

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

CRA-S-2562-SB-2006 (O&M)

Reserved on: 22.09.2022

Date of pronouncement: 26.09.2022

Uma Shanker

...Appellant

Versus

State of Haryana

...Respondent

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

Argued by: Mr. Tara Chand Dhanwal, Advocate for the appellant.

Mr. Vijesh Sharma, Addl. A.G., Haryana.

H.S. MADAAN, J.

1. Appellant Uma Shanker son of Nar Singh, an accused in FIR No.102 dated 19.07.2005, for an offence under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), registered with Police Station Bawani Khera, was tried by Addl. Sessions Judge-II, Bhiwani on the allegations that on 19.07.2005 in the area of T-point near General Hospital, Bawani Khera, District Bhiwani, he was found in conscious possession of 120 gm of charas and vide judgment dated 02.12.2006, he was convicted for an offence under Section 20 of the Act and in terms of order dated 04.12.2006, he was sentenced to undergo rigorous imprisonment for a period of 2½ years and to pay a fine of Rs.3000/-; in default of payment of fine, to further

undergo simple imprisonment for two months.

2. Briefly stated facts of the case, as per prosecution story are that on 19.07.2005, ASI Sultan Singh (hereinafter referred to as the Investigating Officer/IO) along with other police officials was on patrol duty near General Hospital, Bawani Khera and while being present at T-point, one Rajesh son of Om Parkash, R/o Ward No.2, Bawani Khera came there; said Rajesh started talking with the IO, then the accused was spotted coming from the side of Bus Stand Bawani Khera, who on seeing the police party turned back and started walking away swiftly; he was chased and apprehended on the basis of suspicion and his name and other particulars were enquired about, which he disclosed; the IO suspected him to be carrying some contraband, so he served a notice under Section 50 of the Act upon him, apprising him of his right to be searched in the presence of a Gazetted Officer or a Magistrate; however, the accused reposed full faith in the IO; accordingly, personal search of accused was conducted and from the right pocket of his wearing pant, charas wrapped in glazed paper was recovered; two samples of 10 gm each were separated from the recovered charas, which were converted into parcels duly sealed with the seal of IO, having impression 'SS'; residue charas was also converted into a sealed parcel, sealed with seal of IO having impression 'SS'; the seal after use was handed over to HC Satpal Singh; then the sample as well as residue parcels were taken into police possession, vide a recovery

memo signed by witnesses; the accused could not produce any permit or license for retention of 120 gm of charas; as such, he was arrested in this case as per rules, preparing requisite documents; the IO sent ruqa to the police station on the basis of which formal FIR was recorded; the IO prepared rough site plan of the place of recovery, recorded statements of witnesses; he prepared report under Section 57 of the Act.

On return to the police station, the IO produced the accused along with the case property and witnesses before SHO of the police station, who verified the facts; the accused along with the case property was produced before Judicial Magistrate Ist Class, Bhiwani Camp at Siwani; an application under Section 52 of the Act was also submitted on which JMIC, Bhiwani had passed necessary orders after verifying the facts, checking seals on sample parcels and bulk parcels; the accused was sent to judicial custody and the case property was ordered to be deposited with MHC of the police station.

During the course of investigation, a sample parcel was sent to Forensic Science Laboratory (FSL), Madhuban, Haryana and as per report received there from, it was found to be that of charas.

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 20 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 ASI Baljit Singh as PW-1, MHC Vazir Singh as PW-2, Constable Umed Singh as PW-3, Rajesh Verma, Addl. Ahlmad as PW-4, HC Satpal Singh as PW-5, ASI Sultan Singh as PW-6, Vijay Partap Singh, DSP as PW-7, HC Rajmal as PW-8, Rajesh as PW-9 whereas, Rati Ram, Ahlmad was given up as unnecessary.

The prosecution relied upon various documents also including report from FSL, Madhuban as Ex.PF.

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 the prosecution evidence against the accused were put to him but he denied the allegations contending that he was innocent and had been falsely implicated in this case. As a matter of fact, no charas had been recovered from him.

The accused did not lead any evidence in defence.

6. After hearing arguments, the trial Court, vide impugned judgment had convicted the accused and vide impugned order had sentenced him as detailed above.

