

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

1. CRA-D-173-DB-2017

Mohan Lal Ravat

... Appellant

Versus

State of Punjab

... Respondent

2. CRA-D-193-DB-2017

Bhagat Ram @ Waktar Ram Rabeer

... Appellant

Versus

State of Punjab

... Respondent

3. CRA-D-228-DB-2017

Uday Lal Gadhri

... Appellant

Versus

State of Punjab

... Respondent

4. CRA-D-488-DB-2017

Gautam Lal Ravat

... Appellant

Versus

State of Punjab

... Respondent

5.

CRA-D-489-DB-2017

Naresh Kumar

... Appellant

Versus

State of Punjab

... Respondent

6.

CRA-D-1022-DB-2017

Krishan Lal

... Appellant

Versus

State of Punjab

... Respondent

Reserved on : 17.01.2020
Date of decision : 22.01.2020

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

Present: Mr.Bikramjit Singh, Legal Aid Counsel
for the appellants in CRA-D-488-DB-2017,
CRA-D-489-DB-2017 & CRA-D-1022-DB-2017.

Mr. Suram Singh Rana, Advocate
for the appellant in CRA-D-173-DB-2017.

Mr.Harmanpreet Singh, Advocate for
Mr.J.S.Jaidka, Advocate
for the appellants in CRA-D-193-DB-2017 &
CRA-D-228-DB-2017.

Mr.H.S.Grewal, Addl.A.G. Punjab.

RAJIV SHARMA, J.

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

2. These six appeals are instituted against the judgment and order dated 11.01.2017 rendered by the learned Judge, Special Court, Ludhiana, in Sessions case no.40 of 12.03.2013 whereby the appellants were charged with and tried for offences punishable under Section 15 and 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act'). All the appellants were convicted and sentenced to undergo rigorous imprisonment for a period of twelve years and to pay a fine of Rs.1,00,000/- each and in default to pay amount of fine, to further undergo rigorous imprisonment for a period of two years each, for the offence punishable under Section 15 of the NDPS Act. Appellant Naresh Kumar and Udey Lal were also convicted and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.1,00,000/- each and in default to pay amount of fine, to further undergo rigorous imprisonment for a period of two years each, for the offence punishable under Section 18 of the NDPS Act. The sentences were ordered to run concurrently.

3. The case of the prosecution in a nutshell is that on 16.09.2012 SI Harbans Singh, Incharge of Anti Narcotic Cell, Ludhiana was with his police party. They were in their official vehicle. At about 11.30 P.M. an Alto car bearing no.RJ-27-CC-3650 came from the side of Oswal Hospital Chowk, Ludhiana. Investigating Officer signaled with a torch to stop the car. The car driver tried to escape by turning the car to his left. However, the vehicle was stopped. The police party noticed that one LP truck bearing no.RJ-10GA-3742 coming behind that car. The truck driver found the police ahead and tried to reverse the vehicle. The truck was encircled by the police officials. The car passengers came down from the car. The occupant of the

car disclosed his names Wakta Ram and co-passenger disclosed his name as Naresh Kumar @ Pandit. The investigating officer disclosed his identity and place of posting to them. He told them that he was suspecting that they were possessing or carrying some intoxicating substance. He also told them that they had a legal right to get search conducted from a Magistrate or a gazetted officer. Wakta Ram and Naresh Kumar wanted their search to be conducted by a gazetted officer. The occupants of the truck were also came down. The person sitting on the driver seat of the truck disclosed his name as Gautam Lal. The person sitting with him on conductor seat in the truck disclosed his name as Mohan Lal Ravat. The person carrying rucksack and sitting in the body of truck, disclosed his name as Udey Lal. The other person disclosed his name as Krishan Lal. The investigating officer told them his identity and place of posting. He also told them that he was suspecting that they were possessing and also carrying some intoxicating substance in the truck. He wanted to search all of them and truck. He told them about their legal right to be searched from a Magistrate or a gazetted officer. All the persons wanted their search to be carried out by a gazetted officer. The investigating officer gave a call to gazetted officer, i.e. Ramnish Choudhary, ACP Central, Ludhiana. He reached at the spot by 12.50 A.M. in uniform. He disclosed his place of posting and identity to Wakta Ram and Naresh Kumar. He told them that he was a gazetted officer. He told them that car as well as their personal search were to be carried out since the police was suspecting that there was intoxicating substance. The search of the car was undertaken. On the back seat of the car, a black coloured tarpaulin was found covering five heavy sewn sacks. These were taken out

