

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-731-DB-2004
Reserved on: 26.09.2024
Date of decision: 01.10.2024

DARSHAN SINGH

...Appellant

Versus

STATE OF PUNJAB

...Respondent

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

Present: Mr. Inderjit Sharma, Advocate for the appellant.

Mr. Maninderjit Singh Bedi, Addl. A.G., Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 09.08.2004, upon NDPSA File No.252 of 11.12.2000, by the learned Judge Special Court, Bathinda, wherethrough in respect of a charge drawn against the accused *qua* an offence punishable under Section 15 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:

“xxx

Hence convict Darshan Singh is sentenced to undergo rigorous imprisonment for 12 years and to pay a fine of Rs.1,00,000/- (Rupees one lac) and in default of payment of fine to undergo rigorous imprisonment for six months.”

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 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 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 the police party headed by Inspector Balwinder Singh, Station House Officer, Police Station Rama and accompanied by an independent witness Gurdev Singh has apprehended the accused while sitting on three bags under the shade of 'shatoot' tree. The accused on seeing the police party and in attempt to conceal himself laid himself on the bags but he was apprehended. The Investigating Officer told him that he has doubt that as some contraband is containing in the bags in his conscious possession, vide memo Ex.PF and also apprised the accused of his right of search of the bags in the presence of any Magistrate or Gazetted Officer, vide memo Ex.PF. Then the Investigating Officer has sent message to send a Gazetted Officer. Thereafter DSP Raghbir Singh Chahal (PW1) had reached the spot to witness the recovery proceedings. He himself introduced the accused and apprised the accused of his right of search in the presence of another Gazetted Officer or a Magistrate, the accused vide consent memo Ex.PA reposed confidence upon the DSP and allowed him to

search the bag in his conscious possession. Consequently from the search of the bags 30 Kgs poppy husk was recovered from each bag. A sample of 250 Gms was taken out from each bag and converted into three separate parcels. The remaining poppy husk which came to 29 Kg 750 Gms in each bag was allowed to remain in the bags in which it was kept. All the three bags were also converted into three parcels. The bags containing residue poppy husk as well as three samples were sealed by the seal of the Investigating Officer having impression 'BS'. The recovery memo was prepared by the Investigating and was attested by an independent witness Gurdev Singh. ASI Malkiat Singh and DSP Raghbir Singh Chahal. Sample seal was prepared. All the case property and the sample seal were taken into possession vide memo Ex.PB. On search of the accused Rs. 80/- were recovered vide personal search memo Ex.PC. The accused was formally arrested vide memo Ex.PD, Special report was sent to the Circle Officer on 12.9.2000. Rough site plan Ex.PH of the place of recovery was prepared. Ruqa Ex.PG was sent to the police Station through C-II Sohan Singh and on its basis formal FIR Ex. PG/1 was registered against he accused. Entire case property and sample parcels were remained in possession of the Investigating Officer Balwinder Singh, who himself was the Station House Officer of P.S. Rama. He produced the case property along with the accused before the learned Area Registration 13.9.2000 vide application Exh. PJ. The learned Area Magistrate vide his endorsement Ex.PJ/1 had seen the case property. He ordered that the case property be kept in the Malkhana and an offer was also given to accused on 13.9.2000 by the Area Magistrate to get a second sample, but the accused vide his statement Ex.PK/2 refused to take the second sample. The samples were sent to the Chemical Examiner through C-I Amrik Singh on

14.9.2000. The Chemical Examiner after analysis has opined that the contents of all the three samples were that of chura poppy heads.

After completion of investigation the challan was presented before my learned Predecessor, who after complying with the provisions of Section 207 Cr.P.C. has framed charge against the accused. The accused pleaded not guilty and claimed trial.

Trial Proceedings

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

6. In proof of its case, the prosecution examined three 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. The accused also chose to adduce defence evidence, and two witnesses were led into the witness box.

7. 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

8. 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

9. 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

10. Through recovery memo Ex.PB, the recovery of the contraband became allegedly recovered from the site concerned. In proof of the prosecution case, Inspector Balwinder 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.

11. 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.

12. A reading of the report (Ex.P2145), 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 reveals, that the examined stuff

inside the sealed cloth parcels, as became sent to it for examination, thus being poppy heads. The said report is *ad verbatim* extracted hereinafter.

“x x x x

Analysis report of the sample to Bhuki received by me on 14.9.2000 forwarded by the S.S.P. Bathinda referred to in his ends. Overleaf. Certified that seal/seals on the Exhibit were intact and agreed will samples seal sent and it remained in my safe custody till analysis was completed on 4.12.2000.

<i>Marked here</i>	<i>309-P/2000</i>	<i>310P/2000</i>	<i>311-P/2000</i>
<i>Miscroscopic</i>	<i>Chamer P.H.</i>	<i>Chmer P.H.</i>	<i>Chmer P.H.</i>
<i>Morphine</i>	<i>Present</i>	<i>Present</i>	<i>Present</i>
<i>Meconic Acid</i>	<i>Present</i>	<i>Present</i>	<i>Present</i>

Opinion:- *The content of all the (3) three sample are chmer Poppy heads.*

*Sd/- Dr. Sandeep MSPC MS 1.
Asth. Chemical Examiner
to Govt. Pb. Patiala”*

13. 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.P2145, about his re-enclosing the examined stuff inside the cloth parcels, and, his thereons affixing the seals of the FSL concerned.

14. 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.PB, 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.

15. 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.P2 to P4, rather became produced in Court, and, 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 Ex.P2 to Ex.P4, thus occurring within sealed cloth parcels.

16. Therefore, when Ex. P2 to P4 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, at the time of production of Ex.P2 to P4 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. P2 to P4; (b) the loose cloth parcels, Ex. P2 to P4, 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 Ex.P2 to P4, being introduced therein, thereby the report of the FSL (supra), rather looses 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.

Final order

17. 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.

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

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

01.10.2024
Ithlesh

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