

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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1. **CRA-S-830-SB-2004 (O&M)**
Date of Decision: 28.03.2023

Vinod and others ...Appellants
Versus
State of Haryana and others ... Respondents

2. **CRA-S-902-SB-2004 (O&M)**
Jangir Singh ...Appellant
Versus
The State of Haryana ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Ms. Gunjan Mehta, Advocate
for the appellants in CRA S-830-SB-2004.

Mr. Rahul Vats, Advocate
for the appellant in CRA S-902-SB-2004.

Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J.

This judgment shall dispose off above mentioned two criminal appeals, which arise out of the common impugned judgment dated 11.03.2004 and order dated 13.03.2004 passed by the learned Additional Sessions Judge, Hisar, whereby, the appellants had been convicted for the offence punishable under Section 15 of the Narcotics Drugs and Psychotropic Substance Act, 1985 (in short, ‘the NDPS Act’) and sentenced to rigorous imprisonment for 10 years and to pay a fine of Rs. 1,00,000/- each alongwith default stipulation.

The brief facts of the case are that SI Kartar Singh, alongwith other police officials was on patrolling from village Shahpur to Arya Nagar and at about 01.00 a.m., on 09.02.2002 and when they reached near Arya Nagar, the police party noticed a jeep coming from

the opposite direction and by using the torch light, it was signaled to stop. However, instead of stopping the jeep, the driver of the jeep turned back and the police team also chased the jeep. The jeep was stuck in the mud in the fields and the occupants of the jeep managed to escape in the darkness. The police party inspected the jeep bearing registration No. RJ-10G-0712 and ten bags of poppy husk were found in the same. The RC and pollution certificate were also recovered from the jeep. Two samples of 100 gms each were taken from each bags and the remaining quantity of contraband weighed to be 39 kgs 800 grams. When the entire contraband was weighed, it came out to be 4 quintals of poppy husk. The sample parcels as well as remainder quantity were sealed with the seal “KS” and after use, the seal was handed over to HC Suresh Kumar. The case property was taken into possession by preparing separate memos and the *rukka* was sent to the police station for registration of the case, on the basis of which, the formal FIR was recorded by ASI Raghbir Singh. The Investigating Officer conducted initial investigation at the spot. The case property and witnesses were produced before Ram Rattan Inspector/SHO, who verified the investigation from the witnesses and the Investigating Officer and had put his seal “DS” on the case property and directed the Investigating Officer to deposit the case property with the MHC.

As per the story of the prosecution, on 23.02.2002, Vijay Singh produced Vinod and Rajbir, both the accused/appellants before the police and both of them were formally arrested and were interrogated. Both of them suffered their disclosure statements and also pointed the place, where they had abandoned the jeep. Mukhtiar Singh also

produced the accused Jangir Singh on 02.03.2002 and even the said accused was formally arrested and was interrogated. He also pointed the place, where they had left the jeep. The necessary investigation was conducted by the police and the challan was presented in the competent Court by the police.

Finding a *prima-facie* case, the charge under Section 15 of the NDPS Act was framed against the accused/appellants, to which, they pleaded not guilty and claimed trial.

In order to bring home the guilt of the accused, the prosecution examined HC Suresh Kumar as PW1, who supported the case of the prosecution, as stated in the FIR. He clearly stated that the accused present in the Court were the same persons, who got down from the aforesaid jeep at the relevant time. He had duly identified the accused/appellants, present in the Court. The prosecution further examined PW2 Bhanwar Lal, MHC Police Station Sadar Hisar, who had tendered his affidavit Ex.PH as his evidence. He stated that his statement was recorded by the police on 13.02.2002. He stated that there were four seals on each sample i.e. two of "KS" and two of "DS". PW3 Constable Pritam Singh tendered his affidavit Ex.PJ in evidence. PW4 SI Kartar Singh also supported the case of the prosecution in all material particulars. He was the head of the raiding team, which had taken the jeep and the contraband in possession. He stated that they had chased those persons, i.e. driver of the jeep and the other occupants, but they managed to escape from that place. He also identified the accused in the Court. The prosecution further examined PW5 Bhanwar Singh, who had brought the original record in respect of jeep bearing registration No. RJ-

10-G-0712 and as per record, Radha son of Dharampal was the registered owner of the said jeep as per RC Ex.P2. The prosecution further examined PW6 Ram Rattan, who was inspector/SHO at the relevant time. On 09.02.2002, the Investigating Officer had produced before him, the case property and the witnesses in the police station for verification. After verification of the investigation, he had also affixed his seal bearing inscription "DS" on the residue parcels as well as the samples and on his directions, the case property was deposited with the MHC with the seals intact. He had prepared the report under Section 173 Cr.P.C. The prosecution also placed on record recovery memo Ex.PA, disclosure statement of accused Vinod Ex.PB, disclosure statement of accused Rajbir Ex.PC, memos of demarcation Ex.PD and Ex.PE, disclosure statement of accused Jangir Singh Ex.PF, memo of demarcation Ex.PG, affidavit of Constable Bhanwar Lal Ex.PH, affidavit of Constable Pritam Singh Ex.PJ, *rukka* Ex.PK, FIR Ex.PK/1, rough site plan Ex.PL, report under Section 57 of the NDPS Act Ex.PM, pollution certificate of jeep in question Ex.P1, RC Ex.P2 and report of FSL Ex.PQ. After tendering the said documents, the prosecution evidence was closed.

