

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-433-DB-2005
Reserved on: 30.08.2024
Date of decision: 10.09.2024

SHABIR

...Appellant

Versus

STATE OF HARYANA

...Respondent

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

Present: Mr. Hemant Bassi, Advocate (Legal Aid Counsel)
for the appellant.

Mr. Pradeep Parkash Chahar, Sr. DAG, Haryana

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict made on 11.03.2005, upon Sessions Case No.117 of 23.08.2003, by the learned Additional Sessions Judge, Ambala, wherethrough he convicted the accused for a charge drawn qua an offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as “the Act”). Moreover, through a separate sentencing order drawn of even date, he proceeded to impose upon the convict sentence of rigorous imprisonment extending upto a period of 12 years, besides imposed upon him, sentence of fine of Rs.1,00,000/-, besides in default of payment of fine amount, he sentenced the convict to undergo imprisonment extending upto a period of one year.

2. The accused-convict became aggrieved from the above drawn verdict of conviction, and, also the consequent therewith sentence(s) (supra), as became imposed. Resultantly, he instituted thereagainst the instant appeal bearing No.CRA-D-433-DB-2005.

FACTUAL BACKGROUND

3. The genesis of the prosecution case is that, on 7.5.2003, Assistant Sub Inspector Jagdish Kumar accompanied by Head Constable Jagdish Chand, Constable Lal Chand (PW5) were patrolling near Tangri bridge, Mahesh Nagar in official vehicle bearing registration No.HR-01-E/3732 being driven by Constable Sarnam, when a secret information was received from an informer that a young person was present on Rampur - Sarsehri turning on Jagadhri road having four sealed gunny bags, in which there could be narcotics. It was also informed that the said person was sitting on the bags and was waiting for the smugglers; and the same could be sent to Punjab. The Investigating Officer found this information credible and reached the place of occurrence, where the accused was found sitting on four stitched gunny bags, who was apprehended with the help of the police officials; and on being asked, the accused told his name as Shabeer son of late Shaheed, resident of Devband, District Saharanpur (UP). The Investigating Officer suspected some narcotic substance in the bags, due to which the accused was given notice under Section 50 of the Act Ex.P4 and it was asked as to whether he wanted to get himself searched from a Magistrate or a Gazetted Officer, on which the accused gave his option Ex.P5 that he wanted to get himself searched from a Gazetted Officer. Deputy Superintendent of Police Shri Raj Gopal (PW7) was informed to telephone, who reached the spot after around 45 minutes. In the meantime, the Investigating Officer sent the intimation Ex.P6 through notice under Section 42 of the Act. DSP Shri Raj Gopal asked the name of the accused and then he ordered checking of the four gunny bags. In each bag, there were two small gunny bags containing Poppy Straw. Each bag was weighed and was found to be containing 25 kgs. each in each of the eight bags. 250 gms. in two quantities each from each bag

were separated as samples; and then the samples and the residue were sealed with the impression JK, and DSP also affixed his seal with the impression RG on the same, and kept his seal with him. The Investigating Officer gave his seal to Head Constable Jagdish Chand. The case property was taken into police custody vide recovery memo Ex.P7; and the site plan Ex.P.10 was prepared. Information Ex.P8 was sent to the Police Station through Constable Lal Chand, on the basis of which formal First Information Report Ex.P3 was recorded by Moharrar Head Constable Dharamvir (PW3), who made the endorsement Ex.P9 on the same information.

4. Notice under Section 52 of the Act Ex.P11 was given to the accused regarding his arrest. Sub Inspector Rakam Singh (PW2), the then Station House Officer of Police Station Mahesh Nagar, was present near Monga hospital along with his staff, when Assistant Sub Inspector Jagdish Kumar produced the accused along with the case property and the samples; and then Station House Officer Rakam Singh affixed his seal with the impression RS on the case property as well as the samples and prepared the memo Ex.P2. Notice under Section 55 of the Act was prepared by Assistant Sub Inspector Jagdish Kumar, on which the memo/endorsement Ex.P2 was given by the Station House Officer. After completion of all other formalities of investigation, challan against the accused was prepared by Sub Inspector Baljit Singh (PW1) under Section 15 of the Act and was presented in the learned trial Court for putting the accused on trial. Forensic Science Laboratory report Ex.P14 was received in which it was opined that the eight samples contain Poppy Straw.

