

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Appeal No. S-3288 of 2019 (O&M)

Date of Decision: 29.07.2020

Gurjit Singh alias Baru

... Appellant(s)

Versus

State of Punjab

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Ms. Manpreet Ghuman, Advocate
for the appellant.

Mr. Amandeep Singh Gill, Senior Deputy
Advocate General, Punjab for the respondent.

Anil Kshetarpal, J.

The challenge herein is to the judgment passed by the Special Court, Barnala convicting the appellant under Section 22 of the Narcotic Drugs & Psychotropic Substance Act, 1985 (hereinafter referred to as “the 1985 Act”). The operative part of the order of sentence reads as under:-

Under Section 22 of the Narcotic Drugs & Psychotropic Substance Act, 1985	To undergo rigorous imprisonment for a period of 1 year and to pay fine of Rs. 10,000/- (rupees ten thousands only) and in default of payment of fine to undergo further rigorous imprisonment for a period of three months.
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At the outset, it must be noticed that as per the custody certificate, the appellant is alleged to have undergone sentence for a period of nine months and 24 days.

In brief, the case of the prosecution is that on 06.04.2017, a police party headed by Sub Inspector Kulwant Singh, in a government vehicle bearing registration No. PB-13K-1719 in connection with routine patrolling and checking of the suspected persons, was present on the bridge of a drain situated near Gurudwara Sahib Baba Tek Singh in village Dhanaula when at about 9.00 p.m., he received a secret information from the reliable informant that appellant-Gurjit Singh alias Baru, who runs a medical store, in fact, sells and supplies intoxicant tablets and vials as well as English wine in the area of Dhanaula at higher price by fetching the same from outside. The secret informant also informed that today, the appellant, wearing a white Kurta Pajama, is roaming in the area on his black colour scooty (scooter) of Hero Honda company to supply contraband to his customers and can be apprehended red handed along with the intoxicant tablets if search is carried out on Dhanaula-Handiaya link road. Sub Inspector Kulwant Singh drafted a memo (ruqa) Ex.P1 and sent it to the Police Station, Dhanaula through Head Constable Dharminder Singh, resulting in registration of an FIR (Ex.P2). Thereafter, Sub Inspector Kulwant Singh along with the police party laid ambush on the bridge of the canal minor on Dhanaula-Handiaya link road. A person having features as disclosed by the informant was seen coming from the side of Handiaya on a scooter of black colour. When Sub Inspector Kulwant Singh gave him a signal to stop, the said person applied brakes and tried to turn back but Sub Inspector Kulwant Singh apprehended the said person with the help of the police officials and on being questioned about his whereabouts, he disclosed his name as Gurjit Singh besides disclosing other particulars. The scooter

was having registration plate No. PB-19-L-3592. In between the handle and the seat of the rider, a cardboard box was placed on the mat on which a weighty plastic bag was found placed. Sub Inspector Kulwant Singh made an effort to join an independent witness but no one was available. Thereafter, Sub Inspector Kulwant Singh gave his introduction to the apprehended person and told him that he suspects some illegal substance in his possession and hence, search of the cardboard box, plastic bag and his personal search is required to be conducted. Sub Inspector Kulwant Singh also apprised the said person about his legal right to get his search conducted in the presence of Gazetted Officer or Magistrate, if the said apprehended person so desires. However, the apprehended person reposed confidence in Sub Inspector Kulwant Singh upon which a separate consent memo (Ex.P3) was prepared and got signed from the apprehended person and attested by Assistant Sub Inspector Harjinder Singh and Head Constable Bhupinder Singh. From the bag one polythene envelope was taken out and 16 strips of intoxicant tablet TENSIWIN 0.5 salt ALPRAZOLAM batch No. TSLT 1007 were recovered. Each strip contained ten tablets, thus, total 160 tablets were found. The said strips were put into the same envelope and converted into a parcel. From the plastic bag, another polythene envelope was taken out, which on being opened, was found to contain the strips of intoxicant tablets bearing imprint CLAVIDOL-100 SR with batch No. 118 TCR. There were 90 strips and each strip contained 20 tablets, thus, total 1800 tablets were found. The said strips were also put in the same envelope and converted it into a parcel. A cash amounting to ₹ 57,500/- was also recovered from the bag. Both the parcels were sealed by Sub Inspector Kulwant Singh with his seal “KS” and

