

In the High Court of Punjab and Haryana at Chandigarh

1.

CRA-D-947-DB-2004
Reserved on: 27.09.2024
Date of Decision: 01.10.2024

Harnam Singh alias Nama

.....Appellant

Versus

The State of Punjab

.....Respondent

2.

CRA-D-120-DB-2005

Sukhwinder Singh @ Chhinda

.....Appellant

Versus

State of Punjab

.....Respondent

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

Present: Mr. S.P.S. Sidhu, Advocate
for the appellants (in both cases)

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

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 29.10.2004, upon Sessions Case No.95 of 17.10.2000, by the learned Special Judge, Ferozepur, 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-appellants. Moreover, through a separate sentencing order of 30.10.2004, 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:

“xxx

Therefore, considering the quantity of poppy husk recovered from the possession of the accused, they are sentenced to undergo rigorous imprisonment for 12 years with fine of Rs.One Lakh each u/S 15 of N.D. and P.S. Act. In default of payment of fine, the defaulting convict shall further undergo rigorous imprisonment for One year.”

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. P4 is assigned. The narrations carried in Ex.P4, are that on 20.4.2000, SI Major Singh Incharge C.I.A Staff Zira along with

check vehicles and suspected persons in the area of village Bule Bus Adda. The police party was divided into two parties i.e. first party under the supervision of SI Major Singh was holding naka on the southern side of the road whereas other party under the supervision of ASI Bakshish Singh was holding naka on the northern side of the road. At about 3 P.M. a Truck No.RNK 2609 came from the side of village Shahwala, and stopped at a distance of 20-30 Karams from the police party and thereafter Harnam Singh @ Nama son of Maghar Singh accused who was driving truck and Sukhwinder Singh @ Chhinda son the of Niranjan Singh who was sitting on the bags in the body of truck jumped out of the truck and both the accused Harnam Singh and Sukhwinder Singh were previously known to S.I. Major Singh, who is the Investigating Officer of this case (herein after to be called "I.O" for convenience) ASI Bakshish Singh, ASI Balbir Singh H.C. Baljinder Singh and Harnam Singh accused succeeded in escaping towards the southern side whereas Sukhwinder Singh succeeded in escaping on the northern side of the read through the fields. Investigating Officer along with others followed Harnam Singh whereas ASI Bakshish Singh and his party followed Sukhwinder Singh but they succeeded in escaping from the spot. Thereafter, I.O. checked the truck and found that bags are lying in the truck covered by tarpaulin and the bags were suspected to contain some intoxicating material on which I.O. sent a message through walki talki set to D.S.P Zira Mr. Pardeep Kumar Malik at 4 P.M and requested him to reach at the spot. D.S.P reached at the spot along with his personal staff and thereafter I.O on the direction of D.S.P, opened the bags and checked the contents and found poppy husk in it. Investigating Officer sent HC Baljinder Singh to arrange weighing material and found that 40 bags containing poppy

husk were loaded in the truck and the bags were numbered from 1 to 40. Thereafter, I.O. separated 250 grams of poppy husk from each bag as sample and prepared their parcels and parcels were also numbered as 1 to 40. Remaining poppy husk contained in the bags were separately weighed and each bag was found to contain 35 Kgs. of poppy husk and their separate parcels were prepared and thereafter I.O. sealed all the parcels with his seal bearing initials MS and D.S.P. also sealed the parcels with his seal bearing initials PK and sample seal Ex.P6 was separately prepared which was also attested by the D.S.P and all the sealed parcels along with sample seal and truck were taken into possession vide recovery memo Ex.P5 which was attested by witnesses including D.S.P. As accused Harnam Singh and Sukhwinder Singh were found in possession of poppy husk without any permit, therefore, ruqa Ex.P9 was sent to the police station by the I.O. on the basis of which, a formal FIR Ex.P4 was registered. Investigating Officer also prepared rough site plan Ex.P11 of the place of recovery. Investigating Officer recorded the statements of the witnesses at the spot and after completion of the investigation at the spot, I.O. went to P.S. Zira and handed over at all the parcels along with truck etc. to S.H.O Chanan Singh, who further sealed the case property with his seal bearing initials CS and took the same into possession vide memo Ex.P1 which was attested by the witnesses. SHO produced the case property in the Court of Ilaqa Magistrate and also filed an application Ex.P2 on which Ilaqa Magistrate passed order Ex.P3 directing SHO to keep the case property in the malkhana of the police station. S.H.O sent the sample parcels of this case to Chemical Examiner Jalandhar for analysis, who vide his report Ex. P14 declared the contents of the sample parcels as of poppy head. Investigating Officer arrested accused

