

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

CRA-S-670-SB of 2007

DATE OF DECISION :- September 05, 2022

Raju

...Appellant

Versus

The State of Haryana

...Respondent

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

Present:- Mr. Sandeep Kumar, Advocate
for Mr. Vikram Singh, Advocate for the appellant.

Mr. Brijesh Sharma, AAG, Haryana.

1. Briefly stated the facts of the case as per prosecution version are that on 29.3.2006, a police party from police station Model town, Panipat headed by ASI Ranjit Singh (hereinafter referred to the investigating officer/IO) was present near Mata Harkaur School within the area of Shivaji Stadium, Model Town, Panipat in connection with patrolling and crime detection in a Gypsy. In the meanwhile, accused Abu Mohd. and Raju were spotted coming from the side of Gurudwara, who on seeing the police party in the Gypsy tried to turn back. They were apprehended on the basis of suspicion. On being enquired they disclosed their names and other particulars. The investigating officer suspected that accused were carrying some contraband so he served notice under Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the Act) upon the accused. Such notices with regard to Abu Mohd. being Ex.PH and with respect to Raju Ex.PG. PGrespectively. Both the accused responded to the notices vide replies Ex.PH/1 and ExPG/1 and they gave option of the search being carried out in presence of some Gazetted Officer.

Therefore, Sh. Sahib Ram Nehra ,DSP, a Gazetted Officer was called to the spot. On arrival , the said DSP directed that personal search of both the accused be carried out by the police personel. Firstly, search of accused Abu Mohd. was conducted, which resulted in recovery of 1½ Kg of Charas wrapped in three packets of wax paper containing 500 gms of Charas each. Two samples of 5 gm each were drawn there from. Thereafter the samples and residue were converted into parcels which were duly sealed and then the sample parcels as well as bulk parcels were taken into possession vide seizure memo Ex.PD.

2. Then personal search of accused Raju was conducted which resulted in recovery of two packets of Charas weighing 500 gm each. Two samples of 5 gm each were separated there from and then the samples and bulk were converted into sealed parcels which were taken into police possession vide memo Ex.PE.

3. Both the accused were arrested in this case as per law and requisite memos were prepared in that regard. Ruqa Ex.PJ was sent to Police Station, Model Town, Panipat on the basis of which formal F.I.R Ex.PJ/1 was recorded there. The investigating officer prepared rough site plan of place of recovery as Ex. PK. He recorded statements of witnesses. On return to the Police Station the case property was kept in safe custody.

4. On the next date i.e. 30.3.2006 the accused along with case property and witnesses were produced before the Ilaqa Magistrate, who on moving appropriate application passed order Ex.PX after issuing certificate Ex.PY and inventory of the case property was exhibited as Ex.PL. Photographs of the case property were taken as Ex.P1 to Ex.P7. On police application the learned Magistrate accepted the request for destruction of

case property vide orders Ex. PO. The case property was deposited with MHC Police Station Model Town, Panipat.

5. During the course of investigation five sample parcels were sent to Forensic Science Laboratory, Haryana, Madhuban and as per report Ex.PA received therefrom those were found to be of Charas.

6. On completion of investigation and other formalities challan against the accused was filed in the Court.

7. On presentation of challan in the Court copies of documents relied upon therein were supplied to both the accused free of cost under Section 207 Cr.P.C. Finding a prima facie case for an offence under Section 20 of the Act, charge was framed against the accused, accordingly to which they pleaded not guilty and claimed trial.

8. During the course of prosecution evidence prosecution examined following six witnesses :-

9. PW1 HC Vinod Kumar, a formal witness tendered in evidence his affidavit duly sworn as Ex.PB wherein he testified that on 29.3.2006 he was posted as MHC at Police Station Model Town, Panipat and was incharge of the Malkhana; case property of this case in the form in the shape of two bulk parcels and 10 sample parcels along with sample seal impression of ASI Ranjeet Kumar having inscription 'RK' and another seal having inscription 'RS' were deposited with him by ASI Ranjeet Kumar on 29.3.2006; he had handed over five sample parcels duly sealed to constable Arun Kumar with a direction to him to deposit those in the office of FSL, Haryana, Madhuban. Constable Arun Kumar accordingly did so and handed over receipt to him on the same day; during the period the case property remained with him neither he had tampered with the same nor anybody was

allowed to do so.

10. PW2 Constable Arum Kumar who had taken the five sample parcels duly sealed given to him by MHC Vinod Kumar for depositing those in FSL, Haryana, Punjab, through his affidavit Ex.PC testified that he had taken five sample parcels duly sealed along with specimen sealed impressions of 'RK' and 'SR' to FSL Madhuban along with RC No. 226 dated 18.4.2006. Then he had deposited the said articles in FSL Madhuban and on return gave receipt to MHC Vinod Kumar. He further testified that no tampering with such articles had taken place so long as they remained in his possession.

