

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

433

2026.PHHC.044535



CRA-S-3115-SB-2011 (O&M)
Decided on: March 19, 2026.

GURDEEP SINGH

...Appellant

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

PRESENT Mr. Jagpal Singh, Advocate, for
Mr. Arshdeep Singh Sivia, Advocate,
for the appellant.

Mr. Aftab Singh Khara, Sr. DAG, Punjab.

VINOD S. BHARDWAJ. J. (ORAL)

The instant appeal has been preferred against the judgment of conviction and order of sentence dated 08.11.2011 passed by the Judge, Special Court, Sri Muktsar Sahib, in Sessions Case bearing No.450 dated 25.11.2005/RT No.154 dated 29.11.2006, arising out of FIR bearing No.185 dated 19.07.2005, under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station City Malout, District Sri Muktsar Sahib, whereby the appellant had been convicted for commission of offence under Section 15 of the NDPS Act, for having been found in conscious possession of 09 kilograms of poppy

husk and, sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.2,000/- vide order of even date.

2 Succinctly, the prosecution case is that on 19.07.2005, a police party headed by ASI Kabal Singh, having other police officials, namely HC Major Singh and HC Ajmair Singh, etc., on a Govt. vehicle, i.e. Canter and being driven by Gurdass Ram, was going from Malout Mandi to village Ratharian via link road in connection with patrol duty and checking of suspected persons. When the police party went ½ kilometre ahead on the link road from the main G.T. Road, then two persons, holding two plastic bags on their right shoulders, were spotted by the police party on foot. When the accused saw the vehicle of the police party, they put their bags aside on the road and tried to slip away. Out of the two accused, one fell down on the road and was apprehended by the I.O. with the help of other police officials. The I.O. inquired about his whereabouts, and he disclosed his name as Jagsir Singh. Jagsir Singh also disclosed the identity of the other person (who had absconded) as Gurdeep Singh, to whom HC Major Singh was already known. Gurdeep Singh could not be apprehended, and he escaped. The I.O. tried to join independent witnesses, but no one was available there. The satchel, which had been thrown away by accused Jagsir Singh, was lying with an open mouth and out of the same, poppy husk was recovered. Out of the recovered poppy husk, 250 grams were separated by the I.O. as a sample and converted into a parcel. On weighing, the remaining poppy husk came out to be 8 kilograms 750 grams, and it was converted into another parcel. The second satchel, which was thrown away by appellant Gurdeep Singh, was lying open, and poppy husk was recovered from the said satchel, out

of which 250 grams of poppy husk was also separated by the IO as a sample and converted into a parcel. On weighing, the remaining poppy husk came out to be 8 kilograms 750 grams, and it was converted into another parcel. All the parcels were sealed by the I.O. with his seal bearing the impression KS. Specimen seal chit Ex. P9 was prepared, and the seal was handed over to HC Major Singh after use. The I.O. then took the case property into possession vide separate recovery memo Ex. P10, attested by HC Major Singh and HC Ajmair Singh. Ruqa Ex. P11 was sent to the police station through C. Gurpal Singh, based on which a formal FIR Ex. P12 was registered by ASI Baldev Singh. Personal search memo of the accused, Jagsir Singh, was prepared by the IO, and nothing was recovered from him. The accused Jagsir Singh was arrested, and the grounds of arrest were disclosed to him vide memo Ex. P14. Rough site plan Ex. P15 was prepared by the I.O. at the spot. All the memos were attested by the same set of witnesses. Statements of the witnesses were recorded. On returning to the police station, the I.O. produced the accused and the case property before SHO Baldev Singh, who checked the case property and sealed it with his seal BS and took the same into his possession vide separate memo Ex. C-2. On 20.07.2005, SHO Baldev Singh produced the accused Jagsir Singh along with the case property in the court of Sub Divisional Judicial Magistrate, Malout, vide police request/application Ex. P3 and inventory report Ex. P4. The photograph Ex. P2 of the case property was taken, and Ex. P3 was its negative. The court drew two additional samples, i.e., one from each of the bulk parcels, and sealed the same along with the bulk with its seal impression FSD/MLT. The court then passed orders Ex. P5 and then handed over the case property to the SHO, who thereafter

deposited the same with MHC Jeet Singh, with seals intact. He also sent a detailed report Ex. P6, to the DSP concerned. Thereafter, the report of the Chemical Examiner Ex. P8 was received. During the investigation, the police arrested appellant Gurdeep Singh on 07.11.2005, and the grounds of his arrest were conveyed to him vide memo Ex. P17. Personal search memo Ex. P16 of appellant Gurdeep Singh was also prepared by the I.O., and nothing was recovered from him. After completion of the investigation, challan was presented in the court against the accused.

