

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-623-DB-2004
Reserved on: 29.08.2024
Date of decision: 06.09.2024

HARDEV ALIAS GUGLA

...Appellant

Versus

STATE OF HARYANA

...Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Jitender Dhanda, Advocate for the appellant.
Mr. P.P. Chahar, Sr. DAG, Haryana.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict made on 22.3.2004, upon Session Case No. 28 NDPS of 2000, by the learned Addl. Sessions Judge, Fatehabad, wherethrough he convicted the accused for a charge drawn qua an offence punishable under Section 15/25 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as “the Act”). Moreover, through a sentencing order of 26.03.2004, he proceeded to impose upon the convict Hardev alias Gugla the substantive sentence of rigorous imprisonment for a period lasting upto 14 years, besides imposed upon him, sentence of fine of Rs.1,50,000/-, and in default of payment of fine amount, he sentenced the convict to undergo rigorous imprisonment for a period of three years for an offence punishable under Section 15(c) of the Act. Co-accused/convict Gulu was also awarded the same sentence but under Section 25 of the Act.

2. The accused-convicts became aggrieved from the above drawn verdict of conviction, and, also the consequent therewith sentence(s) (supra), as

became imposed. Resultantly, they instituted thereagainst their respective appeals bearing No.CRA-D-623-DB-2004 and CRA-D-624-DB-2004.

3. At this stage, learned State counsel has intimated this Court that the accused Gulu, has died during the pendency of his appeal, hence his appeal bearing No.CRA-D-624-DB-2004 stands abated vide order dated 17.11.2023.

FACTUAL BACKGROUND

4. The genesis of the prosecution case is that, on 2.7.1998 Badri Parshad SI/SHO of Police Station Ratia along with other police official was going on an official jeep No. HNT/4102 from Nangal to Sardarewala, and when they reached near the drainage, they received a secret information that all the accused persons named above are indulging in smuggling and business of selling Chura post and all of them have brought some bags of Chura post and kept the same in the house of Gullu son of Inder Singh and have concealed the same in the fodder room and they can be apprehended. Accordingly, I.O. prepared the raiding party and reached village Sardarewala, outside the house of Gullu and found that all the accused persons were concealing something in the fodder room and on seeing the police party accused Harnek, Jela, Bhola, Ghukka and Gullu went to the roof of the house and tried to escape. All the accused persons except Bugla Hardev son of Gurnam Singh escaped. However, all the persons, who escaped were known to the I.O. and H.C. Dev Karan Singh. During these proceedings Balwinder Singh, Ex. Sarpanch of the village Sardarewala also reached there, who was jointed in the investigation. A notice under Section 50 of the Act was served upon the accused to the effect that suspecting some narcotic substance in the bags, he wanted to search the same and the accused Bugla Hardev, if he so desire, the search can be conducted in the presence of Gazetted Officer or a Magistrate. The contents of the notice were read over and explained

to the accused, who put his thumb impression in token of its acknowledgement in the presence of Balwinder Singh Ex. Sarpanch and Dev Karan H.C. In reply, the accused Bugla desired that his search be conducted before any G.O. or a Magistrate. The reply was also thumb marked by the accused and attested by Balwinder Singh Ex. Sarpanch and Dev Karan H.C. Thereafter, I.O. called D.S.P. Fatehabad through wireless. After sometimes DSP reached at the spot. The investigating Officer appraised the facts to him and on the direction of the DSP, Investigating Officer removed all the bags and poppy straw was found in it. Accordingly, 100 gram sample was separated from all the 21 bags. The reminder on weightment was found to be 40 Kg, in each of the bag and all the 21 bag and 21 samples were converted in the sealed parcel sealed with the seal of BS and CS. The seal after use was handed over to Balwinder Singh Ex. Sarpanch by the I.O. All the sealed parcel along with case property including residue were taken into police possession vide separate recovery memo, which was attested by Balwinder Singh, H.C. Dev Karan. The Investigating Officer sent information in writing to the Police Station through C. Virender Kumar on the basis of which formal FIR Ex.PA/1 was registered. The Investigating Officer also prepared the rough site plan of the place of recovery with correct marginal notes. Accused Bugla was arrested as per arrest memo Ex.PR. Investigating Officer recorded the The statement of the witnesses and completed the proceedings at the spot.