Trial Court Proceedings

5. On completion of investigation, challan was filed in the learned trial Court against the accused. On his appearance before the learned trial Court, he

was charge sheeted for the commission of an offence punishable under Section 15 of the Act. The said charge was read over and explained to the accused in simple Hindi, to which he pleaded not guilty and claimed trial. Subsequently after the recordings of depositions of 7 witnesses, the learned public prosecutor closed the prosecution evidence but after tendering the report of the FSL, to which Ex.P14 is assigned. After the closure of the prosecution case, the learned trial Judge drew proceedings under Section 313 Cr.P.C., wherein, the accused pleaded innocence, and, claimed false implication. However, he did not lead any witness in his defence evidence.

Submissions of learned counsel for the convict-appellant

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

7. Learned State counsel has argued that the impugned verdict of conviction, and, consequent thereto sentence (supra), as became imposed upon the convict by the learned trial Judge concerned, is meritworthy, as the same does not suffer from any taint of any gross mis-appreciation or non-appreciation of any evidence germane to the charge. Therefore, he contends that the impugned verdict of conviction and consequent thereto sentence be maintained, and, affirmed by this Court.

Analysis of the submissions of learned counsel for the convict-appellant and reasons for accepting the same

8. Through Ex.P7 recovery of poppy straw was made from the four gunny bags, whereons the appellant was sitting. Therefore, thereby there was no requirement for the investigating officer concerned, to beget compliance with the mandatory statutory provisions, as embodied in Section 50 of the Act.

9. A reading of the recovery memo thus reveals that, Investigating Officer (PW-4) put his seal bearing impression 'JK' on the sample parcels, as well as, on the residue parcel, but the numbers' of seal impressions embossed on such parcels rather remains unspoken thereins. As further revealed by PW-4, the police party met the SHO Rakesh Singh near Monga Hospital at Mahesh Nagar, where he produced the accused along with the case property, witnesses and samples before him, whereons the SHO concerned, put his seal bearing impression 'RS', but the numbers' of seal impressions embossed by SHO concerned, on such parcels rather also remains unspoken thereins.

10. Subsequently the DSP concerned, also stepped into the witness box as PW-7, but in his examination-in-chief he has only spoken that he had embossed his seal impressions 'RG' on the parcels, but he yet omitted to speak qua the numbers' of such embossed seals impressions, rather on the apposite cloth parcels.

11. However, a reading of the report of the FSL concerned, as becomes enclosed in Ex.P14, contents whereof are extracted hereinafter, though rather vividly reveals, that the 39 sealed cloth parcels as became forwarded there by DSP (H.Q.) Ambala, thus became received there. Though it is further expressed therein that each become sealed with 3 seals of 'JK, 1 seal of RG and 1 seal of RS'. However, the above made narrations in the report of the FSL concerned, do not completely tally with the speakings, as made by the prosecution witnesses concerned, thus in respect of the numbers' of the seal impressions, as became

made on the apposite cloth parcels, especially when the numbers of the seal impressions, as made on the cloth parcels concerned, remain unspoken by the prosecution witnesses concerned, nor became spoken in the recovery memo (supra). Therefore, but obviously it cannot to be concluded, that the enclosed residue in the cloth parcels, which became removed from the bulk, for examinations thereons being made, by the FSL concerned, becoming completely related or being compatible, to the numbers' of the seal impression, as purportedly made thereons, as the said apposite numbers become spoken only in the report of the FSL concerned, but remains unspoken either by the PWs concerned, nor become spoken in the recovery memo Ex.P7.

“Xxx

Description of parcel(s)

Eight sealed cloth/paper parcel(s) each sealed with 3 seals of JK, 1 seal of RG & 1 seal of RS enclosing containing the exhibits 1 to 8.

xxx

Results

Qualitative Tests:- (Exbt 1 to 8)

Meconic Acid:	Present	Thebaine:	Present
Morphine:	Present	Papaverine:	Present
Codeine:	Present	Narcotine:	Present

Quantitative Tests:-

Morphine Percentage: -----
Weight of sample returned 220.00 gms. (each (Exbt 1 to 8)

OPINION:

The samples exhibit 1 to 8 were identified as Poppy straw (Choora post) of Papaver somniferum L.

