

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

CRA-S-1825-SB-2007(O&M)

Date of decision:-13.9.2022

Khushal Singh

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Deepak Aggarwal, Advocate
for the appellant.

Mr.Vijesh Sharma, Addl.A.G., Haryana.

H.S. MADAAN, J.

1. Appellant Khushal Singh was tried by learned Additional Sessions Judge, Sirsa in case FIR No.64 dated 12.6.2002 for an offence under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), registered with Police Station Rori, District Sirsa and on conclusion of trial against the accused vide judgment dated 25.5.2007, he was convicted in that case for the offence for which he was booked and in terms of order 28.5.2007, he was sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.1,00,000/- and in default thereof to undergo further

simple imprisonment for a period of two years.

2. In nutshell, the case of the prosecution is that on 12.6.2002, SI Satbir Singh, SHO of Police Station Rori, District Sirsa (hereinafter referred to as the Investigating Officer/IO) along with other police officials was present at Malhari Chowk in the area of village Mattar, in government jeep having registration No.HR24-D/6106 in connection with patrolling and checking of crime; in the meanwhile a TATA Sumo vehicle came from the side of village Mattar; the police party signalled that vehicle with torch light to stop and in response thereto, driver of the TATA Sumo vehicle slowed it down initially but all of a sudden, he accelerated the speed and took the vehicle towards village Rori side; the police party chased that vehicle; then the driver of that vehicle turned it to KACHA passage leading towards Punjab from bus stand Rohan; after covering a distance of 1 ½ kms. from village Rohan, the TATA Sumo vehicle struck against a watercourse; the driver of the said vehicle ran away from the spot under cover of darkness; then the TATA Sumo vehicle bearing registration No.DL-8CA-5242 was checked and four bags of poppy straw were recovered therefrom; the IO took out two samples of 100 grams each from each bag and on being weighed, the residue poppy straw in each of the four bags came out to be 39 kgs. 800 grams; the samples and bags containing residue poppy straw were converted into parcels, sealed with the seal of IO having inscription SS; specimen seal impressions were taken on a chit and the seal after use was handed over to ASI Jagdish Rai. Thereafter, the sample parcels and bulk parcels along with TATA Sumo vehicle were taken into police possession vide

recovery memo Ex.PW6/A attested by ASI Jagdish Rai and HC Bhagirath. The IO sent ruqa Ex.PW6/C to the police station through Constable Seeta Ram, on the basis of which formal FIR Ex.PW6/B was recorded by MHC Nafe Singh. The IO prepared rough site plan of the place of recovery and recorded statements of witnesses.

3. Thereafter the police party came to the police station and the IO deposited the case property with MHC. The report under Section 57 of the Act Ex.PE was sent to DSP Headquarter Sirsa. The accused had applied for grant of pre-arrest bail to this Court. Therefore, he was formally arrested in this case on 25.8.2002. Samples parcels had been sent to the office of FSL, Haryana, Madhuban and as per report received therefrom Ex.PX, those were found to be that of poppy straw. After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

4. On presentation of the challan, copies thereof were supplied to the accused free of costs, as envisaged under Section 207 Cr.P.C.

5. Then on observing that prima facie charge for an offence under Section 15 of the Act was disclosed against the accused, he was charge-sheeted accordingly, to which, he pleaded not guilty and claimed trial.

6. During the course of its evidence, the prosecution examined Conbstable Sita Ram as PW1, HC Nafe Singh as PW2, Rajender Ex-Sarpanch as PW3, Rajinder son of Rameshwar as PW4, HC Harbans Singh as PW5, ASI Bhagirath as PW6, ASI Jagdish Rai as PW7 and Harjit Singh, Clerk as PW8. PWs Sube Singh and Krishan were given up

as unnecessary by the Public Prosecutor, whereas PW Satbir Singh had expired.

7. After closure of prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing in the prosecution evidence against him were put to the accused but he denied the allegations contending that nothing was recovered from his possession and a false case has been foisted upon him by the police at the instance of Rajinder Singh son of Rameshwar, who was relative of Sadhu Ram MHC.

8. The accused did not lead any evidence in his defence.

9. After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned above, which left him aggrieved and he had filed the present appeal, which was taken up on 14.9.2007 when it was admitted for regular hearing and recovery of fine was stayed. On an application under Section 389 Cr.P.C. having been filed by the appellant/accused for suspension of his sentence of imprisonment during the pendency of appeal, the same was allowed on 7.10.2009 and remaining sentence of appellant/accused was suspended during the pendency of the appeal and he was ordered to be released on bail on furnishing requisite bonds to the satisfaction of CJM/Duty Magistrate, Sirsa.

10. Now the appeal has come up for final hearing.

11. I have heard learned counsel for the appellant – accused, learned Addl.A.G., for the State of Haryana besides going through the record.

