

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-879-DB-2004
Reserved on: 29.08.2024
Date of decision: 12.09.2024

TULE RAM

...Appellant

Versus

STATE OF HARYANA

...Respondent

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

Present: Mr. Prateek Rathee, Advocate (Legal Aid Counsel)
for the appellant.

Mr. P.P. Chahar, Sr. DAG, Haryana.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict made on 12.07.2004, upon Session Case No.83 of 2003, by the learned Special Judge, Panipat, wherethrough he convicted the accused for a charge drawn qua offences punishable under Sections 20 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as “the Act”). Moreover, through a separate sentencing order of 14.07.2004, he proceeded to impose upon the convict the sentence of rigorous imprisonment for a period lasting upto 12 years, besides imposed upon him, sentence of fine of Rs.1,25,000/-, and in default of payment of fine amount, he sentenced the convict to undergo rigorous imprisonment for a period of three years.
2. The period spent in prison by the convict thus during investigation or trial, was, in terms of Section 428 of Cr.P.C., ordered to be set off from the above imposed substantive sentence(s) of imprisonment, upon the convict.

3. The accused-convict became aggrieved from the above drawn verdict of conviction, and, also the consequent therewith sentence(s) (supra), as became imposed. Resultantly, he instituted thereagainst the instant criminal appeal bearing No.CRA-D-879-DB-2004.

FACTUAL BACKGROUND

4. The genesis of the prosecution case is that, on 6.7.2000, a police party headed by Ramesh Kumar A.S.I. was present at outer gate of General Bus Stand, Panipat in connection with patrolling. Meanwhile, the accused along with a bag of rexine of black colour was seen coming from Bus Stand, Panipat. On seeing the police party, he turned back, which arose suspicion. He was apprehended. After enquiring about the identity, he was suspected to be carrying some contraband in the bag. So, he was given a notice Ex.PG under Section 50 of the Act to give his option to be searched in the presence of some gazetted officer or Magistrate, Vide reply Ex.PG/1, he opted to be searched in the presence of some Magistrate. So, PW-6 Balraj Singh Jakhar, Naib Tehsildar exercising the powers of Magistrate was called and in whose presence, the bag being carried by the accused was searched. It was found containing 3.5 Kgs. of Charas. After separating 50 grams of contraband, the residue along with the sample parcel were taken into possession vide recovery memo Ex.PF. A rukka Ex.PD was sent to the police Station and on the basis of which, formal F.I.R. Ex.PD/1 was recorded against the accused. A rough site plan of the place of recovery Ex.PH was prepared. Statements of witnesses were recorded. After receipt of report of F.S.L. Ex.PX and conducting other usual investigations, the present case was launched against the accused in the learned trial Court to face trial.

Trial Court Proceedings

5. On completion of investigation, challan was filed in the learned trial Court against the accused. On his appearance before the learned trial Court, the accused was charge sheeted for the commission of an offence punishable under Section 20 of the Act. The said charge was read over and explained to the accused in simple Hindi, to which he pleaded not guilty and claimed trial.

6. Subsequently after the recordings of depositions of seven witnesses, the learned public prosecutor closed the prosecution evidence but after tendering the report of the FSL, to which Ex.PX 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, he led only one witness in his 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.PF recovery of opium/charas was made from the rexine bag of black colour which the appellant was holding in his right hand. 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. The contents of recovery memo (Ex.PF) become extracted hereinafter.

“Recovery memo of Charas

In the presence of following witnesses in accordance with the order given by Sh. Balraj Singh Jakhar, Naib Tehsildar, Panipat, the search of Raxine bag with black colour being carried by aforesaid Tule Ram in his right hand has been conducted according to law in his presence, then Charas was found in the bag which was wrapped in polythene of yellow colour. After arrangement of weighing scale and weights, on weighment it came out 3 Kg 500 gram, out of which 50 gram Charas was taken out as sample and put into a tin box and remained was put in to a plastic Pippi of 5 Kg. Separate parcels were prepared and sealed with seal RK and taken into police possession vide memo. Memo was signed by the witnesses. After use seal was handed over to constable Sewa Ram No.267. Memo was attested by Sh. Balraj Singh Jakhar, Tehsildar, Panipat.

xxx”

11. A reading of the recovery memo thus reveals that, the investigating officer (PW-7) put his seal bearing impression ‘RK’ on the sample parcels, as well as, on the residue parcel, but the numbers’ of seal impressions embossed on such parcels rather remains unspoken thereins.