Note: After examinations, the remains of the exhibits were sealed with the seals of SSO/General/FSL(H).

xxx”

12. The underlined hereinabove expressions occurring at the top of the report of the FSL (Ex.P14), wherein, occur speakings about the numbers' of seals, as made on the cloth parcels concerned.

13. Reiteratedly the hereinabove underlined expressions, as occur at the top of the report of the FSL, but for lack of (supra) *inter se* synchronicity, with the incriminatory examination, as made on the stuff inside the cloth parcels, thereby does not make the accused to be inculpable and/or rather thereby there occurring snappings of apposite *inter se* complete connectivity *inter se* the descriptions made on the recovery memo with the ones, as become made in the hereinabove underlined portion of the FSL.

14. Even though no contest became raised by the learned defence counsel that the FSL report Ex.P14, thus was not made in respect of contents enclosed in the sealed cloth parcel (supra), nor though any contest became raised by the learned defence counsel, that the thereons embossed number(s) of seal impressions, besides the embossed thereons, thus English alphabets, rather not tallying either with the number(s) of the seal impressions or with the English alphabets, as became embossed thereons, and, as became depicted in the road certificate.

15. In addition, thereby though whatsoever argument is raised before this Court, by the learned counsel for the convict-appellant, that the report, as became made by the FSL concerned, on the sealed cloth parcel, thus is not related to the stuff inside them, and, as became purportedly separated from the bulk, at the crime site, but necessarily is also a pretextual argument.

16. Importantly, though the result of the apposite examinations, as becomes extracted hereinabove, makes vivid echoing that after examinations of the stuff, as was enveloped in the sealed cloth parcel, thus such examinations

unfolding, that therein became enclosed remains of poppy straw. Conspicuously, though the report of the FSL concerned, also recites that after examination of the stuff inside the sealed cloth parcel, the said examined stuff, became re-enclosed in sealed cloth parcels, and, thereons became affixed seals of the FSL concerned.

17. Though the said above recitals, as occur in the report of the FSL concerned, also do not become contested by the learned counsel. Though, the sequel of no contest being raised to the above recitals, though reiteratedly is that, the learned defence counsel, neither asking nor was required to be given any opportunity, thus for production of the cloth parcel enclosing therein, the stuff examined by the FSL concerned, and, in respect whereof an affirmative opinion was made.

18. Though also the effect of the above opportunity neither being asked nor being granted to the learned defence counsel, during the course of cross-examination, of the prosecution witnesses concerned, is *prima facie* naturally that, the above opportunity has been waived or abandoned by the learned defence counsel. In consequence, the further effect thereof, is that, the presumption of truth as attachable through attracting theretos, the mandate existing in Section 292 of the Cr.P.C., does thereby rather *prima facie* acquire conclusivity. Therefore, though for non-production of the parcel containing the residue, as became separated from the bulk, at the crime site, rather before the learned trial Court concerned, does not yet *prima facie* snap the link, *inter se* the residue becoming separated from the bulk, at the time of recovery of the contraband, being made at the crime site, vis-à-vis, the production of the said residue, which after its examination became re-enclosed in a cloth parcel by the FSL concerned.

Arguments of the learned State counsel and the reasons for rejecting the same, thereby this Court concluding that the appeal is required to be allowed

19. Nonetheless, the learned State counsel submits that since in terms of Section 293 and 294 of the Cr.P.C., provisions whereof becomes extracted hereinafter, thus a rebuttable presumption of truth becomes assigned to the reports prepared by the Experts, as become detailed in sub Section 4 of Section 293 of the Cr.P.C. Resultantly, he submits that since thereby the Court has a discretion to summon and examine any such expert, as to the subject matter of his report. Moreover, since thereby an opportunity is assigned to the accused rather to bely the results of the examination made over the subject examined by the Expert concerned. Therefore, he submits that since the said opportunity is waived by the accused, through the learned defence counsel permitting the making of exhibition marks on the report of the FSL concerned. Resultantly the results of the incriminatory examination (supra), as made by the FSL concerned, over the subject concerned, is admissible in evidence but irrespective of the fact, that after examination of the stuff at the FSL, the same remaining unenclosed in cloth parcels, nor the seal impressions of the FSL concerned, becoming embossed thereons, besides the cloth parcels remaining unproduced in Court for the same being then shown to the prosecution witnesses concerned.

