

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

CRA-S-1273-SB-2006 (O&M)

Date of pronouncement: 26.08.2022

Gyanti Devi

...Appellant

Versus

UT, Chandigarh

...Respondent

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

Present: Mr. Sarvesh Malik, Legal Aid Counsel
for the appellant.

Mr. Aakashdeep Singh, Addl. PP, UT Chandigarh.

H.S. MADAAN, J.

1. In nutshell, the facts of the case, as per prosecution story are that on 02.10.2004, a police party from Police Station Industrial Area, UT Chandigarh headed by SI Inder Singh, [hereinafter referred to as the Investigating Officer (IO)] was present in area of Phase-I of Industrial Area in connection with patrolling and checking of crime; the IO received a secret information that accused was standing near Sukhna bridge, having a packet in her hand, which might be containing stolen property; the police party accordingly went to the disclosed place and found the accused standing there; the packet which she was holding in her hand was searched and it was found to contain 04 smaller packets closed with plastic tape; the plastic tape was removed and the material in the packets was found to be charas; each packet was having 500 gm of charas; the IO

took out two samples of 50 gm from each packet; the sample and remaining bulk of each packet were separately sealed by the IO with his seal having impression 'IS'; the seal after use was handed over to Constable Mukesh Kumar; 12 packets were taken into police possession, vide recovery memo Ex.P1; the accused was arrested and a memo Ex.P18 was prepared in that regard; information regarding her arrest was given, vide memo Ex.P2; the IO recorded statements of witnesses; accused could not produce any license or permit for possession of the contraband.

The IO sent ruqa Ex.P15 to police station on the basis of which formal FIR Ex.P16 was recorded; the IO prepared rough site plan of the place of recovery as Ex.P17; on conclusion of proceedings on the spot, the IO brought the accused along with the case property and witnesses to Police Station Industrial Area, Chandigarh and produced the accused, the case property and witnesses before Inspector Nanha Ram, SHO of the Police Station who verified the facts and put his own seal having impression 'NR' on every parcel; sample seal impression was prepared; seal after use was handed over to SI Inder Singh, then Inspector Nanha Ram deposited the case property with MMHC; he produced 08 parcels duly sealed before Illaqa Magistrate on the same day for certification; after getting the sample certified, the parcels were deposited back with MMHC Tejinder Singh; MMHC Tejinder Singh had sent the sample duly sealed to Central Forensic Science Laboratory (for short 'CFSL') through Constable Mukesh Kumar and as per report received there from Ex.P19, the four packets were found to be of charas. After

completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Judge, Special Court, Chandigarh.

2. On presentation of the challan, documents relied upon therein 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 offences under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), was framed against the accused, to which she pleaded not guilty and claimed trial.

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

PW1 Constable Mukesh Kumar, a witness of recovery deposed with regard to recovery of charas from the accused. He testified as per the prosecution story. He further stated that he had transmitted the samples handed over to him by MMHC Tejinder Singh to CFSL with seals intact thereon.

PW2 SI Inder Singh deposed regarding his part and the recovery of contraband from the possession of accused besides investigation conducted by him proving various documents.

PW3 HC Tejinder Singh testified that the case property duly sealed was deposited with him by Inspector/SHO Nanha Ram and he had sent four samples duly sealed to CFSL through Constable Mukesh Kumar.

PW-4 Lady Constable Darshan Kaur stated that on the

direction of SI Inder Singh, she had conducted the personal search of accused, vide memo Ex.P18.

PW-5 Sh. A.K. Dalela, deposed that he had received four samples duly sealed through Constable Mukesh Kumar on 05.10.2004 and after analyzing the contents of same, he found those samples to be that of charas, vide his report Ex.P19.

PW-6 Constable Yashpal deposed that he had prepared scaled site plan of place of recovery as Ex.P20 at the instance of SI Inder Singh.

PW-7 SI Om Parkash, who had recorded the formal FIR Ex.P16 on receipt of ruqa Ex.P15 testified in that regard.

PW-8 Inspector Nanha Ram deposed regarding his part in the investigation as per prosecution case.

PW-9 Sh. Sudeep Goyal, JMIC, Chandigarh deposed regarding production of case property before him and passing of orders Ex.P23 and P24 by him in that regard.

PW-10 HC Baldev Singh proved the entries in daily dairy made as Ex.P25 and P26.

The prosecution relied upon various documents and thereafter, its evidence was closed.

4. 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 her but she denied the allegations contending that she was innocent and had been falsely implicated in this case; that in fact one Vinod resident of village Jadopur

had come to her and stated that her son Bali Ram was working as an agriculture labourer at village Hindupur, District Patiala near Chandigarh was ailing and he would take her to him. She accordingly accompanied him only for the purpose to see her ailing son. She reached bus stand Chandigarh on 02.10.2004 by bus. After a few minutes Vinod stated that he had to meet someone at Bus Stand and she should stay in the bus. He asked her to get down in colony No.4, where he would again meet her. He had also purchased two tickets out of which one was given to her. She stated that the alleged bag was also handed over to her by Vinod stating that he would take it after the bus reached colony no.4 and he had left the alleged bag near her seat on the local bus stand. After some time some police officials boarded the bus and seized the above bag asking her to alight from the bus, though she kept on crying that the bag belonged to Vinod but the police officials did not pay any heed; that after tracing her, her son made representations to Inspector General of police and Deputy Commissioner Chandigarh on 11.02.2005 narrating the whole episode but the police did not apprehend the real culprit.

