

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

CRA-S-2571-SB-2007(O&M)

Date of decision:-29.7.2022

Satyawan

...Appellant

Versus

State of Haryana

...Respondent

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

Present: Ms.Pushp Gupta, Advocate for  
Ms.Anju Arora, Advocate for the appellant.

Mr.Brijesh Sharma, AAG, Haryana.

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**H.S. MADAAN, J.**

1. Appellant/accused Satyawan was tried by Special Judge, Jind in case FIR No.193 dated 30.10.2004 for an offence under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), Police Station Uchana and in terms of judgment dated 19.11.2007, the accused/appellant was convicted in that case for the offence for which he was booked and vide order dated 21.11.2007, he was sentenced to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.30,000/- and in default thereof to further undergo rigorous imprisonment for a period of 6 months.

2. Briefly stated, the facts of the case as per prosecution version are that on 30.10.2004, the accused was apprehended by a police party from Police Station Uchana, District Jind led by ASI Ved Parkash, which was on patrol duty going from bus stand, Uchana to village Palwan. The accused had come from the side of village Palwan and he had been apprehended on the basis of suspicion at T-point, Palwan. ASI Ved Parkash suspected that accused was in possession of some contraband, as such, he served notice upon accused informing him of his right to get his search conducted in presence of some gazetted officer or a Magistrate. The accused vide memo Ex.PE/1 reposed confidence in the Investigating Officer. Thereafter, personal search of accused was conducted and he was found to be carrying CHARAS wrapped in a polythene paper in the left pocket of the shirt worn by him. The Investigating Officer drew sample of 25 gms. of charas and the remaining CHARAS on being weighed came to be 175 gms. The sample and bulk were converted into sealed parcels sealed with seal of the Investigating Officer and taken into police possession. A ruqa was sent to the police station, on the basis of which formal FIR was recorded. The accused was accordingly arrested in this case. The site plan of the place of recovery was prepared. Statements of witnesses were recorded. On return to the police station, accused along with the recovered contraband was produced before SI Prem Chand, SHO of Police Station Uchana, who verified the facts and circumstances of the case and put his own seal on each parcel. Thereafter, the case property was deposited with the MHC of the police station and accused was put up in lock up.

3. During the investigation, a sample parcel was sent to the office of Chemical Examiner, Haryana and as per report received therefrom, it was found to be that of CHARAS. On completion of investigation, accused was challaned and sent up to face trial.

4. On presentation of challan in the Court of learned Special Judge, Jind, he supplied copies of documents relied upon therein to the accused free of costs as provided under Section 207 Cr.P.C. Then observing that prima facie charge for an offence under Section 20 of the Act was disclosed against the accused, he was charge-sheeted accordingly, to which, he pleaded not guilty and claimed trial.

5. During the course of its evidence, the prosecution examined as many as seven witnesses i.e. PW1 Gaje Singh, Patwari, PW2 SI Kartar Singh Dahiya, PW3 SI Prem Chand,, PW4 EASI Basheshar Dutt, PW5 HC Jai Narain, PW6 ASI Ved Parkash and PW7 Constable Surinder Singh.

6. With that the prosecution evidence got concluded.

7. Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to him but he denied the allegations contending that he is innocent and had been falsely involved in this case.

8. Accused did not lead any evidence in his defence.

9. After hearing arguments, learned trial Court convicted and sentenced accused as mentioned above, which left him aggrieved and he has filed the present appeal, which came up for hearing on 7.1.2008 when it was admitted for regular hearing and 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 29.9.2008. Now the case has come up for regular hearing.

10. I have heard learned counsel for the appellant – accused – convict, learned Assistant Advocate General for the State of Haryana besides going through the record.

11. PW5 HC Jai Narain, PW7 Constable Surinder Singh recovery witnesses and ASI Ved Parkash, Investigating Officer have fully supported the prosecution story on all aspects. It stands duly proved on record that on 30.10.2004 in the area of T-point, Palwan, accused was found in conscious possession of 200 grams of CHARAS without any permit or licence. They were cross-examined at length on behalf of the accused but they remained unshattered and unanimous regarding material details of the episode. A few minor contradictions in their statements do not go to the root of matter since those are bound to occur due to difference in power of perception, observation and retention of events in various persons and so also due to lapse of memory due to passage of time etc. The official witnesses had no reason to involve the accused in this case wrongly, challan him falsely or to depose against him to secure his conviction.

