

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-98-DBA-2005
Reserved on: 18.09.2024
Date of decision: 26.09.2024

STATE OF PUNJAB

...Appellant

Versus

KULWINDER SINGH

...Respondent

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

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

Ms. Ekta Thakur, Advocate
for the respondent.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict of acquittal made on 19.08.2004, upon Sessions Case No.71 of 2001, by the learned Addl. Sessions Judge, Jalandhar-cum-Judge, Special Court.
2. The State of Punjab became aggrieved from the above drawn verdict of acquittal. Resultantly, the State of Punjab instituted thereagainst the instant appeal bearing against the respondents.

FACTUAL BACKGROUND AND INVESTIGATION

3. The genesis of the prosecution case are that, on 24.01.1999, Inspector Maninder Bedi along with ASI Jaswinder Singh, ASI Balbir Singh and along with other police officials of Police Station Sarabha Nagar, Ludhiana and along with SI Sucha Singh of Police Station Nakodar, HC Mohan Lal, C. Avtar Singh and other police officials under the supervision of DSP Phillaur Sh.

Opinderjit Singh, were present in connection with special Nakabandi, in case FIR No.10 dated 23.1.1999, U/s 121, 122 IPC, 25 Arms Act, 22 of the N.D.P.S. Act, 4/5 Explosives Act. The police party held a Nakabandi at 'T' point, G.T. Road, Jalandhar. At about 11:00 p.m. one Maruti Car of blue colour, bearing registration No.HR-07-3939 was seen coming from Phillaur to Ludhiana. Then Inspector Maninder Bedi with the help of torch light signalled the car to stop. Three persons were seen in the car, out of them one was driving the car and two persons were sitting on the rear seat. He checked the accused who was sitting on the left side of the rear seat of the car, who tried to take out his assault rifle and tried to use the same, but he was apprehended with the help of ASI Jaswinder Singh and other police officials. During interrogation, accused disclosed his name as Kulwinder Singh @ Gurdev Singh son of Prem Singh, resident of Jodhpur, P.S. Bassi Pathana, district Fatehgarh Sahib. Inspector Maninder Singh Bedi asked accused Kulwinder Singh whether he wanted to be searched in the presence of some Magistrate or some Gazetted Officer, but the accused reposed his faith in the police party. Then in the presence of DSP Opinderjit Singh, Inspector Maninder Bedi conducted the search of accused Kulwinder Singh which led to the recovery of AK-56 rifle bearing No.25019557 along with Magazine. During the personal search of accused, one more Magazine of AK-56 was recovered from the right pocket of the jacket of accused, on unloading both the Magazines, it found to contain 25 cartridges each of AK-56 rifle. Further heroin wrapped in the polythene paper and further wrapped in the parna (piece of cloth) and tied with the waist was also recovered from accused. A sample of 10 gms. was separated and on weighment the remaining heroin came to be 490 Gms. The sample and the remaining heroin were sealed by Inspector Maninder Bedi, with the seal bearing impressions MB and the DSP also sealed the same

with his seal bearing letters OJS. One mobile phone Make Nokia was also recovered from the accused. Rough site plan with correct marginal notes was prepared. Statements of the witnesses were recorded and on receipt of report of Chemical Examiner Ex.PX and after completion of investigation challan against the accused was presented in the court of Sh. A.S. Narula, the then Additional Sessions Judge, Jalandhar, on 23.4.1999, by Shri Sarabjit Rai, SHO.

Trial Court Proceedings

4. 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 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “the Act”), to which he pleaded not guilty and claimed trial. Subsequently after the recordings of depositions of 5 witnesses, the learned public prosecutor closed the prosecution evidence. 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 appellant-State

5. Learned State counsel has argued before this Court, that the impugned verdict of acquittal, thus requires an interference. He supports the above submission on the ground, that it is based on a gross mis-appreciation, and, non-appreciation of evidence germane to the charge.