Trial Court Proceedings

5. On completion of investigation, challan was filed in the learned trial Court against the accused. On their appearance before the learned trial Court, all the accused persons were charge sheeted for the commission of an offence punishable under Section 15 of the Act. The said charge was read over and

explained to the accused in simple Hindi, to which they pleaded not guilty and claimed trial.

6. Subsequently after the recordings of depositions of six witnesses, the learned public prosecutor closed the prosecution evidence but after tendering the report of the FSL, to which Ex.PS is assigned. After the closure of the prosecution case, the learned trial Judge drew proceedings under Section 313 Cr.P.C., wherein, the accused pleaded innocence, and, claimed false implication. However, they led one witness in their defence evidence.

Submissions of learned counsel for the convict-appellant

7. The learned counsel for the aggrieved convict-appellant has argued before this Court, that the impugned verdict of conviction, and, the consequent thereto order of sentence, thus require an interference. He supports the above submission on the ground, that it is based on a gross misappreciation, and, non-appreciation of evidence germane to the charge.

Submissions of the learned State counsel

8. Learned State counsel has argued that the impugned verdict of conviction, and, consequent thereto sentence (supra), as became imposed upon the convict by the learned trial Judge concerned, is meritworthy, as the same does not suffer from any taint of any gross mis-appreciation or non-appreciation of any evidence germane to the charge. Therefore, he contends that the impugned verdict of conviction and consequent thereto sentence be maintained, and, affirmed by this Court.

9. Through Ex.PC recovery of poppy post was made from the fodder room of the house of co-accused Gullu. Therefore, thereby there was no

requirement for the investigating officer concerned, to beget compliance with the mandatory statutory provisions, as embodied in Section 50 of the Act.

10. A reading of the deposition of the investigating officer concerned, reveals that after the makings of recovery of the said contraband, the same becoming enclosed in 21 cloth parcels, and, thereons becoming embossed three seal impressions each, carrying thereons English alphabets 'BP' each. Thereafter, DSP also put his signatures over the cloth parcels. Moreover, he embossed thereons seal impressions bearing English alphabets 'CS'.

11. Furthermore, as revealed from a reading of statement of the Head Constable Balwinder Singh No.55, who stepped into the witness box as PW-1, thus the sample parcels became sent through Constable Ram Dhari C. No.166 to the FSL concerned.

12. A reading of the report of the FSL concerned, as becomes enclosed in Ex.PS, contents whereof are extracted hereinafter, thus vividly reveals, that the 21 sealed cloth parcels as became forwarded there by DSP Fatehabad, thus became received there. The above made narrations in the report of the FSL concerned, do completely tally with the speakings, as made by the prosecution witnesses concerned, both in respect of the numbers' of the seal impressions, as became made on the apposite cloth parcels, besides also tally with the English alphabets, as became embossed thereons'. Therefore, but obviously it has to be concluded, that the enclosed residue in the cloth parcels, which became removed from the bulk, for examinations thereons being made, by the FSL concerned, becoming completely related or being compatible, both to the numbers' of the seal impression, as made thereons, besides with the English alphabets, as became embossed thereon.

Xxx

NATURE OF SEAL(S)

Twenty one 21 sealed cloth/paper parcel(s) each with 3 seals of B.P. and 3 seals of C.S. enclosing _____, containing the exhibit 1 to 21.

xxx

RESULTS

Qualitative Tests:- Ex-1 to Ex-21

Meconic Acid:	Present	Thebaine:	Present
Morphine:	Present	Tapaverine:	Present
Codeine:	Present	Narcotine:	Present

Quantitative Tests:-

Morphine Percentage: _____

Weight of the sample returned: Approx. (illegible) Ex.-1 to Ex.-21)

OPINION: The samples (Ex.-1 to Ex-21) were identified as poppy straw (chura post) of (illegible).