of the car. These were opened. The sacks were containing poppy husk. He drew out two samples of 250 grams each from each of these five sacks. Remaining bulk was also weighed. Each bag on weighment was found 24.500 kgs. The bags containing bulk were sealed. Ten samples of 250 grams each drawn from the bags were sealed by the investigating officer with his seal 'HS' and by the ACP with his seal 'RK'. The bags with bulk quantity were also sewn and sealed. Thereafter, the search of Naresh Kumar was undertaken. He was found in possession of black coloured polythene envelop. It contained opium. Two samples of 10 grams each were separated. Remaining quantity on weighment came out to be 2.580 grams. All these three quantitates were converted into parcels. All these parcels were sealed by the investigating officer with his seal 'HS' and by ACP with his seal 'RK' At about 4.00 A.M. ACP Ramnish Choudhary informed the truck passengers one by one about his place of posting and identity. He also told that he was a gazetted officer. He told them that their personal search and search of truck was to be carried out since police was suspecting that there were some intoxicating substance. They gave consent to ACP Ramnish Choudhary. Thereafter, under his supervision, the investigating officer searched accused Udey Lal. He was carrying rucksack on his back. It was opened. It contained opium. Two samples of 10 grams each were separated from the bulk and remaining quantity when weighed came out to be 3.380 kgs. All these three quantities were converted into parcels. All these parcels were sealed by the investigating officer with his seal 'HS' and then by ACP with his seal 'RK'. These parcels were taken into possession. Thereafter, the truck was searched. 300 bags of 50 kgs each of Micron Talc were found. 46 heavy

sewn bags were also found. These 46 bags were opened. These contained poppy husk. Two samples of 250 grams each from each of these bags were separated. These were converted into parcels. These 46 bags were marked as 1 to 46 and their respective sample parcels were marked as 1A to 46A and 1B to 46B. Remaining bulk quantities in respective bags when weighed came out to be 24.500 kgs. These 46 bags and all the samples were sealed by the investigating officer with his seal 'HS' and by ACP with his seal 'RK'. The case property was sent for chemical examination. The investigation was completed. The Challan was put up after completing all the codal formalities.

4. The prosecution examined a number of witnesses. Statements of appellants were recorded under Section 313 Cr.P.C. They denied the case of prosecution. Appellants produced two witnesses in support of their case. The appellants were convicted and sentenced, as noticed hereinabove. Hence these appeals.

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

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

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

8. PW-1 SI Harbans Singh testified that on 15.09.2012 he was posted as Incharge Anti Narcotic Cell, Ludhiana. He along with ASI Kashmir Singh and other police officials were travelling in Bolero vehicle.

At about 11.30 p.m. during checking one Alto car bearing registration

no.RJ27-CC-3660 came from Oswal Hospital chowk. He gave signal with the help of a torch to the driver to stop the car. However, the driver tried to escape. He was stopped. In the meantime, one LP truck bearing registration no.RJ19-GA-3742 also came behind the car. The truck driver tried to reverse the truck. He directed ASI Kashmir Singh to keep watch on the truck. He enquired the name and address of the driver of the car. He disclosed his name Wakta Ram. The person sitting along with the driver on the adjoining seat told his name Naresh Kumar. He introduced himself. He apprised both the accused namely Wakta Ram and Naresh Kumar separately regarding his designation and place of posting. He apprised both the accused that he had suspicion that there was some intoxicating substance in the car or in their possession. Their search and search of the car was required to be conducted. They had a legal right to get the search conducted in the presence of a gazetted officer or a Magistrate. Both accused replied separately that the search be conducted in the presence of gazetted officer. Thereafter, he went near the truck. One person was sitting on the driver seat of the truck. Another person was sitting on the conductor seat of the truck. The person sitting on the driver seat disclosed his name Gautam Lal. The other person sitting on the conductor seat of the truck disclosed his name as Mohan Lal Rawat. The other two persons told their name Udey Lal Gardri carrying one rucksack on his back and the other person told his name Kishan Lal @ Krishna. He apprised regarding his designation and place of posting to them. He apprised the accused one by one that he had suspicion that there was some intoxicating substance in their possession or in the truck. Their search and the search of truck was required to be conducted.