11. PW3 constable Kanhiya Lal, a qualified photographer stated that on 30.3.2006 he had taken photographs of the case property with a digital camera, such photographs being Ex. P1 to Ex. P7. Photographs Ex. P1 to Ex. P3 pertain to case property of Abu Mohd. and P4 to P7 relate to accused Raju. He stated that he had not done any touching to the photographs.

12. PW4 Sh. Sahib Ram Nehra, DSP deposed regarding his part supporting the prosecution story on material aspects especially with regard to recovery of contraband from the possession of accused.

13. PW5 HC Krishan Kumar, a witness of recovery also lent support to the case of prosecution on material points so did PW6 ASI Ranjeet Singh, the investigating officer of this case, who deposed regarding the investigation conducted by him and recovery of contraband from possession of accused in terms of prosecution story. He proved various documents on record.

14. Learned Public Prosecutor for State tendered in evidence order

dated 30.3.2006 passed by ACJM, Panipat as Ex.PX and Ex.P4 and thereafter closed evidence of prosecution.

15. Statements of the accused were recorded under Section 313 Cr.P.C in which all the incriminating circumstances appearing against the accused in prosecution evidence were put to them but they denied the same contending that they were innocent and have been falsely involved in this case.

16. During their defence evidence accused examined Amit Kumar, Manager M/s Shiva Enterprises , Purewal Colony, Assandh Road, Panipat as DW1, who stated that Raju was employee of Shiva Enterprises and he was issued identity card Ex.DA. Raju had been working with them for the last six years as a Tailor Master. He was not having any addiction and habbit of smoking or consuming alcohol etc. Raju was present in factory premises till lunch time on 29.3.2006. He proved photocopy of attendance Register Mark 'A' to Mark 'C'. The other witness examined by defence was DW2 Mohd. Anis son of Mohd. Isile, aged 30 years, labourer, resident of Loni, Ghaziabad, U.P. He stated that he had been working in Golden Tobacco Factory for the last five years; accused Abu Mohd. is his 'Sadu' (co-brother-in-law) in relation and he knew him for the last seven years; on 28.3.2006, Abu Mohd. came to him for collecting money in the sum of Rs.4,000/- which he had borrowed from him (appellant); that he had paid him Rs.4,000/- on 29.3.2006 in between 1.00/1.30 P.M; one boy namely Raju disclosed to be friend of Abu Mohd. was also with him. According to this witness thereafter they left for station and he came to his factory.

17. After hearing arguments, learned trial Court vide judgment dated 13.3.2007 convicted both the accused for an offence under Section 20

of the Act and in terms of the order passed on that very day Abu Mohd. was ordered to undergo rigorous imprisonment for a period of 12 years and to pay a fine of Rs.1,20,000/- and in default of payment of fine to undergo further rigorous imprisonment for a period of three years whereas Raju was sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1 lakh and in default of payment of fine to undergo further rigorous imprisonment for a period of 2 ½ years.

18. Such judgment of conviction and order of sentence left accused convict Raju aggrieved and he had approached this Court by way of filing an appeal which was taken up on 29.3.2007, when it was Admitted for regular hearing. Notice was also issued to the State. The recovery of fine was ordered to remain stayed during pendency of the appeal and in terms of order passed on 13.8.2007, his remaining sentence was suspended and he was ordered to be released on bail subject to his furnishing requisite bonds to the satisfaction of Chief Judicial Magistrate, Panipat.

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

20. I have heard learned counsel for the appellant and learned State counsel besides going through the record.

21. In this case, the prosecution has brought enough cogent and convincing evidence on record to prove the recovery of contraband from possession of accused in terms of the prosecution story. Sh. Sahib Ram Nehra ,DSP, a Gazetted Officer appearing as PW4, Head Constable Krishan Kumar appearing as PW5 and ASI Ranjeet Singh appearing as PW6 have supported the prosecution story on material aspects as regards of contraband having been recovered from possession of appellant accused Raju and his co-accused Abu Mohd.. All the three witnesses were subjected to lengthy

cross-examination but they stuck to their guns and their credibility could not be shaken on any material point. All three of them deposed in a natural and convincing manner and their deposition inspire confidence. No previous enmity between these PWs and the accused has been alleged or proved promoted by which they might have involved the accused in this case falsely or deposed against them to secure their conviction. From the statements of formel witnesses PW1 HC Vinod Kumar, PW2 Constable Arun Kumar necessary link evidence comes out to be there i.e. to say that no tampering with the case property had taken place after search and seizure and further the sample parcels had reached FSL Haryana, Madhuban with seals intact. Report therefrom exhibited Ex.PA also goes to corroborate this fact. The remaining witnesses examined by the prosecution corroborated this version. Report from FSL Haryana Madhuban Ex. PA reveals that on analysis the samples were found to be those of Charas.