Note: After exam, the exhibits have been sealed with the seal of FSL (illegible)

Sd/-

S.K. NAGPAL
Senior Scientific Officer (General)
cum-ex-officio Asstt. Chemical
Exminer to the Govt; of Haryana,
Forensic Science Laboratory
Madhuban (Karnal) ”

13. Though, no contest became raised by the learned defence counsel that the FSL report Ex.PS, thus was not made in respect of the contents enclosed in the sealed cloth parcels (supra), nor though any contest became raised by the learned defence counsel, that the thereons embossed number(s) of seal impressions, besides the embossed thereons, thus English alphabets, rather not tallying either with the number(s) of the seal impressions or with the English alphabets, as became embossed thereons, and, as became depicted in the road certificate. In consequence, though *prima facie* the argument as becomes raised

before this Court by the learned counsel for the convict-appellant, that the report of the FSL (supra), as made on the stuff retrieved, from the sealed cloth parcels, rather not relating to the residue enclosed therein, after separating the same from the bulk, thus after seizure thereof being made at the crime site, rather *prima facie* is a pretextually raised argument before this Court.

14. Nonetheless, the incriminatory opinion rendered by the FSL concerned, vis-a-vis the stuff enclosed inside the sealed cloth parcels, which become received there, but for reasons to be assigned hereinafter rather is enveloped in a grave shroud of skepticism, qua it relating to the stuff which as a matter of fact was carried in the sealed cloth parcels, as become sent and also became received at the FSL concerned.

15. The reason for making the above inference ensues from the factum, that the mere unrebutted adduction into evidence of the incriminatory report of the FSL rather may not be the apt clincher, unless the examined stuff after being so examined becomes re-enclosed in the cloth parcels by the expert at the FSL concerned, besides unless on the cloth parcels, the seals of the FSL but become embossed, and thereafters the cloth parcel (supra) becoming produced before the learned trial Judge concerned, for the same being shown to the prosecution witnesses concerned, and/or only in the event of the above imperatives being done, thereupons, alone the results of the incriminatory examination, thus may unflinchingly prove the charge drawn against the accused.

16. Imperatively since the primary evidence for sustaining the charge, thus not only becomes comprised in the adduction into evidence of the report of the FSL, but also becomes comprised in the production in Court of the sealed cloth parcels enclosing therein the stuff examined, and, thereons becoming embossed the seal impressions of the FSL concerned. Strikingly therebys there

would be no room for skepticism percolating vis-a-vis the prima donna fact, qua no stuff other than the one as sent to the FSL, rather becoming examined. Moreover, therebys there would be no further inroads into the efficacy vis-a-vis the fact, that there were no spoilings or tamperings with the sealed cloth parcels as become sent for examination to the FSL concerned, irrespective of the detailings (supra) becoming spoken at the top of the report of the FSL.

17. Significantly also therebys the link commencing from the seizure taking place at the crime site, and, upto the sample parcels becoming produced in Court, but would remain unsnapped. Contrarily, the said link would get snapped or would become broken in case there is omission on the part of the prosecution to adduce into evidence along with the report of the FSL, the cloth parcels enclosing therein the stuff examined, and, thereons existing the seals' of the FSL concerned. In the event of the said link becoming snapped, thereupon as stated (supra), the prosecution case gets enveloped in an aura of skepticism and the consequent benefit of doubt ensues to the accused.

18. In addition, if all above is done, thereupon whatsoever argument is raised before this Court, by the learned counsel for the convict-appellant, that the report, as became made by the FSL concerned, on the sealed cloth parcels, thus becoming not related to the stuff inside them, and, as became purportedly separated from the bulk, at the crime site, but necessarily would be a pretextual argument.

