

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

- (1) CRA-S-1929-SB-2006 (O&M)
- Balwinder Singh @ Fauji  
Versus  
State of Punjab
- ...Appellant
- ...Respondent
- (2) CRA-S-2141-SB-2006 (O&M)
- Gurdev Singh and another  
Versus  
State of Punjab
- ...Appellants
- ...Respondent
- (3) CRA-S-2526-SB-2006 (O&M)
- Makhan Ram  
Versus  
State of Punjab
- ...Appellant
- ...Respondent

**Date of pronouncement: 18.08.2022**

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

Present: Ms. Kiran Verma, Advocate/Legal Aid Counsel  
for the appellant(s).

Mr. Anmol Singh Sandhu, AAG, Punjab.

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

1. By this judgment, I intend to dispose of above mentioned

three appeals arising out of the same judgment, passed by Judge, Special Court, Jalandhar in FIR No.230 dated 07.12.2002 for an offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), registered with Police Station Phillaur, District Jalandhar, i.e., CRA-S-1929-SB-2006 by appellant Balwinder Singh @ Fauji, CRA-S-2141-SB-2006 by Gurdev Singh and Nazar Ram and CRA-S-2526-SB-2006 by Makhan Ram.

2. Briefly stated the facts of the case, as per prosecution story are that on 07.12.2002, a police party from Police Station Phillaur headed by Inspector Nirmal Singh (for brevity 'IO') was travelling in a government Gypsy doing patrolling within its jurisdiction going from Apra towards Phillaur; when the vehicle carrying the police party had reached 2 km ahead of Village Khanpur, then LP Truck without number plate on the front side, was spotted coming at a very high speed; it was signalled to stop by the police party; a person who was identified as Balwinder Singh @ Fauji jumped out from the truck and ran away; he was chased by ASI Somnath and Constable Nishan Singh; the truck was being driven by Gurdev Singh-accused whereas Nazir Ram and Makhan Ram were sitting by his side; in the meanwhile, Sohan Singh an independent witness arrived at the spot; he was joined with the police party; three accused apprehended at the spot mentioned supra were informed by the IO that he suspected some contraband being carried in the truck and the accused had a right to get the search carried out in the presence of some Gazetted Officer or a Magistrate; all the three accused

opted to get the search conducted in the presence of a Gazetted Officer; memos in that regard Ex.PA to PC were prepared; as such the IO summoned Sh. Kamaljit Singh, DSP, Sub Division Phillaur, a Gazetted Police Officer to the spot by sending a wireless message; Sh. Kamaljit Singh, DSP accordingly arrived at the spot; he introduced himself to the accused informing them that he was a Gazetted Officer and that he intended to search the truck, since it was suspected to be carrying narcotic and that the accused could get the search conducted by him or by some Magistrate; all the three accused reposed confidence in Sh. Kamaljit Singh, DSP; their consent memos in that regard were prepared; thereafter under supervision and instructions of Sh. Kamaljit Singh, DSP, the body of the truck was searched, which was covered with a tarpaulin; 42 bags were found to be there, those bags contained poppy husk; two samples of 250 gms each were drawn from each of 42 bags and the residue poppy husk on being weighed came to be 38 kg in each bag; the samples and the bags containing residue poppy husk were converted into parcels duly sealed with seal of IO having inscription 'NS' and seal of DSP having inscription 'KJS'; sample seals impression were taken on a separate paper; the IO handed over the seal after use to independent witness Sohan Singh whereas Sh. Kamaljit Singh, DSP retained his seal with him, after use; thereafter the case property along with tarpaulin and truck were taken into police possession vide a recovery memo Ex.PD attested by the witnesses; the accused were arrested in this case; ruqa Ex.PM was sent to the police station on the basis of which formal FIR Ex.PM/1 was

recorded; information regarding arrest of the accused was sent to their relatives; personal search of all the three accused was conducted and separate memos in that regard were prepared as Ex.PH to PJ; rough site plan of place of recovery was prepared as Ex.PN; on return to the police station, the IO produced the case property along with the accused and witnesses before SHO and then on his instructions, the case property was deposited with MHC of the police station whereas accused were put in lock-up; during the course of investigation, sample parcels were sent to the office of Chemical Examiner, Punjab and as per report received there from Ex.PO, the sample were found to be that of poppy head. Balwinder Singh @ Fauji accused was also arrested.