7. Feeling aggrieved by the judgment of his conviction and

order of sentence, the accused had preferred an appeal before this Court which was taken up on 21.12.2006, when it was Admitted for regular hearing and recovery of fine was stayed; sentence awarded to the appellant/accused was ordered to be suspended during pendency of the appeal subject to his furnishing bonds to the satisfaction of CJM, Bhiwani. Now the appeal has come up for final hearing.

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

9. Here both the witnesses of recovery namely PW-5 HC Satpal Singh and PW-6 ASI Sultan Singh had fully supported the prosecution story as regards recovery of 120 gm of charas from possession of the accused on 19.07.2005 in the area of T-point near General Hospital, Bawani Khara without any permit or license. Both these PWs were subjected to lengthy cross-examination on behalf of the accused but they stuck to their guns and could not be shattered on any material point. Both of them deposed in a natural and convincing manner. 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 wrongly or deposed against him to secure his conviction.

I find their depositions to be natural, inspiring confidence, as such, worthy of reliance.

10. From the other evidence adduced by the prosecution in the

form of examining PW-7 Sh. Vijay Partap Singh, the officiating SHO of the police station, affidavit of MHC Vazir Singh, the custodian of the case property and Constable Umed Singh, the carrier of the sample parcel to FSL, Madhuban, it comes out that no tampering with the case property had taken place and the sample parcel had reached office of Chemical Examiner, Madhuban, Haryana in an intact condition, and the report received there from Ex.PF clearly goes to show that on analysis the sample was found to be that of charas. Report under Section 57 of the Act has also been proved in evidence as Ex.PJ. From the testimony of PW-6, ASI Sultan Singh, it comes out that the provision of Section 50 of the Act was duly complied with by apprising the accused about his right to be searched from a Gazetted Officer or a Magistrate, though, the accused had opted to get his search carried out by the IO himself.

Similarly, provisions of Section 52-A of the Act are also shown to have been complied with by producing accused along with the case property before Illaqa Magistrate, who after seeing the case property and verifying the facts had passed the necessary orders with regard to deposit of the case property. The prosecution had successfully established the ingredients of offence under Section 20 of the Act against the accused.

11. Learned counsel for the appellant has stated that the independent witness examined by the prosecution PW-9 Rajesh had not

supported the prosecution story and had rather turned hostile, stating that he did not know anything about the case and had not met the police party in connection with the present case. He had been subjected to cross-examination by the Public Prosecutor. He had admitted his signatures on documents Ex.PG, PD/1, PE, though denied that any charas had been recovered from the possession of the accused in his presence. According to learned counsel for the appellant, this creates a serious dent in the prosecution story.

However, I do not find myself in agreement with learned counsel for the appellant in that regard. As has been discussed in detail above, the official witnesses of recovery namely, PW-5 HC Satpal Singh and PW-6 ASI Sultan Singh did not have any previous enmity with the accused and had no motive to depose falsely against him. Their depositions have been found to be worthy of reliance. Their statements are to be taken at par with the independent witnesses.

12. A Single Judge of this Court in judgment **Krishan Kumar Vs. State of Punjab, 2016(2) RCR (Crl.) 707**, had observed that testimonies of the official witnesses carries the same evidentiary value as that of any other witness and their statements cannot be discarded simply on account of their official designation.

13. A Division Bench of this Court in judgment **Sucha Singh Versus State of Punjab 2015(4) RCR (Criminal)25**, where an independent witness had been joined during the search and recovery of

contraband, he had appeared as a witness for the defence stating that his signatures were procured on blank papers when he had visited the police station in drunken condition. His such, contention was not accepted holding that it cannot be believed that numerous signatures on various papers having different written material could be signed by a witness on blank papers. The testimony of that witness was held to be unreliable and was discarded. In that very judgment, credibility of official/police witnesses was considered and it was observed that when there is no allegation of any enmity against the police officials to falsely implicate the appellants and there was no reason for them to depose against the appellants, the trial Court had rightly concluded that non-examination of independent witness of search and recovery being won over by the accused does not raise any doubt in the prosecution case.

14. Another argument advanced by learned counsel for the appellant was that the IO after using the seal had not given it to the independent witness but to a police official, as such, there could be possibility of tampering with seals. This argument is also without any weightage. No provision of law requires that seal after use is to be handed over to an independent witness.

A Single Judge of this Court in judgment **Ajaib Singh Vs. State of Punjab, 1999(2) RCR (CrL.) 638**, dealing with such type of situation, had observed that when seal is not handed over to

independent witness after use, the same is not fatal, though it created suspicion which is very feeble and moreover, seal cannot always be handed over to the independent witness because the IO has to use it frequently and the IO cannot afford always to entrust the seal to the independent witness, which is supposed to remain in his possession for days together till the case property reaches its destination. Therefore, this objection is rejected.

