

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

CRA-S-100-SB-2005 (O&M)

Date of pronouncement: 03.08.2022

Avtar Singh

...Appellant

Versus

State of Haryana

...Respondent

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

Present: Mr. Narinder Singh, Advocate for the appellant.

Mr. Brijesh Sharma, AAG, Haryana.

H.S. MADAAN, J.

1. This appeal is directed against judgment dated 29.11.2004 passed by Judge, Special Court, Ambala, vide which he had tried accused Avtar Singh for an offence under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') and on conclusion of trial convicted him for the said offence and in terms of the order passed on 30.11.2004 sentenced him to undergo rigorous imprisonment for 07 years and to pay a fine of Rs.50,000/-; in default of payment of fine, to further undergo RI for one year.

2. Briefly stated the facts of the case, as per prosecution story are that on 22.11.2002, ASI Dhian Singh along with HC Ajay Kumar and other police officials from CIA GRP, Ambala Cantt. were present at Platform No.7 Railway Station Ambala Cantt., in connection with

checking of trains; in the meanwhile, train No.2925 UP Pashchim Express arrived from the side of Delhi going towards Punjab side; the police party carried out checking of the train and while doing so in a 2nd Class Compartment, Avtar Singh-accused seeing the police party left the coach and started walking away briskly; he was apprehended on the basis of suspicion; one Rakesh Mishra who was present at platform was joined with the police party; the accused was carrying a raxin bag of green and black colour; ASI Dhian Singh suspecting that the bag being carried by the accused contained some contraband and his desiring to search that served notice Ex.PE upon him informing the accused of his right to get the search conducted in the presence of some Gazetted officer or some Magistrate; the accused gave his option for his search before Gazetted officer or Magistrate, vide Ex.PE/1; accordingly, Sh. J.S. Bawa, DSP was informed who arrived at the spot and under his directions, the bag being carried by the accused was searched; a shirt, a parna (a piece of cloth) were found in the bag besides a plastic pouch wrapped inside the cloth; that pouch was found containing 2 kg of opium; two representative samples of 10 gms each were separated; the samples as well as residue were converted into parcels which were sealed; the said parcels along with other articles were taken into possession, vide memo Ex.PF; the accused could not produce any license or permit for possession of the opium; ruqa Ex.PB was sent to the police station on the basis of which, formal FIR was recorded; the accused was arrested in this case; necessary formalities were completed at the spot; rough site plan was prepared and

statements of witnesses were recorded; on return to the police station, the accused along with the case property and witnesses were produced before SI Dharampal, SHO of Police Station GRP, Ambala Cantt.; SI Dharampal verified the facts and then put his seal having impression 'DP' on the parcels; the case property was deposited with the MHC of the police station; report under Section 57 of the Act Ex.PL was prepared; during investigation of the case, a sample parcel was sent to FSL, Haryana and as per report received therefrom Ex.PM, it was found to be that of opium.

3. On completion of investigation and other formalities, challan against the accused was prepared and filed in the Court; documents relied upon in the challan were supplied to the accused free of costs as provided under Section 207 Cr.P.C., and then finding a prima facie case, charge for an offence under Section 18 of the Act was framed against the accused, to which he pleaded not guilty and claimed trial.

4. During the course of prosecution evidence, prosecution examined the following witnesses:-

PW-1 SI Dharampal deposed regarding his part i.e. the accused along with the case property and witnesses being produced before him by ASI Dhian Singh on 22.11.2002 at Police Station GRP Ambala Cantt., and his verifying the facts and then putting his seal having inscription 'DP' on the parcels and getting the case property deposited with MHC of the police station.

PW-2 HC Raghbir Singh in his affidavit Ex.PC deposed that he had carried a sample parcel with seals intact from police station to FSL and no tampering of seals had taken place during the intervening period.

PW-3 HC Ram Bachan, a formal witness tendered his affidavit Ex.PD to the effect that the case property was deposited with him and he had sent one sample parcel to FSL and further during the period the case property remained in his possession, that was in intact form.

PW-4 Inspector Satpal Singh who had prepared the challan in this case deposed in that regard.

PW-5 HC Ajay Kumar a witness of recovery deposed in that regard.

PW-6 ASI Dhian Singh, Investigating Officer of the case supported the prosecution story with regard to the recovery part and other aspects.

With that, the prosecution evidence got concluded.

5. Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing in prosecution evidence against the accused, were put to him but he denied the same, contending that he is innocent and has been falsely involved in this case. He did not lead any defence evidence despite availing several opportunities.

6. After hearing arguments, the trial Court convicted and sentenced the accused as detailed supra, which left him aggrieved and he

has filed the present appeal. The appeal came up for hearing on 11.01.2005, when it was admitted and recovery of fine was stayed.

Now the appeal has come up for final hearing.

