

CRA-S-332-SB-2002
CRA-S-101-SB-2002

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Reserved on: 27.05.2024
Pronounced on: 29.05.2024

1. CRA-S-332-SB-2002 (O&M)

Kuldeep Singh

...Appellant

Vs.

State of Punjab

...Respondent

2. CRA-S-101-SB-2002 (O&M)

Roshan Lal

...Appellant

Vs.

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Sumayia Malik, Advocate (legal aid counsel)
for the appellant(s).

Mr. Sandeep Kumar, DAG Punjab

HARPREET SINGH BRAR, J

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1. This common judgement shall dispose of both the abovementioned appeals as they arise from identical factual matrix. However, for the sake of brevity, the facts are taken from **CRA-S-332-SB-2002**.

2. The instant appeal is preferred against the judgment of conviction and order of sentence dated 26.11.2001 passed by learned Judge, Special Court, Fatehgarh Sahib in FIR No.113 dated 23.11.1986 under Sections 15 and 61 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short 'NDPS Act'), registered at Police Station Gobindgarh, Fatehgarh Sahib, whereby the appellants were convicted and sentenced to undergo rigorous imprisonment for a period of ten years with a fine of Rs.1,00,000/- each under Section 15 of NDPS Act and in default of payment of fine, to further undergo rigorous imprisonment for a period of 01 year.

FACTUAL BACKGROUND

3. The facts of the prosecution case, tersely put, are that on 23.11.1986, a police party headed by PW5-SHO SI Sher Singh (Investigating Officer) was on patrolling duty, when they received secret information that a truck bearing registration No.PJP-5277 has been parked by the road. The appellants along with one other person were sitting in the truck and it was loaded with poppy husk. Information being reliable, the police party proceeded to the spot. On their way, one independent witness, namely, Harbans Singh Lambardar joined the police personnel at Village Mughal Majra. When the police jeep approached the truck, three persons, on noticing the police jeep, fled away from the spot and managed to

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escape under the cover of darkness. The truck was unloaded and 50 bags containing poppy husk were recovered. On weightment, 45 kg of poppy husk was found in each bag. A sample weighing 100 grams was extracted from each of the gunny bags containing poppy husk and prepared into parcels. The sample parcels and the remaining contraband were separately sealed with the seal of the Investigation Officer, S.I. Sher Singh, bearing inscription 'SS'. The recovered contraband was taken into possession vide recovery memo Ex.PF. The bags containing poppy husk were numbered 1 to 50 and the corresponding sample parcels were also numbered as 1 to 50.

4. Appellant Roshan Lal was arrested on 26.03.1987. The remaining accused were declared proclaimed offenders. Subsequently, on account of Roshan Lal jumping bail, he was also declared as proclaimed offender on 03.05.1991. Later on, Roshan Lal was again apprehended and the final report under Section 173 of Cr.P.C. was presented on 29.10.1994. On finding a *prima facie* case against the appellant, charge under Section 15 of the NDPS Act was framed against him vide order dated 11.03.1995, to which he pleaded not guilty and claimed trial. During trial proceedings, appellant Kuldeep Singh was also arrested and charged vide order dated 22.10.1997 for having committed an offence under Section 15 of the NDPS Act.

5. In order to prove its case, prosecution examined as many as eight witnesses. All the incriminating evidence was put to the appellants and their

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statements under Section 313 Cr.P.C. were recorded, wherein they pleaded false implication. However, the appellants did not lead any evidence in their defence.

6. After minutely scrutinizing the evidence led by the prosecution and going through the record of the case, learned trial Court held the appellants guilty and sentenced them as discussed herein above.