15. Furthermore, after sealing the case property at the spot, on return to the police station, the IO had produced the case property along with accused and witnesses before Sh. Vijay Partap Singh, DSP posted as Probationary SHO at Police Station Bawani Khera, who had verified the facts and report under Section 57 of the Act had been submitted before him and after satisfying himself, had affixed his seal having impression 'AS' on the sample parcel and bulk parcel. Sh. Vijay Partap Singh, appearing as PW-7 deposed in that regard, further stating that he had appended his endorsement Ex.PJ/1 on report under Section 57 of the Act, which was placed before him. He had further stated that after making endorsement, he had sent report under Section 57 of the Act to Sh. Ram Kumar, DSP Siwani and as deposed by HC Rajmal, PW-8 that report had been put up before Sh. Ram Kumar Malik, DSP who had signed the same. PW-4 Sh. Rajesh Verma, Addl. Ahlmad in the Court of Sh. Rajiv Goyal, JMIC, Bhiwani had stated that on 20.07.2005, he was posted as such in the Court of Sh. Jasbir Singh, the

then JMIC, Bhiwani Camp at Siwani and on that day, case property relating to this case was produced before Sh. Jasbir Singh, the then JMIC, Bhiwani along with an application U/s 52 of the Act for certification of the inventory and seals which was accordingly done by learned JMIC. The samples Ex.P2 and P3 and bulk parcel Ex.P1 were signed by learned JMIC, Bhiwani and thereafter, the JMIC ordered that the case property be deposited with MHC whereas the accused was remanded to judicial custody. As per report received from FSL, Madhuban, the sample parcel had reached there with seals intact. Under the circumstances, there could not be any possibility of any tampering with the seals and the IO handing over seal to police official does not create any doubt in the mind about credibility of the prosecution version.

16. One more argument advanced by learned counsel for the appellant was that there are variations in the statements of PWs but the variations so pointed out are with regard to inconsequential details of the case i.e. the time of departure of the police party from the police station, the time when the accused was apprehended, the duration for which the police party remained at the spot, the time when the police party returned to the police station after search and seizure, similarly with regard to distance of police station from the place of recovery, distance from which the police party had observed the accused etc. These variations are bound to occur in normal course, on account of

difference in power of observation and perception of various individuals and lapse of memory due to passage of time. Those cannot be magnified out of the proportion, so as to make a mountain out of a molehill and discard the depositions of the witnesses for such like reason. The law is very well settled in that regard. The trial Court has also dealt with this aspect in a very proper and appropriate manner in para No.22 of the impugned judgment. As a matter of fact, the pleas put-forward on behalf of the appellant/accused here which were raised before the trial Court have been dealt with in a very apt and proper manner by the trial Court and I do not find myself in disagreement with the trial Court in that regard.

17. The impugned judgment of conviction passed by the trial Court is quite detailed, well reasoned, does not suffer from any illegality or infirmity. It is based upon proper appraisal of evidence and correct interpretation of law. There is illegality or infirmity therewith, which might have called for interference by this Court while exercising appellate jurisdiction. The prosecution had established its charge against the accused beyond a shadow of reasonable doubt and for the said reason, he was convicted.

As regards the sentence of 2 ½ years awarded to the accused, the same cannot be said to be on higher side. The trial Court referring to Apex Court judgment in **Durand Didier Vs. Chief Secretary Union Territory of Goa, 1989 AIR 1966**, has observed that drug abuse is a social malady and while drug addiction eats into the

vitals of the society, drug trafficking not only eats the vitals of the economy of a country, but illicit activities including encouragement of terrorism and further that drug trafficking has acquired the dimensions of an epidemic affecting the economic policies of the State, corrupting the system which is detrimental to the future of a country since it has effect of producing a sick society and harmful culture. Thus, there is absolutely no reason to reduce the sentence of imprisonment because that would rather sent a wrong message in the society that one can indulge in heinous crime of drug trafficking and if caught would be given a very light punishment, that would rather encourage the potential criminals to tread the path of crime which is not desirable. The appeal is found to be without merit and is dismissed accordingly.

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

26.09.2022

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(H.S. MADAAN)
JUDGE

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