

**CRA-D-907-DB-2004 (O&M)****-1- 2024:PHHC:167068-DB****In the High Court of Punjab and Haryana at Chandigarh****CRA-D-907-DB-2004 (O&M)****Reserved on: 27.11.2024****Date of Decision: 10.12.2024**

Jaswant Singh alias Babla

.....Appellant

Versus

State of Punjab

.....Respondent

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

Present: Ms. Vishali, Advocate for
Mr. Hem Raj, Advocate
for the appellant.

Mr. Maninder Singh, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 11.8.2004, upon case bearing NDPS File No. 94 of 25.6.2002, by the learned Judge, Special Court, Bathinda, wherethrough in respect of a charge drawn against the accused qua an offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the Act"), the learned trial Judge concerned, proceeded to record a finding of conviction against the accused-appellant.

2. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, sentenced the convict to undergo rigorous imprisonment for a period of twelve years for the commission of an offence punishable under Section 15 of the Act, besides also imposed, upon the convict sentence of fine, comprised in a sum of Rs. 1,50,000/-, and, in default of payment of fine amount, he sentenced the convict to undergo rigorous imprisonment for a period of nine months.

*CRA-D-907-DB-2004 (O&M)*

-2-

2024:PHHC:167068-DB



3. 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 him, by the learned convicting Court concerned, and, hence has chosen to institute thereagainst the instant criminal appeal.

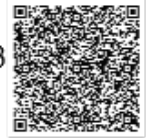
Factual Background and Investigation proceedings

4. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. PD/1 is assigned. The narrations carried in Ex. PD/1 are that on 31.3.2002, at about 11.00 A.M., Parlad Singh Sub Inspector, Station House Officer of Police Station, Dialpura alongwith posse of police officials was going for patrolling and checking bad element towards village Jalal on a kacha path in a Government vehicle bearing No. PB-03-9203. On the way, he had joined Mithu Singh independent witness in the Police Party. When the police party crossed about one kilometer from village Jalal, he found that on the left side of the kacha path, some gunny bags were kept, and, the accused was found sitting on the said gunny bags. On seeing the police vehicle, the accused had gone perturbed, and, tried to conceal himself behind the bags which arose suspicion in the mind of the investigating officer concerned. Since he suspected that bags might be containing some contraband, therefore, he apprehended the accused and told him that he is suspecting some contraband in the bags and wants to search the same.

5. The investigating officer concerned, apprised the accused about his legal right to get his search conducted from any Magistrate or any other gazetted officer, whereupon the accused desired for the presence of a gazetted officer for his search. Subsequently, DSP Jagjit Singh Gill reached

*CRA-D-907-DB-2004 (O&M)*

-3- 2024:PHHC:167068-DB



the spot to witness the search proceedings. The DSP also apprised the accused of his legal right qua the search of the bags in his conscious possession from another Gazetted Officer or a Magistrate, but the accused reposed confidence in him. Thereupon, upon the search of the bags, poppy husk became recovered. Out of each bag, a sample containing 250 grams of poppy husk was separated and all 11 samples were taken out and became converted into parcels, which were duly sealed with the seal of the investigating officer bearing impressions 'PS'. Upon weighment of the bulk poppy husk, present in the bags, it came to 29 Kgs.750 gms. All the eleven bags were also converted into parcels and sealed with the seal bearing impression 'PS'. Seal impression was prepared at the spot. Seal after use was entrusted to ASI Gurnam Singh. The entire contraband and sample seals were taken into police possession vide recovery memo Ex. PC. Ruqa Ex. PD was sent to the Police Station concerned, for registration of a case and on its basis formal FIR EX. PD/1 was registered.

6. On 1.4.2002, the investigating officer concerned, produced the accused and the entire case property including the sample seal before the learned Area Magistrate concerned. The learned Magistrate concerned verified the case property and found the same to be intact condition. Subsequently, he ordered to keep the case property in the police malkhana of the police station concerned.

7. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned Court concerned.

Trial Proceedings

8. The learned trial Judge concerned, made an objective analysis

**CRA-D-907-DB-2004 (O&M)****-4-**

2024:PHHC:167068-DB



of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charge against the accused, for the offence punishable under Section 15 of the Act. The afore drawn charge was put to the accused, to which he pleaded not guilty, and, claimed trial.

9. In proof of its case, the prosecution examined three witnesses, and, thereafter the learned Public Prosecutor concerned, after tendering into evidence the report of the chemical examiner concerned, to which Ex. PO becomes assigned, closed the prosecution evidence.

10. 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, led four witnesses into the witness box.

Submissions of the learned counsel for the appellant

11. 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

12. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent therewith sentence(s) (supra), as become imposed upon the convict, is well merited, and, does not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the instant appeal, as preferred by the convict, be dismissed.