the specimen seal impression (Ex.P1) was prepared separately on Form No. 29M-C. On further checking of the cardboard box, 12 bottles of English wine mark “White and Blue Premium Whiskey” were recovered. Sub Inspector Kulwant Singh arranged a tub and a plastic Can and thereafter, he broke open the lid seal of each bottle and poured the contents of each bottle in the tub and then drew a sample in a nip and converted the same into a parcel. The remaining whiskey was transferred into a plastic Can and then converted it into a parcel. Both the nip parcel and the plastic Can parcel were sealed by Sub Inspector Kulwant Singh with his seal bearing impression “KS” and the specimen seal impression (Ex.P2) was prepared separately on Form No. 29M-C. The seal, after use, was entrusted to Assistant Sub Inspector Harjinder Singh. The parcels of the intoxicant tablets, sample nip and plastic Can containing remaining liquor and the sample seal chits along with cash amount recovered and scooter bearing registration No. PB-19-L-3592 were taken into possession vide recovery memo Ex.P4. On personal search of the appellant, the currency notes amounting ₹ 5,810/- along with one mobile phone of “Oppo” company of silver golden colour containing sim No. 94175-40611 was recovered and taken into possession vide separate personal memo (Ex.P5). The memos were attested by Assistant Sub Inspector Harjinder Singh and Head Constable Bhupinder Singh. Sub Inspector Kulwant Singh also prepared a rough site plan (Ex.P8) of the place of recovery and the appellant was arrested on the spot vide arrest memo (Ex.P6). An intimation in this regard was sent vide memo Ex.P7. The Investigating Officer recorded the statements of the witnesses and completed the spot investigation. On return to the police station, the case property along

with the accused and the witnesses were produced before the Inspector Davinder Singh, who, after verification of the facts from the witnesses and on being satisfied, put his own seal bearing impression “DS” on the case property of two bulk parcels of intoxicant tablets and also attested the sample seal chit (Ex.P1) and then, deposited the case property with Moharrir Head Constable Gursimranjit Singh. Sub Inspector Kulwant Singh also prepared a report under Section 57 of the 1985 Act (Ex.P9) upon which the Deputy Superintendent of Police made his endorsement. Thereafter, on the same day i.e. 07.04.2017, Sub Inspector Kulwant Singh withdrew the case property i.e. two bulk parcels of the intoxicant tablets from Moharrir Head Constable and produced the same before the Judicial Magistrate Ist Class along with the accused and the inventory (Ex.P11). The Judicial Magistrate Ist Class, after breaking open the seals of the bulk parcels, drew two representative samples, consisting of one strip each and put that into polythene envelopes and prepared two parcels. The residue bulk parcel was converted into another parcel. Similarly, the bulk parcel of intoxicant tablets CLAVIDOL 100 SR was also opened and two samples, containing one strip each, were taken out and converted into separate parcels, whereas the remaining strips were converted into a separate parcel. Thereafter, four representative sample parcels and two bulk parcels of the remaining strips of tablets were sealed with the seal of the Judicial Magistrate Ist Class bearing impression “RPS”. The specimen seal impression (Ex.P13) was prepared separately on Form No. M29-C. He passed an order Ex.P12. Thereafter, as per the directions of the Judicial Magistrate Ist Class, Sub Inspector Kulwant Singh deposited the entire case property in the Judicial Malkhana by keeping

with himself one representative sample of each one of the two types of intoxicant tablets, for sending the same to the Chemical Examiner for its analysis. These were deposited with the Moharrir Head Constable. On 10.04.2017, the representative sample parcels of intoxicant tablets were sent to the Forensic Science Laboratory, Bhatinda through Head Constable Surinder Singh for its chemical analysis. He took the samples to the Forensic Science Laboratory on the very same day and got it deposited. On 19.05.2017, the report (Ex.P14) was received from the Forensic Science Laboratory. On 12.04.2017, the sample nip of liquor was sent to the Chemical Laboratory, Kharar through Head Constable Gurpreet Singh.