3 On presentation of the challan, copies thereof and other documents were supplied to the accused, and after finding a prima facie case for the offence punishable under Section 15 of the N.D.P.S. Act, the accused were charge sheeted accordingly, to which they pleaded not guilty and claimed trial. It is not out of place to mention here that after the framing of the charge, accused Jagsir Singh absented himself as he did not come present. Ultimately, proclamation proceedings were initiated against Jagsir Singh, and vide order dated 23.08.2008, the accused Jagsir Singh was declared a proclaimed offender. The prosecution brought its evidence to prove the case against appellant Gurdeep Singh.

4 To connect the appellant with the present case, the prosecution examined PW1 SI/SHO Baldev Singh, PW2 ASI Kabal Singh, I.O. of the case; PW3 ASI Major Singh, recovery witness; PW4 HC Gurnam Singh and PW5 Jeet Singh, MHC and thereafter, the prosecution closed its evidence.

5 Thereafter, the statement of the appellant Gurdeep Singh was recorded under Section 313 Cr.P.C. in which the entire incriminating

evidence brought on the record was put to him, to which he denied in toto by pleading false implication and innocence. He pleaded that he was innocent and that no incriminating article had been recovered from his possession. He claimed to have been falsely implicated due to a party faction in the village. No witness was, however, examined by the appellant in his defence.

6 The parties were heard by the trial Court. After considering the evidence adduced and the rival submissions advanced, the appellant was convicted for the commission of offence under Section 15 of the NDPS Act, 1985 and sentenced as above. Hence, the present appeal.

7 It has been argued by the learned counsel appearing for the appellant that the appellant has been wrongly convicted in the aforesaid case and that the trial Court did not appreciate the facts in its entirety, resulting in an erroneous finding of guilt. The principal contentions raised on behalf of the appellant are that the case of the prosecution rests solely on the testimonies of official witnesses, who were interested in the outcome of the case and that no independent witnesses were joined. It is further argued that there are material contradictions in the deposition of the prosecution witnesses examined before the Court, and that the identity of the appellant was not established. It is further contended that there was non-compliance of the statutory provisions.

8 State counsel, on the other hand, contends that the trial Court has considered the entire evidence and that independent witnesses had been joined. He contends that the trial Court has passed a well-reasoned and speaking judgment after meticulously appreciating the entire oral as

well as documentary evidence on record. The findings recorded are based on cogent, reliable, and trustworthy evidence and do not call for any interference. The prosecution successfully established that the appellant was found in conscious possession of 9 kilograms of poppy husk without any permit or licence. The recovery had been proved through consistent testimonies of prosecution witnesses, and the same was corroborated by documentary evidence as well as the report of the Chemical Examiner. The presumption under Sections 35 and 54 of the NDPS Act was rightly invoked, and the appellant failed to rebut the same. The contention of the appellant that the case rests only on official witnesses is wholly misconceived. It is settled law that the testimony of police officials is as reliable as that of any independent witness, if found credible. In the present case, the statements of the official witnesses are consistent, inspire confidence, and have withstood the test of cross-examination. No motive for false implication has been alleged or proved. The learned Trial Court has rightly held that non-joining of independent witnesses is not fatal, particularly in a case of chance recovery. Efforts were made by the Investigating Officer to join independent witnesses, but no one agreed. It is a matter of common experience that public persons are reluctant to join police proceedings. Therefore, the prosecution case cannot be doubted on this ground alone. The prosecution has established the complete chain of custody of the case property. The seals on the sample parcels remained intact throughout, and the Chemical Examiner's report confirms the same. Any minor delay in sending the samples has been duly explained and has not caused any prejudice to the appellant. The identity of the appellant has been duly established. The prosecution

witnesses have categorically deposed that the appellant was known to them prior to the occurrence, and his name was duly mentioned in the ruqa and FIR. The mere fact that the appellant had fled from the spot does not demolish the prosecution case when his identity otherwise stands proved. The alleged discrepancies pointed out by the appellant are minor in nature and do not go to the root of the prosecution case. Such minor inconsistencies are natural and do not affect the core of the prosecution story. There is no violation of any mandatory provision of law. The recovery in the present case was from bags and not from the personal search of the accused; hence, provisions like Section 50 of the NDPS Act are not attracted. It was specifically noticed by the trial Court that the seal impressions had been intact during the entire period, and there was no tampering of the seized material. He contends that all the aspects have been duly considered and declined by the Court.