19. Importantly, the result of the apposite examinations, as become extracted hereinabove, makes vivid echoing that after examinations of the stuff, as became enveloped in the sealed cloth parcels, thus such examinations unfolding, that thereins became enclosed remains of Chura post.

20. Be that as it may, a reading of the above extracted report made by the Chemical Examiner, reveals qua it candidly expressing qua the imperative fact relating to, after an incriminatory examination being made of the stuff inside the sealed cloth parcels, thus the examined stuff becoming re-enclosed in cloth parcels. Significantly however, though on the apposite parcels the chemical examiner concerned, embossed the seal of the FSL concerned, but the said embossed seal is illegible, thereby the illegibility of the seal of the FSL, as became embossed on the apposite cloth parcel, but leads to a conclusion that as such the cloth parcel concerned, enclosing therein the stuff after its examination being made at the FSL concerned, rather becoming tampered and/or no seal of the FSL became embossed on the apposite cloth parcels. Moreover, the sealed cloth parcels (supra), never became produced in Court, nor became shown to the prosecution witnesses concerned.

Arguments of the learned State counsel

21. Nonetheless, the learned State counsel submits that since in terms of Section 293 and 294 of the Cr.P.C., provisions whereof becomes extracted hereinafter, thus a rebuttable presumption of truth becomes assigned to the reports prepared by the Experts, as become detailed in sub Section 4 of Section 293 of the Cr.P.C. Resultantly, he submits that since thereby the Court has a discretion to summon and examine any such expert, as to the subject matter of his report. Moreover, since thereby an opportunity is assigned to the accused rather to bely the results of the examination made over the subject examined by the Expert concerned. Therefore, he submits that since the said opportunity is waived by the accused, through the learned defence counsel permitting the making of exhibition marks on the report of the FSL concerned. Resultantly the results of the incriminatory examination (supra), as made by the FSL concerned,

over the subject concerned, is admissible in evidence but irrespective of the fact, that after examination of the stuff at the FSL, the same remaining unenclosed in cloth parcels, nor the seal impressions of the FSL concerned, becoming embossed thereons, besides the cloth parcels remaining unproduced in Court for the same being then shown to the prosecution witnesses concerned.

293. Reports of certain Government scientific experts.—(1)

Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report.

(3) Where any such expert is summoned by a Court, and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.

(4) This section applies to the following Government scientific experts, namely:—

(a) any Chemical Examiner or Assistant Chemical Examiner to Government;

[(b) the Chief Controller of Explosives;]

(c) the Director of the Finger Print Bureau;

(d) the Director, Haffkeine Institute, Bombay;

(e) the Director [, Deputy Director or Assistant Director] of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;

(f) the Serologist to the Government;

[(g) any other Government scientific expert specified, by notification, by the Central Government for this

purpose.]

294. No formal proof of certain documents.—(1) *Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.*

(2) The list of documents shall be in such form as be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed:

Provided that the Court may, in its discretion, require such signature to be proved.

22. Be that as it may, he yet further reiteratedly submits that in terms of Section 294 of the Cr.P.C., provisions whereof becomes extracted hereinabove, since the said report became included in a list and when upon its/their production in Court, at the instance of the learned Public Prosecutor concerned, there was an opportunity vis-a-vis the accused to either admit or deny the genuineness of the said report. Therefore, reiteratedly he submits that since the said opportunity remained unavailed. Contrarily with the learned defence counsel rather permitting the making of an exhibition mark thereons, thereupon in terms of Section 293(4) of the Cr.P.C., the report of the FSL was *per se* readable in evidence.

23. He further reiteratedly submits that thereby yet the link commencing from the date of preparation of recovery memo and upto the drawing of the report remains fully established, thereby the charge drawn against the accused becomes cogently proven, irrespective of existence of the above infirmity relating to the non production of the examined stuff before the Court concerned,

for the same then being shown to the prosecution witness or to the expert concerned.

