

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

1. CRA-D-192-DB-2014(O&M)

HARGURPREET SINGH

.....Appellant

Vs

STATE OF PUNJAB

.....Respondent

2. CRA-D-36-DB-2014(O&M)

RASHPAL SINGH @ PALA AND ANR.

.....Appellants

Vs

STATE OF PUNJAB

.....Respondent

3. CRA-D-970-DB-2018

GURJANT SINGH @ BHOLU AND ANR.

.....Appellants

Vs

STATE OF PUNJAB

.....Respondent

Date of Decision:-12.01.2022

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE PANKAJ JAIN**

**Present: Mr. Ashwani Bhardwaj, Advocate and
Mr. Vipul Jindal, Advocate,
for the applicant/appellant (in CRA-D-192-DB-2014).**

**Mr. Jashandeep Singh Sandhu, Advocate
for appellant No.1 and
Mr. R.S. Sekhon, Advocate
for appellant No.2(in CRA-D-36-DB-2014).**

**Mr. Pankaj Bhardwaj, Advocate
for the appellants (in CRA-D-970-DB-2018).**

Mr. S.P.S Tinna, Addl. A.G, Punjab.

PANKAJ JAIN. J.

These three appeals arise out of common FIR No.11 dated 21.03.2010. The appellants have challenged their conviction by the trial Court for offences punishable under Section 21(c) of NDPS Act, Section 307 read with Section 149 of Indian Penal Code and Section 25 of the Arms Act, 1959 read with Section 149 of IPC.

Appeals No.CRA-D-192-DB-2014 and CRA-D-36-DB-2014 arise out of common judgment dated 19.11.2013. Appeal No.CRA-D-970-DB-2018 titled Gurjant Singh @ Bholu and Anr. Vs. State of Punjab is against the judgment dated 25.09.2018, as the appellants herein were declared proclaimed offenders and thus were put to trial later.

Vide judgment dated 19.11.2013, accused Rashpal Singh @ Pala, Hargurpreet Singh and Sahib Singh i.e. Appellants in CRA-D-36-DB-2014 and CRA-D-192-DB-2014 were awarded the following sentences:-

Sr.	Name of convict	Under Section	To undergo RI for a period of	Fine of Rs.	In default of payment of fine to further undergo RI for a period of
1.	Rashpal Singh alia Pala	21(c) of NDPS Act	20 years	Rs.2,00,000/-	4 years

	-do-	307 read with Section 149 of IPC	10 years	Rs.50,000/-	1 year
	-do-	25 of Arms Act read with Section 149 of IPC	3 years	Rs.5,000/-	3 months
2.	Hargurpreet Singh	21(c) of NDPS Act	20 years	Rs.2,00,000/-	4 years
	-do-	307 read with Section 149 of IPC	10 years	Rs.50,000/-	1 year
	-do-	25 of Arms Act read with Section 149 of IPC	3 years	Rs.5,000/-	3 months
3.	Sahib Singh	21(c) of NDPS Act	20 years	Rs.2,00,000/-	4 years
	-do-	307 read with Section 149 of IPC	10 years	Rs.50,000/-	1 year

	-do-	25 of Arms Act read with Section 149 of IPC	3 years	Rs.5,000/-	3 months
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Vide judgment dated 28.09.2018 appellants in CRA-D-970-DB-2018 were awarded the following sentences:-

Sr.	Name of convict	Under Section	To undergo RI for a period of	Fine of Rs.	In default of payment of fine to further undergo RI for a period of
1.	Gurjant Singh	21(c) of NDPS Act	12 years	1,20,000/-	2 years
	-do-	307 IPC	3½ years	25,000/-	One year
	-do-	25 of Arms Act	2 years	5000/-	2 months
2.	Rashpal Singh	21(c) of NDPS Act	12 years	1,20,000/-	2 years
	-do-	307 IPC read with Section 149 IPC	3½ years	25,000/-	One year
	-do-	25 of Arms Act read with Section 149 IPC	2 years	5000/-	2 months

As per the case of prosecution, on 21.03.2010, an information was received by Inspector Balbir Singh IO that Indo-Pak smuggler namely Gurinder Singh @ Sony and his brother Gurjant Singh have received a consignment of Heroin in the area of Fazilka Sector, District Ferozepur. Gurjant @ Bholu and his associates namely Rashpal Singh,