12. Though the Investigating Officer concerned, stepped into the witness box as PW-7, but in his examination-in-chief he has only spoken that he

had embossed his seal impressions 'RK' on the parcels, but he yet omitted to speak qua the numbers' of such embossed seals impressions, rather on the apposite cloth parcels.

13. The SHO concerned, stepped into the witness box as PW-5. Though, the said prosecution witness in his cross-examination echoed that five seals were already affixed on the sample parcel and he affixed his two seals bearing impression 'RS'.

14. However, a reading of the report of the FSL concerned, as becomes enclosed in Ex.PX, contents whereof are extracted hereinafter, though rather vividly reveals, that the one sealed cloth parcel as became forwarded there by DSP (H.Q.) Panipat, thus became received there. Though it is further expressed therein that the parcel became sealed with 5 seals of 'RK' and 2 seals of 'RS'. However, the above made narrations in the report of the FSL concerned, do not completely tally with the speakings, as made by the prosecution witnesses concerned, thus in respect of the numbers' of the seal impressions, as became made on the apposite cloth parcel, especially when the numbers' of the seal impressions, as made on the cloth parcel concerned, remain unspoken by the prosecution witnesses concerned, nor became spoken in the recovery memo (supra). Therefore, but obviously it cannot 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, to the numbers' of the seal impression, as purportedly made thereons, as the said apposite numbers become spoken only in the report of the FSL concerned, but remains unspoken either by the PWs concerned, nor become spoken in the recovery memo Ex.PF.

Xxx

Description of parcel(s)

One sealed cloth parcel sealed with 5 seals of R.K. and 2 seals of R.S. enclosing a metallic container containing the exhibit.

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RESULTS

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Qualitative Tests:-

Cannabidiol Present

Cannabinol Present

Tetrahydrocannabinol Present

Weight of the Sample Returned: 45.00 gram

OPINION: The sample was identified as Charas (cannabis).

Note: After examination, the exhibit has been sealed with the seals of SSO /(Gnl.)/FSL(H).

xxx”

15. The underlined hereinabove expressions occurring at the top of the report of the FSL (Ex.PX), wherein, occur speakings about the numbers’ of seals, as made on the cloth parcel concerned.
16. Reiteratedly the hereinabove underlined expressions, as occur at the top of the report of the FSL, but for lack of (supra) *inter se* synchronicity, with the incriminatory examination, as made on the stuff inside the cloth parcel, therebys does not make the accused to be inculpable and/or rather therebys there occurring snappings of apposite *inter se* complete connectivity *inter se* the descriptions made on the recovery memo, with the ones, as become made in the hereinabove underlined portion of report of the FSL.
17. Though the said infirmity is contended to be overcome from SHO while stepping into the witness box testifying that so many numbers of seal impressions were made on the cloth parcels. However, the said made testification cannot overcome the evidentiary strength of a scribed recital made in recovery

memo (Ex.PF) whereto rather evidentiary vigor is to be assigned than to the contra thereto oral evidence (supra) spoken by the SHO concerned.

18. Reiteratedly, therebys the prosecution has failed to prove the charge which was completely dependent upon the result of the examination made on the stuff enclosed in the residue cloth parcel, as became sent to the FSL, for examination.

Final Order

19. 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.

20. Records be sent down forthwith.

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

(SURESHWAR THAKUR)
JUDGE

12.09.2024

(SUDEEPTI SHARMA)
JUDGE

Ithlesh

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