

In the High Court of Punjab and Haryana at Chandigarh

1. CRA-D-366-DB-2013  
Reserved on: 21.10.2024  
Date of Decision: 23.10.2024

Partap Singh alias Kala and another .....Appellants

Versus

State of Punjab .....Respondent

2. CRA-D-259-DB-2013

Baljit Singh .....Appellant

Versus

State of Punjab .....Respondent

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

Present: Mr. L.S. Sekhon, Advocate  
for appellant No.1 (in both cases)  
  
Mr. Kanisth Ganeriwala, Advocate  
for appellant No.2 (in CRA-D-366-DB-2013)  
  
Mr. Maninderjit Singh Bedi, Addl. A.G., Punjab.

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SURESHWAR THAKUR, J.

1. Since both the above appeals arise from a common verdict, made by the learned trial Judge concerned, hence both the appeals (supra) are amenable for a common verdict being made thereons.

2. Both the appeals (supra) are directed against the impugned

verdict, as made on 21.03.2013, upon Sessions Case No.281 of 19.10.2010, by the learned Special Judge, Sangrur, wherethrough in respect of a charge drawn against the accused *qua* offences punishable under Sections 15, 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “the Act”), besides under Section 483 of the IPC, the learned trial Judge concerned, proceeded to record a finding of conviction against the accused-appellants. Moreover, through a separate sentencing order of 22.03.2013, the learned trial Judge concerned, imposed upon, the convicts both sentence(s) of imprisonment as well as sentence(s) of fine, but in the hereinafter extracted manner:

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*Keeping in view the entire facts and circumstances. the convicts Partap Singh alias Kala and Satpal Singh alias Gagu are sentenced to undergo Rigorous Imprisonment for 12 years each and to pay 1,00,000/- each as fine under Section 15 of the Act. In default of payment of fine, they shall further undergo Rigorous Imprisonment for three years each. They are further sentenced to undergo Rigorous Imprisonment for two years each under Section 483 of the IPC, whereas accused Baljit Singh is sentenced to undergo Rigorous Imprisonment for 12 years and to pay ₹1,00,000/- as fine under Section 25 of the Act. In default of payment of fine, he shall further undergo Rigorous Imprisonment for three years. The period of imprisonment undergone during the investigation, inquiry or trial be set off as per law.”*

3. The period of detention undergone by the convicts, during the investigation, and, trial of the case, was, in terms of Section 428 of the Cr.P.C., rather ordered to be set off, from the above imposed sentence(s) of imprisonment.

4. The accused-convicts become aggrieved from the above drawn

verdict of conviction, besides also, becomes aggrieved from the consequent therewith sentences of imprisonment, and, of fine as became imposed, upon them, by the learned convicting Court concerned, and, hence have chosen to institute thereagainst their respective criminal appeals (supra).

**Factual Background and Investigation proceedings**

5. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. PO/1 is assigned. The narrations carried in Ex.PO/1, are that on 12.07.2010 SI Bhagwant Singh while posted at CIA Staff Bahadur Singh Wala, on that day, he along with ASI Surinder Pal Singh, HC Gurtej Singh, HC Jaswinder Singh, HC Baldev Singh, HC Labh Singh and CI Kanwaljit Singh, on official vehicle, bearing registration No.PB-12C-9000, being driven by HC Jagpal Singh was present on the bridge of minor canal in the revenue estate of village Bhatian Kalan, in connection with patrolling duty and checking of suspected persons on Chhintan Wala-Bagriana road. At about 3.00 a.m. S.I. Bhagwant Singh noticed a vehicle coming from the side of Chhintan Wala. The said vehicle was signaled to stop by giving indication of torch. In the mean time one Gurdas Singh came from the side of village Bagriana, who was joined in the police party. On inquiry driver of the vehicle disclosed his name as Partap Singh alias Kala son of Jang Singh, resident of village Johlian, the person who was sitting on conductor seat disclosed his name as Satpal Singh alias Gaggu son of Deep Singh, resident of village Sadhoheri and the person who was sitting on the rear seat disclosed his name as Satnam Singh son of Chand Singh, resident of village Sadhoheri. SI Bhagwant Singh noticed four poly bags in the dicky of vehicle make Tavera of white colour bearing registration No.HR-24C-7064. SI Bhagwant Singh disclosed his identity to