Hargurpreet Singh, Sahib Singh and Rashpal Singh are coming back after receiving consignment of heroin in their vehicle, black colour Tata Safari bearing No.CH-04-B-7820. In case naka is laid, they can be apprehended. Finding the information credible, Inspector Balbir Singh informed Sh. Gautam Sharma IPS, SP Anti Smuggling Punjab, Amritsar and on his direction, a Police party was constituted. Naka was laid at Harike bridge where after some time, the suspected vehicle was spotted coming from Ferozepur side. Driver of Tata Safari stopped Tata Safari 5/6 paces away from the nakabandi. On finding that the vehicle was caught and there was no way to escape, one person who was sitting in front along with driver alighted from the Tata Safari. He was carrying black colour bag on his right shoulder. He started firing from his pistol towards the Police party. Police fired in return and after long struggle, he was apprehended. During this struggle, he tried to throw the black colour bag into the river but he failed as the bag hit the boundary of the bridge and fell on the road. He injured his right wrist in the process and during scuffle, 4/5 Police personnels also received injuries. Inspector Balbir Singh introduced himself to that person and on inquiry, he disclosed his name Gurjant Singh. As Gurjant Singh and other police officials received injuries, Inspector Balbir Singh instructed SI Harjinder Singh to admit all of them in Civil Hospital, Amritsar for treatment. Police party also

arrested other four persons travelling in aforesaid Tata Safari. On enquiry, driver of Tata Safari disclosed his name as Rashpal Singh and the persons sitting on the back seat disclosed their names Sahib Singh @ Sahba, Rashpal Singh and Hargurpreet Singh. Inspector Balbir Singh told them that he suspected intoxicant in the bag, which was thrown away by their co accused and in their vehicle and the search was to be conducted. He apprised all the persons separately that they had legal right to get the search conducted in the presence of Gazetted Officer or Magistrate. All of them desired that they be searched in the presence of Gazetted Officer. In this regard , he prepared non consent memos. Inspector Balbir Singh called DSP Rajbir Singh, Special Cell Amritsar, through mobile and requested him to reach the spot. In the meanwhile, public witness Sukhwinder Singh was joined in the investigation. Thereafter, Investigating Officer collected eight empty cartridges of 30 bore of the pistol of accused and converted them into parcel and sealed with his seal BS and took into possession vide separate memo. The pistol used in commission of offence by accused Gurjant Singh was handed over to him (Balbir Singh) by Inspector Harvinderpal Singh. He unloaded the said pistol but no live cartridge was recovered. Thereafter, he prepared the parcel of the said pistol and magazine after noting its number and make and preparing sketch thereof. He also sealed the said parcel and took the same in possession

vide separate memo. In the meanwhile, DSP Rajpal Singh reached and he introduced himself to all the accused separately and told them that he was a Gazetted Officer of the Punjab Police. He also told them that the search of their bag and vehicle was to be made and they had legal right to get their search conducted in his presence or in the presence of other Gazetted Officer or Magistrate but they opted to get their search conducted from DSP Rajpal Singh and in this regard consent memos were prepared. Thereafter, on the direction of the DSP, the Investigating Officer, conducted search of the bag thrown by accused Gurjant Singh upon which four packets of heroin were recovered and on weighment it came out to be one Kg each i.e. 4 Kgs in total. The Investigating Officer separated two samples of 5 grams each from all the four packets and converted into sample parcels and the remaining heroin was put into plastic boxes and they were marked 3 to 6 and the sample parcels were marked S3A, S3B to S6A, S6B. All the parcels were sealed by the Inspector Balbir Singh with his seal BS. DSP also sealed all the parcels with his seal RS. The entire case property was taken into police possession vide separate memo. Thereafter, on the direction of DSP Rajpal Singh, the Investigating Officer conducted search of Tata Safari Car, upon which one bag of brown colour containing 10 packets of heroin were recovered and on weighment it came to be one Kg. Each totaling 10 Kgs, out of which, he separated

two samples of 5 grams each i.e. 20 samples and they were numbered. All the samples were put into plastic boxes and converted into sample parcels and remaining was converted into four bulk parcels by putting the same into plastic boxes. The bulk parcels were marked 7 to 16 and the samples were marked as S7A, S7B to S16B. All the parcels were sealed by Inspector Balbir Singh. DSP also put his seal on all the parcels. The Investigating Officer prepared CFSL Form and the entire case property was taken into Police possession vide separate memo. Thereafter, on the direction of DSP, Inspector Balbir Singh conducted search of boot of the Tata Safari upon which a bag containing 12 packets of heroin was recovered, out of which he separated two samples of 5 grams each from all 12 packets i.e. Totaling 24 samples, which were numbered separately. All the samples were put into small plastic boxes and converted into sample parcels and the remaining heroin was converted into four bulk parcels by putting the same into plastic boxes. The Investigating Officer numbered the bulk parcels marked 17 to 28 and the sample parcels were marked as S17A, S17B to S28A, S28B and all the parcels were sealed by the Investigating Officer with his seal BS. DSP also put his seal RS on all the parcels and took into possession the entire case property vide separate memo. Thereafter, the Investigating Officer conducted search of dash board of the said vehicle upon which 8 live cartridges of 30 bore pistol were

