

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

CRA-S-203-SB-2006 (O&M)

Date of pronouncement: 04.08.2022

Rohtash

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Mr. Dhirinder Chopra, Advocate for the appellant.

Mr. Anmol Singh Sandhu, AAG, Punjab.

H.S. MADAAN, J.

1. This appeal is directed against judgment dated 17.01.2006 passed by Judge, Special Court, Sangrur, vide which on completion of trial, accused Rohtash son of Kushla Ram was convicted for an offence under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') and vide order of the even date, he was sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1 lakh; in default of payment of fine, to further undergo RI for one year. Since the other accused in this case namely Shish Ram had been declared proclaimed offender, no decision with regard to his culpability was taken and no order with respect to his sentence was passed.

2. Briefly stated the facts of the case, as per prosecution story are that on 12.10.1999, Inspector Barjinderpal Singh along with other

police officials was travelling in a Government vehicle bearing registration No.PB-13-B-1601 going from Moonak to Kundani Handa in connection with patrolling; when the vehicle reached near Ghagar bridge also known as Panjha Pulla, Sukhdev Singh Lambardar came across the police party, he was joined therewith; when the police party reached at a distance of about 100 yards on kucha path towards Kudni in the area of Moonak, then Rohtash and Shish Ram accused were spotted sitting under a kikkar tree; accused Rohtash was holding a tin can (pipi) whereas Shish Ram was opening its lid; the police party stopped its vehicle; on observing the police personnel, both the accused stood up; they were apprehended on the basis of suspicion; Inspector Barjinderpal Singh told the accused that he suspected that there was some intoxicant substance in the tin can in their possession and wanted to search the same, if the accused so desired, then a Gazetted officer or Magistrate could be summoned to the spot; both the accused opted to get the search conducted in the presence of some Gazetted officer; their consent statements were recorded in that regard which were thumb marked by them; accordingly, Sh. Manohar Singh, DSP Sangrur was summoned to the spot by sending a wireless message; on arrival at the spot, the DSP gave his introduction to the accused, telling them that he was a Gazetted officer; on the direction of said DSP, Inspector Barjinderpal Singh conducted search of tin can, after opening the same, it was found to contain opium wrapped in a glazed paper; two samples of 10 gm each were drawn therefrom and put in a small tin boxes which were converted into parcels; the remaining

opium on being weighed came out to 3 kg 480 gm; it was placed in the same can and converted into a parcel; all the three parcels were sealed by Inspector Barjinderpal Singh with his seal having impression 'BS'; Sh. Manohar Singh, DSP also put his seal having impression 'MS' on the parcels; the case property was taken into possession, vide a recovery memo attested by witnesses; sample seal chit was prepared separately carrying impression of seal of IO and DSP; it was handed over to PW Sukhdev Singh; on further search of accused Rohtash, one jhola containing pant, shirt and an envelope of glazed paper was found lying near the feet of Rohtash; those articles were taken into possession, vide memo attested by PWs; personal search of Shish Ram was conducted and the articles recovered as a result were taken into possession, vide a recovery memo; ruqa was sent to the police station on the basis of which, formal FIR was registered against the accused; both the accused were arrested in this case; necessary documents were prepared in that regard; rough site plan of the place of recovery was also prepared and statements of witnesses were recorded; on return to the police station, the IO deposited the case property with MHC Pavitar Singh; on the next day on 13.10.1999, ASI Inder Singh took the case property from MHC Pavitar Singh and produced the same before Illaqa Magistrate and then redeposited the same with MHC; sample parcel was sent to the office of Chemical Examiner, Punjab and as per report received therefrom, 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; 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 18 of the Act was framed against the accused, to which they pleaded not guilty and claimed trial.

4. During the course of prosecution evidence, prosecution examined PW-1 ASI Baldev Singh and PW-3 Inspector Barjinderpal Singh, both of them supported the prosecution story with regard to recovery of contraband from the possession of accused; in addition to that, PW-3 Inspector Barjinderpal Singh testified with regard to the investigation conducted by him.

PW-6 Manohar Singh, DSP (retired) another recovery witness also supported the prosecution story on material points, particularly with regard to recovery of contraband from the tin which was in the possession of both the accused.

PW-2 ASI Inder Singh, PW-4 HC Pavitar Singh, PW-5 C-II Malkiat Singh and PW-6 Constable Kuldeep Singh all formal witnesses submitted their affidavits Ex.PK, PM, PN and PQ respectively.

With that, the prosecution evidence got concluded.

5. Statements 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 them. Accused Rohtash stated that he was innocent. He along with Shish Ram was

arrested by the police on 10.10.1999 from brick kiln of Village Alisher and nothing incriminating was recovered from them. They had gone to the brick kiln for collecting labour charges from the owner of brick kiln. After their illegal confinement by the police in the police station, they were falsely involved in this case. Shish Ram also took that very plea. Subsequently, Shish Ram absented from the proceedings and vide order dated 14.10.2005, he was declared a proclaimed offender.

The accused did not lead any evidence in defence.

6. After hearing arguments, the trial Court convicted and sentenced accused Rohtash as mentioned above, which left him aggrieved and he has filed the present appeal, which came up for hearing on 31.01.2006, when it was admitted and recovery of fine was stayed during the pendency of the appeal. Subsequently, on an application under Section 389 Cr.P.C., having been filed vide order dated 31.07.2009, the remaining sentence of accused was suspended during the pendency of the appeal and presently he is on bail.