7. I have heard learned counsel for the appellant/accused, learned State counsel besides going through the record.

8. The impugned judgment and order of sentence come out to be result of proper appraisal of evidence and correct interpretation of law, not suffering from any illegality or infirmity. The prosecution had successfully proved its charge against the accused beyond a shadow of reasonable doubt by bringing enough cogent, convincing and reliable evidence on the record. No motive for alleged false implication could be explained by the accused. PW-6 ASI Dhian Singh and PW-5 HC Ajay Kumar had fully supported the prosecution story with regard to the accused having been apprehended in a 2nd class coach of Pashchim Express at Ambala Cantt., on 22.11.2002. His search having been conducted in the present case by Gazetted officer namely Sh. JS Bawa, DSP as per option given by the accused and the raxin bag being carried by the accused was found to be containing 2 kg of opium without any license or permit. Both the PWs were subjected to lengthy cross-examination on behalf of the accused but they remained un-shattered and stuck to their guns except for few minor variations and contradictions here and there which are with regard to inconsequential details of the incident and do not go to the root of the matter. No previous enmity between these PWs and the accused has been alleged or proved prompted by

which they might have involved the accused in this case falsely or deposed against him to secure his conviction. From statements of formal witnesses PW-2 HC Raghbir Singh and PW-3 HC Ram Bachan, it comes out that no tampering of the case property had taken place during the period the case property remained with PW-3 HC Ram Bachan and sample parcel remained with HC Raghbir Singh. The testimony of Inspector Satpal Singh, PW-4 and PW-1 SI Dharampal also lend credence to the prosecution case. From the report of FSL Ex.PM, it comes out that on analysis, the sample was found to be that of opium.

9. The trial Court referring to Sections 54 and 35 of the Act had come to the conclusion that since possession of contraband by the accused stood established and accused failed to account for the same satisfactorily, a presumption against him is to be drawn that he had culpable mental state and he was in conscious possession of the contraband. The trial Court has referred to the case law by citing judgment **Kesar Singh Vs. State of Punjab, 1999 (2) RCR (Criminal) 803.**

10. Learned counsel for the appellant has raised various contentions; first being that independent witness Rakesh Mishra was not examined during the trial which affects the credibility of the prosecution story. However, I do not find myself in agreement with learned counsel for the appellant on that point. Independent corroboration is a rule of prudence and not requirement of law. No provision of law requires that in the absence of independent corroboration, the depositions of official

witnesses are to be discarded. The official witnesses in this case in the absence of any motive when subjected to cross-examination came out with flying colours and I do not see any reason to disbelieve their testimonies, which were rightly acted upon by the trial Court.

11. Learned counsel for the appellant stated that PW-5 HC Ajay Kumar had stated that the seal after use had been given to him by the IO whereas PW-6 ASI Dhian Singh stated that it had been given to independent witness, which is major lacuna in this case. Again I do not find much merit in this contention. Forgetfulness is one of the basic human trait. Human memory starts fading with passage of time. No two persons have got similar memory and extent of understanding recapitulation of events varies in the human beings. Similarly two persons may have different perception of distance, time, direction etc. A slip here or there in the statement of a witness cannot be magnified so as to make a mountain out of a molehill and resultantly letting off a person found in the possession of large quantity of contraband.

12. With regard to the contention that there was delay of 06 days in sending the sample to FSL, that also does not merit much attention because opium is not such a substance which undergoes change in composition within such a span of time; sometime that much could have been taken in preparing the necessary dockets and sending the sample to FSL keeping in view the availability of the police personnel and other duty work. Furthermore the prosecution has successfully proved that no tampering with the parcels had taken place and they remained in safe

custody. No prejudice to the accused is shown to have been caused by any such delay.

13. As regards the submissions that notice under Section 50 of the Act and the arrest memo carry thumb impression of the accused and his name is not mentioned. However that does not render the investigation illegal or cause any prejudice to the accused. The Court is to take overall view of the case and not to adopt a hyper technical approach which may result in failure of justice.

14. With regard to objection that DSP Sh. J.S. Bawa was not examined. Again that does not make much difference. It is quality of the evidence and not the quantity which matters. The prosecution is not required to examine each and every witness cited by it. The prosecution has successfully proved recovery of contraband from the accused by examining PW6 ASI Dhian Singh and PW5 HC Ajay Kumar. Therefore, this argument by learned counsel for the appellant is also rejected being without any merit.

15. Under the circumstances, the appeal is doomed for failure since I do not see any reason to interfere with the impugned judgment and order passed by the trial Court. There is no scope for reduction in the sentence since the contraband recovered from the accused is quite substantial. As has been rightly observed by the trial Court while sentencing the accused, the recovery is nearing commercial quantity. The judgment of Hon'ble Supreme Court has been referred to **Union of India Vs. Kuldeep Singh, 2004 (1) RCR (Criminal) 90** observing that an

offence relating to Narcotic Drugs and Psychotropic Substances is more heinous than a culpable homicide because the latter affects only an individual whereas the former affects and leaves its deleterious impact on the society besides shattering the economy of the nation as well.

16. The drug traffickers are playing havoc with the lives of innocent persons more particularly the youth of the region for getting pecuniary gain for themselves. They do not hesitate to endanger the lives of innocent persons. Therefore, no leniency can be shown to such type of persons. I do not find any reason to reduce the sentence imposed upon the appellant/convict. The appeal is found to be without merit, and is dismissed accordingly.

17. Necessary intimation be sent to the Chief Judicial Magistrate, Ambala to issue necessary warrants of arrest against the accused, so as to make him undergo the remaining sentence.

03.08.2022

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No