recovered, which were converted into parcel and taken into police possession vide separate memo. It was also sealed by the Investigating Officer and the DSP. DSP kept his seal with him and the Investigating Officer handed over his seal after use to SI Nirmal Singh. All the three bags were taken into Police possession vide separate memos. Tata Safari was also taken into custody vide separate recovery memo. Thereafter, personal search of the accused was conducted. Ruqa was sent to the Police station, on the basis of which FIR was registered.

All the accused were charged for offences punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985, Section 307 IPC and Section 25 of the Arms Act and put to trial.

In order to prove its case, the prosecution examined PW1 Inspector Balbir Singh, Investigating Officer, PW2 SI Nirmal Singh, recovery witness, PW3 HC Gurdeep Singh, PW4 Dr. Narinderpal Singh, Senior Resident Medical College, Amritsar, PW5 Inspector Gurinderpal Singh, PW6 ASI Sukhbir Singh, PW7 Constable Dilbag Singh, PW8 Constable Bhagwan Singh, PW9 Bimla Sharma, PW10 Gargi Sharma, PW11 Inspector Harvinderpal Singh, PW12 Tarsem Lal, Arms Clerk, PW13 Retired DSP Rajpal Singh, PW14 Retired Inspector Harjinder Singh, DW15 Devender Singh Rawat, Data Entry Operator.

After examining the evidence on record, the learned trial

Court found that the prosecution has proved the guilt of the accused beyond reasonable doubt. It was held that on 21.03.2010, all the accused formed an unlawful assembly and were found to be in possession of 26 Kg of heroin without any valid licence or permit. The learned trial Court further found that the prosecution has proved that when the Police party tried to stop the accused, the accused attacked the Police party and are thus guilty of having committed the offences they have been charged for.

Mr. Ashwani Bhardwaj, Advocate counsel for the appellant in CRA-D-192-DB-2014 has brought to our attention FSL report Ex. P41, as per which the date of receipt of samples in the Forensic Science Lab, Punjab is shown to be 26.03.2010. He has then taken us to order dated 30.03.2010, passed by JMIC, Zira Ex. P42 which shows that on 30.03.2010, case property i.e. 26 bulk parcels of 990 grams each and 52 samples of 5 grams each bearing seal impressions were produced before the Court. It was on 30.03.2010, the Court ordered that 26 bulk parcels along with 26 sample parcels be kept in judicial malkhana and remaining 26 samples parcels be sent for chemical examination.

Relying upon these two documents, the contention raised by the counsel for the appellant is that the fact that if the case property i.e. 26 bulk parcels of 990 grams each and 52 samples of 5 grams each

were produced before the Court on 30.03.2010, as is evident from the Ex P-41, then how 26 parcels can be received by Forensic Lab on 26.03.2010, as mentioned in Ex. P42? Argument raised is that these two documents Ex 41 and Ex 42 are contradictory. If on 30.03.2010, all 52 sample parcels were produced before Court, how 26 samples deposited with Lab on 26.03.2010, can be related to recovery alleged against the appellants. He thus asserts that the appellants are entitled to be acquitted.

In order to respond to the plea raised by counsel for the appellant, Additional Advocate General, Punjab Mr. SPS Tinna, on 01.12.2021, requested that it would be appropriate to requisition the case property lying in the judicial malkhana at Ferozepur. Learned counsel for the appellant(s) had no objection to the request made by Additional Advocate General, Punjab.

The case property lying in the judicial malkhana at Ferozpur was requisitioned. Mr. SPS Tinna, Additional Advocate General, Punjab, has also produced photocopy of an application dated 30.03.2010, which admittedly is not part of record. The same is taken on record as mark "X" and is directed to be tagged at appropriate place in the case file. But from the contents thereof, it seems to be an application moved by one SI Harjinder Singh before the Court of CJM, Zira. By the said application, correction of order dated 22.03.2010

passed by CJM, Zira was sought.

22.03.2010, order reads as under:-

“The prosecution has filed the present request for keeping the case property in MALKHANA. Case property i.e 26 bulk parcels of 990 grams each and 52 sample parcels of 5 grams each bearing seals impressions BS/RS/HS. The seals are intact. Heard. In view of the contents of application & request made by the Ld. APP for the State, the case property is ordered to be kept in judicial MALKHANA in intact condition.