After completion of the investigation, report under Section 173(2) Cr.P.C. was prepared and filed in the Court. The appellant was supplied the copy of the report along with the accompanying documents. On examination of the report coupled with the documents, finding sufficient grounds, charges under Section 22 of the 1985 Act as well as under Section 61 of the Punjab Excise Act, 1914 were framed against the appellant to which he pleaded not guilty and claimed trial.

The prosecution, in order to prove its case, examined the following witnesses:-

PW.1 Avtar Singh, Junior Assistant from the Office of S.D.M., Barnala to prove the ownership of scooter on which the appellant was alleged to be travelling;

PW.2 Gursimranjit Singh, Assistant Sub Inspector (the then Moharrir Head Constable) to prove the

deposit of various samples in the Malkhana and subsequent handing over of the sample for presentation before the learned Judicial Magistrate, subsequent deposit of representative samples with the Malkhana and the transmission of the samples to the Forensic Science Laboratory.

PW.3 Assistant Sub Inspector Harjinder Singh - a member of the police party and the witness of the recovery was examined;

PW.4 Sub Inspector Kulwant Singh, the Investigating Officer;

PW.5 Head Constable Surinder Singh was examined to prove the delivery of samples of the intoxicant tablets to the Forensic Science Laboratory;

PW.6 Davinder Singh, Station House Officer (now retired) was examined.

The statement of the appellant under Section 313 Cr.P.C. was recorded in which the evidence led by the prosecution along with the incriminating material was put to the appellant, who claimed false implication.

The learned trial Court held that the prosecution has failed to prove its case with regard to the recovery of liquor as the sample was not drawn properly. The learned trial Court further found that the appellant cannot be convicted for the possession of the intoxicant tablets i.e.

CLAVIDOL -100 SR (1800 tablets) as these tablets contained Tramadol

Hydrochloride salt which did not fall within the ambit of the 1985 Act at the time when the recovery in the present case was made. However, the Special Court convicted the appellant for possession of 16 strips of intoxicant tablets i.e. TENSIWIN 0.50 containing salt ALPRAZOLAM 0.48 mg. per tablet.

This Court has heard the learned counsel for the appellant as well as the Senior Deputy Advocate General, Punjab and with their able assistance, gone through the judgment as well as the record.

Learned counsel for the appellant, while drawing attention of the Court to the order passed by the learned Judicial Magistrate Ist Class on 07.04.2017 Ex.P12, Form No. 29M-C Ex.P13 and the report of the Regional Testing Forensic Science Laboratory, Bhatinda Ex.P14, has contended that the sample sent to the Forensic Science Laboratory was tampered. As per the case of the prosecution, the appellant was found in possession of two different varieties of the intoxicant tablets. 16 strips of intoxicant tablet TENSIWIN 0.5, each strip containing ten tablets total 160 tablets having batch No. TSLT 1007 were alleged to have been recovered from the appellant. Apart therefrom, 90 strips of intoxicant tablets CLAVIDOL-100SR, each strip containing 20 tablets, total 1800 tablets were also recovered. It was contended that from the perusal of Ex.P12, it is apparent that two representative samples from each variety of intoxicant tablets were drawn by taking two strips each. Thus, with regard to intoxicant tablet CLAVIDOL-100 SR, two strips out of 90 strips were converted into two separate samples, which stands confirmed from Form No. 29M-C (Ex.P13) signed by the learned Judicial Magistrate Ist Class, wherein it is also recorded that with regard to intoxicant tablets CLAVIDOL-100 SR, two

strips containing 20 tablets each were drawn into representative samples (two in number), whereas the remaining 88 strips were packed in a separate parcel. However, the parcel No.1 contained only ten white coloured tablets in a strip labelled as CLAVIDOL-100 SR. Thus, the learned counsel contended that there is tampering with the samples.

It was further submitted that as per the case of the prosecution, secret information was received at about 9.00 p.m. whereas the FIR has been registered at 23.52 hours (approximately 12.00 in the night). She contended that as per the prosecution, the recovery was effected at 10.00 p.m. She further submitted that the distance of the police station from the place of occurrence is only 7 kms. She further contended that the entire case of the prosecution is false. She also contended that there is non-compliance of Section 50 of the 1985 Act. She further contended that since no independent witness has been associated, therefore, the case against the appellant has not been proved.

On the other hand, learned State counsel, while referring to the judgment passed by the Special Court, has contended that there is no ground to interfere.