Harnam Singh in this case on 22.7.2000 and intimated the grounds of arrest to him and a memo Ex.P12 was prepared to this effect which was thumb marked by accused Harnam Singh. Accused Harnam Singh was also medico legally examined through application Ex.P13. Accused Sukhwinder Singh could not be arrested in this case and he was declared as proclaimed offender challan was and presented in the Court for trial of the accused.

6. On appearance of accused Harnam Singh in the Court, complete copies of documents as required under law were supplied to him free of costs. On 25.10.2000, the then learned Special Judge, Ferozepur prima facie found sufficient grounds to presume that the accused has committed an offence punishable U/S 15 of N.D. & P.S Act. Accused Harnam Singh was charged accordingly to which he pleaded not guilty and claimed trial.

7. During pendency of the case, accused Sukhwinder Singh @ Chhinda was arrested by ASI Bakshish Singh in this proclaimed offender on 26.2.2001 and grounds of arrest were intimated to him and a memo Ex.P7 was prepared to this effect which was thumb marked by the accused. Supplementary challan was presented to the court against accused Sukhwinder Singh. Thereafter, on appearance of accused Sukhwinder Singh, complete copies of documents were supplied to the accused. On 26.2.2001, the then learned Special Judge, Ferozepur prima facie found sufficient grounds to presume that accused Harnam Singh and Sukhwinder Singh have committed an offence punishable U/S 15 of N.D. & P.S. Act. Both the accused were charged accordingly to which they pleaded not guilty and claimed trial.

Trial Proceedings

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 they pleaded not guilty, and, claimed trial.

9. In proof of its case, the prosecution examined five 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 counsel for the aggrieved convicts-appellants 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

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 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

13. Through recovery memo Ex.P5, the recovery of the contraband became allegedly recovered from the offending vehicle concerned. In proof of the prosecution case, Sub Inspector Major Singh stepped into the witness box as PW-5, and, in his examination-in-chief, he made speakings therein, which concur with the contents of the appeal FIR, to which Ex.P4 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. A reading of the report (Ex.P14), 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

40 sample parcels of Chura Post received weighing 250 grams each with seal impressions M.S, P.K., C.S

Macroscopic:- Fine powder poppy-head (In each case)

Morphine:- Present -do-

Meconic Acid: Present -do-

Opinion”- *The analysis indicates that the contents of the exhibit are Poppy-Head.*

*Sd/- Assistant Chemical Examiner
to Govt. Pb. Jalandhar”*

16. 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.P14, 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.P5, 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.P5, rather became produced in Court, and, as revealed on a reading of the examination-in-chief of PW-5, also became identified, as such by PW-5. In the wake of the above, it appears, that despite the identification of the case property, being made in Court by PW-5, and, also irrespective of the fact, that the exhibit marks were made, during the makings of testifications by PW-5, 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 P5, thus occurring within sealed cloth parcels.

19. Therefore, when Ex.P5 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.P5 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.P5; (b) the loose cloth parcels, Ex.P5, 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 P5, 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, thereupon, 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 therefrom 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.

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

25. 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 allowed. The impugned judgment convicting, and, sentencing the appellants, and, as becomes recorded by the learned trial Judge concerned, is quashed, and, set aside. The appellants are acquitted of the charge framed against them. The fine amount, if any, deposited by them, be, in accordance with law, refunded to them. 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 appellants, if in custody, and, if not required in any other case, be forthwith set at liberty. Release warrants be prepared accordingly.

26. Records be sent down forthwith.

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

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

01.10.2024
Ithlesh