9 I have heard the learned counsel appearing for the respective parties and have gone through the documents appended along with the present appeal, including the impugned judgment.

10 In so far as the argument about failure to join independent witnesses is concerned, it is well established that independent witnesses are often reluctant to join in police proceedings. The same may be for reason and apprehension of harassment by law enforcement, accused or by legal compulsions. The said practicality cannot be ignored. Besides, joining of an independent witness is not a mandatory statutory requirement, but only a desirable procedural aspect. Failure to associate independent witness would not impeach the credibility of official witnesses. The testimony of official witnesses would not be discarded on

mere expression of apprehension, but has to corroborate a miscarriage of justice.

11 Law accepts even the list of related and interested witnesses subject to caution and careful scrutiny. The police officials are performing their official duties and have no special interest in the case than that of a prudent witness. There should be no element of disbelief or distrust on their testimony. The defence is required to bring material on record for discarding or disbelieving their deposition.

12 A general argument has been raised about contradictions in the testimony of the witnesses. The counsel has however failed to refer to any deposition or evidence, with respect to his arguments about discrepancies. The next aspect is of identification. The counsel has not referred to any material in deposition to the effect that the accused were muffled. Thus, their face was seen by the witnesses who appeared to prove the case. One person was apprehended at the spot while the appellant was known previously to HC Major Singh, who appeared as PW3. Thus, the identity of the appellant stood fully established.

13 Additionally, the judgment of the trial court has also been perused.

14 On consideration of the evidence and the arguments advanced on behalf of rival parties, the trial Court recorded as under: -

“12. The first contention raised by the counsel for the accused is, that case of the prosecution rests upon the testimonies of the official witnesses alone, to which there is no independent corroboration and the witnesses are interested in the success of the case, as such their testimonies cannot be relied upon. Firstly, it is a case of chance recovery.

Secondly, it is settled proposition of law, there is no hard and fast rule that independent witness be joined invariably. It is settled proposition of law that testimonies of the official witnesses are as good as of independent witnesses. Statements of the official witness cannot be discarded merely on the ground of colour of their office. The only analogy, which is to be kept in mind while relying upon the testimonies of the official witnesses is that there testimonies are to be scrutinized with more care and caution. Keeping in view this analogy in mind, I have scrutinized the testimonies of the official witnesses with more care and cautiously, which were subjected to lengthy cross examination, but they could not be budged on any material aspect of the case of the prosecution. There is nothing on record to disbelieve the police officials and that they are truthful and credible. There is no reason for false implication. Further, I may also take support of case law titled as Nasib Singh @ Nasiba vs. State of Haryana 2010(1) RCR (Criminal) (P&H), page 360, wherein, it has been held:

"B. Narcotic Drugs and Psychotropic Substances Act, 1985, Section 20- Independent witness-Appellant convicted and sentenced for carrying charas without any permit-Plea that only police officials have deposed against the appellant and no independent witnesses joined, therefore, prosecution case is bound to fail is not correct as testimony of prosecution witnesses is free from blemish of contradictions, discrepancies and improvement-Therefore, it is not necessary that independent witness should have joined".

Further, I may also take support of case law titled as Jarnail Singh vs. State of Punjab, 2011 (1) RCR (Criminal), (SC), page 925, wherein, it has been held:-

E. Narcotic Drugs and Psychotropic Substances Act, 1985, Section 18-Independent witness-recovery of was not contraband at a place which frequently used by public-head Constable sent adjoining village to bring member to Panchayat, but of the villagers were not prepared to join held:-

(1) The reluctance on the part of the villagers is neither strange nor unbelievable-generally, people belonging to the same village would into unnecessarily want to create bad relations/enmity with any other villager".

Further, when ASI Kabal Singh has appeared in the witness box has categorically deposed in his cross examination that efforts were made to join the independent witness and even 4-5 persons were asked to join the police party, but they refused to be independent witnesses in this case. His testimony has also been duly corroborated by ASI Major Singh PW. So, keeping in view of above discussion and in view of the citation of law, I do not find any force in the contention of the learned counsel for the accused and the same is hereby repelled.

13. Further, it was argued that PW4 HC Gurnam Singh took the sample to the office of Chemical Examiner and some objections were raised and regarding this this witness has mentioned about the said objections in his affidavit Ex.PW4/A, but the prosecution has not proved on record the said objections and this makes the case of the prosecution doubtful. I have heard this contention of the learned counsel for the accused, but do not find any force in this contention because HC Gurnam Singh PW4 while appearing in the

Court has tendered into evidence his affidavit Ex. PW4/A, in which, he deposed about the fact of taking of the sample from the MHC and its receipt in the office of Chemical Examiner was made on 22.08.2005, but some objections were imposed upon the same. So, said sample carrier returned back with objections from the office of Chemical Examiner and again on 29.08.2005, after getting removed the same, he again visited the office of Chemical Examiner and on 30.08.2005 get deposited the sample of the case. This witness has categorically deposed that no written objection was made by the office of Chemical Examiner and this fact has not been challenged by the accused. Moreover evidence of HC Gurnam Singh has been corroborated by MHC. Otherwise, as per report of the Chemical Examiner, the seals were intact at the time of receipt of the sample in the office of Chemical Examiner. The only contention of which can be considered is delay in depositing the sample, which too, has also not prejudiced the accused because the sample was found to be intact when reached in the office of Chemical Examiner. Here, I may take support of the case law titled as State of Punjab vs. Lakhwinder Singh & Anr. 2010 (2) RCR (Criminal), (Supreme Court of India), page 582, wherein, it has been held:

"B. Narcotic Drgus and Psychotropic Substances Act, 1985, Section 15-Appeal against acquittal-Recovery of contraband-Delayed sample-Effect-Recovery of 35 bags of poppy husk from accused persons-Samples of contraband from each bag separated- of seven days in sending the samples to Forensic Science Laboratory-Report of Chemical Examiner established that seal of sample found intact at the time of examination-Mere observation by the High Court that the case property might have been tampered with, cannot take the place of proof-Held, not fatal-Sufficient and cogent grounds

to set aside order of acquittal-Order of trial Court Sentencing 12 years RI restored."

So, in view of my above discussion and citations of law the contention raised by the learned counsel for the accused has no weightage and the same is repelled.

14. Lastly, it was argued by the learned counsel for the accused that identity of Gurdeep Singh has not been proved by the prosecution in this case because as per prosecution version, accused Gurdip Singh fled away from the spot and there is no cogent evidence to prove the identity of accused Gurdip Singh or connect him with the present. I have heard this argument of the learned counsel for the accused, but do not find any weight in this arguments because in this case, ASI Kabal Singh has categorically deposed that HC Major was already knew to Gurdip Singh. This fact has also been corroborated by HC Major Singh. Even the name of accused Gurdip Singh has been categorically mentioned in the ruqa Ex. P11 and FIR Ex. P12. Here reliance can placed upon the case law titled as Jagga Singh vs. State of Haryana 2010 (3) RCR, (P&H), page 756, wherein it has been held:

"A. Narcotic Drugs and Psychotropic Substance Act, 1985 Section 15-Evidence Act, 1872, Section 9 recovery-Test identification parade-Recovery of 8 bags, each containing 35 kgs poppy husk five from maruti car and three bags from cycles-Names and Parentage of all accused except one correctly described in ruqa-Remaining accused rightly described as handicapped-Deposition of both official witnesses as to identification of accused consistent-Held, absence of identification parade, not fatal to the prosecution-conviction upheld".

Furthermore, there is no plea of the accused that the police officials were having any personal grudge or enmity against him. So, in view of my above discussion as well as citations of law, the contention raised by the learned counsel for the accused has no force and the same is hereby repelled.”

15 It is thus evident that the trial Court has considered all the aspects including that of examination of independent witnesses and observed that it is a case of chance recovery, and further that there is no hard and fast rule that independent witnesses have to be joined invariably. Testimonies of official witnesses will hold as good as independent witnesses and to be not discarded on the ground of their official position in case the same are found to be cogent, convincing and trustworthy. It has been specifically recorded that prosecution witnesses could not be shaken on any material aspect; despite lengthy cross-examination as such, their truthfulness cannot be doubted. Further, regarding the objection raised by the chemical examiner and resultant delay in sending the sample, it has been specifically observed that the alleged delay has not prejudiced the appellant in any manner because the sample was found intact when it reached the office of the chemical examiner, as is evident from the testimony of PW.4 HC Gurnam Singh. So far as the argument regarding identity of the appellant not being established (because as per the prosecution, the appellant had fled away from the spot), is concerned, it has been noticed by the trial Court that ASI Kabal Singh categorically deposed that the appellant was already known to HC Major Singh and name of the appellant further finds mention in the ruqa EX. P11 and FIR proved as EX. P12.