the accused and told them that he suspected them (accused) carrying some contraband in the their car and he wanted to conduct his search and apprised the accused of their legal right to get the search conducted in the presence of Gazetted Officer or a Magistrate, who can be called at the spot. They opted their search to be conducted from any Gazetted Officer. Non consent memo of the accused Ex.PA, Ex.PB and Ex. PC respectively were recorded, signed by accused and attested by ASI Surinder Pal Singh and Gurdas Singh PW. Thereafter, SI Bhagwant Singh requested DSP Amargarh, through wireless set to reach at the spot. After some time, Sh Gurpreet Singh, DSP Amargarh reached at the spot in official vehicle beating registration No.PB-13Q-6823 along with his driver and gunmen. Sh.Gurpreet Singh DSP also disclosed his identity to the accused persons and he told the accused that he suspected them (accused) carrying some contraband in the their car and he wanted to conduct the search and apprised the accused of their legal right to get the search conducted in the presence of any other Gazetted Officer or a Magistrate, but accused reposed confidence in DSP. Their consent memos Ex.PD, Ex.PE and Ex.PF were recorded, signed by the accused and witnessed by above said witnesses as well as DSP Gurpreet Singh.

6. Thereafter, on the instructions of DSP Gurpreet Singh all the four bags lying in the above said Tavera Car were taken out and SI Bhagwant Singh conducted search of the poly bags carried by the accused, which led to recovery of poppy husk. SI Bhagwant Singh put numbers from 1 to 4 on the bags. From each bag, two samples of 250 gms each were separated and separate parcels were prepared and were numbered as IA, IB to 4A, 4B. On weightment each bag was found to be containing 39.5 kgs of poppy husk, which were also converted into a separate parcels. Then all the

sample parcels and bulk parcels were lac sealed by SI Bhagwant Singh with his seal bearing impression 'BS' Specimen of the seal Ex.P1 was prepared separately. Seal after use was handed over to ASI Surinderpal Singh. All the parcels were also sealed by DSP Gurpreet Singh with his seal bearing impression GS and also attested the sample seal chit. From further search of the car, one RC bearing No PB-11AN-2818 was recovered from the dash board and two number plates of the same numbers were also recovered from underneath the driver's seat. All the eight sample parcels, four bulk parcels, sample seal. RC, both the number plates and Tavera Car were taken into possession vide recovery memo Ex.PG, attested by the witnesses as well as DSP. From the personal search of accused Partap Singh ₹450/-, from the personal search of accused Satpal Singh 150/- and from the personal search of accused Satnam Singh ₹250/- were recovered, which were taken into possession vide separate personal search memos Ex.PH, Ex.PJ and Ex.PK respectively, signed by the accused and attested by the above said witnesses as well as DSP Gurpreet Singh. Ruqa Ex.PO was prepared and sent to police station, which led to the registration of formal F.I.R Ex.PO/1. Accused were arrested vide memos Ex.PL, Ex.PM and Ex.PP. Investigating Officer also prepared rough site plan of the place of recovery Ex.PQ.

7. On returning the police station, the accused, witnesses, personal search and entire case property were produced before officiating SHO Anwar Ali, who verified the facts of the case, interrogated the accused and affixed his seal bearing impression "AA" on the parcels as well as on sample seal chit and attested it along with case property. Thereafter, Investigating Officer deposited case property with MHC Taranjit Singh. On 04.10.2010 accused Baljit Singh was arrested in this case. On completion of ensuing

investigation and on receipt of report of Chemical Examiner the challan was presented in the Court.

**Trial Proceedings**

8. The learned trial Judge concerned, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charge against the accused, for an offence punishable under Section 15 and 25 of the Act. The afore drawn charge was put to the accused, to which they pleaded not guilty, and, claimed trial.

9. In proof of its case, the prosecution examined six witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. However, the accused did not lead any witness defence evidence.

10. As above stated, the learned trial Judge concerned, proceeded to convict the accused for the charge (supra), as became drawn against them, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonment, as well as of fine, upon the convicts.

**Submissions of the learned counsel for the appellants**

11. The learned counsels for the aggrieved convicts-appellants have argued before this Court, that the impugned verdict of conviction, and, consequent therewith order of sentence, require an interference. They support 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**

12. On the other hand, the learned State counsel has argued before

this Court, that the verdict of conviction, and, consequent therewith sentence(s) (supra), as become imposed upon the convicts, is well merited, and, does not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the instant appeal, as preferred by the convict, be dismissed.

**Analysis of the case**

13. Through recovery memo Ex.PG, the recovery of the contraband became allegedly recovered from the offending vehicle concerned. In proof of the prosecution case, Sub Inspector Bhagwant Singh stepped into the witness box as PW-3, and, in his examination-in-chief, he made speakings therein, which concur with the contents of the appeal FIR, to which Ex.PO/1 is assigned.