However, for the reasons to be assigned hereinafter the said made argument before this Court by the learned State counsel is not acceptable.

24. Firstly for the reason that though in terms of the Section 293(3) of the Cr.P.C., rather the experts concerned, when proceed to make a report in respect of the subject matter concerned, thereupon the said report is usable as evidence. However, the usability of such report rather is not conclusive proof vis-a-vis the results of the examinations as disclosed therein. The reason for making the said conclusion becomes sparked from the factum, that the coinages “*may be used as evidence in any inquiry, trial or other proceeding under this Code*”, do garner an inference that the said report, but acquires only a presumption of truth, thus is not conclusive proof in respect of the results of the examination, as become echoed thereins.

25. In sequel, the makings of a close analyses of the provisions as embodied in Section 293(2) of the Cr.P.C., leads to the sequel that thereby the learned trial Court becoming empowered to summon and examine the expert concerned, whereupons, the said vested empowerment in the trial Judge concerned, is to be read to be thus bestowing also a leverage vis-a-vis the defence to cross-examine the expert concerned.

26. Moreover, though in terms of Section 293(3) of the Cr.P.C., the expert concerned, may be with the leave of the Court, choose not to make his personal appearance before the learned trial Judge concerned, whereby the learned trial Judge concerned, may permit the responsible officer concerned, so deployed by the author of the report for proving the said apposite report but who is also well conversant with the facts of the case besides can satisfactorily depose in Court on behalf of the expert, who prepared the report.

27. However, yet the recourse to Section 293(3) of the Cr.P.C., but cannot whittle down the conferment of an indefeasible right upon the accused to seek a personal cross-examination being made vis-a-vis the author of the report concerned, as thereby a full opportunity of fair trial, as envisaged under Article 21 of the Constitution of India, thus would become well preserved vis-a-vis the accused.

28. Necessarily therebys the statutory discretion (supra) as becomes conferred upon the learned trial Judge concerned, thus to summon and examine any such expert as to the subject matter of his report, rather has to be read to be not conferring an idle discretion upon the learned trial Judge concerned. Contrarily, it has to be construed to be injuncting the learned trial Judge concerned, to ensure that he summons the expert, especially when this Court after assigning the directory signification (supra), to the directory coinages “*may be used as evidence in any inquiry, trial or other proceeding under this Code*”, as occur in Section 293 of the Cr.P.C., rather has therebys inferred that the report of an expert only enjoys a presumption of truth. If so, especially when this Court has also made the above inference, that for fully awakening the innate purpose of Article 21 of the Constitution of India, as appertains to the fullest opportunity of fair trial becoming assigned to the accused. Therefore, for facilitating the assigning of the fullest opportunity of fair trial to the accused, therebys the personal appearance of the author of the report, after his being summoned, is but imperative, as only thereafter he can be cross-examined by the defence. Therefore too, the import of the provisions (supra), thus is to forward the mandate of fair trial as enshrined in Article 21 of the Constitution of India, therebys the summoning of the accused is imperative for his being not only

examined-in-chief rather for proving the incriminatory report as become drawn by the expert concerned, but also for his being subsequently cross-examined.

29. Be that as it may, though Section 294 of the Cr.P.C., provisions whereof becoming extracted hereinabove, appear to make an injunction upon the learned trial Judge concerned, to vis-a-vis any document which is filed by the prosecution or by the accused, particulars whereof are included in the list, thus permit respectively the prosecution or the accused, either to admit or deny the genuineness of every such document. Moreover, in the event of the genuineness of any document rather remaining undisputed, thereupon the said document being permissible to be read in evidence in any enquiry, trial of other proceeding as drawn under the Code, but without proof of the signature of the person to whom it purports to be signed. The proviso appended under Section 294(3) of the Cr.P.C., also well empowers the Court to in its discretion require proof of signatures.