Rajni Chhokra

Judicial Magistrate 1st Class

Zira 22.3.2010”

Mr. Tinna, submits that since in the order dated 22.03.2010, the Court ordered that the case property be kept in judicial malkahna but 26 sample parcels were left out, so the said order was sought to be corrected. Accordingly, vide application dated 30.03.2010, correction of the order dated 22.03.2010 was prayed and it was submitted that the case property along with 26 parcels be ordered to be kept in judicial malkhana and the remaining 26 sample parcels of 5 grams each be ordered to be sent to the Forensic Lab for examination. As per Mr. SPS Tinna, Addl, A.G. Punjab, this application was moved as the malkhana refused to accept 26 sample parcels and was ready to accept only 26 bulk parcels as case property.

On 07.12.2021, the case property was produced before this Court. The primary seal was opened and the property was seen. Number of sample parcels were found lying in unsealed condition. In explanation thereto Mr. Tinna, submits that the said sample parcels

were received from the chemical laboratory after examination. He has tried to demonstrate the fact that there was only one signature of the Court on the case property and sample parcels. As per him it must lead to the inference that the samples sent to chemical lab were produced before the Court only on 22.03.2010. He asserts that after 26 samples were sent to the chemical lab on 26.03.2010, they were not produced on 30.03.2010. He further submits that a mistake may have crept in order dated 30.03.2010, passed by JMIC but accepts that no application for correction thereof was filed.

Despite the efforts made by learned Additional Advocate General, the question raised by counsel for the appellant remains unanswered. Admittedly, there were in total 78 parcels. 26 parcels of 990 grams each were bulk parcels, 52 parcels of 5 grams each were the sample parcels. The same were produced before the Court on 22.03.2010. The property was seen by the Court and after finding that the seals were intact it was ordered to be kept in judicial malkhana. The prosecution further claims that 26 sample parcels out of 52 sample parcels were sent to forensic chemical laboratory on 26.03.2010. As per report of the lab also 26 sample parcels of 5 grams each were received on 26.03.2010. Thus on 30.03.2010, the prosecution was left with 26 bulk parcels of 990 grams each and 26 samples of 5 grams each. However, as per order dated 30.03.2010 all the 78 parcels i.e. 26

bulk parcels along with 52 sample parcels with marks on them were produced before the Court. It was only on 30.03.2010 that the Court ordered that the 26 sample parcels with Mark S-III -A to S-XXVIII-A be sent for chemical examination.

Joint reading of Ex. P41 and Ex. P42 raises serious question about the sample parcels being sent to Forensic Chemical Lab on 26.03.2010 and the application dated 30.03.2010, produced by Mr. SPS Tinna, Addl, A.G. Punjab, compounds it further. In the application itself, the prosecution requested the Court to order deposit of bulk parcels bearing Marks III to XXVIII and 26 sample parcels bearing Marks S-III B to S-XXVIII B in judicial malkhana and further to order that remaining 26 sample parcels bearing Mark S-III A to S-XXVIII A be sent for chemical examination. If that is so, how can the report based on 26 sample parcels received by lab on 26.03.2010 be linked to contraband recovered in this case.

In the trials under NDPS Act, samples of the contraband recovered and the chemical examination thereof is a vital link that yokes the accused to the charge. In the present case, the said link has gone amiss. Burden to prove guilt of accused rests upon the prosecution. It is casted with the duty to satisfy the same beyond all reasonable doubt. The prosecution cannot at any stage afford to jettison the said burden and take the trial lightly.

In the present case, production of whole of the property before the Court on 30.03.2010 including all 52 samples puts the fact of sending 26 parcels for chemical examination on 26.03.2010 and report in doubt. The lapse on the part of prosecution remains unexplained and the doubt created goes to the root of the case.

In view of the aforesaid discussions, we found that the appellants have been able to show wide gaps in the picture portrayed by prosecution. No other point has been argued. No challenge has been laid to findings recorded by the trial Court and the sentence awarded under Section 307 IPC and Section 25 of Arms Act.

Finding merit in the appeals, conviction of the appellants for offence(s) punishable under Section 21(c) of the NDPS Act 1985, is set aside. Appellants are acquitted of the aforesaid charge. However, the conviction and sentence awarded for offences punishable under Section 307 IPC and Section 25 of the Arms Act are maintained. Consequently, the appeals are partly allowed in the aforesaid terms.

(AJAY TEWARI)
JUDGE

(PANKAJ JAIN)
JUDGE

12.01.2022
Amandeep

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No