They had a legal right to be searched in the presence of a gazetted officer or

a Magistrate. Accused gave non-consent memos that search to be carried out by a gazetted officer. Thereafter, he contacted Sh.Ramnish Choudhary, ACP Central Ludhiana. He reached the spot at about 12.50 A.M. He disclosed his identity. He told all the accused one by one that he had suspicion that there was some intoxicating substance in their possession or in the car and their search and search of the car was required to be undertaken. They reposed confidence in him. He recorded consent memo of Wakta Ram Ex.PG. The consent memo of accused Naresh Kumar was Ex.PH. During search of the car, 5 bags were found lying on the back seat of the car. These bags were covered with the plastic tarpaulin of black colour. The tarpaulin was removed. Bags were unloaded from the car. These were opened and checked. These bags were contained poppy husk. Thereafter, he separated two samples of 250 grams each from each bag and converted the same into ten sample parcels. Thereafter, each bag was weighed with the help of spring scale. 24.500 kgs poppy husk was recovered from each bag. He marked these bags. The seals were put on the sample parcels as well as on the bulk. He prepared Form no.M29. Poppy husk along with sample parcels and alto car was taken into possession. Thereafter, during personal search of accused Naresh Kumar, opium was recovered which was wrapped in a black cloth and thereafter in a plastic envelope. The opium was tied by accused Nareswh Kumar with his body. Thereafter, he separated two samples each of 10 grams from the recovered opium and converted the same into two sample parcels after putting the same in the small plastic envelope. Remaining opium was weighed at the spot. It came to be 2.580 kgs. It was converted into parcel. Thereafter, sealing proceedings were completed. Case property was taken into possession. Thereafter, ACP introduced himself to

all the four accused one by one regarding his designation and place of posting. He apprised to all the four accused separately that he had suspicion that there was some intoxicating substance in their possession or in the truck. Their search and search of the truck was required to be conducted and they had a legal right to get the search conducted in the presence of any other gazetted officer or a Magistrate. Accused opted to be searched in the presence of ACP. ACP recorded the consent statement of accused Gautam Lal Ex.PL. The consent statement of accused Mohan Lal was recorded vide Ex.PM. Consent statement of accused Udey Lal Gadri is Ex.PN. Statement of Kishan Lal was also recorded vide Ex.PO. Thereafter, on the direction of ACP, police party conducted the search of four accused. Udey Lal Gadri was carrying opium in rucksack which was on his back. Opium was in a black colour plastic envelope. He separated two samples each 10 grams from the recovered opium and converted the same into two sample parcels. Remaining opium was weighed at the spot. It was found 3.380 kgs. It was converted into bulk parcel after putting the same in a plastic container. Thereafter, he sealed all the three parcels with his seal bearing impression 'HS'. ACP affixed his seal bearing impression 'RK' on all the parcels. Thereafter he took into possession all the three parcels of opium along with rucksack and sample seal. Thereafter, on the direction of ACP, he with the help of other police officials unloaded the bags lying in the truck and the same were checked. 300 plastic bags of micro talc each 50 kgs were recovered and 46 plastic bags lying under the micro talc bags in the truck were opened. These 46 bags contained poppy husk. He marked these bags from no.1 to 46. He with the help of other police officials mixed the poppy husk of each bag with hand and separated two sample each 250 grams from

each bag and converted the same into 92 sample parcels after putting the same in plastic envelope and thereafter in a piece of cloth. Thereafter, he marked 92 sample parcels from no.1A to 46A and 1B to 46B. Thereafter, he weighed each bag and from each bag 24.500 kgs poppy husk including plastic bag was recovered and converted the same into 46 bulk parcels. Thereafter, he sealed all the parcels with his seal bearing impression 'HS' and ACP also affixed his seal on each parcel bearing impression 'RK'. Entire case property was taken into possession. 300 bags of micro talc were taken into possession vide memo Ex.PR. He prepared ruqa. It was sent to police station. FIR was registered. He produced the entire case property along with witnesses, accused, Form M29 and sample seal specimen before Inspector Anil Kumar SHO, Police Station Division no.6, Ludhiana. Inspector Anil Kumar also inspected the case property and found the seals intact on the same. Thereafter, Inspector Anil Kumar affixed his seal bearing impression 'AK' on all the parcels and on sample seal chit. Thereafter, the case property was deposited with MHC Police Station Division no.6, Ludhiana. He recorded the statements of witnesses. He obtained the entire case property from MMHC, Police Station Division no.6, Ludhiana for producing the same in the Court of Illaqa Magistrate for preparation of inventory. He produced the case property in the Court of Sh.Lovedeep Hundal, JMIC, Ludhiana. Thereafter, he deposited the entire case property with MHC Police Station Division no.6, Ludhiana. Thereafter on 17.09.2012 he again obtained the entire case property from MMHC Police Station Division no.6 Ludhiana for producing the same in the Court of Illaqa Magistrate for preparation of inventory. He produced the case property and accused in the Court of learned JMIC, Ludhiana. He moved application Ex.PFF before the