30. Since as stated (supra), the corner stone of Section 293 of the Cr.P.C., is that, therebys only a rebuttable presumption of truth becoming assigned to a report prepared by the experts detailed in Section 293(4) of the Cr.P.C. Therebys reiteratedly when an opportunity to the accused to lead evidence in rebuttal to the said prepared report, through making cross-examination upon the author concerned, is in consonance with the ordainment occurring in Article 21 of the Constitution of India, thereupons irrespective of no denial being made by the defence counsel at the time of production of the report of the FSL by the Public Prosecutor concerned, but would not relieve the learned trial Judge concerned, vis-a-vis the statutory obligation as enclosed in Section 294 Cr.P.C. Importantly, when the said statutory obligation is cast in a mandatory tone, besides when the said assigning of an overload of mandatoriness to the

provisions carried in Section 294 Cr.P.C., becomes well grooved in the mandatory statutory coinage “*shall be called upon to admit or deny the genuineness of each such document*”, as exist in Section 294 Cr.P.C.

31. Though, the learned State counsel has vigorously argued that since the report of the FSL concerned, enclosed in Ex.PS, thus makes an incriminatory pronouncement vis-a-vis the accused, whereafter he has further submitted that since the said report was tendered into evidence by the learned Public Prosecutor concerned. Therefore since at the said stage, there was an opportunity to the accused to admit or deny the genuineness of the said report, whereas, the said opportunity remaining unavailed, thereupon when within the domain of Section 294(3) of the Cr.P.C., the FSL report has earlier remain undisputed, as such it was *per se* readable in evidence.

32. In nutshell he argues that the mere tendering into evidence vis-a-vis the report, without the stuff examined being produced in Court, rather is sufficient and clinching proof, in respect of the incriminatory results drawn against the accused, especially when after the tendering of the report by the Public Prosecutor concerned, the accused rather waived for reason (*supra*) or had forgone the opportunity to deny the results of the examination as made.

33. Even the said submission (*supra*), is rudderless, thus on the ground that it has sprung from the learned trial Judge concerned, remaining unawakened in entirety vis-a-vis the innate nuance (*supra*) as become assigned to the above extracted provisions.

34. Since as stated (*supra*), the fine rubric ingraining the provisions comprised in Section 294 Cr.P.C., is to ensure the furtherance of fair trial as envisaged under Article 21 of the Constitution of India, in respect of the charges drawn against the accused. Moreover, if the said would yet happen only after the

expert stepping into the witness box, thus for enabling the defence to cross-examine him, qua the processes' engaged by him for making examinations of the stuff enclosed in the sealed cloth parcels, thereby the mere tendering of the report by the Public Prosecution concerned, but would not *ipso facto* prove the charge drawn against the accused. In addition, even if at that stage the defence counsel, did not refute the makings of an exhibit mark thereon, but yet to the objective insightful mind of this Court, the said purported waiver did not thus, empower the learned trial Judge concerned, to omit to obey the statutory obligation cast upon him, thus contemplated within the domain of the significations as assigned, vis-a-vis the mandatory statutory coinages "*shall be called upon to admit or deny the genuineness of each such document*". The said statutory coinages do cast a peremptory diktat upon the Court to irrespective of no refutation being made vis-a-vis the apposite report rather by the defence counsel, yet to rather call upon the accused to also either admit or deny the genuineness of the documents.

35. In other words, the said was a solemn duty cast upon the Court. Moreover, the said duty could be said to be well exercised only when the accused was peremptorily called upon to admit or deny the genuineness of the said document. Moreover, the said right is personal to the accused, and, is to be both ensured to be availed as also to be well exercised only by him, unless of course the defence counsel makes a statement that he has instructions to permit the making of an exhibition mark in the instant case.