293. Reports of certain Government scientific experts.—(1)

Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report.

(3) Where any such expert is summoned by a Court, and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.

(4) This section applies to the following Government scientific experts, namely:—

(a) any Chemical Examiner or Assistant Chemical Examiner to Government;

[(b) the Chief Controller of Explosives;]

(c) the Director of the Finger Print Bureau;

(d) the Director, Haffkine Institute, Bombay;

(e) the Director [, Deputy Director or Assistant Director] of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;

(f) the Serologist to the Government;

[(g) any other Government scientific expert specified, by notification, by the Central Government for this purpose.]

294. No formal proof of certain documents.—*(1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.*

(2) The list of documents shall be in such form as be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed:

Provided that the Court may, in its discretion, require such signature to be proved.

20. Be that as it may, he yet further reiteratedly submits that in terms of Section 294 of the Cr.P.C., provisions whereof becomes extracted hereinabove, since the said report became included in a list and when upon its/their production in Court, at the instance of the learned Public Prosecutor concerned, there was an opportunity vis-a-vis the accused to either admit or deny the genuineness of the said report. Therefore, reiteratedly he submits that since the said opportunity remained unavailed. Contrarily with the learned defence counsel rather permitting the making of an exhibition mark thereons, thereupon in terms of Section 293(4) of the Cr.P.C., the report of the FSL was *per se* readable in evidence.

21. He further reiteratedly submits that thereby yet the link commencing from the date of preparation of recovery memo and upto the drawing of the report remains fully established, thereby the charge drawn against the accused becomes cogently proven, irrespective of existence of the above infirmity relating to the non production of the examined stuff before the Court concerned, for the same then being shown to the prosecution witness or to the expert concerned.

However, for the reasons to be assigned hereinafter the said made argument before this Court by the learned State counsel is not acceptable.

22. Firstly for the reason that though in terms of the Section 293(3) of the Cr.P.C., rather the experts concerned, when proceed to make a report in respect of the subject matter concerned, thereupon the said report is usable as evidence. However, the usability of such report rather is not conclusive proof vis-a-vis the results of the examinations as disclosed therein. The reason for making the said conclusion becomes sparked from the factum, that the coinages “*may be used as evidence in any inquiry, trial or other proceeding under this*

Code”, do garner an inference that the said report, but acquires only a presumption of truth, thus is not conclusive proof in respect of the results of the examination, as become echoed thereins.

23. In sequel, the makings of a close analyses of the provisions as embodied in Section 293(2) of the Cr.P.C., leads to the sequel that thereby the learned trial Court becoming empowered to summon and examine the expert concerned, whereupon, the said vested empowerment in the trial Judge concerned, is to be read to be thus bestowing also a leverage vis-a-vis the defence to cross-examine the expert concerned.

24. Moreover, though in terms of Section 293(3) of the Cr.P.C., the expert concerned, may be with the leave of the Court, choose not to make his personal appearance before the learned trial Judge concerned, whereby the learned trial Judge concerned, may permit the responsible officer concerned, so deployed by the author of the report for proving the said apposite report but who is also well conversant with the facts of the case besides can satisfactorily depose in Court on behalf of the expert, who prepared the report.

25. However, yet the recourse to Section 293(3) of the Cr.P.C., but cannot whittle down the conferment of an indefeasible right upon the accused to seek a personal cross-examination being made vis-a-vis the author of the report concerned, as thereby a full opportunity of fair trial, as envisaged under Article 21 of the Constitution of India, thus would become well preserved vis-a-vis the accused.

26. Necessarily thereby the statutory discretion (*supra*) as becomes conferred upon the learned trial Judge concerned, thus to summon and examine any such expert as to the subject matter of his report, rather has to be read to be not conferring an idle discretion upon the learned trial Judge concerned.

Contrarily, it has to be construed to be injuncting the learned trial Judge concerned, to ensure that he summons the expert, especially when this Court after assigning the directory signification (supra), to the directory coinages “*may be used as evidence in any inquiry, trial or other proceeding under this Code*”, as occur in Section 293 of the Cr.P.C., rather has therebys inferred that the report of an expert only enjoys a presumption of truth. If so, especially when this Court has also made the above inference, that for fully awakening the innate purpose of Article 21 of the Constitution of India, as appertains to the fullest opportunity of fair trial becoming assigned to the accused. Therefore, for facilitating the assigning of the fullest opportunity of fair trial to the accused, therebys the personal appearance of the author of the report, after his being summoned, is but imperative, as only thereafter he can be cross-examined by the defence. Therefore too, the import of the provisions (supra), thus is to forward the mandate of fair trial as enshrined in Article 21 of the Constitution of India, therebys the summoning of the accused is imperative for his being not only examined-in-chief rather for proving the incriminatory report as become drawn by the expert concerned, but also for his being subsequently cross-examined.