Magistrate. In the Court of learned Magistrate, one sample of opium of 10 grams was drawn from the opium recovered from accused Udey Lal and one sample of opium of 10 grams was drawn from the opium recovered from accused Naresh Kumar. In the Court of learned Magistrate, one sample each 250 grams was drawn from each bag of poppy husk, i.e. 51 bags. The case property was again sealed in the Court of learned Magistrate with seal impression 'SH'. Thereafter, on the direction of learned Magistrate, he deposited the entire case property with District Nazir, Ludhiana except two samples of opium and 51 samples of poppy husk drawn by him at the spot. In his cross-examination, he deposed that he did not know whether the recovered truck was in the name of one of the accused or not. Similar was his reply with regard to Alto car. They tried to join independent witnesses but nobody was ready to join in the police proceedings. They had not conducted personal search of the accused till contraband was recovered from the truck and alto car till the arrival of DSP. The weight, scale and other sealing material were already with his investigation bag.

9. PW-2 Gurjit Singh has led his evidence by filing affidavit Ex.PW2/A. In his affidavit, it was averred that he was posted as Malkhana Munshi at Police Station Division no.6, Ludhiana on 16.09.2012. Anil Kumar Inspector deposited the case property recovered from L.P. Truck and alto car on 16.09.2012, i.e. 300 parcels of marka Micron Talk powder, 51 bags of sample parcels of poppy husk weighing 25.500 kgs. each, 2 parcels of opium one weighing 3.380 kgs and second one weighing 2.580 kgs, 102 sample parcels of poppy husk weighing 250 grams each, 4 sample parcels of opium of 10 grams each. On 16.09.2012 case property along with accused was handed over to SI Harbans Singh for the purpose of inventory. SI

Harbans Singh again deposited the case property with him in the Malkhana in good condition on 16.09.2012. On the direction of SI Harbans Singh, he handed over all the case property along with Form no.29 in good condition to him on 17.09.2012. SI Harbans Singh again deposited with him two sample parcel of opium and 51 sample parcels of poppy husk along with sample seal chit, form no.29 in good condition and remaining case property was deposited with judicial malkhana on 17.09.2012 at about 8.30 P.M. On 01.10.2012 he took two sample parcels of 10 grams each, 51 parcel of poppy husk of 250 grams each with seal impressions 'HS', 'RK' and 'AK', 4 copies of sample seal chit, 4 copies of form no.29, checked and seen by Magistrate and handed over to HC Malook Singh with the direction of docket issued by the office Commissioner of Police, Ludhiana, for deposit the case property with the Chemical Examiner, Kharar, for further investigation. HC Malook Singh deposited the case property along with form No.29 with the Chemical Examiner, Kharar on 01.10.2012. In his cross-examination, he deposed that one original copy of Form no.M29 and three copies of Form No.M29 were deposited with him.

10. PW-3 HC Malook Singh has led his evidence by filing affidavit Ex.PW3/A. According to him, on 01.10.2012 Malkhana Munshi deposited with him the case property in good condition after taking it from Malkhana. It was handed over to him to deposit the same with the Chemical Examiner, Kharar. On the same date, as per directions of MHC Surjit Singh, he took docket from the office of Police Commissioner, Ludhiana and deposited the case property with the Chemical Examiner, Kharar.

11. PW-4 ASI Tarlok Chand deposed that on 06.12.2012 he was posted at Police Station Division no.6, Ludhiana. On that day, he was given

investigation of the case.

12. PW-5 ASI Kashmir Singh and PW-6 ASI Kapil Kumar had corroborated the statement of PW-1 SI Harbans Singh and the manner in which accused were apprehended, search and sealing proceedings were completed on the spot in accordance with law.