Now let us examine the arguments of learned counsel for the parties in detail. It is the case of the prosecution that when the appellant was apprehended, he was found in possession of three contraband articles, which according to the Inspector were in violation of either the 1985 Act or the 1914 Act. Two different varieties of intoxicant tablets were recovered from the possession of the appellants viz. TENSIWIN 0.5 and CLAVIDOL-100 SR. 16 strips of intoxicant tablets TENSIWIN were recovered from the

possession of the appellant, each strip contained ten tablets, thus, in total 160 tablets. Whereas 90 strips of intoxicant tablet CLAVIDOL-100SR, were found in possession of the appellant, each strip contained 20 tablets, thus, in total 1800 tablets. The order of the learned Judicial Magistrate Ist Class (Ex.P12) is also to the same effect. Thus, the intoxicant tablet CLAVIDOL-100 SR contained 20 tablets in each strip. This is further confirmed from Form No. 29M-C (Ex.P13). However, if one carefully examines the report of the Forensic Science Laboratory (Ex.P14), it is apparent that one sealed parcel with seal "GS" was received by the Forensic Science Laboratory, which in turn contained another parcel bearing secret code No. 04/PS/DNL seal with one seal of "DS". On opening the same, it was found to contain two parcels Marked 1 and 2 each sealed with one seal of "RPS". The seal of "RPS" belongs to the Judicial Magistrate Ist Class. Ten white coloured tablets in a strip labelled as CLAVIDOL-100 SR were found in parcel No. 1. There is no explanation as to how the strip with 20 tablets became ten tablets. The Judicial Magistrate Ist Class sealed two parcels, one strip containing 20 tablets with respect to CLAVIDOL-100 SR. There is nothing on record that the strip was cut or torn off to divide it in half. Thus, the argument of learned counsel for the appellant creates a serious doubt on the genuineness of the case of the prosecution. Learned State counsel was specifically confronted with the aforesaid position, however, he was unable to give any satisfactory explanation. Rather, learned State counsel contended that the appellant has not been convicted for having in possession of intoxicant tablets CLAVIDOL-100 SR. The question is that whether the sample which was sent to the Forensic Science laboratory was tampered

with or not. A serious doubt has been created in view of the facts noticed above. It is apparent that one sealed parcel with seal “GS” (which was of Moharrir Head Constable) contained another parcel having seal “DS” belongs to the Station House Officer. On opening the same, two parcels were found. Thus, the argument of learned counsel for the appellant that the parcels were tampered with, cannot be ruled out. The prosecution has failed to explain the discrepancy.

It may be noted that the case of the prosecution is that the police party had a laptop and a printer in the government vehicle. On careful perusal of the record, it is apparent that the printouts of ruqa/information (Ex.P1) sent to the police station for registration of the FIR on the one side and the consent memo (Ex.P3), the recovery memo of all the articles recovered from the scooter (Ex.P4), the recovery memo of the articles recovered from the personal search of the appellant (Ex.P5) and the arrest memo of the appellant (Ex.P6) on the other side are different. When Sub Inspector Kulwant Singh (retired), the Investigating Officer, appeared in evidence, he on being confronted with the aforesaid facts stated that the printer attached to the laptop on which the printouts of the ruqa and various memos were taken, was same. However, he stated that he cannot assign any reason as to why the printouts of the ruqa is different from the memos. The documents (Ex.P1, Ex.P3, Ex.P4, Ex.P5 & Ex.P6) were alleged to have been prepared at the spot where the appellant was stated to have been apprehended. The prosecution has failed to furnish any explanation with regard to the aforesaid discrepancy. This lend credence to the case of the defence that the appellant was apprehended from his house with Rs.

1,00,000/- and thereafter, he was falsely implicated. If the computer as well as the printer was one, there is no reason as to why the printouts would be different. Even the size of the font is different.