CONTENTIONS

7. Learned counsel for the appellants assails the impugned judgment on the ground that learned trial Court failed to appreciate that the incident is of 23.11.1986, yet the appellants were neither apprehended from the spot nor connected with the truck in question. The appellants have been falsely implicated in the present case. Moreover, the officer effecting recovery was not competent to proceed in the matter in view of the provisions of the NDPS Act and as a result, the entire proceedings stand vitiated. Furthermore, even the independent eye witness, namely, Jaswant Singh, who allegedly knew and named the accused, was not examined by the prosecution. His statement under Section 161 Cr.P.C. has been blindly adopted by the prosecution without affording an opportunity to the defence to effectively cross-examine him. There is absolutely no material to connect the appellants with the commission of crime. Even the case property was not produced. The alleged loss of the case property due to flood, is absolutely false and a made up story. The entire case is based on muddled facts and the findings. Thus, the conclusion drawn by learned trial Court cannot be sustained.



8. On the other hand, learned State counsel argues that learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record and as such, no interference is warranted by this Court. There is nothing on record to suggest that the appellants may have been falsely implicated.

OBSERVATIONS AND ANALYSIS

9. Having heard learned counsel for the parties at length and after perusing the record of the case with their able assistance, it transpires that a raid was conducted on the basis of secret information and 50 bags of poppy husk containing 45 kg each were recovered from the truck. It is pertinent to note that on seeing the police, the appellants-accused ran away from the spot, only to be formally arrested months later.

10. A perusal of the record indicates that the alleged recovery was effected on 23.11.1986 and the same was produced by the Investigating Officer (PW-5) before the MHC, Constable Malkiat Singh (PW-2), who has categorically admitted that the samples were retained by him in his custody from 23.11.1986 to 08.12.1986, when they were sent for chemical examination. Hence, the samples were deposited with the FSL, after a lapse of 14 days from seizure, which would tantamount to a serious flaw in the investigation.

11. Further, as per the prosecution, the case property could not have been produced before learned trial Court since the contraband was destroyed due to rain

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and the subsequent flooding of the police station. The prosecution relied upon the statement of PW-4, DSP Satish Kumar, who deposed that the case property was washed away because of heavy rains for a continuous number of days and that DDR No.29 dated 11.07.1993 (Ex. PD) was recorded in this regard. Additionally, photographs of the standing water were also taken, which were placed on record as Mark 'A' to Mark 'D'. However, an inspection of the photographs does not conclusively establish that it was, in fact, the concerned police station that was flooded. The photographs were not properly exhibited. Learned trial Court also recorded an observation to this effect but it proceeded to solely rely on the testimony of PW-4. As such, learned trial Court fell into error as it only depended on the testimony of an interested witness, which was not corroborated by any other material brought on record.

12. Admittedly, the appellants had fled away from the spot, after spotting the police party and while appellant Roshan Lal was formally arrested on 26.03.1987, appellant Kuldeep Singh was apprehended after 10 years. In spite of the fact that the appellants were not arrested from the spot along with the contraband, no test identification parade was conducted to ascertain the identity of the appellants merely because PW6-ASI Harpal Singh expressed his ability to identify the appellants as he knew them prior to the incident. Section 54A of the Cr.P.C. reads as follows:

“54A. Identification of person arrested.--



Where a person is arrested on a charge of committing an offence and his identification by any other person or persons is considered necessary for the purpose of investigation of such offence, the Court, having jurisdiction may, on the request of the officer in charge of a police station, direct the person so arrested to subject himself to identification by any person or persons in such manner as the Court may deem fit:

Provided that, if the person identifying the person arrested is mentally or physically disabled, such process of identification shall take place under the supervision of a Judicial Magistrate who shall take appropriate steps to ensure that such person identifies the person arrested using methods that person is comfortable with:

Provided further that if the person identifying the person arrested is mentally or physically disabled, the identification process shall be videographed.”