14. The prosecution though has been able to lead cogent evidence, in proof of the recovery of the seizure, thus being effected from the offending vehicle, and, the same thus being sealed with the relevant seal impressions. Moreover, though the prosecution has also been able to cogently establish, that the sealed cloth parcels, became deposited in the malkhana concerned. In addition, though the prosecution has been able to establish, that the case property travelled in an untampered condition to the FSL concerned.

15. Moreover, though a reading of the report (Ex.PT), as made by the FSL concerned, whereto the relevant seizure became sent for an examination being made of the stuff inside the sealed cloth parcels, though also reveals, that the examined stuff inside the sealed cloth parcels, as became sent to it for examination, thus being chura poppy heads. The said report is *ad verbatim* extracted hereinafter.

| CHEMICAL LABORATORY (Kharar) |          |                    |                          |                             |                             |                 |          |                                   |             |          |              |                                         |  |
|------------------------------|----------|--------------------|--------------------------|-----------------------------|-----------------------------|-----------------|----------|-----------------------------------|-------------|----------|--------------|-----------------------------------------|--|
| SAMPLE of Chura Poppy Head   |          |                    |                          |                             |                             |                 |          |                                   |             |          |              |                                         |  |
| Excise Report No.            | Dated    | Analysis of sample | Received by lab on dated | Forwarded by SSP (District) | Analysis completed on dated | F.I.R No./ Date | P.S.     | Results Marked Here (Sample Code) | Macroscopic | Morphine | Meconic Acid | Final Report contents of the sample are |  |
| 4293                         | 2/8/2010 | Bhuki              | 20/7/10                  | Sangrur                     | 27/7/10                     | 79/12/7/10      | Amargarh | 1610-P/10                         | Chura PH    | Present  | Present      | All Chura Poppy Heads                   |  |
|                              |          |                    |                          |                             |                             |                 |          | 1611-P/10                         | Chura PH    | Present  | Present      |                                         |  |
|                              |          |                    |                          |                             |                             |                 |          | 1612-P/10                         | Chura PH    | Present  | Present      |                                         |  |
|                              |          |                    |                          |                             |                             |                 |          | 1613-P/10                         | Chura PH    | Present  | Present      |                                         |  |

16. Be that as it may, though also a reading of the report (supra) of the FSL also discloses, that the sealed cloth parcels, became received there, hence with the seal impressions thereons being intact. However, the chemical examiner at the FSL concerned, after making examinations of the stuff inside the sealed cloth parcels, and, thereafter his drawing the report (supra), yet palpably omitted to mention in the report Ex.PT, about his re-enclosing the examined stuff inside the cloth parcels, and, his thereons affixing the seals of the FSL concerned.

17. The above was required to be mandatorily done, as, thereupon the imperatively required to be proven, thus unbroken links in the chain of incriminatory evidence, commencing from the seizure being made from the offending vehicle, through recovery memo Ex.PG, and, lasting upto the production of the case property in Court, thereby thus would become convincingly proven, rather to remain unsnapped or unbroken. In the above event alone the charge drawn against the accused would be concluded to become cogently established. However, as above stated, for want of the chemical examiner concerned, after making examination(s) of the stuff inside, the sealed cloth parcels, thus re-enclosing the examined stuff inside the cloth parcels, and, his further failure to emboss thereons, rather the seals

of the FSL concerned, whereafter the examined stuff was to be produced in Court, for its being shown to the investigating officer concerned, for thereby thus, on evident surging-forth of the above requisite primary evidence, rather the charge drawn against the accused, could be concluded to be convincingly proven.

18. Be that as it may, when the chemical examiner concerned, after examining the stuff inside the sealed cloth parcels, omitted to re-enclose the examined stuff inside the cloth parcels, and, also omitted to emboss thereons the seals of the FSL concerned. Therefore, it appears, that the stuff after becoming examined by the chemical examiner concerned, was thus enclosed in loose cloth parcels, and, thereafter the said loose cloth parcels, became sent in an unsealed condition, thus to the incharge of the malkhana concerned. Subsequently, it appears that such loose, and, unsealed cloth parcels, thus comprising the case property Ex.PG, rather became produced in Court, thus, as revealed on a reading of the examination-in-chief of PW-3, also became identified, as such by PW-3. In the wake of the above, it appears, that despite the identification of the case property, being made in Court by PW-3, and, also irrespective of the fact, that the exhibit marks were made, during the makings of testifications by PW-3, thus on the said case property, upon its, becoming produced in Court, but since there is no recorded observation by the learned trial Judge concerned, about PG, thus occurring within sealed cloth parcels.

