar and Baldev Singh separately that he was posted as DSP, Amritsar. He asked them as to whether they wanted to be searched by a Magistrate. The accused reposed faith in him. Separate consent memos were prepared. Thereafter, search was carried out of the bags. Contraband was recovered. All the codal formalities were completed on the spot. In his cross-examination, he deposed that the place of recovery was towards back side of General Bus Stand. He denied the suggestion that actually Baldev Singh was picked up from village Razapur, District Panipat (Haryana).

11. The accused were apprehended. The samples were duly drawn from the bulk. The samples and both the parcels were separately sealed. The case property was deposited in the Malkhana. Thereafter, it was produced before the Ilaqa Magistrate to be kept in judicial Malkhana. The appellants

were apprised of their right to be searched before a Gazetted Officer or Magistrate. However, they reposed faith in DSP Balkar Singh (PW.7). The Chemical Examiner report is Ex.P17. On the basis of analysis, the diacetylmorphine (Heroin) was found present in the contents of all 11 parcels. The case property had remained intact from the spot till the same was produced before the Ilaqa Magistrate and before the Chemical Examiner.

12. Learned counsel appearing on behalf of the appellants have vehemently argued that the independent witness was not produced. The recovery was made from the back side of the General Bus Stand. The Court can take judicial notice of the fact that persons do not come forward to become witnesses. The statements of the police officers can be taken into consideration if they are trust-worthy and inspire confidence. The quantity of Heroin recovered from the appellants is huge. One Sanjeev Kumar was independent witness but he was given up by the learned Public Prosecutor on 08.06.2010 since he was won over by the accused. There is irregularity in the investigation.

13. The defect in investigation has not caused any prejudice to the appellants. PW.2 Constable Jaspal Singh has deposed in cross-examination that sample seal Form 29 along with the docket was handed over to him on 07.05.2008. Similarly, PW.3 Constable Ajit Singh has deposed that one sample of Heroin was handed over to him along with sample seal Form 29 on 15.05.2008. He has testified that only one sample of Heroin was handed over to him, but the fact remains that 11 samples had reached the Chemical Examiner. Thus, no prejudice has been caused to the appellants.

14. Accordingly, the prosecution has proved its case against the appellants beyond reasonable doubt. There is no merit in the appeals and same are dismissed. Appellant Baldev Singh in Crl. A. No. S-2307-SB of 2012 is on bail. His bail bond and surety bond are cancelled. He is ordered to surrender before the jail authorities forthwith to undergo remaining part of his sentence.

(RAJIV SHARMA)
JUDGE

January 21, 2019
ndj

(HARINDER SINGH SIDHU)
JUDGE

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