16 Hence, counsel for the appellant has not been able to point out any legal infirmity in the conclusions drawn or convince this Court to interfere with the same. It is further evident that even the trial Court has considered all the arguments raised by the appellant and thereafter, the evidence has been appreciated in the right perspective. The judgment of conviction dated 08.11.2011, passed by the Judge, Special Court, Sri Muktsar Sahib, in Sessions Case bearing No.450 dated 25.11.2005/RT No.154 dated 29.11.2006, thus cannot be interfered with. The appeal thus deserves to be dismissed on its challenge to the conviction part.

17 Adverting to the question of quantum of sentence, counsel for the appellant contends that the appellant deserves the benefit of reconsideration of the sentence that has been awarded by the trial Court. He contends that out of the total sentence of 6 months awarded to the appellant, as per the custody certificate dated 19.03.2026, the appellant had already undergone a sentence of 3 months and 27 days, i.e. more than half of the sentence awarded by the trial Court. It is submitted that the recovery was non-commercial and that the incident took place in the year 2005. A period of nearly 21 years has elapsed since then. The appellant has faced the agony of a protracted criminal trial for a long time. He further contends that, as per the custody certificate produced by the State, the appellant has not indulged in any other criminal offence and hence, he has integrated into society.

PARAMETERS AND PRINCIPLES OF SENTENCING:

18 The Hon'ble Supreme Court has laid down certain principles to govern the Courts in the matter of sentencing. Reference in this regard may be made to the judgment of the Hon'ble Supreme Court in the matter

of *State of Punjab Vs. Prem Sagar & Ors (2008) 7 SCC 550*. The relevant extract of the said judgment is reproduced hereinbelow: -

5. *'Whether the Court while awarding a sentence would take recourse to the principle of deterrence or reform or invoke the doctrine of proportionality, would no doubt depend upon the facts and circumstances of each case. While doing so, however, the nature of the offence said to have been committed by the appellant plays an important role. The offences which affect public health must be dealt with severely. For the said purpose, the courts must notice the object for enacting Article 47 of the Constitution of India.*

6. *There are certain offences which touch our social fabric. We must remind ourselves that even while introducing the doctrine of plea bargaining in the Code of Criminal Procedure, certain types of offences had been kept out of the purview thereof. While imposing sentences, the said principles should be borne in mind.*

7. *A sentence is a judgment on conviction of a crime. It is resorted to after a person is convicted of the offence. It is the ultimate goal of any justice-delivery system. Parliament, however, in providing for a hearing on sentence, as would appear from sub-section (2) of Section 235, sub-section (2) of Section 248, Section 325 as also Sections 360 and 361 of the Code of Criminal Procedure, has laid down certain principles. The said provisions lay down the principle that the court in awarding the sentence must take into consideration a large number of relevant factors; sociological backdrop of the appellant being one of them.*

8. *Although a wide discretion has been conferred upon the court, the same must be exercised judiciously. It would depend upon the circumstances in which the crime has been committed and his mental state. Age of the appellant is also relevant.*

9. *What would be the effect of the sentencing on the society is a question which has been left unanswered by the legislature. The Superior Courts have come across a large number of cases which go to show anomalies as regards the policy of sentencing. Whereas the quantum of punishment for commission of a similar type of offence varies from minimum to maximum, even where same sentence is imposed, the principles applied are found to be different. Similar discrepancies have been noticed in regard to imposition of fine.*

10. *In Dhananjay Chatterjee Alias Dhana v. State of W.B. [(1994) 2 SCC 220], this Court held:*

"15...Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime..."

11. *Gentela Vijayavardhan Rao and Another v. State of A.P. [(1996) 6 SCC 241], following Dhananjay Chatterjee (supra), states the principles of deterrence and retribution but the same cannot be categorized as right or wrong. So much depends upon the belief of the judges.*

12. In a recent decision in Shailesh Jasvantbhai and Another v. State of Gujarat and Others [(2006) 2 SCC 359], this Court opined:

“7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of ‘order’ should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that: "State of criminal law continues to be--as it should be--a decisive reflection of social consciousness of society." Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the appellant, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

Relying upon the decision of this Court in Sevaka Perumal v. State of T.N. [(1991) 3 SCC 471], this

Court furthermore held that it was the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc.

