

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

CRA-S-2470-SB-2017

Date of decision: 13.2.2020

Sarbjit Kaur

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr.Nandan Jindal, Advocate for the appellant

Ms.Harsimrat Rai, DAG, Punjab

JITENDRA CHAUHAN, J.

The present appeal is directed against the judgment and order dated 8.5.2017, whereby appellant Sarbjit Kaur was convicted and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.One lac; in default of payment of fine, to further undergo RI for three months under Sections 15(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), whereas Krishan Singh was acquitted by the trial Court as the prosecution had failed to prove charge against him.

The facts necessary for adjudication of the matter as narrated in para no.2 of the impugned judgment are as under:-

“In brief, the prosecution story from the police Challan is that on 04.04.2014 SI Balwinder Singh alongwith ASI Randhir Singh, L/C Mandeep Kaur, HC Sarabjit Singh were going from

village Benra towards Dhuri side through a passage of drain in a private car, in connection with patrolling and checking of suspected persons. When the police party proceeded half Km from the drain bridge towards village Benra, at about 4.00 P.M. one scooter, driven one Hindu gentleman was seen coming from Dhuri side, along with a lady who was pillion rider and holding a plastic bag (thaila). On suspicion, Investigating Officer stopped the vehicle. On seeing the police party, the scooter driver got perplexed and tried to turn back his scooter and the lady also stepped down from the scooter along with the plastic bag held by her. The scooter driver ran away towards the fields from the spot, leaving behind the scooter and Investigating Officer identified the person who ran away as Krishan Singh son of Gurmail Singh, resident of village Bagrian, P.S. Amargarh, whom he earlier knew. HC Sarabjit Singh chased the fleeing person but he managed to run away. When SI Balwinder Singh went near the scooter No.PB-11-AD-3779 mark Bajaj Chetak of white colour, he found that another plastic bag was also lying on the floor of the scooter. The lady who had alighted from the scooter alongwith the plastic bag was apprehended by the Investigating Officer with the help of lady constable Mandeep Kaur and inquired her whereabouts, who disclosed her name as Sarabjit Kaur alias Keena wife of Pappu, resident of village Bagarian. The accused

Sarabjit Kaur on inquiry about the person who fled away disclosed that he was her brother-in-law (Deor) Krishan Singh son of Gurmail Sing, caste Sansi, resident of Bagrian. Investigating Officer disclosed his identity to the accused Sarabjit Kaur and told her that he has suspicion of some intoxicating substance in both the plastic bags and in their scooter and he wanted to conduct search of her person, both the plastic bags and their scooter. Investigating Officer also apprised the accused that she has a legal right and can get conducted her personal search as well as search of the plastic bags and scooter in the presence of some Gazetted Officer or a Magistrate, who could be called at the spot. But the accused Sarabjit Kaur reposed confidence in the Investigating Officer and her consent statement was recorded, which was thumb marked by the accused. Thereafter, the Investigating Officer conducted the search of the plastic bags from which poppy husk was recovered. The plastic bags were given serial no. 1 and 2. Two samples of 250 grams of poppy husk were drawn from each bag and numbered as 1/1, 1/1 and 2/2, 2/2. On weighing the remaining poppy husk in each bag including the bags came to be 25 kgs. 500 grams, which were also converted into separate parcels. All the four sample parcels and both the bulk parcels were sealed by the Investigating Officer with his seal bearing impressions 'BS'. Sample seals and form no.29

were prepared. Seal after use was handed over to ASI Randhir Singh. All the parcels duly sealed along with the sample seals were taken into police possession vide recovery memo attested by witnesses. Ruqa was sent to the police station on the basis of which formal FIR was registered against the accused persons.”

After completion of the investigation, the challan was presented in the Court. The appellant and her co-accused Krishan Singh were charge-sheeted under Section 15(c) of the Act, to which, they pleaded not guilty and claimed trial.

In order to substantiate the charges, the prosecution had examined SC Harpal Kumar as PW1, HC Makhan Singh as PW2, Harish Kumar as PW3, SI Deepinderpal Singh as PW4, Amarjit Bhutani as PW5, SI Balwinder Singh as PW6, ASI Randhir Singh as PW7, LC Mandeep Kaur as PW8, Dharamvir, Junior Assistant DTO Patiala as PW9.

When examined under Section 313 of the Code of Criminal Procedure, the accused-appellants denied all the incriminating circumstances appearing in the prosecution evidence against them and pleaded false implication.

After analysing the entire evidence and hearing the learned counsel for the parties, the learned Trial Court convicted and sentenced the accused-appellant Sarbjit Kaur as noticed at the outset, whereas Krishan Singh stands acquitted, as the prosecution had failed to prove charge against him.

Feeling dissatisfied with the same, the accused- appellant Sarbjit Kaur preferred the present appeal.

Learned counsel for the appellants contends that the learned trial court has committed a grave error while convicting the appellant as the prosecution case is highly doubtful. As per the case of the prosecution, SI Balwinder Singh, ASI Randhir Singh, LC Mandeep Kaur and HC Sarabjit Singh were present on the spot and none of them could be able to chase the co-accused Krishan Singh, who was driving the scooter, whereas Sarbjit Kaur was riding pillion. The police officials were present on the place of occurrence in a private car, however, the driver of the said car was not examined. No independent witness was joined at the time of alleged recovery of contraband. There was delay of 20 days in sending the sample to the FSL. It is further asserted that the contraband was not recovered from the conscious possession of the appellant because as per the statement of LC Mandeep Kaur. She stated in her cross-examination that the alleged bags were recovered from the fields and she cannot tell the factum of ownership of the fields.