CRA-D-907-DB-2004 (O&M)

-5- 2024:PHHC:167068-DB



Analysis of the case

13. Through recovery memo Ex. PC, the recovery of the contraband became allegedly recovered from the site concerned. In proof of the prosecution case, Parlad Singh, Inspector 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. PD/1 is assigned.
14. 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.
15. A reading of the report (Ex. 846), as made by the FSL concerned, whereto the relevant seizures became sent for an examination being made of the stuff inside the sealed cloth parcels, though reveals, that the examined stuff inside the sealed cloth parcels, as became sent to it for examination, thus being the chura poppy heads. The said report is *ad verbatim* extracted hereinafter.

“Analysis of the sample of Bhuki received by me on dated 4.4.2002, forwarded by the SSP, Bathinda, referred to in his ends to overleave. Certified that the seal/seals on the exhibit worn on the back and agreed with sample seal sent and it remained in my safe custody till analysis was completed.

Marked here	183-P/02	184-P/02	185-P/02	186-P/02	187-P/02	188-P/02
Marked here	Chura PH.	Chura PH.	Chura PH.	Chura PH.	Chura PH.	Chura PH.
Morprize	Present	Present	Present	Present	Present	Present
Meconic Acid	Present	Present	Present	Present	Present	Present



CRA-D-907-DB-2004 (O&M)

-6- 2024:PHHC:167068-DB



Marked here	189-P/02	190-P/02	191-P/02	192-P/02	193-P/02
Macroscopic	Chura PH.	Chura PH.	Chura PH.	Chura PH.	Chura PH.
Morprize	Present	Present	Present	Present	Present
Meconic Acid	Present	Present	Present	Present	Present

Opinion: *The contents of all the 11 samples are Chura Poppy Heads.”*

16. Be that as it may, though a reading of the report (supra) of the FSL also discloses, that the sealed cloth parcels, became received there, hence with the seal impressions thereons being intact. However, the chemical examiner at the FSL concerned, after making examinations of the stuff inside the sealed cloth parcels, and, thereafter his drawing the report (supra), yet omits to mention in the report Ex. 846, about his re-enclosing the examined stuff inside the cloth parcels, and, his thereons affixing the seals of the FSL concerned.

17. The above was required to be mandatorily done, as, thereupon the imperatively required to be proven, thus unbroken links in the chain of incriminatory evidence, commencing from the seizure being made from the crime site, through recovery memo Ex. PC, 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

*CRA-D-907-DB-2004 (O&M)*

-7- 2024:PHHC:167068-DB



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.

18. 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 SI Parlad 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.

19. 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

**CRA-D-907-DB-2004 (O&M)****-8- 2024:PHHC:167068-DB**

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.

20. 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 affirmative examination(s) of the contents thereof, thus lasting upto production thereof in the Court, for its then being shown to the investigating officer concerned.

21. 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.

22. 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 loses 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



CRA-D-907-DB-2004 (O&M)

-9- 2024:PHHC:167068-DB



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.

23. 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.

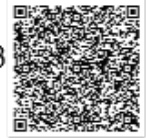
20. *Conspicuously, the hereinabove extracted respective standing order and notification become declared by a judgment rendered by the Hon’ble Apex Court in case titled as “**Noor Aga V. State of Punjab and another” Criminal Appeal No.1034 of 2008, decided on 09.07.2008**, to be holding a mandatory character 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*



CRA-D-907-DB-2004 (O&M)

-10- 2024:PHHC:167068-DB



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*



CRA-D-907-DB-2004 (O&M)

-11- 2024:PHHC:167068-DB



parcels, rather would not make the charge drawn against the accused, thus for his allegedly exclusively and consciously possessing, the entire seizure, thus also becoming efficaciously proven.

25. *Conspicuously when for the drawing of an effective conclusion, that the charge drawn against the accused qua his allegedly consciously and exclusively possessing, the entire bulk, but requires that only after homogeneous mixing of the bulk seizure, taking place, be it of psychotropic substance, in vials or in any other mode or be it with respect of narcotic drugs carried in whatsoever mode, rather residues therefrom becoming drawn, whereafter an affirmative finding on the stuff inside the residues, is required to be made by the Chemical Examiner concerned.”*

24. 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 therefrom, hence the charge drawn against the accused appertaining to the weight of the entire seizure, *de hors* affirmative results being made in respect of the stuff inside the residue sample parcels, as, sent to the laboratory concerned, thus is not cogently proved.

25. 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



CRA-D-907-DB-2004 (O&M)

-12- 2024:PHHC:167068-DB



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.”

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

27. The said view is also supported by a judgment rendered in case titled as “Gaunter Edwin Kircher V. State of Goa, Secretariat Panji, Goa”, Criminal Appeal No.642 of 1991, decided on 16.03.1993, relevant paragraph whereof becomes extracted hereinafter.

“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

28. 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 becomes 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,



CRA-D-907-DB-2004 (O&M)

-13- 2024:PHHC:167068-DB



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.

29. Records be sent down forthwith.
30. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

December 10, 2024
Gurpreet

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