Submissions of the learned counsel for the respondent

6. Learned counsel for the respondents has argued that the impugned verdict of acquittal, 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 acquittal be maintained, and, affirmed by this Court.

7. Through Ex.PB recovery of heroin was made from the parna tied around the waist of the accused. The contents of recovery memo (Ex.PB) become extracted hereinafter.

“Recovery memo of Heroin

In the presence of following witnesses on conducting further search of accused Kulwinder Singh abovesaid, in the Parna tied around his waist, Heroin wrapped in a glazed paper has been recovered, out of which 10 gms has been taken out as sample and put into a dibbi tin, on weighing, remaining came to 490 grams, which has been put in an other dabba tin, prepared the parcels, sealed with my seal bearing impression MB and sealed by the DSP with his seal bearing impression OJS. Sample seal is drawn and kept separately. Seals after use has been handed over to ASI Jaswinder Singh. Parcel of Heroin, sample, sample seal, and Parna have been taken into police possession vide instant memo. The memo has been got signed from the witnesses.

xxx”

8. A reading of the recovery memo thus reveals that, the investigating officer (PW-4) put his seal bearing impression ‘MB’ 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.

9. Though the Investigating Officer concerned, stepped into the witness box as PW-4, but in his examination-in-chief he has only spoken that he had embossed his seal impressions ‘MB’ on the parcels, but he yet omitted to speak qua the numbers’ of such embossed seals impressions, rather on the apposite cloth parcels.

10. The DSP concerned, who stepped into the witness box as PW-2, thus also in his examination-in-chief only spoke that he had embossed his seal impressions 'OJS' on the parcels, and he also 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.PX, contents whereof are extracted hereinafter, though rather vividly reveals, that one sealed cloth parcel as became forwarded there by the SSP Jalandhar, thus became received there. Though it is further expressed therein that the parcel became sealed with 1 seal of 'MB' and 1 seal of 'OJS'. 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 parcel, especially when the numbers' of the seal impressions, as made on the cloth parcel 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.PB.

Xxx

1) Report Number 66/99/Toxy/Dated 26.2.99

2) Reference Number 18224 dated 9/2/99 Senior Superintendent of Police, Jalandhar

xxx

6) *Articles received* *One parcel sealed with two seals (bearing letters O.J.S and M.B one seal each) in which heroin is disclosed. The seals on the parcel found intact and tally with the seal samples.*

Xxx

REPORT

On examination of the powder of the parcels under reference, 16.17% diacetyl morphine, which is the active part of the smack, has been found present.

xxx”

12. The underlined hereinabove expressions occurring at the top of the report of the FSL (Ex.PX), wherein, occur speakings about the numbers’ of seals, as made on the cloth parcel 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 parcel, therebys does not make the accused to be inculpable and/or rather therebys 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 report of the FSL.

14. Reiteratedly, therebys the prosecution has failed to prove the charge which was completely dependent upon the result of the examination made on the stuff enclosed in the residue cloth parcel, as became sent to the FSL, for examination.

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.PX, 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, thereupons alone 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, thus therebys would become convincingly proven, or rather would remain unsnapped or unbroken. In the above event alone reiteratedly 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, 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.

18. Therefore, when the apposite case property 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 the case property 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 case property; (b) the loose cloth parcels, if any, 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 *qua* the enclosures inside case property, being introduced therein, thereby the report of the FSL (supra), rather loses its evidentiary vigour. Reiteratedly a further scope is also left, that thereby the stuff, if any, existing inside the case property, rather became introduced therein, and/or, 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 and the said fact has been aptly recorded by the learned trial Judge concerned.

Final Order

19. In aftermath, there is no merit in the instant appeal, and the same is dismissed. The verdict of acquittal, as become rendered by the learned trial Judge concerned, is upheld and maintained.

20. 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.
21. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

26.09.2024

(SUDEEPTI SHARMA)
JUDGE

Ithlesh

Whether speaking/reasoned:-
Whether reportable:

Yes/No
Yes/No