12. At the very outset, it may be stated that the prosecution has been unable to connect the accused with the recovery of contraband. Neither the accused is named in the FIR nor the salient features such as physical appearance, colour, complexion, height, features are mentioned therein. None of the members of the police party claimed to have seen the person, who was driving the TATA Sumo at the relevant time. It is not the case of the prosecution that any of the members of the police party was previously acquainted with the accused or they had identified him to be the person driving the TATA Sumo vehicle from which the contraband had been recovered. Under the circumstances, there was no occasion to hold any test identification parade so as to get the accused identified from the members of the police party nor the same was got arranged for the purpose. The TATA Sumo vehicle in question is not owned by the accused. The evidence that he was in possession of that vehicle does not come out to be convincing.

13. Though the prosecution had examined PW3 Sh.Rajinder Singh, Ex - Panch son of Sh.Jot Ram, 35 years, resident of village Kanhewal, District Mansa, who stated that on 11.6.2002, he was present in the house of Rameshwar Dass situated in DHANI in the area of village Kanhewal and he had gone to his house for taking TATA Sumo jeep, however, Rajinder son of Rameshwar Dass told him to take the vehicle on the next day; in the meanwhile, accused Khushal Singh came there for taking the jeep of Rajinder son of Rameshwar and took away the vehicle; on the next day, when he went to the house of Rameshwar Dass, and waited for sufficient time but vehicle was not sent by Khushal Singh; at

about 10:00 a.m. Rajinder came to this witness and told that police had seized his vehicle and poppy straw had been recovered from the vehicle by the police of Police Station Rori. This witness claimed that he along with Rajinder, Krishan Singh and Sube Singh went to the house of accused Khushal Singh, who told them that poppy straw had been recovered from the vehicle and he would bear all the expenses of the case; Khushal Singh had stated that he had left the vehicle at the spot and himself run away from there. In his cross-examination, the witness stated that Rajinder son of Rameshwar is his nephew. From the replies given by him in his cross-examination, the facts stated by him in his examination-in-chief come out to be quite doubtful and unconvincing and it seems that he had come forward to save Rajinder from any criminal action.

14. Rajinder son of Rameshwar had appeared as PW4 stating that he used to drive TATA Sumo jeep bearing registration No.DL-8CA-5242 as Taxi and park it at Taxi Stand of village Rori for being taken by the people on hire basis and on 11.6.2002, accused Khushal Singh came to his house and took away his jeep; on 12.6.2002, one Kewal Singh came to him at 9:00 a.m. and informed that his vehicle was parked at Police Station Rori and four bags of choora post were recovered from the same, then he along with some other persons went to the house of Khushal, who confessed before them that he had brought four bags of choora post in the jeep, which had been recovered by the police. In his cross-examination, he stated that he had not charged any money from accused Khushal Singh for taking his vehicle.

15. It is very strange that PW4 Rajinder plying the TATA Sumo

vehicle as a taxi would hand over the vehicle to Khushal Singh just at his asking without charging any money from him. Under normal circumstances, whenever a person wants to hire a taxi, then the taxi is driven by either the owner or the driver employed by him and it is not handed over to a person in such like manner. PW4 Rajinder did not claim that he had such close relationship with accused Khushal Singh that he handed over his vehicle to him just at his asking without charging any amount from him. The whole thing comes out to be unconvincing and unsatisfactory giving rise to a doubt as to whether Khushal Singh accused had in fact borrowed the TATA Sumo vehicle in question from its owner Rajinder and it was Khushal Singh, who was driving the TATA Sumo vehicle when it got stopped after hitting watercourse. While being examined under Section 313 Cr.P.C., accused has denied all these allegations stating that he has been involved in this case at the instance of Rajinder Singh son of Rameshwar, who is relative of Sadhu Ram posted as MHC at Police Station Rori.

16. Considering the facts and circumstances of the case, a reasonable doubt arises in the mind with regard to accused having been found in conscious possession of the contraband and as per law such benefit goes to the accused. In a judgment under similar circumstances rendered by a Division Bench of this Court i.e. ***Bakshish Singh alias Pappu and others Versus State of Punjab, 2013(26) RCR(Criminal)474,*** which was a case when poppy husk was recovered from a truck and car and without there being any cogent evidence on record to show that any of the person from the police party had identified the accused, no

identification parade was conducted and only on the basis of disclosure statement made by co-accused and two documents recovered from the truck, which were not mentioned in the ruqa, FIR or remand papers, accused had been convicted by the trial Court. In an appeal filed on behalf of Bakshinder Singh, accused, who was allegedly driving the truck at the relevant time, the appeal was accepted observing that the prosecution had failed to prove the guilt of such accused beyond reasonable doubt and his conviction by the trial Court was set aside.

17. Similarly in this case also, the prosecution had been unable to bring home guilt of the accused conclusively and affirmatively. He deserved to be given benefit of doubt, which was wrongly denied to him by the trial Court. The conviction and sentence of accused cannot be sustained. Therefore, allowing the appeal filed by the appellant, the impugned judgment of conviction and order of sentence passed against the appellant/accused are set aside, resultantly, he is acquitted of the charge framed against him.

Necessary intimation be sent to the quarter concerned.

13.9.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes