



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1335-2021 (O&M)

Reserved on: 22.11.2024

Date of decision: 29.11.2024

SAPNA THAKUR

...Appellant

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Ms. Simran, Advocate for
Mr. Sandeep Sethi, Advocate
for the appellant.

Mr. P.P. Chahar, Advocate (*Amicus Curiae*)

Mr. Maninder Singh, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 03.09.2021, upon CIS NDPS No.115 of 2017, by the learned Judge Special Court, Patiala, wherethrough in respect of a charge drawn against the accused qua an offence punishable under Section 22 of the NDPS Act, the learned trial Judge concerned, proceeded to record a finding of conviction against the accused-appellant. Moreover, through a separate sentencing order, drawn on 07.09.2021, 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:

“So, I sentence the convict to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,00,000/- (Rs. One lac). In default of payment of fine, she shall further undergo RI for three months.”



2. The accused-convict becomes 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 her, by the learned convicting Court concerned, and, hence has chosen to institute thereagainst the instant criminal appeal, before this Court.

Factual Background and Investigation proceedings

3. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex.P6 is assigned. The narrations carried in Ex.P6, are that on 15.5.2016, ASI Janpal Singh along with police party containing HC Paramjit Singh No.875, HC Surjit Singh No. 719, HC Gurmukh Singh No. 1018, Lady Constable Vijay Laxmi 2624 were on patrolling duty and checking of bad elements and were on government vehicle No. PB11-AG-8963 driven by HC Nirmal Singh and was present at T-Point Sanjjarpur Turn in the area of village Mehmadpur. Laptop and printer was there with HC Paramjit Singh and the police party was checking the vehicle coming from side of Ambala.

4. At about 7.30 p.m. one bus of Haryana Roadways came from Ambala side and was in the line of the vehicles just before the police party. One hair cut girl came out of the back door of the bus having one black colour bulky bag in her right hand and she started walking at the back side. On the basis of suspicion she was called to stop but she started moving fast and she was apprehended with the help of police officials. Her name was enquired to which she told her name as Sapna Thakur daughter of Bhim Singh, resident of House No.12, Krishna Colony, near Ablowal, P.S. Civil Lines, Patiala and her features were aged about 20 years, height 5 feet, complexion fair, having hair cut, on the inside of left arm there was Tattoo in the sign of heart SK was written inside it.

ASI Janpal Singh told his own identity that he is ASI Janpal Singh posted in PS



Shambu and told her that there is suspicion on her for having some narcotics in the polythene carry bag in her hand and he wanted to effect personal search as well as search of the polythene.

5. She was apprised about her legal right that if she wants then she and her polythene bag can be searched in presence of a Gazetted Officer who can be called at the spot. Said Sapna Thakur gave thought for sometime and then reposed faith in ASI Janpal Singh and stated that ASI can effect the personal search and search of polythene without calling Magistrate or Gazetted officer. In the presence of LC Vijay Laxmi the consent statement of Sapna Thakur was recorded who signed the same in English. LC Vijay Laxmi and HC Surjit Singh also signed the same.

6. Thereafter personal search of polythene carry bag in the hand of Sapna Thakur, was conducted by opening and 50 strips of Lomotil Tablets were found and each strip contained 60 tablets each and in total 3000 tablets were there in her possession. That black colour polythene carry bag was put in the plastic container and converted into parcel and sealed by ASI Janpal Singh with seal bearing impression JS. Sample seal was prepared. Memo of recovery was prepared and same was taken into police possession and witnessed by HC Surjit Singh and LC Vijay Laxmi. ASI tried to join private witness from the spot but no one was ready. Ruqa was prepared and sent through HC Gurmukh Singh to the police station for registration of the case.

7. During investigations, ASI Janpal Singh prepared the site plan of the place of occurrence. Accused was joined in the investigation and became formally arrested. The information of her arrest was given to her mother Radha Rani on Mobile Number 97816-75223 and in this regard memo of arrest and information was prepared, which were signed by Sapna Thakur and the



witnesses. Memo of Jamatalashi was also prepared. Upon jamatalashi, Rs. 50/- currency note, one mobile phone China made make BQ was also recovered which was also taken into possession. Statements of witnesses were recorded. Form No.29 was prepared at the spot. Report under Section 57 NDPS Act was also prepared and after completion of investigation at the spot, police party along with accused, case property and papers, came back to the police station and they were produced before ASI Amar Singh, officiating incharge of Police Station, who enquired from accused Sapna Thakur, witnesses and seen the case property parcel, sample seal and thereafter he put his own seal on the parcel hearing impression AS. He also put his seal on sample seal bearing impression AS and thereafter deposited the case property with MHC Satpal Singh in malkhana and accused was put up in lock up in the police station.

8. ASI Janpal Singh recorded statement of ASI Amar Singh, officiating SHO. On 16.5.2016 ASI Janpal Singh along with other police party obtained case property and sample seal, Form no. 29 from MHC Satpal Singh and accused was also taken out from the lock up and produced before the court of Smt. Pratima Mahajan, Learned JMJC, Rajpura, who checked the case properly parcel, sample seals and thereafter seals were broken open and two strips of tablets, each containing 60 tablet were separated as samples and rest of the bulk parcel was put in the same plastic container containing 48 strips, each containing 60 Tablets, total 2880 tablets. Two samples were converted to sample parcels each containing 60 tablets and sealed all the parcels with seal bearing seal impression PM. Sample seal was prepared.

9. Form No.29 was also attested and accused was sent to judicial custody. It was ordered for deposit of sample in Forensic Science Laboratory, Mohali and case property in judicial malkhana, Patiala. As order of inventory



could not be taken so ASI Janpal Singh got accused medically checked up and sent her to Central Jail, Patiala and brought back case property parcel and two sample parcels along with sample seal and form No. 29 and deposited again with MHC Satpal Singh in the police malkhana. On 17.5.2016, ASI Janpal Singh has taken the case property parcels, along with order of inventory from MHC Satpal Singh and deposited the same in judicial malkhana, Patiala. On 23.5.2016, MHC Satpal Singh sent the sample parcel containing 60 Tablets of Lomotil bearing seal impression PM along with sample seal and Form no. 29 taken out of the malkhana and gave to ASI Satnam Singh, officiating SHO who sealed the said parcel along with sample seal and further sealed it with his seal bearing impression SS and put unique code No. 018 dated 23.5.2016 for sending it to Director, Forensic Science Laboratory, Mohali and again handed over to MHC Satpal Singh, who handed over these articles to HC Subhash Chand. HC Subhash Chand took these articles to office of SSP before Nodal Officer Bikramjit Singh, DSP (D), Patiala who further put these articles in another cloth bag and sealed the same with his own seal bearing impression BS and put another unique code 0159/DPO/PTL dated 23.5.2016 and handed over the same to HC Subhash Chand for supplying the same to Director, Forensic Science Laboratory, Mohali, who supplied the same on the same day and on return receipt was handed over to MHC Satpal Singh.

10. After receipt of report of Chemical Examiner and recording statement of witnesses and on completion of investigation, the challan under Section 173 Cr.P.C. was prepared and presented before the trial Court.

Trial Proceedings

11. 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 22 of the NDPS Act. The afore drawn charge was put to the accused, to which he pleaded not guilty, and, claimed trial.

12. In proof of its case, the prosecution examined seven 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 three witnesses were led into the witness box.

13. As above stated, the learned trial Judge concerned, proceeded to convict the accused for the charge (supra), as became drawn against her, 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

14. 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. She supports the above submission on the ground, that they are based on a gross misappreciation, and, non-appreciation of evidence germane to the charge.

Submissions of the learned State counsel

15. 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

16. Through recovery memo Ex.P2, the recovery of the contraband became allegedly recovered from the possession of the appellant. In proof of the prosecution case, ASI Janpal Singh stepped into the witness box as PW-1, and, in his examination-in-chief, he made speakings therein, which concur with the contents of the appeal FIR, to which Ex. P6 is assigned.

17. 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.

18. A reading of the report (Ex.P13), 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 containing Diphenoxylate Hydrochloride and Atropine Sulphate. The said report is *ad verbatim* extracted hereinafter.

“x x x x
6. Articles received:

*One parcel sealed with one seal of ‘PM’
alleged to contain intoxicating material.*

*Seal on the parcel was found intact and tallied
with the specimen seal impression.*

*On opening the parcel was found to contain
sixty tablets of white colour in strips, each
strip was labelled as Lomotil.*



7. Purpose of reference: *Analysis and report*

8. Identification & Tests:

<u>Ingredients Present</u>	<u>Average quantity of ingredients in the parcel</u>
Diphenoxylate hydrochloride	2.2mg/tablet
Atropine Sulphate	0.022mg/tablet

Report

The tablets contained in the parcel under reference have been analysed separately by chemical analysis. On the basis of analysis the ingredients along with their quantity found present in these have been given at serial no.8 (Identification and tests) of this report.

x x x x”

19. 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.P13, about his re-enclosing the examined stuff inside the cloth parcels, and, his thereons affixing the seals of the FSL concerned.

