



In the High Court of Punjab and Haryana at Chandigarh

CRA-S-1527-SB-2012 (O&M)
Reserved on: 4.10.2024
Date of Decision: 23.10.2024

Gulshan KumarAppellant

Versus

State of PunjabRespondent

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

Present: Mr. Shubham Chandel, Advocate
for the appellant.

Mr. Kunwarbir Singh, AAG, Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 14.1.2012, upon Sessions Case No. 168 of 9.1.2005, by the learned Judge Special Court, Sangrur, wherethrough in respect of a charge drawn against the accused *qua* an offence punishable under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “the Act”), the learned trial Judge concerned, proceeded to record a finding of conviction against the accused-appellant. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, imposed upon, the convict both sentence(s) of imprisonment as well as sentence(s) of fine, but in the hereinafter extracted manner:

<u>“Name of accused</u>	<u>Under Section</u>	<u>Sentence</u>
Gulshan Kumar	22 NDPS Act	To undergo rigorous imprisonment for a period of 10 years and also to pay fine to the tune of Rs. 1 lac. In default of payment of fine to further undergo rigorous imprisonment for one year.”



2. The period of detention undergone by the convict, during the investigations, 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.

3. The accused-convict becomes 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 him, by the learned convicting Court concerned, and, hence has chosen to institute thereagainst the instant criminal appeal.

Factual Background and Investigation proceedings

4. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. PG/1 is assigned. The narrations carried in Ex. PG/1, are that on 9.10.2005 S.I Bhupinder Singh along with other police officials H.C Avtar Singh, H.C Sukhdev Singh, C. Gurmit Singh and PHG Lachhman Singh were going on scooters, motor cycles in connection with patrolling duty. The police party was going on the mettled road towards Truck Union, Malerkotla and when they reached near the gate of Punjab State Tubewell Corporation, thereupon a person was seen coming on foot from the front side. He was carrying a plastic bag on his head and on seeing the police party, he became nervous and stopped all of a sudden. It was at about 11.00 A.M. Thereafter S.I Bhupinder Singh along with the other police officials nabbed the said person. On inquiry, he disclosed his name as Gulshan Kumar son of Bachan Lal Caste Mahajan resident of Club Road, Singla Street, Ward No. 16 Malerkotla. His physical appearance was that, he was of the aged 35 years, height 5'2" having a cut mark on his forehead. He



person namely Lal Singh son of Ujaggar Singh resident of Singh Sabha Colony, Malerkotla came over there. He was joined in the police party. SI Bhupinder Singh in the presence of the said witness and the police officials told the said person that he suspected that he was was carrying some contraband in the plastic bag and he also made him aware qua his legal right for getting his search being conducted in the presence of a Gazetted Officer or a Magistrate. Gulshan Kumar expressed that he reposed confidence in him and he wanted the search to be conducted by him (the I.O). The consent statement was recorded, which was signed by Gulshan Kumar and the witnesses i.e Lal Singh and H.C Avtar Singh. The plastic bag was taken down from the head of Gulshan Kumar. On opening the same, it was found to be containing two cardboard boxes. One cardboard box was found to be containing intoxicating injections without any label or mark. From each of the box, 5 injections were taken as sample. The remaining injections were counted and it came out to be 4090 injections. The same were put in the said box itself. From the second cardboard box, it was found that it was containing intoxicating injections mark G-Norphine, which were 27 small boxes and containing 270 injections of G-Norphine, from which 5-5 injections were taken as samples and the remaining injections were put into the same box. 248 strips of tablets mark Momolit were recovered, which were 17360 tablets on counting. Two samples from each of the strips were taken. Each strip was containing 70 tablets. The remaining tablets were counted, which came out to be 17220 tablets. 143 strips of intoxicating tablets make Lomotil were recovered and each strip was containing 70 tablets and the total tablets were 10010 tablets, out of which, two samples of each strip were separated and converted into parcels.



5. From the second cardboard box, another small plastic box was recovered, which was found to be containing intoxicating powder, out of which two samples of 20 gms each were taken. The remaining quantity was weighed, which came out to be 2kgs and 210 gms. The intoxicating powder was again put into the same plastic box. The intoxicating injections, the tablets and the powder were duly sealed by the Investigating Officer with his seal bearing impression 'BS'. Specimen of seal was prepared separately. The seal after use was handed over to Lal Singh. The case property was taken into possession vide recovery memo and the I.O has sent the ruqa for lodging of the case under section 20/61/85 of Narcotic Drugs and Psychotropic Substances Act through H.C Sukhdev Singh. The case property was deposited with the M.H.C Gurmej Singh. Then on 10.10.2005, the case property along with the accused were produced before the learned Illaqa Magistrate. After passing of the order by the learned Illaqa Magistrate, the case property was deposited in the Judicial Malkhana.

6. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned Court concerned.

Trial Proceedings

7. 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 22 of the Act. The afore drawn charge was put to the accused, to which he pleaded not guilty, and, claimed trial.

8. 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 thereins, the accused pleaded innocence, and, claimed false implication. The accused also chose to adduce defence evidence, and led one witness into the witness box.

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

Submissions of the learned counsel for the appellant

10. The learned counsel for the aggrieved convict-appellant has argued before this Court, that the impugned verdict of conviction, and, consequent therewith order of sentence, 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

11. 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 convict, 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

12. Through recovery memo Ex.PD, the recovery of the contraband became allegedly recovered from the site concerned. In proof of the prosecution case, SI Bhupinder 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. PG/1 is assigned.

13. The prosecution though has been able to lead cogent evidence, in proof of the recovery of the seizure, thus being effected at the crime site, 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.

14. A reading of the report (Ex. PO), as made by the FSL concerned, whereto the relevant seizures became sent for an examination being made of the stuff inside the sealed cloth parcels, though reveals, that the examined stuff inside the sealed cloth parcels, as became sent to it for examination, thus being the intoxicating substances. The said report is *ad verbatim* extracted hereinafter.

“x x x x

6. Articles received Five parcels each sealed with two seals of B.S and HS alleged to contain intoxicating material. Seals on the parcels were intact and tallied with the specimen seal impressions.

x x x x

8. Identification and tests:-

Ingredient present	Quantity (mgs) per ml/tablet/% in parcel No.				
	1	2	3	4	5
Oxytodis Units	5	-	-	-	-
Buprenorphine hydrochloride	-	0.12	-	-	-
Diphenoxylate hydrochloride	-	-	1.2	1.1	-



Atropine sulphate	-	-	0.01	0.01	-
Acetaminophene	-	-	-	-	50%

Report

The contents of all the parcels No. 1 to 5 under reference have been analysed separately by chemical analysis. On the basis of analysis different ingredients along with their quantity present in these have been given at Sr. No. 8 (Identification and tests) of this report.”

15. Be that as it may, though 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 omits to mention in the report Ex. PO, about his re-enclosing the examined stuff inside the cloth parcels, and, his thereons affixing the seals of the FSL concerned.

16. 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 crime site, through recovery memo Ex. PD, 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.

17. Be that as it may, sample parcels Ex. P-2 to Ex. P-6 became produced in the Court, besides bulk parcel Ex. P-7 also became produced in the Court. However, sample parcels Ex. P-2 to Ex. P-6 and bulk parcel Ex. P-7 rather cannot be related to the results of the examinations, as became made on the parcels, as became sent to the laboratory concerned. The reason for stating so, becomes comprised in the trite factum, that since after examination(s) of the stuff inside the sealed cloth parcels, the same never became re-enclosed in the cloth parcels, nor the seal impression of the FSL concerned, became made thereovers. Resultantly, therebys it may be concluded that neither the same sample parcels were ever sent to the laboratory concerned, and/or if they became sent, they for the above stated infirmity, cannot be declared to be related to the supra results of the examinations, as became made thereovers. Therefore, benefit of doubt is to be assigned to the appellant.

18. Resultantly, reiteratedly 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 sample parcels Ex. P-2 to Ex. P-6 and bulk parcel Ex. P-7, being introduced therein, thereby the report of the FSL (supra), rather looses its evidentiary vigour. A further scope is also left, thus to infer 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.

19. 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."

20. Consequently, since the expostulation of law carried in verdict (supra), remains unsatiated thereby the accused become entitled to an



acquittal.

21. 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.”

Final order

22. 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 becomes 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.

- 23. Records be sent down forthwith.
- 24. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

October 23, 2024
Gurpreet

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