27. Be that as it may, though Section 294 of the Cr.P.C., provisions whereof becoming extracted hereinabove, appear to make an injunction upon the learned trial Judge concerned, to vis-a-vis any document which is filed by the prosecution or by the accused, particulars whereof are included in the list, thus permit respectively the prosecution or the accused, either to admit or deny the genuineness of every such document. Moreover, in the event of the genuineness of any document rather remaining undisputed, thereupon the said document being permissible to be read in evidence in any enquiry, trial or other proceeding as drawn under the Code, but without proof of the signature of the person to

whom it purports to be signed. The proviso appended under Section 294(3) of the Cr.P.C., also well empowers the Court to in its discretion require proof of signatures.

28. Since as stated (*supra*), the corner stone of Section 293 of the Cr.P.C., is that, therebys only a rebuttable presumption of truth becoming assigned to a report prepared by the experts detailed in Section 293(4) of the Cr.P.C. Therebys reiteratedly when an opportunity to the accused to lead evidence in rebuttal to the said prepared report, through making cross-examination upon the author concerned, is in consonance with the ordainment occurring in Article 21 of the Constitution of India, thereupons irrespective of no denial being made by the defence counsel at the time of production of the report of the FSL by the Public Prosecutor concerned, but would not relieve the learned trial Judge concerned, vis-a-vis the statutory obligation as enclosed in Section 294 Cr.P.C. Importantly, when the said statutory obligation is cast in a mandatory tone, besides when the said assigning of an overload of mandatoriness to the provisions carried in Section 294 Cr.P.C., becomes well grooved in the mandatory statutory coinage “*shall be called upon to admit or deny the genuineness of each such document*”, as exist in Section 294 Cr.P.C.

29. Though, the learned State counsel has vigorously argued that since the report of the FSL concerned, enclosed in Ex.P14, thus makes an incriminatory pronouncement vis-a-vis the accused, whereafter he has further submitted that since the said report was tendered into evidence by the learned Public Prosecutor concerned. Therefore since at the said stage, there was an opportunity to the accused to admit or deny the genuineness of the said report, whereas, the said opportunity remaining unavailed, thereupon when within the

domain of Section 294(3) of the Cr.P.C., the FSL report has earlier remain undisputed, as such it was *per se* readable in evidence.

30. In nutshell he argues that the mere tendering into evidence vis-a-vis the report, without the stuff examined being produced in Court, rather is sufficient and clinching proof, in respect of the incriminatory results drawn against the accused, especially when after the tendering of the report by the Public Prosecutor concerned, the accused rather waived for reason (supra) or had forgone the opportunity to deny the results of the examination as made.

31. Even the said submission (supra), is rudderless, thus on the ground that it has sprung from the learned trial Judge concerned, remaining unawakened in entirety vis-a-vis the innate nuance (supra) as become assigned to the above extracted provisions.

32. Since as stated (supra), the fine rubric ingraining the provisions comprised in Section 294 Cr.P.C., is to ensure the furtherance of fair trial as envisaged under Article 21 of the Constitution of India, in respect of the charges drawn against the accused. Moreover, if the said would yet happen only after the expert stepping into the witness box, thus for enabling the defence to cross-examine him, qua the processes' engaged by him for making examinations of the stuff enclosed in the sealed cloth parcels, thereby the mere tendering of the report by the Public Prosecution concerned, but would not *ipso facto* prove the charge drawn against the accused. In addition, even if at that stage the defence counsel, did not refute the makings of an exhibit mark thereon, but yet to the objective insightful mind of this Court, the said purported waiver did not thus, empower the learned trial Judge concerned, to omit to obey the statutory obligation cast upon him, thus contemplated within the domain of the significations as assigned, vis-a-vis the mandatory statutory coinages "*shall be*

called upon to admit or deny the genuineness of each such document". The said statutory coinages do cast a peremptory diktat upon the Court to irrespective of no refutation being made vis-a-vis the apposite report rather by the defence counsel, yet to rather call upon the accused to also either admit or deny the genuineness of the documents.