On the other hand, the learned State counsel submits that the prosecution case is fully established and therefore, the learned trial Court has rightly convicted and sentenced the accused.

Heard.

This Court in **Ranbir Singh vs. State of Haryana 2001(1)**

RCR (Crl.) 674 has held as under:-

5. However, the main factor in every criminal case remains to be that the story of the prosecution must be

inspiring truthfulness in the testimony of the witnesses relied upon. In the case in hand, Vakil Chand, the driver of the private jeep in which the police party was patrolling did not come into the witness box. The police did not record any sufficient statements to prove their own presence on the scene where the accused were allegedly captured. The Investigating Officer SI Badri Parshad PW 2 did not make any effort to find out the source of the poppy husk where from it was received and its destination. No house search of any of the appellant was effected. The police party would have been visible to the Four wheeler driver and there was no possibility that they would have tried to come near the place if the police party had been standing there. One of the accused-appellants allegedly escaped from the scene of occurrence.

6. In the given circumstances it would be impossible for one person to run away in the face of duly armed police officials being present. The police had allegedly a jeep with them and the police personnel on the spot must be physically fit to perform their function efficiently and they could have easily chased the offender but they did not do so. This reflects a clear manipulation of the story on the part of the Investigating Officer. The police party did not join any independent person. In fact the police party did not know any of the appellants-accused. Vakil Chand is not produced to say that he disclosed the name of Ranbir Singh. It has come in the evidence of ASI Balwan Singh PW 1 that some people passed nearby going to their fields but they did not join any one of them in the investigation. Wherefrom they did bring weighing scales and all the material for conducting investigation

remain obscure. This is totally one-sided story of the prosecution. It is not sure that the specimen seal was also deposited with the MHC or was retained there.

7. So the prosecution version in fact did not inspire confidence in its truthfulness. On the other hand, the version of the defence appears to be more plausible and that the material in question might have been found abandoned and for some reasons the appellants were involved in this case. The conviction and sentence of the appellants, therefore, cannot be sustained. The appeal is allowed and the appellants are acquitted of the charges framed against them.

In the present case too, the police party was in a private car in connection with patrolling and checking. The driver of the car was not examined during trial. Moreover, the prosecution story is highly doubtful because despite the fact that four police officials were present on the spot, accused Krishan Kumar, who was driving the scooter ran away and appellant Sarbjit Kaur was nabbed by them. As per the statement of the PW8 LC Mandeep Kaur, the recovery was effected from the fields and she did not know the owner of the fields, whereas as per the statement of the Investigating Officer, PW 6 SI Balwinder Singh, the recovery was effected on a road. Moreover, it is also not possible that pillion, particularly a lady could hold a bag weighing 25 kgs on a scooter.

Further it was necessary for the trial Court to frame a specific question regarding presumption, which is sought to be raised either under Section 35 or Section 54 of the Act when the accused were examined under Section 313 of Cr.P.C., so as to seek their explanation. A glance through

their statutory statements would reveal that no such specific question was framed by the learned trial Court. The presumptions arising under the aforementioned Sections are not available to the prosecution. It further emanates from their statutory statements that it has nowhere been put to the accused that she was in possession of the bags. Therefore, conscious possession is not established qua the bags by the prosecution.

A Division Bench of this Court in **Sukhdev Singh @ Sukha v. State of Punjab**, 2006 (1) Recent Criminal Reports (Criminal) 4 has observed that “the seal was given to SI of police and not to the independent witness. The Division Bench of this Court held that the possibility of seal being tampered with, substance being changed and the containers being re-sealed, cannot be ruled out”.

In **Buta Singh v. State of Punjab**, 2006 (1) Recent Criminal Reports (Criminal) 835, as many as 18 bags of poppy husk were recovered. The prosecution failed to explain delay of 8 days in despatch of sample to the Forensic Science Laboratory for chemical analysis. It was held that such a delay is fatal and the same is also in violation of the Standing Instructions No.1/88 dated 15.3.1988 (Narcotic Control Bureau, New Delhi), relevant of which reads as under:-

“1.13 Mode and time limit for dispatch of sample to Laboratory. The samples should be sent either by insured post or through special messenger duly authorised for the purpose. Despatch of samples by registered post or ordinary mail should not be resorted to. Samples must be despatched to the Laboratory within 72 hours of seizure to avoid any legal objection.”

In **Baldev Singh v. State of Punjab**, 2005 (1) Recent Criminal Reports (Criminal) 823, it was held that till the case property has not been despatched to the office of the Forensic Science Laboratory, the seal should not be available to the Prosecution Agency and in absence of such safeguard, the possibility of seal being tampered with, substance being changed and the containers being re-sealed, cannot be ruled out.

Coming to the facts of the case in hand, the prosecution has not apportioned any reason worth the name for holding back the sample parcels for 20 days. The seal remained in the possession of the police official. In these premises, it is very difficult to say that the contents of the sample parcels were not changed. Moreover, no independent witness was joined during the recovery proceedings, which also creates a dent in the prosecution version.

Keeping in view all the circumstances, the Court feels that the prosecution has failed to prove its case against the accused beyond reasonable doubt.

In view of the above discussion, the present appeal is allowed. The impugned judgment/order of conviction and sentence are set aside and the accused-appellant is hereby acquitted of the charge framed against her. Her bail bonds stands discharged.

13.2.2020
gsv

(JITENDRA CHAUHAN)
JUDGE

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