13. PW-8 DSP Ramnish Kumar Chaudhary testified that he had received a telephonic message from IO SI Harbans Singh at 12.30 A.M. on 16.09.2012 on his mobile. He reached the spot. I.O. Harbans Singh was already on the spot. The consent memo of accused Wakta Ram was recorded in his presence. He reposed confidence in him. The memo is Ex.PG. Thereafter, accused Naresh Kumar gave his consent to carry out the search. His statement Ex.PH was recorded by him. Thereafter, search was carried out in the car and from the possession of car driven by Wakta Ram, five plastic bags were recovered in which poppy husk was recovered and ten samples of 250 grams each were drawn by the I.O. The same were sealed with the seal bearing impression 'HS' and remaining poppy husk of each bag came to be 24.500 kgs. in each bag. The same were also sealed with seal bearing impression 'HS' by the I.O. He also put his seal bearing impression 'RK'. Thereafter, personal search of accused Naresh Kumar was carried out. One packet of polythene was recovered from which opium was recovered. Two samples of 10 grams each were drawn and remaining opium came to be 2.580 kgs. The codal formalities were completed on the spot. Statements of Gautam Lal, Mohan Lal, Udey Lal, Kishan Lal were also recorded. They reposed confidence in him. Their consent memos were Ex.PL to Ex.PO. Thereafter, from the truck, 46 plastic bags of poppy husk were recovered out of which two samples of 250 grams of poppy husk were drawn. In total

92 samples were taken and remaining poppy husk in each bag came to be 24.500 kgs. All the samples and bulk parcels were sealed. The codal formalities were completed. Accused Udey Lal was personally searched. He was carrying rucksack. The opium was recovered from the bag. Two samples of 10 grams each were drawn and remaining opium came to be 3.380 kgs. The codal formalities were completed. In his cross-examination, he deposed that he reached the spot at about 12.50 A.M. Accused Wakta Ram was driver of the Alto car whereas accused Naresh Kumar @ Pandit was co-passenger in the car. Remaining four accused were in the truck.

14. DW-1 HC Ranjiv Kumar had produced the log book of official vehicle bearing no.PB10-BU-8026. According to the record, the said vehicle was used on 15.09.2012 and 16.09.2012 by SI Harbans Singh.

15. DW-2 HC Sansar Singh has proved entries Ex.DW2/A, Ex.DW2/B, Ex.DW2/C and Ex.DW2/D.

16. According to the prosecution case, an Alto car was apprehended. The car was driven by Wakta Ram and Naresh Kumar was the co-passenger. Wakta Ram and Naresh Kumar were told about their legal right to be searched in the presence of a gazetted officer or a Magistrate. They opted their car and their personal search to be carried out by a gazetted officer. PW-8 DSP Ramnish Kumar Chaudhary reached the spot. He told the accused about their legal right. The car was searched. Poppy husk was recovered. All the codal formalities were completed on the spot. The personal search of Naresh Kumar was carried out. Opium was recovered from his person. All the codal formalities were completed on the spot. Section 50 of the NDPS Act was complied with in letter and spirit. It was required to be complied with only qua the personal search which was made

from accused Naresh Kumar. In case, contraband is recovered from the car, Section 50 of the NDPS Act is not attracted. Similarly all the accused occupying the truck apprised of their legal right. The truck was searched in the presence of PW-8 DSP Ramnish Kumar Chaudhary after they reposed faith in him. Personal search of PW Udey Lal was also undertaken. He was carrying rucksack bag. From the bag, opium was recovered. All the codal formalities were completed on the spot. Form M29 was filled up. Section 50 of the Act was complied with. The case property recovered from the car, truck and rucksack bag and personal search of accused Naresh Kumar and Udey Lal were deposited in the malkhana. Thereafter, it was taken out for the purpose of inventory. Inventory was prepared. The samples were drawn. The same were sent for chemical examination. According to the Chemical Examiner report, samples were found to be opium as well as chura poppy heads. The case of the prosecution is also that car was seen coming from Oswal Hospital Chowk. It was singled to stop. The truck was following it. The poppy husk was being carried out in the car as well as in the truck. Two persons were in possession of opium. The persons travelling in the car as well as in the truck were in conscious possession of the poppy husk. It cannot be presumed that they were oblivious of carrying poppy husk in the car and truck.

17. Learned counsel appearing on behalf of accused Mohan Lal has argued that Mohan Lal was juvenile. In all the recovery memos, his age was recorded 19 years. Merely in his statement recorded under Section 313 Cr.P.C. mentioning his age would not make him juvenile at the time of recovery of contraband.

18. It is settled law that once possession is established the person

who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. All of them were travelling in the car and truck together. Moreover, whether there was conscious possession is to be determined with specific reference to factual matrix and they were aware of the contraband carrying in the car and truck. The possession can be physical as well as constructive.

19. Accordingly, there is no merit in these appeals and the same are dismissed. Appellants Gautam Lal Ravat, Bhagat Ram @ Waktar Ram and Mohan Lal Ravat are on bail. Their bail bonds and surety bonds are cancelled. The police is directed to take them into custody to undergo remaining sentence imposed by the trial Court.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

January 22, 2020.
Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No