After the closure of the prosecution evidence, the statements of the accused were recorded under Section 313 Cr.P.C. and all the accused pleaded their false implication. No reasons were assigned by them for involving them in a false case. In defence evidence, the accused had tendered the statement of HC Suresh Kumar as Ex.DA, FIR Ex. DB and DC and the defence evidence was closed.

I have heard learned counsel for the parties and with their able assistance, I have gone through the trial Court record carefully.

At the outset, learned counsel for the appellants vehemently argued that in the instant case, the identity of the accused could not be proved by the prosecution by leading cogent evidence. It was stated that the accused were not known to the prosecution witnesses earlier and the test identification parade was not conducted. The accused were identified in the Court for the first time and such identification could not have been relied upon by the learned trial Court. The said submission has been opposed by the learned State counsel by contending that the accused had been carrying the contraband and when they were chased by the police, they fled away from the place of recovery, after leaving behind the jeep. Later on, all the accused were produced by Vijay Singh and Mukhtiar Singh, witnesses. Apart from that they have been duly identified by PW1 HC Suresh Kumar and PW4 Kartar Singh as the persons, who were carrying the contraband in the jeep in question.

I have heard learned counsel for the parties and find that the submissions made by the learned State counsel carry weight and are liable to be accepted. At about 1.00 a.m., on 09.02.2002, the police party had chased the jeep, which was occupied by the present appellant. However, the jeep of the accused was struck in the mud and they left the jeep and ran away from there. However, the police officials chased them and taking advantage of the darkness, all the three accused had fled from the place of recovery. However, all the three accused were produced by Vijay and Mukhtiar and on their arrest, all the accused suffered their respective disclosure statements and also identified the place, where they

had left the jeep and had fled away. Even PW1 HC Suresh Kumar clearly stated in his deposition that the police party tried to apprehend them, but they managed to escape due to darkness. The said witnesses categorically stated that the accused present in the Court are the same persons, who got down from the jeep in question at the relevant time. Similarly, PW4 SI Kartar Singh had also identified the present appellants and it can never be stated that the accused were not duly identified by the police.

Further, the jeep, which was intercepted and taken into possession was carrying four quintals of poppy husk and it can never be believed that such a huge quantity of poppy husk was planted by the police on the present appellant. Even in their statements under Section 313 Cr.P.C., all the appellants have stated that they had been falsely implicated in the instant case, however, did not attribute any motive on the part of the police to falsely involve them in a criminal case. Still further, PW1 HC Suresh Kumar and PW4 SI Kartar Singh were subjected to lengthy cross-examination by the learned defence counsel and their testimonies could not be shattered in any manner and the learned trial Court has correctly placed reliance on the testimonies of the said witnesses.

The learned defence counsel further referred to certain contradictions appearing in the testimonies of PW1 HC Suresh Kumar and PW4 SI Kartar Singh. However, I have carefully perused the testimonies of the said witnesses and the findings recorded by the learned trial Court are liable to be upheld. The learned trial Court has correctly recorded in the impugned judgment that these were minor

contradictions, which are bound to appear in the testimonies of the truthful witnesses. It is a matter of common experience that by the lapse of time, human memory fades and such errors definitely appear in the testimonies of the official witnesses, who have to appear as witnesses in several criminal cases. Thus, the learned trial Court correctly ignored the minor contradictions, which do not go to the root of the case.

Learned counsel for the appellants vehemently argued that in the instant case, the police had opportunity to join the independent witnesses at the time of recovery of the contraband and at the time of the production of the accused before the police. Still further, Vijay Singh and Mukhtiar Singh had not been examined and the findings recorded by the learned trial Court are legally unsustainable. The said submissions have been vehemently opposed by the learned State counsel. I have considered the rival submissions made by the learned counsel for the parties and find no substance in the arguments raised by the learned counsel for the appellants. No doubt, the accused were produced by Vijay Singh and Mukhtiar Singh, private witnesses. However, the said witnesses were won over by the accused and could not be examined by the prosecution. However, apart from the statements of Vijay Singh and Mukhtiar Singh, there were sufficient incriminating evidence, which unerringly established the guilt of the accused. Apart from that, the jeep was left by the accused at about 01.00 a.m., on 09.02.2002 and it was impossible to find independent witnesses at that moment. Even otherwise, a huge recovery of poppy husk of four quintals had taken place. Normally, no person would be willing to appear as witness against the persons, who are involved in transporting narcotic drugs.

Consequently, the non-examination of independent witnesses would have no adverse impact on the case of the prosecution as the testimonies of official witnesses are found worthy of credence. No other point has been raised.

This Court has carefully perused the evidence led by both the sides and the findings recorded by the learned trial Court. The learned trial Court has correctly apprehended the evidence in the light of settled principles of law and has discussed the evidence in detail. This Court has satisfied that the learned trial Court has recorded the valid reasons while convicting the present appellants in the instant case.

In view of the above discussion, the impugned judgment dated 11.03.2004 and order of sentence dated 13.03.2004 passed by the learned Additional Sessions Judge, Hisar, is upheld and affirmed. The appeal is ordered to be dismissed.

All pending applications, if any, are disposed off, accordingly.

The case property, if any, may be dealt with as per the rules after expiry of period of limitation for filing the appeal.

Records of the Court below be sent back.

28.03.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No