

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-439-DB-2005
Reserved on: 30.08.2024
Date of decision: 09.09.2024

DHARAMBIR

...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 01.03.2004, upon Session Case No.25 NDPS of 1999, by the learned Addl. Sessions Judge, Fatehabad, wherethrough he convicted the accused for a charge drawn qua an offence punishable under Section 15(c) of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as “the Act”). Moreover, through a separate sentencing order of 03.03.2004, he proceeded to impose upon the convict the substantive sentence of rigorous imprisonment for a period lasting upto 12 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.
2. 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 appeal hearing No.CRA-D-439-DB-2005.

FACTUAL BACKGROUND

3. The genesis of the prosecution case is that, on 21.07.1998 when Bhim Singh, ASI of Police Station Rattia along with police party was present on a road leading to Bhundar was near a brick kiln of Gora Lal, in the area of Rettangarh for patrolling. At about 3:00 a.m., one TATA truck-608 was seen coming from the side of Rattangarh. The truck was signaled to stop but the driver of the truck took his vehicle to the side of the road towards brick kiln. After stopping the vehicle, all the three occupants of the vehicle fled away. I.O. along with other police officials tried to apprehend them but all the occupants of the vehicle ran away taking benefit of darkness. After that, Investigating Officer checked the vehicle bearing registration No.HR-20B-2333 and on suspicion, he gave information through C. Ramesh Kumar requesting D.S.P. Fatehabad to witness the recovery. After some time D.S.P. Charanjit Singh reached along with his staff at the spot. D.S.P. Malvinder Singh @ Vazir, Vice-Sarpanch of Village Rattangarh was also called at the spot. Thereafter, I.O. conducted the search of the truck TATA 608 before the D.S.P. Sh. Charanjit Singh and Malvinder Singh, Vice Sarpanch of village Rattangarh. 39 Bags of poppy straw were found concealed beneath the 40 bags of stone chips. Accordingly, after removing the bags of the stone chips, 39 bags of the poppy husk were recovered. The sample of 100 grams each out of each of the bag was separated and was converted into 39 parcels and sealed with the seal of CS. On weighment the reminder poppy husk was found 39 Kg. 900 grams in all 39 bags and all those 39 bags were also sealed with the seal of CS of DSP. All the sealed samples along with case property including residue, truck along with its documents, i.e. R.C., D.L. and Insurance were taken into police possession vide separate recovery memo Ex.P3 and Ex.P5, which were attested by Charanjit Singh DSP and Malvinder Singh.

The Investigating Officer also prepared the rough site plan of the place of

recovery with correct marginal notes. Thereafter, the I.O. recorded the statement of the witnesses under Section 161 Cr.P.C. All the three accused were arrested by May Ram S.I. CIA Staff, Hisar from Village Niana. After completing the investigation at the spot, on return to the Police Station, the Investigating Officer handed over the case property with the MHC.

Trial Court Proceedings

4. 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.

5. Subsequently after the recordings of depositions of nine witnesses, the learned public prosecutor closed the prosecution evidence but after tendering the report of the FSL, to which Ex.P12 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 did not lead any witness in their defence evidence.

Submissions of learned counsel for the convict-appellant

6. 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

7. 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.

8. Through Ex.P3 recovery of poppy husk was made from the offending vehicle Tata-608 bearing registration No.HR-20B/2333. 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.

9. The contents of recovery memo (Ex.P3) become extracted hereinafter.

“In the presence of the following witnesses, search of the vehicle Tata-608 No.HR-20B/2333 has been conducted. The vehicle is loaded with 40 bags of plastic containing pieces of white chips and below them, 39 filled gunny bags have been recovered. Each bag of which on checking by opening their mouth was found containing chura post. 100 gram of chura post as sample has been taken from each bag and prepared 39 parcels and the remaining 39 bags when weighed with spring weighing scale, each bag was found containing 39 kg 900 grams including the bag. After scaling the mouth of all the 39 bags, all the bags and all the 39 parcels containing samples have been sealed with the seal of CS by taking it from Sh. Charanjit Singh, DSP and the seal after use and after retaining the sample seal, has been handed over to Sh. Charanjit Singh, DSP. The 39 parcels of sample of chura post, 39 bags containing residue duly sealed with the seal of CS and 40 bags of chips along with the vehicle Tata 608 No.HR-20B/2333, have

been taken into police possession as a piece of evidence. Signatures of the witnesses have been obtained on the memo.”

10. A reading of the recovery memo thus reveals that, DSP (PW-4) put his seal bearing impression ‘CS’ 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.

11. Though the DSP concerned, also stepped into the witness box as PW-4, but in his examination-in-chief he has only spoken that he had embossed his seal impressions ‘CS’ on the parcels, but he yet omitted to speak qua the numbers’ of such embossed seals impressions, rather on the apposite cloth parcels.

12. However, a reading of the report of the FSL concerned, as becomes enclosed in Ex.P12, contents whereof are extracted hereinafter, though rather vividly reveals, that the 39 sealed cloth parcels as became forwarded there by DSP (H.Q.) Fatehabad, thus became received there. Though it is further expressed therein that each became sealed with 3 seals of ‘CS’. 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.P12.

Xxx

DESCRIPTION OF SEAL(S)

Thirty nine 39 sealed cloth/paper parcel(s) each with 3 seals of C.S. and _____ containing the exhibit 1 to 39.

xxx

RESULTS

Qualitative Tests:- Ex-1 to Ex-39

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

Quantitative Tests:-

Morphine Percentage: ____

Weight of the Sample Returned: Approx. 80 gram (Ex.-1 to Ex.-21)

OPINION: The samples (Ex.-1 to Ex-39) were identified as poppy straw (chura post) of (illegible).

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

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. The underlined hereinabove expressions occurring at the top of the report of the FSL (Ex.P12), wherein, occur speakings about the numbers’ of seals, as made on the cloth parcels concerned.
14. 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 parcels, 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.

15. 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

16. 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.

17. Records be sent down forthwith.

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

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

09.09.2024

Ithlesh

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