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 first ground of attack of counsel for the appellant was that Sukhdev Singh, Lamberdar, the independent witness who according to the prosecution case was with the police party at the time of apprehension of accused and effecting recovery from them, to whom the seal had been handed over was not been examined by the prosecution,

causing a serious doubt about truthfulness of the prosecution story. However, I do not find any merit in this contention. A perusal of the record goes to show that Sukhdev Singh was given up by Addl. PP on behalf of the State by making a statement which is reflected in the interim order passed by the trial Court on 30.10.2003. He had stated that Sukhdev Singh had been won over by the accused, as such was being given up. I do not find anything wrong with such action of the prosecution. Furthermore, the independent corroboration is a rule of prudence and not requirement of law. It is nowhere provided that independent corroboration is a must and in the absence thereof, the depositions of official witnesses are not to be believed. However, in this case, the official witnesses of recovery PW-1 ASI Baldev Singh, PW-3 Inspector Barjinderpal Singh and PW-6 Manohar Singh, DSP (retired) have fully proved the recovery of contraband from conscious possession of the accused. Though they were cross examined at length on behalf of the accused but they could not be shattered on any material point. No motive has been suggested or proved prompted by which they might have involved the accused falsely or deposed against them to secure their conviction.

9. From the remaining witnesses examined by the prosecution who have submitted their affidavits, it comes out that no tampering of seals had taken place during the period the case property remained in malkhana or sample was taken to FSL. Therefore, non-examination of Sukhdev Singh, Lamberdar does not have any effect.

10. Another argument advanced by learned counsel for the appellant was that there is manipulation in documents inasmuch as FIR number is written on the documents supposed to have been prepared before sending of ruqa which goes to show that the documents were either not prepared at that time or were prepared after registration of FIR or at the police station subsequently, falsifying the prosecution story.

11. Ld. State counsel has submitted that investigation in the case was conducted in a fair manner and no forgery or manipulation was done in the documents.

12. I on my part feel that though with regard to some documents, FIR number and date appear to have been written in the same flow but that does not mean that for some irregularity committed during the investigation, a person accused of a serious offence of possession of huge quantity of contraband should be allowed to go scot-free. It is matter of common knowledge that the police of the region is not known for carrying out the investigation in very professional and scientific manner. Old methods of investigation are still being used which sometime result in occurring of certain irregularities. The Court is to do substantial justice and not to let off the persons accused of committing heinous crimes by adopting a hyper-technical approach, otherwise, there would be utter chaos in the society and the culprits would manage to escape punishment by raising such like pleas and some investigating officer may leave such loopholes and lacunae in the investigation intentionally to help the criminals for extraneous consideration.

13. With regard to judgments referred to by learned counsel for the appellant in support of his contentions, first being **Union of India Vs. Shah Alam & Anr., 2010 AIR (Supreme Court) 1785**, wherein as per facts of the case recovery of heroin had been effected from the bag of accused; personal search of accused was also carried out but no recovery was effected; the conviction of accused in that case was set aside holding that provisions of Section 50 of the Act were not complied with. This judgment is not applicable since as per facts of that case, recovery had been effected on receipt of secret information whereas it was a chance recovery in the present case. As per facts of authority, personal search of accused has also been carried out, whereas it is not so in the instant case. Jamatalashi of the accused conducted after recovery of the contraband can certainly be not equated with personal search for the purpose of effecting recovery of any contraband. Therefore, it was not a case of non-compliance of Section 50 of the Act in the present case.

14. Coming to the next judgment **Man Bahadur Vs. State of H.P. 2008(4) RCR (Criminal) 563**, by the Apex Court wherein it was observed that accused should be made aware that he has right to be searched before Magistrate or Gazetted Officer and when accused is not informed of his such right, then Section 50 of the Act was not complied with and conviction was set aside. In this case, from the record, I do not find any non-compliance of Section 50 of the Act, rather, it comes out that the accused were duly informed of their right to get the search conducted before some Magistrate or Gazetted Officer and they opted to

get the search carried out in the presence of a Gazetted Officer and the search was infact, carried out in the presence of Sh. Manohar Singh, DSP, a Gazetted Officer. Therefore, this judgment also does not help the accused in any manner.

15. For similar reasons, the other judgments referred to **Vijaysinh Chandubha Jadeja Vs. State of Gujarat, 2011(1) SCC 609**, by Supreme Court does not come to rescue of the appellant. The next judgment on which learned counsel for the appellant had relied upon was **State of Orrisa Vs. Sitansu Sekhar Kanungo, 2002 (8) JT 292**, that judgment also had different facts and circumstances and the context in which the judgment was delivered was also quite distinct, therefore, does not help the appellant. With regard to last judgment relied upon **Kamaljit Singh @ Pappu Vs. State of Punjab, 2020(14) SCC 9**, again that judgment does not help the accused/appellant because as per facts of the case, there were various omissions including sole independent witness not being examined, FIR number noted at top of the seizure panchnama, the witness who claimed to have received the information telephonically and had passed it to his contemporary who in turn promptly recorded the FIR had been entrusted with the investigation of the case etc. It was due to cumulative effect of such like reasons that a serious doubt was expressed over truthfulness of prosecution case. Here it is not so. The evidence adduced by the prosecution has been found to be cogent, convincing, reliable with PWs having no motive to depose falsely against the accused because for some slip here or there in the investigation. The

investigation has been carried out in a fair and impartial manner. The accused has failed to render any reasonable or plausible explanation for his false implication in the case. Sections 35 and 54 of the Act result in drawing of presumption of culpable state of mind against the accused that they were in conscious possession of the contraband.

16. The judgment passed by the trial Court is quite detailed, well reasoned, does not suffer from any illegality or infirmity. The appeal is found to be without merit and is dismissed accordingly.

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

04.08.2022

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(H.S. MADAN)
JUDGE

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