20. 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. P2, and, lasting upto the production of the case property in Court, thus therebys 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, contrarily 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,



whereafters the examined stuff after retrievals from the malkhana concerned, was to be produced in Court, for its being shown to the investigating officer concerned, for thereby thus, on evident surgings-forth of the above requisite primary evidence, rather the charge drawn against the accused, could be concluded to be convincingly proven, thereupon rather for wants (supra) the charge would stagger.

21. Be that as it may, though the sample parcels whereons an incriminatory opinion (supra) became recorded at the FSL concerned, but yet since on a reading of the testification, as occurs in the examination-in-chief of PW-1 Janpal Singh, the supra became produced in Court, besides on the production of the relevant parcels they then became shown to the witness (supra), who also then proceeded to state, that they were the very same ones which became separated from the bulk parcels, and, also theirs being the very same ones whereons also the incriminatory opinion (supra) became recorded. Consequently, on the basis of the above, the learned State counsel has vigorously argued before this Court, that therebys irrespective of the chemical examiner of the FSL concerned, omitting to after making examination(s) of the stuff inside the sample cloth parcels, thus re-enclosing the same in the cloth parcels, besides his omitting to emboss thereons the seals of the FSL concerned, rather therebys looses its relevance.

22. However, the above argument cannot be accepted by this Court, thus on the ground, that there is no endorsement by the Chemical Examiner concerned, on the report (supra) to the extent that after re-enclosure of the examined stuff inside the cloth parcel, the same becoming returned to the office wherefrom they arrived at the FSL concerned. Furthermore, the parcel as became sent for examinations to the FSL concerned, but obviously did not result



in a receipt entry becoming made by the Incharge of the Malkhana concerned. The consequent effect thereof, is that, the cloth parcels, as became produced in Court, thus cannot become related to the cloth parcels, as became sent to the FSL concerned, nor can they be related to the ones whereons an incriminatory opinion was made at the FSL concerned.

23. In sequel, the production in Court of the sample parcels whereons an incriminatory opinion was recorded but were not the ones which became sent to the FSL concerned, nor thereby it can be concluded that the above produced sample parcels in Court, are the ones which are to be convincingly stated to comprise the link starting from the recovery of the seizure being made at the crime site, and, after examination(s) of the contents thereof, lasting upto production thereof in the Court, for its being shown to the investigating officer concerned, yet imperatively the stuff inside the produced in Court cloth parcels becoming affirmatively examined by the FSL concerned.

24. In aftermath, the supra produced in Court sample cloth parcels, are to be concluded to be the result of a contrivance deployed by the investigating officer concerned, so as to falsely connect the accused with the said produced sample cloth parcels in Court.

25. Resultantly, reiteratedly when scope is, thus left for an inference *qua* either the case property, thus not relating to the report (supra) of the FSL concerned, thereby the report of the FSL (supra), rather looses its evidentiary vigour. A further scope is also left, thus to infer 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.

26. Lastly, since 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”**, thus has therein 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, thereupons, 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 therefroms becoming drawn, whereafter an affirmative finding on the stuff inside the residues, is required to be made by the Chemical Examiner concerned.”

27. Moreover, when evidently in the instant case, there is no mentioning of takings place of homogeneous mixings of the entire bulk seized from the offending bulk, before taking sample parcels therefroms, 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.

28. 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.

“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.”

29. Consequently, since the expostulation of law carried in verdict (supra), remains unsatiated thereby the accused become entitled to an acquittal.

30. The said view is also supported by a judgment rendered in case



Criminal Appeal No.642 of 1991, decided on 16.03.1993, relevant paragraph whereof becomes extracted hereinafter.

“J. Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 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

31. 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 her. The fine amount, if any, deposited by her, be, in accordance with law, refunded to her. 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.

32. Records be sent down forthwith.

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

(SURESHWAR THAKUR)
JUDGE

29.11.2024
Ithlesh/Gurpreet