

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-174-DB-2006
Reserved on: 30.08.2024
Date of decision: 6.09.2024

BABLOO JAIN AND OTHERS

...Appellants

Versus

STATE OF HARYANA

...Respondent

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

Present: Mr. Arnav Ghai, 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 10.01.20006, upon Session Case No. 52 NDPS of 3.10.2002, by the learned Special Judge, Ambala, wherethrough he convicted the accused for a charge drawn qua offences punishable under Sections 8 and under Section 18 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as “the Act”). Moreover, through a separate sentencing order of 12.01.2006, he proceeded to impose upon the convicts the sentence of rigorous imprisonment for a period lasting upto 15 years, besides imposed upon them, sentence of fine of Rs.1,00,000/-, and in default of payment of fine amount, he sentenced the convicts to undergo rigorous imprisonment for a period of one year for an offence punishable under Section 18 of the Act, and, for an offence punishable under Section 8 of the Act, they were sentenced to undergo rigorous imprisonment for a period lasting upto six months.

2. All the above imposed sentences of imprisonment, were ordered to run concurrently. The period spent in prison by the convicts 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 convicts.

3. 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 the instant criminal appeal bearing No.CRA-D-174-DB-2006.

FACTUAL BACKGROUND

4. The genesis of the prosecution case is that, on 24.7.2002 Inspector Phool Chand posted in Detective Police Staff, Ambala, accompanied by Inspector Ashok Kumar (PW7), Sub Inspector Suraj Bhan, the then Station House Officer, Police Station, Mahesh Nagar, ASI Laxmi Chand, Head Constable Naresh Kumar, Head Constable Rattan Lal, Constable Jarnail Singh, Constable Balwan Singh and Constable Randhir Singh were patrolling on official vehicle bearing registration No.HR-01-F-4464 being driven by Constable Ravinder Kumar met Inspector Ashok Kumar along with police officials in another vehicle at bus stand, Ambala Cantt. They were talking with one another, when a secret information was received from an informant that, on 20.7.2002 one truck bearing registration No.MP-14-G-7013 owned by its owner Babloo, driven by Aameen Shah and cleaner Shabir Shah had started from Madhya Pradesh by loading gram husk in the truck and that the accused Mukhtiar Singh resident of Village Dhantori (Kurukshetra) had also met them. It was also informed that the opium wrapped in a plastic bag and kept in a cardboard box was also in the truck by these persons. It was also informed that Mukhtiar Singh

was to take this delivery of opium at Ambala and he had given Rs.2,000/- to them and the remaining amount of Rs.8,000/- was to be paid after deliver of opium at Ambala. The police party also received the information that the truck was to be unloaded at the shop of Mangat Ram of Ambala City and that after unloading; the truck was coming back to Pipli. The police also received the information that all the four persons Babloo, Aameen Shah, Shabir Shah and Mukhtiar Singh were there in the truck along with bag of opium and if the area was cordoned the accused could be apprehended with the opium. The police party believing the information as credible cordoned the area near Tangri Bridge, G.T. Road, Village Shahpur. After sometime, a truck bearing registration No. MP-14-G-7013 came from the side of Ambala, which was got stopped. The driver told his name as Aameen Shah. The other person sitting on the front seat was Shabir Shah. The third person told his name as Mukhtiar Singh and fourth person told his name as Babloo i.e. the present accused persons. The investigating officer told all of them that they were suspected of keeping some narcotics in truck and whether they wanted the search to be conducted by Gazetted Officer or Magistrate and issued notice under Section 50 of the Act (Ex.P9) in this regard. The accused opted vide option Ex.P10 to get the search conducted in the presence of some Magistrate. In the meantime Shri Roshan Lal, Naib Tehsildar (PW6) reached the spot, who was informed about the facts. After verifying the names etc. of the accused, Naib Tehsildar directed the investigating officer to conduct the search of the cabin of the truck, from which one plastic bag duly stitched was recovered. The same was taken out of the truck. After opening the bag one cardboard box was recovered, out of which there were two plastic envelopes in which there was 10 Kgs each of opium. Two samples each of 100 grams were separated out of each plastic envelope and then the four samples and residues after mixing in a plastic cane were converted into parcel

and were sealed with the seal PC. The samples and the residue were taken into police custody vide seizure memo Ex. P7. The seal after used was handed over to Naib Tehsildar. Information Ex. P1 was sent to the Station House Officer, Police Station, Parao through Constable Jarnail Singh, on the basis of which formal First Information Report Ex.P2 was lodged by MHC Surjit Singh (PW1), who made the endorsement Ex.P3 on the information itself.

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 offences punishable under Sections 8 and 18 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 eight witnesses, the learned public prosecutor closed the prosecution evidence but after tendering the report of the FSL, to which Ex.P8 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 six witnesses in their defence evidence.

Submissions of learned counsel for the convicts-appellants

7. The learned counsel for the aggrieved convicts-appellants 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 convicts 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.P8 recovery of opium was made from the offending truck bearing registration No.MP-14-G-7013, which was being driven by accused Aameen Shah. The person sitting on the front seat was accused Shabir Shah, and, the third person was accused Babloo. 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.P8) become extracted hereinafter.