On completion of investigation and other formalities, challan against the accused was prepared and filed in the Court; 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 an offence under Section 15 of the Act was framed against the accused, to which they pleaded not guilty and claimed trial.

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

PW-1 HC Pankaj Kumar.

PW-2 SI Tarlochan Singh, a witness of recovery deposed with regard to recovery of contraband from the possession of the accused in terms of the prosecution story.

PW-3 Mrs. Shimla Devi, Steno to DTO, Ludhiana had brought the record with regard to ownership of the truck in question.

PW-4 Inspector Nirmal Singh the IO of this case deposed regarding the investigation conducted by him and with regard to recovery of contraband from possession of the accused.

PW-5 Sh. Kamaljit Singh, DSP testified about his role and recovery of contraband having been effected from possession of the accused which they were carrying in the truck on the fateful day.

PW-6 HC Nishan Singh stated that he had identified Balwinder Singh at the spot since Balwinder Singh used to visit Police Station Phillaur with some person where he remained posted.

PW-7 Constable Ashwani Kumar vide his affidavit Ex.PR testified that on 12.12.2002, he had taken sample parcels to the office of Chemical Examiner with seals intact. His affidavit is basically with regard to safe custody of the sample parcels during the period those remained in his possession.

The prosecution relied upon several documents. With that, the prosecution evidence got concluded.

4. Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing in prosecution evidence against the accused were put to them but they denied the allegations contending that they were innocent and had been falsely involved in this case. Accused Gurdev Singh and Balwinder Singh came up with a plea that they had not committed any offence and

no recovery was affected from them. They did not know their co-accused where as Nazir Ram had taken a plea that he had no connection with the truck in question and the case has been falsely planted upon him. The plea taken up by accused Makhan Ram was that he was chowkidar of Village Ballowal and he has litigation with Gurdial Chand, for that reason he was picked up from his house on 06.12.2002 and thereafter involved in this case.

5. During course of their defence evidence, the accused examined Shri. Rano wife of accused Makhan Ram, as the DW – 1, who deposed that on 08.12.2002 while she along with her husband were present at home, then police from Police Station Phillaur came and took her husband away. She took Sarpanch and other respectable of the village to police station on 06.12.2002 and 07.12.2002 but the police put them off stating that her husband was required for inquiry but subsequently he was involved in a false case. She further stated that her husband was chowkidaar of Village Ballowal and had won a case against Dyal Singh who had close relations with the police.

DW-2 Darbana Singh testified that accused Makhan Ram was chowkidar of his village and on 06.12.20002 he (this witness) along with wife of Makhan Ram and other persons visited PS Phillaur with regard to picking up of Makhan Ram by the police from home.

6. After hearing arguments, vide impugned judgment dated 12.09.2006, all the four accused were convicted for an offence under Section 15 of the Act and in terms of the order passed on that very day, all

the four accused were sentenced to undergo rigorous imprisonment (RI) for a period of 10 years each and to pay a fine of Rs.1 lakh each; in default of payment of fine, to undergo further RI for 02 years each.

Feeling aggrieved by the said judgment of their conviction and sentence, all the four accused have preferred the present appeals which have come up for hearing now.

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

8. The first ground of attack by counsel for the appellants was that independent witness joined with the police party namely Sohan Singh was not examined as a witness by the prosecution; his examination was necessary since as per prosecution story, seal of the IO after use had been handed over to him, therefore, a severe blow is dealt to the prosecution story and a reasonable doubt arises in the mind about truthfulness of prosecution story, therefore, benefit of doubt should be given to the accused and they should be acquitted of the charge framed against them.

Whereas, learned State counsel has submitted that non-examination of the independent witness does not affect the credibility of prosecution story.

After hearing the rival contentions, I find that since in the present case, there is nothing to show that the official witnesses had any previous enmity with the accused, prompted by which they might have

involved the accused in this case wrongly. Therefore, there is no reason to doubt the depositions of official witnesses and look for independent corroboration even. Even otherwise, independent corroboration is a rule of prudence and not requirement of law. I find the explanation of State counsel to be quite cogent and convincing. The trial Court has also dealt with this aspect in details in the impugned judgment and I do not see any reason to have a different view in the matter.