19. Therefore, when Ex.PG obviously appertains to the relevant stuff, as became examined at the FSL concerned. In consequence, in the wake of no observations (supra), being made by the learned trial Judge concerned, qua at the time of production of Ex.PG in Court, and, also in the

wake of the report (supra) of the FSL concerned, omitting to specifically state therein, about the examined stuff, being re-enclosed in sealed cloth parcels, whereons, became embossed the seals of the FSL concerned, thus leads to the hereinafter conclusion; (a) The prosecution has not been able to co-relate the report (supra) to Ex.PG; (b) the loose cloth parcels, Ex.PG, as became produced in Court, in support of the report (supra) of FSL concerned, do not become related to the said examined stuff. Resultantly, when scope is, thus left for an inference *qua* either the case property, thus not relating to the report (supra) of the FSL concerned, and/or to the enclosures inside PG, being introduced therein, thereby the report of the FSL (supra), rather loses its evidentiary vigour. A further scope is also left, that the case property, if any, became tampered with. Moreover, much scope is also left for the drawing of an inference, that the case property other than the one related to the charge drawn against the accused, thus became produced in Court. As but a natural corollary, when the primary evidence for proving the charge drawn against the accused, does come under a cloud of deep suspicion. Resultantly, this Court is constrained to conclude, that the charge drawn against the accused did not come to be cogently established.

20. Be that as it may, this Court while answering the substantial question of law sent to the larger Bench of this Court, in case No. **CRA-S-5190-SB-2015 titled as “Deepak Kumar V. State of Punjab”**, it has been expostulated that; a) There being an imperative necessity of testings being made of the stuff inside the sample parcels. b) The inventory as becomes prepared in the presence of Magistrate concerned, in terms of Section 52A of the Act, but without testings of the stuff enclosed in the sample parcels, thus being made at the laboratory concerned, rather *per se* not acquiring the

utmost evidentiary vigor.

20. Conspicuously, the hereinabove extracted respective standing order and notification become declared by a judgment rendered by the Hon'ble Apex Court in case titled as **"Noor Aga V. State of Punjab and another" Criminal Appeal No.1034 of 2008, decided on 09.07.2008,** to be holding a mandatory character and also become ordained therein to be requiring completest adherence. Contrarily on breach thereof becoming made, therebys may be the accused would become entitled to an acquittal.

21. Furthermore, in case the entire bulk is homogeneously mixed and derivative samples are derived therefroms, resultantly the effect thereof would be that, the incriminatory finding as become recorded on the stuff inside the sample parcels as sent to the laboratory concerned, thus would acquire a presumption of truth, irrespective of the fact that the entire bulk wherefrom the derivative samples are borrowed, but after the entire seizure becoming homogeneously mixed, rather not becoming sent for analyses thereovers, being made at the laboratory concerned. Contrarily, in case the entire bulk seizure remains not homogeneously mixed, thereupon the charge drawn against the accused appertaining to the weight of the entire weight of the seizure, de hors affirmative results being made in respect of the stuff inside the residue sample parcels, as, sent to the laboratory concerned, rather would come under a cloud of doubt, whereupon benefit thereof would accrue to the accused.

22. As an illustration, if the 08 packets were allegedly recovered from the appellant and only two packets were having contraband substance and rest 6 packets did not have any contraband; though all may be of the same colour, when we mix the substances of all 8 packets into one or two; then definitely, the result would be of the total quantity and not of the two pieces. Therefore, the process adopted by the prosecution creates suspicion. In such a situation, as per settled law, the benefit thereof should go in favour of the accused. It does not matter the quantity, but proper procedure has to be followed, without which

*the results would be negative.*

23. *Reiteratedly, in case, the derivative samples from the bulk are drawn but without the entire bulk seizure becoming homogeneously mixed, thereupon the laboratory examination of the stuff inside the sample cloth parcels rather would not prove the charge relating to the weight of the entire bulk seizure taking place, at the crime site, thus from the alleged conscious and exclusive possession of the accused.*

24. *Contrarily, in case the entire bulk seizure is not homogeneously mixed or when the narcotic drug(s) or psychotropic substance, does become carried in different vials or in different packets, besides upon the said mode(s) of carryings of (supra), becomes not homogeneously mixed, thereupons, even if a fragment or a portion thereof becomes extracted from one vial or only from one packet, thus for creating a residue parcel, it would beget the ill consequence of the accused becoming entitled to an acquittal. Resultantly, when despite the evident absence of apposite homogeneous mixings of the entire bulk, taking place be it borne in packets, containers or be it being carried in different vials, besides when only a part or the fragment or portion of the seizure or only one or two of the vials, becoming extracted from the bulk, yet the said extracted fragment when becomes sent for examination to the laboratory concerned, but the apposite affirmative laboratory examination as becomes made vis-a-vis the stuff inside the sample parcels, rather would not make the charge drawn against the accused, thus for his allegedly exclusively and consciously possessing, the entire seizure, thus also becoming efficaciously proven.*