12. The other evidence produced by the prosecution is corroborative in nature, which supports the prosecution story on material aspects. PW1 Gaje Singh, Patwari Halqa, Palwan had prepared the scaled site plan of the place of recovery on demarcation of HC Jai Narain and he deposed in that regard. PW2 SI Kartar Singh Dahiya stated that on

19.2.2005 while posted as SHO, P.S. Uchana, on that day on receipt of FSL report Ex.PB, he had prepared challan under Section 173 Cr.P.C. PW3 SI Prem Chand had deposed that on 30.10.2004 while he was posted as SI/SHO P.S. Uchana, on that day, accused along with the case property had been produced before him by the Investigating Officer and he had verified the facts and then put his own seal on the parcels, thereafter got the case property deposited with MHC. He stated that he had prepared his report Ex.PC/1 and sent the same to the DSP, Narwana. PW4 EASI Basheshar Dutt, a formal witness tendered in evidence his affidavit Ex.PD.

13. The prosecution had successfully proved that there was no tampering of the case property and sample taken from the recovered contraband and the same had reached office of Chemical Examiner without any tampering and as per report received therefrom, it was found to be that of CHARAS. There is nothing on record to suggest that any mandatory provision of law had been violated. The accused has not been able to render any reasonable or plausible explanation, which might have cast a doubt in the mind about the truthfulness of the prosecution story.

14. Therefore, I do not find any illegality and irregularity in the judgment passed by the learned trial Court. Rather it is based upon proper appraisal and appreciation of evidence and correct interpretation of law. The prosecution had successfully proved its case against the accused beyond a shadow of reasonable doubt and he was rightly convicted by the trial Court.

15. Now coming to the sentence part. The trial Court had

sentenced the accused to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.30,000/- and in default thereof to further undergo rigorous imprisonment for a period of 6 months.

16. As per the custody certificate placed on record by the State counsel, the appellant/accused has undergone 1 year, 2 months and 14 days of total sentence including remissions, which includes post conviction period of 10 months and 11 days. The actual undergone period including custody as undertrial is shown to be 1 year, 2 months and 14 days. The appellant/accused is not shown to be involved in any other criminal case.

17. Learned counsel appearing for the appellant/accused has contended that the appellant is a poor person and is only bread winner of his family; he is not a previous convict, therefore, sentence of the appellant/accused be reduced substantially.

18. Though learned State counsel has opposed any reduction in the sentence but keeping in view the facts and circumstances of the case, the period of imprisonment already undergone by the appellant/accused, the mitigating circumstances explained by learned counsel for the appellant that the appellant was aged about 28 years at the time of his conviction, further about 18 years have elapsed from the date of recovery and 15 years from the date of conviction; there is nothing on record to show that he had indulged in any criminal activity after suspension of his remaining sentence and his release on bail during the pendency of the appeal, I find that the sentence of imprisonment awarded to the appellant should be reduced to one already undergone by him in this case.

19. In that way, while upholding the judgment of conviction passed against the appellant/accused, the order of sentence is modified and his sentence is reduced to one already undergone by him in this case. Whereas, the fine part is kept as intact. The appellant/accused is directed to deposit the amount of fine in the trial Court within one month from today and in case of default of payment of fine, the appellant/accused shall be liable to be taken into custody and made to undergo sentence in default of payment of fine by Chief Judicial Magistrate, Jind by issuing Non-bailable warrants of arrest against him.

20. As such the appeal challenging the impugned judgment stands disposed of with above modification in sentence.

Intimation be sent to Chief Judicial Magistrate, Jind for necessary compliance.

29.7.2022  
**Brij**

**(H.S.MADAAN)**  
**JUDGE**

**Whether reasoned/speaking : No / Yes**

**Whether reportable : No / Yes**