13. While conducting test identification parade is not mandatory, this is not a case where identity of the appellants could have been conclusively established merely because an official witness, who is an interested party, claims to know them. Moreover, no witnesses from the vicinity or from the appellants' neighborhood were examined in order to identify the appellants or establish their presence on the alleged spot at the time of recovery. As such, neither the identity of the appellants are conclusively proved nor the matter of conscious possession has been adequately dealt with. Even if it was the appellants, who were seen fleeing from the spot, their mere presence is hardly sufficient to prove conscious possession. The Hon'ble Supreme Court in ***State of Punjab v. Balkar Singh and another, (2004) SCC(Criminal) 838*** observed as under: -



"....the presence of the respondents at the place from where the bags of poppy husk were recovered itself was taken as possession of these bags by the police. In fairness, the police should have conducted further investigation to prove that these accused were really in possession of these articles. The failure to give any satisfactory explanation by the accused for being present on that place itself does not prove that they were in possession of these articles. Though the respondents raised a plea before the sessions Court, the same was not considered by the Sessions Judge in the manner in which it should have been considered. We do not think that the High Court erred in holding that there was no evidence to prove that the respondents were in conscious possession of the poppy husk recovered by the police. The prosecution failed to discharge its obligation to prove the possession of the poppy husk by the respondent.

*This Court has followed this view expressed in Balkar Singh's case (supra), in number of cases e.g. **Sukhdev Singh alias Sukha v. State of Punjab , 2006(1) RCR (Criminal) 4 (P&H)** and **Bikkar Singh v. State of Punjab, 2006(3) RCR (Criminal) 16 (P&H)**. Even in **Avtar Singh v. State of Punjab 2002(4) RCR (Criminal) 180 : AIR 2002 Supreme Court 3343**, it was observed by the Hon'ble Supreme Court that though the persons were found sitting on the bags, but this alone would not be sufficient proof for they being in conscious possession of the contraband. Thus, the prosecution in the instant case was not able to prove the contraband was recovered from the exclusive conscious possession of the appellant."*

14. Furthermore, a perusal of the impugned judgment indicates that although an independent witness was joined in the investigation, when the recovery was effected from the accused, but he was not examined during trial. This lapse on the part of the investigation team becomes even more prominent, given the accused were not apprehended at the spot and the independent witness was the only person apart from ASI Harpal Singh-PW6 to identify the accused for the



Investigating Officer. The Hon'ble Supreme Court in ***Krishan Chand Vs. State of H.P., AIR 2017 (SC) 3751*** has laid down the ratio that the failure of the Investigating Officer to associate an independent witness at the time of recovery creates a dent in the case of the prosecution. A two Judge Bench of the Hon'ble Supreme Court in ***Gorakh Nath Prasad Vs. State of Bihar, 2018(1) RCR (Criminal) 108*** had acquitted the accused and held that case of the prosecution cannot be entirely based upon the statements of the official witnesses, when no independent witness has been joined in the investigation.

15. Lastly, the Investigating Officer i.e. PW5-SHO SI Sher Singh, who received the secret information, is also the complainant in the case. The Hon'ble Supreme Court in ***State by Inspector of Police, Narcotic Intelligence Bureau, Madurai, Tamil Nadu Vs. Ranjangam 2010(15) SCC 369***, has opined that since the arrest and search is made by the complainant, he should not involve himself with the investigation of the case. Such an officer leading the investigation would forthrightly raise questions as to the fairness and impartiality of the said investigation process.

CONCLUSION

16. In view of the above discussion, present appeals are allowed. The judgment of conviction and order of sentence dated 26.11.2001 passed by learned Judge, Special Court, Fatehgarh Sahib are hereby set aside and appellants, namely

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Kuldeep Singh and Roshan Lal, are acquitted of the charges framed against them.
Their bail bonds and surety bonds stand discharged.

17. All the pending miscellaneous application(s), if any, shall also stand disposed of.
18. The case property, if any, may be dealt with as per rules, after the expiry of period of limitation for filing the appeal(s). Record of the case be sent back to the Court below.

[HARPREET SINGH BRAR]
JUDGE

29.05.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No