5. During her defence evidence, accused examined Inderjit Singh as DW-1, DW-2 Madan Mohan Singh, DW-3 Ram Bali son of the accused, who supported her version.

6. After hearing arguments, Judge, Special Court, Chandigarh vide judgment dated 15.04.2006 convicted the accused for an offence under Section 20 of the Act for having been found in conscious possession of 02 kg of charas without any license or permit and in terms

of the order passed on 17.04.2006, accused was sentenced to undergo rigorous imprisonment (RI) for a period of 10 years and to pay a fine of Rs.1 lakh; in default of payment of fine, to undergo further RI for one year.

7. This judgment of conviction and order of sentence left the appellant/accused aggrieved and she had filed the present appeal, notice of which was given to the State, which has put in appearance. The appeal was taken up for hearing on 30.10.2006, when it was Admitted for regular hearing and recovery of fine was stayed, whereas, vide order dated 26.11.2008, the remaining sentence of appellant was suspended during pendency of the appeal, subject to her furnishing requisite bonds to the satisfaction of Chief Judicial Magistrate, Chandigarh.

Now the appeal has come up for final hearing.

8. I have heard learned Legal Aid Counsel for the appellant/accused, learned State counsel besides going through the record.

9. Here, both the witnesses of recovery namely PW-1 Constable Mukesh Kumar and PW-2 SI Inder Singh, fully supported the prosecution version on material aspects with regard to accused having been found in conscious possession of 02 kg of charas on 02.10.2004 in the area near Sukhna bridge, Chandigarh without any permit or license. Both these PWs were cross-examined at length on behalf of the accused but they stuck to their guns and could not be shattered on any material point. No reason has been suggested or proved prompted by which they might have

involved the accused falsely or deposed against her to secure her conviction. The depositions of these PWs come out to be natural and convincing and inspire confidence, and I do not see any reason to disbelieve the same.

From the other evidence adduced by the prosecution, it comes out that no tampering with the case property had taken place after search and seizure and that the sample parcels had reached CFSL with seals intact and on analysis, those were found to be that of charas. The accused had failed to render any reasonable or plausible explanation for her alleged false implication in this case. The plea taken by her that recovered contraband belonged to one Vinod and not her does not come out to be convincing and plausible. The DWs examined by her in defence are not found to be reliable and trustworthy, keeping in view the reason given by them in their cross-examination and their conduct after recovery from the accused.

She has failed to account for the possession of recovered contraband, therefore, drawing presumption under Sections 35 and 54 of the Act, she is to be taken in conscious possession of the contraband. The prosecution had successfully proved its charge against the accused conclusively and affirmatively beyond a shadow of reasonable doubt.

10. As regards the submissions made by learned counsel for the appellant, the first one was with regard to non-compliance of Section 50 of the Act. This contention is without any force, since admittedly Section 50 of the Act is applicable in case of personal search only and not with

regard to search of packet which the accused may be holding in his/her hand. Furthermore as per the secret information with the police, the accused was in possession of some stolen property and not contraband and it was only on opening the packet which she was holding four smaller packets containing contraband had been recovered. Therefore, there was no occasion for complying with provisions of Section 50 of the Act.

11. Regarding the other objection that no independent witness was joined. It may be stated that independent corroboration is a rule of prudence and not requirement of law. Here as already observed, both the official witnesses were not found to have any animosity or enmity with the accused spurred by which they might have planted a false case upon the accused. Therefore, their depositions have been found to be natural and worthy of reliance and the same are to be treated at par with those of independent witnesses. Non-joining of independent witness in this case does not make any difference.

12. With regard to calling of lady Constable, the prosecution has examined PW-4 Lady Constable Darshan Kaur, who stated that on the direction of SI Inder Singh, she had conducted the personal search of accused before she was arrested, vide memo Ex.P18.

13. The impugned judgment of conviction passed by the trial Court is quite detailed, well reasoned, based upon proper appraisal of evidence and correct interpretation of law. There is no illegality or infirmity therein. The same is upheld as regards the conviction.

With regard to sentence imposed upon the accused, the

recovery effected in this case amounts to commercial quantity with minimum punishment of 10 years and fine of Rs.1 lakh. The trial Court has been quite lenient with the appellant/accused by imposing minimum punishment. There is no scope for further reduction in the sentence. Therefore, his sentence part is also upheld.

The appeal is found to be without merit and same is hereby dismissed.

14. The appellant/accused is directed to surrender before Chief Judicial Magistrate, Chandigarh within a week from today, failing which learned CJM, would issue warrants of arrest to secure her presence and send her to jail to undergo the remaining sentence. Necessary intimation be sent to the Court concerned for information and compliance.

26.08.2022
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(H.S. MADAAN)
JUDGE

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