22. Learned counsel for the appellant has attacked the prosecution story on various grounds. The first ground of attack was that no independent witness was joined with the police despite easy availability which puts doubt on credibility of prosecution version. However, I do not find any merit in his submission. Independent corroboration is a rule of prudence and not requirement of law. It is no where provided in any statute that independent corroboration is a must and in absence thereof, the case of the prosecution is to be rejected outrightly. As already discussed all the three witnesses of recovery are not shown to have any previous enmity with the accused, as such their depositions are to be taken at par with the independent witnesses and I do not see any reason to disbelieve their statements.

23. The next submission made by learned counsel for the appellant was that although separate recoveries have been effected from both the accused but a single challan was filed against them. However, I do not find illegality in such action of prosecution. The two accused had been apprehended by the police and recovery was effected from them. It was a chance recovery and not based upon any prior information. Both the accused had been charged sheeted separately to the extent of recovery effected from them and not booked for the total recovery of the contraband from both the accused. Therefore, since recovery was effected by the police party while the accused were coming together and one F.I.R had been registered against them, in my considered view there is nothing wrong if both the accused having been challaned and forwarded to face one trial though charge sheeted separately to the extent of recovery effected from them.

24. One more plea put up by learned counsel for the appellant was that there are material contradictions in the statements of witnesses of recovery as regards time, distance etc. I find that a few minor contradictions and variations of the statements of witnesses are bound to occur with passage of time on account of fading memory and difference in power of observation and perception of various individuals. Such variations rather go to show that witnesses are truthful unlike the tutored witnesses who depose in a parrot like manner. I find the account given by the prosecution witnesses to be trustworthy.

25. One more ground of attack of learned counsel for the appellant was that there was delay of 20 days in sending the samples to FSL. This objection also found to lack merit. A Division Bench of this Court in

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(Criminal) 25 had dealt with this aspect observing that such delay does not effect prosecution case adversely and prosecution and conviction cannot be vitiated on that ground. Even otherwise as observed supra prosecution has successfully established that no tampering with the case property had taken place after search and seizure and the sample parcels had reached FSL Haryana, Madhuban with seals intact. Therefore, some delay in sending the samples to FSL cannot result in the accused getting any benefit by default.

26. Last of all learned counsel for the appellant has contended that the accused had led evidence to show that they could not be present at the place where they were apprehended in terms of prosecution story and contraband recovered from them as such defence was wrongly rejected by the trial Court, though it was reliable and convincing. Again I find myself in disagreement with learned counsel for the appellant on this point. It has to be noticed that while being examined under Section 313 Cr.P.C the accused had not uttered a single word with regard to any specific defence plea. DW1 Amit Kumar happened to be Manager of some private concern and he had placed photocopy of the attendance register. The attendance register of private concern can be easily manipulated whereas DW2 Mohd. Anis is a close relative of Abu Mohd. (co-accused) of the present appellant and had every reason to depose falsely to save the accused. None of these DWs claims to have submitted any representation to the higher police officers or other wings of administration regarding alleged false implication of the accused in this case. The accused themselves do not claim to have taken any such step as against the cogent, convincing and reliable evidence both oral as well as documentary produced by the prosecution which has been found

to be free from any blemish. Statement of these two DWs cannot possibly wash away that evidence and take precedence over the evidence adduced by the prosecution so as to return finding of acquittal against the appellant.

27. The judgment passed by the trial Court is quite detailed, well reasoned, based upon proper appraisal and evidence and correct interpretation of law. There is no illegality or infirmity there with. The prosecution has successfully proved its charge against the accused. The accused had not raised any explanation for their false implication in this case or for the contraband. No mandatory provision of law in this case is shown to have been violated. The recovery of contraband effected from the accused is quite substantial. Such drug peddlers for monetary gain have made people of the area specially the youth to take to drugs in the process affecting their health adversely and creating many social problems also. Such type of people do not deserve any leniency least that would encourage the potential criminals to tread the path of crime. Thus the impugned judgment of conviction and order of sentence are upheld.

28. The appeal is found to be without merit and is dismissed accordingly.

29. Appellant Raju is stated to be on bail granted to him by this Court. His bail is cancelled. The Chief Judicial Magistrate, Panipat is directed to issue arrest warrants to get him arrested so as to make him undergo the remaining sentence.

(H.S. MADAAN)
JUDGE

September 05, 2022

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No