33. In other words, the said was a solemn duty cast upon the Court. Moreover, the said duty could be said to be well exercised only when the accused was peremptorily called upon to admit or deny the genuineness of the said document. Moreover, the said right is personal to the accused, and, is to be both ensured to be availed as also to be well exercised only by him, unless of course the defence counsel makes a statement that he has instructions to permit the making of an exhibition mark in the instant case.

34. Since at the time of the tendering into evidence of the report of the FSL, to which Ex.P14 is assigned, the learned defence counsel, did make a statement, that he has instructions from the accused to not oppose, the making of an exhibition mark upon the report of the FSL concerned, thereby the learned trial Judge concerned, appears to have derogated from the mandatory statutory obligation cast upon him rather to ensure *qua* the accused appearing before him, thus for admitting or denying the genuineness of apposite report. The said avoidance of performance of duty by the learned trial Judge concerned, has resulted in the accused becoming denied the fullest opportunity to admit or deny the report, and, to also subsequently ask that the expert concerned, be summoned, so that he can then cross-examine him, about the correctness of the report or vis-a-vis the correctness of the processes engaged into by him for his making an examination of the stuff inside the sealed cloth parcel.

35. Moreover, Section 294(3) of the Cr.P.C., declares that when the genuineness of any document is not disputed, thereupon the said document being readable in evidence but without proof of the signatures of the person to whom it purports to be signed, but with a proviso that the Court may, in its discretion, require such signature to be proved.

36. In aftermath, the statutory right of admission or denial as bestowed in Section 294 of the Cr.P.C., though *prima facie* relates only to the apposite admission/denial covering the genuineness of the signatures of the author of the document concerned, which may be even a report made in terms of Section Section 293(4) of the Cr.P.C., but it does not yet relieve the learned trial Judge concerned, to yet in terms of Section 293(2) of the Cr.P.C., though the coinages therein, are in a directory language, but further ensure the conducting of a fair trial vis-a-vis the accused. The said would occur only if the expert concerned, becoming summoned, as therebys the accused would be permitted to cross-examine the expert concerned, wherebys the right of fair trial would become fully preserved vis-a-vis the accused, the same being a Constitutional right.

37. Emphatically also there is no evidence on record which forthrightly speaks that the said examined contents enclosed in the apposite cloth parcels became returned to the FSL concerned, nor obviously qua the said examined sealed cloth parcels became deposited in the police malkhana concerned. Moreover, the apposite sealed cloth parcels never became produced in Court, for theirs becoming shown to the prosecution witnesses concerned, thus for ensuring the makings of speakings by them, vis-a-vis, the apposite sealed cloth parcels becoming received in the police malkhana and subsequently in Court, thus in an untampered and unspoiled condition. Since the above did not happen therebys, it appears that the prosecution has withheld a vital incriminatory link comprised in

the production in Court of the apposite cloth parcels in respect of whose contents, an incriminatory report comprised, thus in Ex.P14, thus was made. The suppression or withholding of the above vital link, thus snaps the link *inter se* the recovery being made at the crime site, vis-a-vis the apposite incriminatory opinion being made thereons by the FSL concerned.

38. If so, it appears that the apposite sealed cloth parcels did disappear, wherefrom an inference arises that the incriminatory report made on the stuff inside the cloth parcels concerned, may not be related to the stuff which as a matter of fact, became examined at the FSL concerned, irrespective of the factum, that the residue enclosed in sealed cloth parcels may have travelled in an unspoiled or untampered condition to the FSL concerned. Conspicuously, when the apposite returns of the apposite cloth parcel rather in an unspoiled or untampered condition but was imperative. Consequently, if grave skepticism makes it enrodes vis-a-vis the prosecution case, thereby the vital incriminatory link (*supra*) becomes snapped. Therefore, benefit of doubt is to be given to the accused.

Final Order

39. 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 become 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.

- 40. Case property, if any, be dealt with in accordance with law, but only after the expiry of the period of limitation for the filing of an appeal.
- 41. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

10.09.2024

(SUDEEPTI SHARMA)
JUDGE

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