Still further, it is the case of the prosecution that the secret informant informed the Investigating Officer. Sub Inspector Kulwant Singh (Retired), the Investigating Officer at about 9.00 p.m., while deposing as PW.4, has stated that the secret informant came to him at 8.45 a.m. One can ignore the mistake between “a.m.” and “p.m.”. However, it is the case of the Investigating officer that he immediately sent a ruqa/information to the police station through Head Constable Dharminder Singh. On perusal of the FIR, it is apparent that the same was registered at 23.52 hours. The distance between the place where the information was received and the police station is 7/8 kms. All the members of the police party were travelling on a government vehicle. It is not the case of the prosecution that no metalled road was available. In such circumstances, there is a difference of approximately three hours in sending the ruqa and the registration of the FIR. Even the Head Constable Dharminder Singh has not been examined, rather given up by the Public Prosecutor. Still further, according to the case of the prosecution, the appellant was apprehended at about 10.00 p.m. and his search was carried out at 10.05 p.m. Thus, it can be safely stated that the FIR was registered subsequent to the time when the appellant was apprehended.

In view of the aforesaid, the case set up by the prosecution becomes doubtful, particularly when Head Constable Dharminder Singh, who had taken the ruqa/information memo to the police station, has not been

examined.

Next argument of learned counsel for the appellant on non-compliance of Section 50 of the 1985 Act does not need much discussion because in the present case, the alleged recovery is from the scooter and not from the personal search of the appellant. Hence, Section 50 of the 1985 Act would not be applicable with regard to the search of the vehicle. In this regard, reference can be made to the recent judgment passed in *State of Punjab v. Baljinder Singh (2019) 10 SCC 473*.

Next argument of the learned counsel for the appellant with regard to non-joining of an independent witness, needs a detailed consideration particularly when the case set up by the prosecution has become doubtful. It is undisputed that neither any independent witness has been joined nor it appears that any sincere effort was made to do so. When Assistant Sub Inspector Harjinder Singh appeared as PW.3, he stated that efforts were not made to call any independent witness from the Gurudwara Sahib Baba Tek Singh which is located at some distance from the place of recovery, particularly when he admitted that Baba Tek Singh along with his disciples resides in the Gurudwara Sahib itself. Still further, he also admitted that no police official was sent to village Dhanaula which is at a distance of two and half kilometers to call any independent witness. Similarly, when Sub Inspector Kulwant Singh, the Investigating Officer, appeared as PW.4, he stated that he tried to join some independent witness but nobody was available. The Investigating Officer has failed to elaborate as to how he made efforts particularly when, in his cross-examination, he has admitted that he did not make effort to call any independent witness either from

Gurudwara Sahib Baba Tek Singh or from the village Dhanaula. In the facts of the present case, the joining of an independent witness would have lent more credence to the case of the prosecution.

On careful reading of the judgment passed by the Special Court, it is apparent that the Court has failed to examine the evidence in depth rather the same has been examined in a superficial manner which is not expected from the Court. Before passing any judgment or arriving at any conclusion, the Court is expected to dig deep into the case and critically analyse the evidence available before it. In the present case, the judgment passed leaves a lot to be desired.

There is another aspect which needs discussion. On careful reading of the ruqa/memo of information sent by the Investigating Officer through Head Constable Dharminder Singh, it is apparent that the police party consisted of the Investigating Officer himself, Assistant Sub Inspector Harjinder Singh, Head Constable Bhupinder Singh, Head Constable Dharminder Singh, Head Constable Jaspal Singh, Head Constable Buta Singh and Constable Gurdeep Singh. The government vehicle was driven by Head Constable Daya Singh. The prosecution has not examined Head Constable Bhupinder Singh, Head Constable Dharminder Singh, Head Constable Jaspal Singh, Head Constable Buta Singh, Constable Gurdeep Singh and Head Constable Daya Singh. No reason for their non-examination is forthcoming. Still further, the Public Prosecutor made a statement before the Court to the effect that he gives up Head Constable Bhupinder Singh, Assistant Sub Inspector Jagsir Singh, Assistant Sub Inspector Satnam Singh, Sub Inspector Sardara Singh and Head Constable Dharminder Singh being

unnecessary. The evidence of Head Constable Dharminder Singh, as already noted, was important as he is alleged to have carried ruqa-the information/memorandum of information from the spot to the police station and after the registration of an FIR, he had also carried back the copy of that FIR to the spot.

In view thereof, the judgment passed by the Special Court is set aside. The appellant is acquitted of the charge and he be set free, if not required in any other case. The present appeal is allowed.

The miscellaneous application(s) pending, if any, shall also stand disposed of in terms of the main order.

(Anil Kshetarpal)
Judge

July 29, 2020
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No