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18. Don M. Gottfredson in his essay on "Sentencing Guidelines" in "Sentencing by Hyman Gross and Andrew von Hirsch" opines:

"It is a common claim in the literature of criminal justice and indeed in the popular press that there is considerable "disparity" in sentencing. The word "disparity" has become a prerogative and the concept of "sentencing disparity" now carries with it the connotation of biased or insidious practices on the part of the judges. This is unfortunate in that much otherwise valid criticism has failed to separate justified variation from the unjustified variation referred to as disparity. The phrase "unwarranted disparity" may be preferred; not all sentencing variation should be considered unwarranted or disparate. Much of it properly reflects varying degrees of seriousness in the offense and/or varying characteristics of the offender. Dispositional variation that is based upon permissible, rationally relevant and understandably distinctive characteristics of the offender and of the offense may be wholly justified, beneficial and proper, so long as the variable qualities are carefully monitored for consistency and desirability over time. Moreover, since no two offenses or offenders are identical, the labeling of variation as disparity necessarily involves a value judgment- that is, disparity to one person may be simply justified variation to another. It is only when such variation takes the form of differing sentences for similar

offenders committing similar offenses that it can be considered disparate."

[Emphasis supplied]

The learned author further opines:

"In many jurisdictions, judicial discretion is nearly unlimited as to whether or not to incarcerate an individual; and bound only by statutory maxima, leaving a broad range of discretion, as to the length of sentence."

19. Kevin R. Reitz in Encyclopedia of Crime and Justice, Second edition "Sentencing guidelines" states:

"All guideline jurisdictions have found it necessary to create rules that identify the factual issues at sentencing that must be resolved under the guidelines, those that are potentially relevant to a sentencing decision, and those viewed as forbidden considerations that may not be taken into account by sentencing courts. One heated controversy, addressed differently across jurisdictions, is whether the guideline sentence should be based exclusively on crimes for which offenders have been convicted ("conviction offenses"), or whether a guideline sentence should also reflect additional alleged criminal conduct for which formal convictions have not been obtained ("non-conviction offenses").

Another difficult issue of fact-finding at sentence for guideline designers has been the degree to which trial judges should be permitted to consider the personal characteristics of offenders as mitigating factors when imposing sentence. For example: Is the defendant a single parent with young children at home? Is the defendant a drug addict but a good candidate for drug treatment? Has the defendant struggled to overcome

conditions of economic, social or educational deprivation prior to the offense? Was the defendant's criminal behavior explicable in part by youth, inexperience, or an unformed ability to resist peer pressure? Most guideline states, once again including all jurisdictions with voluntary guidelines, allow trial courts latitude to sentence outside of the guideline ranges based on the Judge's assessment of such offender characteristics. Some states, fearing that race or class disparities might be exacerbated by unguided consideration of such factors, have placed limits on the list of eligible concerns. (However, such factors may indirectly affect the sentence, since judges are permitted to base departures on the offender's particular 'amenability' to probation (Frase, 1997).)"

20. Andrew von Hirsch and Nils Jareborg have divided the process of determining sentence into stages of determining proportionality while determining a sentence, namely:

- 1. What interests are violated or threatened by the standard case of the crime- physical integrity, material support and amenity, freedom from humiliation, privacy and autonomy.*
- 2. Effect of violating those interests on the living standards of a typical victim- minimum well-being, adequate well-being, significant enhancement*
- 3. Culpability of the offender*
- 4. Remoteness of the actual harm as seen by a reasonable man.'*

CONCLUSION

19 Keeping the aforesaid principles in mind, it is evident that the offence in question is not in the nature as would be dangerous to national integrity or shocking to the public conscience.

20 The object of punishment is not only to punish but also to rehabilitate the offenders in society. Where an appellant reflects a strong possibility of improvement and reformative behaviour, the process of law should come to the aid of such an appellant so as to ensure his reintegration into society.

21 I find that the prolonged incarceration, the protracted criminal trial and the consequent agony faced by the appellant, the actual sentence out of total sentence already undergone by the appellant, the reformative tendency shown by the appellant by not indulging in any other offence, the age of the appellant at the time of the incident as well as the legal principles reproduced above, are sufficient mitigating circumstances.

22 Consequently, finding no illegality, impropriety, perversity or failure to appreciate the evidence in its true perspective, or any reference to the material that the conclusions drawn by the trial Court are not borne out of the evidence adduced, the judgment of conviction dated 08.11.2011 passed by the Judge, Special Court, Sri Muktsar Sahib, is affirmed. However, the order of sentence dated 08.11.2011 is modified, and the sentence awarded to the appellant is reduced to the period already undergone by him.

23 The present petition is accordingly **partly allowed**.

March 19, 2026.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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