“In the presence of following witnesses and during the course of barricading Truck No.MP-14G-7103 was made to stop at Tangri Bridge Shahpur in the area of Ambala on suspicion of having intoxicant substance in it in which four persons including driver were sitting. The driver told his name as Aamin Shah son of Mobin Shah Caste Fakir Muslman, resident of Mandapura PS Mandsor, District Mandsor (MP). The first person sitting by the side of driver told his name as Shahbir Shah son of Mohsin Shah, cleaner, caste Fakir Muslman r/o Mandapura and the other person told his name as Mukhtiar Singh son of Gurbax Singh, caste Kamboj Sikh, r/o Dhantori PS Shahbad and third person told his name as Bablu son of Chand Mal, caste Jain r/o New Abadi Mandsor (MP). All the four were informed he is suspecting some intoxicant substance in their

possession and they were asked to get their search conduct from Magistrate or from Gazetted officer. To get their consent Notice U/S 50 of NDPS Act was served on them. Sh. Roshan Lal, Naib Tehsildar Ambala Cantt. reached at the spot, who was briefed with the secret information. As per direction given by Sh. Roshan Lal Naib Tehsildar one plastic Katta stitched with Sutli was produced and after removing Sutli it was checked. Two plastic envelop containing opium which were put in the Gatta Patti were recovered. On weighing, the weight of the each envelop measured 10-10 kg each i.e total 20 kg 2-2 parcels from each envelop weighing 100- 100 gms was taken as sample opium, made into parcels separately. The remaining opium was taken out from the envelops and put in a plastic canny, made into parcels. The parcels of sample and parcel of remaining opium weighing 19 kg 600 gms were sealed with seal PC. The parcels of Sample, parcel of remaining opium, Gatta Petti, plastic Katta, both empty envelop, truck No.MP-14G-7013 were taken into police possession vide recovery memo. The seal after use and by keeping specimen seal impressions separately, was handed over to Naib Tehsildar and it was kept by him. Memo was got signed from the witnesses. Naib Tehsildar attested the memo.”

11. A reading of the recovery memo thus reveals that, the investigating officer (PW-8) put his seal bearing impression ‘PC’ on the sample parcels, as well as, on the residue parcel, but the numbers’ of seal impressions embossed on such parcels rather remains unspoken therein.

12. Though the DSP concerned, also stepped into the witness box as PW-8, but in his examination-in-chief he has only spoken that he had embossed his seal impressions ‘PC’ on the parcels, but he yet omitted to speak qua the numbers’ of such embossed seals impressions, rather on the apposite cloth parcels.

13. Another prosecution witness who put his seal impression on the parcels is (PW-3) Brij Mohan. The said witness stepped into witness box as PW-

3, wherein though he echoed that he put his seal bearing impression 'BM' on each of the seal impressions but he also failed to disclose therein the numbers' of the seal impression(s) put on the samples parcels concerned.

14. However, a reading of the report of the FSL concerned, as becomes enclosed in Ex.P8, contents whereof are extracted hereinafter, though rather vividly reveals, that the 2 sealed cloth parcels as became forwarded there by DSP (H.Q.) Ambala, thus became received there. Though it is further expressed therein that each become sealed with 2 seals of P.C. and 1 seal of B.M. 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 parcels, especially when the numbers' of the seal impressions, as made on the cloth parcels 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.P8.

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Description of parcel(s)

Two sealed cloth/paper parcel(s) each sealed with 2 seals of P.C. and 1 seal of B.M. enclosing a plastic container in each containing the exhibits (Exhibits 1 and 2).

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Results

Qualitative Tests:- (Exhibit 1 and 2)

Meconic Acid: *Present* *Thebaine:* *Present*

Morphine: Present Tapaverine: Present

Codeine: Present Narcotine: Present

Quantitative Tests:-

Morphine Percentage: 5.597% W/W (Exhibit-1)

6.450% W/W (Exhibit-2).

Weight of the sample returned: 92.664 gms with container (exhibit-1)

101.006 gms with container (exhibit-2).

OPINION: The sample's (Exhibit-1 and 2) were identified as Opium.

Note: After examinations, the remains of the exhibits were sealed with the seals of SSO /General/FSL(H).

Sd/-

*S.K. SANGWAN
Asstt. Director) (General)
Forensic Science Laboratory
Haryana, Madhuban (Karnal) ”*

stuff enclosed in the residue cloth parcel, as became sent to the FSL, for examination.

Final Order

18. 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 appellants, and, as become recorded by the learned trial Judge concerned, is quashed, and, set aside. The appellants are acquitted of the charge framed against them. The fine amount, if any, deposited by them, be, in accordance with law, refunded to them. 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 appellants, if in custody, and, if not required in any other case, be forthwith set at liberty. Release warrants be prepared accordingly.

19. Records be sent down forthwith.

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

(SURESHWAR THAKUR)
JUDGE

6.09.2024

(SUDEEPTI SHARMA)
JUDGE

Ithlesh

Whether speaking/reasoned:-	Yes/No
<i>Whether reportable:</i>	<i>Yes/No</i>