25. *Conspicuously when for the drawing of an effective conclusion, that the charge drawn against the accused qua his allegedly consciously and exclusively possessing, the entire bulk, but requires that only after homogeneous mixing of the bulk seizure, taking place, be it of psychotropic substance, in vials or in any other mode or be it with respect of narcotic drugs carried in whatsoever mode, rather residues therefroms becoming drawn, whereafter an affirmative finding on the stuff inside the residues,*

*is required to be made by the Chemical Examiner concerned.”*

21. Moreover, in the instant case, there is no mentioning of takings place of homogeneous mixing of the entire bulk seized from the offending bulk, before taking sample parcels therefrom, hence the charge drawn against the accused appertaining to the weight of the entire seizure, *de hors* affirmative results being made in respect of the stuff inside the residue sample parcels, as, sent to the laboratory concerned, thus is not cogently proved.

22. Moreover, in paragraph 35 of the judgment rendered by the Hon'ble Apex Court in **“Noor Aga V. State of Punjab and another” Criminal Appeal No.1034 of 2008, decided on 09.07.2008**, paragraph whereof becomes extracted hereinafter, thus becomes spelt the imperative *sine qua non*, rather requiring to become cogently proven hence for therebys the charge drawn against the accused becoming declared to become unflinchingly proven. However, since after the examination(s) being made of the stuff inside the sample parcels, thus by the FSL concerned, rather the latter did not re-enclose them in the sealed cloth parcels, hence carrying thereons the seals' of the FSL concerned. Moreover, when the said sample parcel(s) became never returned to the office wherefrom they generated nor when they became produced in Court.

*“35. The High Court proceeded on the basis that non-production of physical evidence is not fatal to the prosecution case but the fact remains that a cumulative view with respect to the discrepancies in physical evidence creates an overarching inference which dents the credibility of the prosecution. Even for the said purpose the retracted confession on the part of the accused could not have been taken recourse to.”*

23. Consequently, the expostulation of law carried in verdict

(supra), remains unsatiated thereby the accused become entitled to an acquittal.

24. The said view is also supported by a judgment rendered in case titled as **“Gaunter Edwin Kircher V. State of Goa, Secretariat Panji, Goa”, Criminal Appeal No.642 of 1991, decided on 16.03.1993**, relevant paragraph whereof becomes extracted hereinafter.

*“J. Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 52A and 53 – Customs Act, 1962, Section 110(IB) – Physical evidence – Case Property – Recovery of heroin from accused – Case property destroyed and not produced – Physical evidence relating to three samples taken from the bulk amount of heroin were also not produced – Bulk quantity was destroyed the samples were essential to be produced and proved as primary evidence for the purpose of establishing the fact of recovery of heroin as envisaged under Section 52A of the Act.”*

25. However, when the offending vehicle along with the accused and contraband was apprehended, then RC bearing No.PB-11AN-2818 was recovered from the dash board of the said vehicle. Said RC was in the name of accused Baljit Singh. Two number plates of this number were also recovered which were lying underneath the driver seat. It has been proved on record that RC which was recovered of the vehicle bearing No. PB-11AN-2818, the engine number and chassis number were found to be the same with the engine and chassis number of Taverna vehicle on which the accused had installed number plate bearing No.HR-24C-7064, hence, it is proved that the accused have counterfeited a property mark by affixing fictitious number plate. As such, the conviction of the accused under Section 483 of the IPC is upheld.

**Final order**

26. The result of the above discussion, is that, this Court finds merit in the appeals, and, is constrained to allow them. Consequently, both the appeals are partly allowed. The impugned judgment convicting, and, sentencing the appellants, and, as becomes recorded by the learned trial Judge concerned, is quashed, and, set aside qua offences punishable respectively under Sections 15 and 25 of the Act. The appellants are acquitted of the charge framed against them but respectively under Sections 15 and 25 of the Act. The fine amount, if any, deposited by them, be, in accordance with law, refunded to them. 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 but after undergoing the sentence awarded under Section 483 of the IPC.

27. Records be sent down forthwith.

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

**(SURESHWAR THAKUR)**  
**JUDGE**

**(SUDEEPTI SHARMA)**  
**JUDGE**

**23.10.2024**  
**Ithlesh**

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