9. Another argument advanced by counsel for the appellants was that identity of accused Balwinder Singh @ Fauji was not established because in terms of the prosecution story, he had jumped off from the truck and ran away. However, learned State counsel while drawing attention of the Court to testimony of PW6 HC Nishan Singh stated that HC Nishan Singh who was member of the police party and was acquainted with Balwinder Singh specifically stated that he had identified accused Balwinder Singh. Therefore, this objection by learned counsel for the appellants lacks merit.

10. Learned counsel for the appellants had further contended that in terms of the prosecution story, the contraband recovery was in the form of poppy husk but as per report Ex.PO received from the office of Chemical Examiner, it was found to be that of poppy heads, which creates a doubt about truthfulness of the prosecution story.

Whereas, learned State counsel while referring to para No.20 of the impugned judgment where this aspect has been discussed by observing that poppy husk, poppy straw includes all parts of opium

poppy and no benefit can be granted to the accused on this score, has submitted that this is the adequate explanation in the matter and does not constitute a doubtful circumstance.

I find the view taken by the trial Court in the matter does not call for any disagreement and the accused cannot get any benefit in that score.

11. Learned counsel for the appellants has pointed out certain discrepancies in statements of witnesses of recovery namely PW2 SI Tarlochan Singh, PW4 Inspector Nirmal Singh, PW5 Sh. Kawanljit Singh, DSP, stating that such contradictions render their depositions doubtful.

Whereas learned State counsel has contended that the discrepancies so pointed out are with regard to inconsequential details of the incident which could be result of lapse of memory on account of passage of time.

After hearing the rival contentions, I find that the discrepancies so pointed out by learned counsel for the appellants are mostly with regard to time when the truck was seen and spotted; the time of arrival of DSP at the spot; the time when the police party along with accused had reached the police station etc., and further in respect of distance between various places. Such type of variations are bound to arise due to difference in power of observation, memorization of events and perception of various individuals. These rather goes to show that witnesses are truthful and not tutored ones who depose in a parrot like

manner. Furthermore, statements of PWs were recorded in the Court after a considerable time and it is matter of common knowledge that human memory fades as the time expires resulting into forgetfulness also. The depositions of witnesses of recovery cannot be doubted for that reason. Therefore, this contention of learned counsel for the appellants does not cut any ice.

12. In this case, all the witnesses of recovery above mentioned have fully supported the prosecution story on material aspects. They 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. As observed earlier, there is no material on record to show that they had any previous enmity with the accused for reason of which they might have implicated the accused in this case falsely. I do not see any reason to disbelieve their depositions. The prosecution has successfully proved that the case property remained in safe custody and there was no tampering of seals during the period, the case property remained deposited in malkhana and sample parcels were taken to office of Chemical Examiner for deposit there for analysis. The investigation in this case has been conducted in a fair and impartial manner. The very fact that the contraband was being carried in a LP truck which is not a passenger vehicle but transport vehicle and all the four accused were travelling in that truck goes to point out towards their conscious possession of the contraband. All four of them are to be taken to be in joint possession of the contraband. They could not render any reasonable or plausible explanation for the

contraband having been recovered from the truck in which they were travelling. They are to be taken as in conscious possession of the contraband in view of Sections 35 and 54 of the Act. Keeping in view the huge quantity of recovery involved, there are little chances of the same being planted upon the accused.

No convincing reason for their alleged false implication comes out to be there and the reason given by them does not come out to be convincing and worthy of reliance. The prosecution had proved its charge against the accused beyond a shadow of reasonable doubt and all the four accused were rightly convicted and sentenced by the trial Court. The trial Court has been quite lenient with the accused in awarding minimum punishment for the offence. There is no scope for further reduction. Therefore, the appeals are found to be without merit and the same are dismissed accordingly.

The accused/appellants who were granted the concession of suspension of sentence during the pendency of the appeals in terms of the order passed by this Court are ordered to surrender before Chief Judicial Magistrate, Jalandhar within a week from today, failing which learned CJM, would issue warrants of arrest to secure their presence and send them to jail to undergo the remaining sentence. Necessary intimation be sent to the Court concerned in this regard.

18.08.2022

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

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