36. Since at the time of the tendering into evidence of the report of the FSL, to which Ex.PS is assigned, the learned defence counsel, did make a statement, that he has instructions from the accused to not oppose, the making of an exhibition mark upon the report of the FSL concerned, thereby the learned

trial Judge concerned, appears to have derogated from the mandatory statutory obligation cast upon him rather to ensure *qua* the accused appearing before him, thus for admitting or denying the genuineness of apposite report. The said avoidance of performance of duty by the learned trial Judge concerned, has resulted in the accused becoming denied the fullest opportunity to admit or deny the report, and, to also subsequently ask that the expert concerned, be summoned, so that he can then cross-examine him, about the correctness of the report or vis-a-vis the correctness of the processes engaged into by him for his making an examination of the stuff inside the sealed cloth parcel.

37. Moreover, Section 294(3) of the Cr.P.C., declares that when the genuineness of any document is not disputed, thereupon the said document being readable in evidence but without proof of the signatures of the person to whom it purports to be signed, but with a proviso that the Court may, in its discretion, require such signature to be proved.

38. In aftermath, the statutory right of admission or denial as bestowed in Section 294 of the Cr.P.C., though *prima facie* relates only to the apposite admission/denial covering the genuineness of the signatures of the author of the document concerned, which may be even a report made in terms of Section Section 293(4) of the Cr.P.C., but it does not yet relieve the learned trial Judge concerned, to yet in terms of Section 293(2) of the Cr.P.C., though the coinages therein, are in a directory language, but further ensure the conducting of a fair trial vis-a-vis the accused. The said would occur only if the expert concerned, becoming summoned, as therebys the accused would be permitted to cross-examine the expert concerned, wherebys the right of fair trial would become fully preserved vis-a-vis the accused, the same being a Constitutional right.

39. Emphatically also there is no evidence on record which forthrightly speaks that the said examined contents enclosed in the apposite cloth parcels became returned to the FSL concerned, nor obviously qua the said examined sealed cloth parcels became deposited in the police malkhana concerned. Moreover, the apposite sealed cloth parcels never became produced in Court, for theirs becoming shown to the prosecution witnesses concerned, thus for ensuring the makings of speakings by them, vis-a-vis, the apposite sealed cloth parcels becoming received in the police malkhana and subsequently in Court, thus in an untampered and unspoiled condition. Since the above did not happen therebys, it appears that the prosecution has withheld a vital incriminatory link comprised in the production in Court of the apposite cloth parcels in respect of whose contents, an incriminatory report comprised, thus in Ex.PC, thus was made. The suppression or withholding of the above vital link, thus snaps the link *inter se* the recovery being made at the crime site, vis-a-vis the apposite incriminatory opinion being made thereons by the FSL concerned.

40. If so, it appears that the apposite sealed cloth parcels did disappear, wherefrom an inference arises that the incriminatory report made on the stuff inside the cloth parcels concerned, may not be related to the stuff which as a matter of fact, became examined at the FSL concerned, irrespective of the factum, that the residue enclosed in sealed cloth parcels may have travelled in an unspoiled or untampered condition to the FSL concerned. Conspicuously, when the apposite returns of the apposite cloth parcel rather in an unspoiled or untampered condition but was imperative. Consequently, if grave skepticism makes it enrodes vis-a-vis the prosecution case, therebys the vital incriminatory link (supra) becomes snapped. Therefore, benefit of doubt is to be given to the accused.

Final Order

41. The result of the above discussion, is that, this Court finds merit in the appeal, and, is constrained to allow it. Consequently, the appeal is allowed. The impugned judgment convicting, and, sentencing the appellant, and, as become recorded by the learned trial Judge concerned, is quashed, and, set aside. The appellant is acquitted of the charge framed against him. The fine amount, if any, deposited by him, be, in accordance with law, refunded to him. The personal, and, surety bonds of the accused shall stand forthwith cancelled, and, discharged. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal. The appellant, if in custody, and, if not required in any other case, be forthwith set at liberty. Release warrants be prepared accordingly.

42. Records be sent down forthwith.

43. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

06.09.2024

(SUDEEPTI SHARMA)
JUDGE

Ithlesh

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