(2024) 11 SHI CK 0037

High Court Of Himachal Pradesh

Case No: Criminal Appeal No. 303 Of 2022

Raju Gharti And Others	APPELLANT
Vs	
State Of H.P.	RESPONDENT

Date of Decision: Nov. 6, 2024

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 313
- Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 18, 20(b), 21, 22, 27A, 29, 42, 50, 52, 52A, 52A(1), 52A(2), 57, 60(3)
- Evidence Act, 1872 - Section 64, 154, 155, 155(3)

Hon'ble Judges: Vivek Singh Thakur, J; Rakesh Kainthla, J

Bench: Division Bench

Advocate: Kulwant Singh Gill, Seema Sharma

Final Decision: Dismissed

Judgement

Rakesh Kainthla, J

1. The present appeal is directed against the judgment and order dated 22.6.2022, passed by learned Special Judge-II Sirmaur, District at Nahan, H.P.

(learned Trial Court) whereby the appellant (accused before learned Trial Court) were convicted of the commission of an offence punishable under

Section 18 of the Narcotic Drugs and Psychotropic Substances Act (in short â€˜NDPS Actâ€™) and each accused was sentenced to undergo

rigorous imprisonment for 10 years, pay a fine of ₹1,00,000/- for the commission of aforesaid offence and in default of payment of fine to undergo

further simple imprisonment for six months. (Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial

Court for convenience).

2. Briefly stated, the facts giving rise to the present appeal are that the police filed a charge sheet against the accused before the learned Trial Court

for the commission of offences punishable under Sections 18 and 29 of the NDPS Act. It was asserted that ASI-Rajinder Singh (PW13), HC-Hari

Chand (PW14), HC-Rupender Singh (PW6), Constable-Kailash Panwar (PW10) and Constable Amit Kumar (PW12) were present near the temple

ahead of Sainwala in a private car bearing registration No. HP-17C-0639 on 11.07.2016 at around 2:15 PM in civil uniform. ASI-Rajinder Singh

(PW13) received a secret information that a truck bearing registration No. HP-10B-1117 was bringing the narcotics from Kala Amb towards Nahan.

The information was credible; hence, it was reduced into writing (Ext. PW1/A) and was handed over to Constable Kailash Panwar (PW10) with a

direction to carry it to the Additional Superintendent of Police, Nahan, Constable Kailash Panwar (PW10) handed over the information to the

Additional Superintendent of Police, Nahan on the same day at 3:15 pm. He returned to the spot and handed over the copy of the information to the

Investigating Officer on his return. A vehicle bearing registration No. HP-18B-8159 came from Nahan at about 2:40 pm. The police signalled the

driver to stop the vehicle. The driver stopped the vehicle and revealed his name as Jaideep Pal (PW7) on inquiry. One person was sitting beside the

driver, who revealed his name as Om Prakash (PW4). They were requested to join the police team as witnesses and they agreed. The truck bearing

registration No. HP-10B-1117 came from Kala Amb at 3:15 pm. ASI-Rajinder brought the vehicle bearing registration No. HP-17C-0639 to the

middle of the road and stopped the truck with the help of the accompanying police officials. The driver revealed his name as Shankar Thapa (accused

no. 2). The person sitting beside the driver revealed his name as Bishan Singh (accused no. 4) and the persons sitting on the rear seat revealed their

names as Naveen (accused no. 3) and Raju Gharti (accused no. 1). The driver produced the registration certificate issued in the name of Vivek

Sharma (PW5). He also produced insurance certificate and his driving license. The police gave option to the driver and other persons under Section 50

of the NDPS Act (Ext. PW4/A) to be searched before the Magistrate or the Gazetted Officer. The accused consented to be searched by the police.

The police checked the truck and found that it was empty. The police lifted the truck seats and found one backpack (Ext. â€˜PBâ€™). The police

opened the backpack and found 06 packets (Ext. P1 to Ext. P6) inside the backpack. The packets contained black dark substance. The packets were

cut from the sides and the substance inside them was smelled and tasted. It was found to be opium. A memo of identification (Ext. PW4/C) was

prepared. The driver and other persons could not produce any license/permit regarding the transportation of the opium. The police weighed the

packets. Packets No.1 to 4 were found to be weighing 506 grams each. Packet 5 contained 500 grams and Packet 6 contained 200 grams of opium.

Thus, the police found 2.740 Kilograms of opium. The police taped each packet and put all the packets in the backpack in the same manner in which

they were recovered. The backpack was put in a cloth parcel (Ext. â€˜PAâ€™) and the parcel was sealed with 5 impressions of seal â€˜Hâ€™.

NCB-I form (Ext. PW9/E) was filled in triplicate. A seal impression was put on the form and the seal was handed over to Om Prakash (PW4) after

the use. A memo regarding the handing over of the seal (Ext. PW4/E) was prepared. Constable Amit Kumar took the photographs (Ext. PW8/A1 to

Ext. PW8/A13) with the help of his mobile phone. The police seized the parcel, sample seal, form NCB-I, truck, registration certificate, insurance,

driving license and key vide memo (Ext. PW4/F). Rukka (Ext. PW9/A) was prepared and sent to the police station through Constable Amit Kumar

where FIR (Ext. PW9/B) was registered. Rajinder Singh (PW13) carried out the investigation on the spot. He prepared the site plan (Ext. PW13/A)

and recorded the statements of the witnesses as per their version. He arrested the accused. The case property was produced before SHO-Yogender

Singh (PW9), who re-sealed the parcel with three seal impressions of seal â€˜Xâ€™. He obtained the sample seal (Ext. PW9/D) on a separate piece

of cloth. He filled columns No.9 to 11 of the NCB-I form and put the seal impression on the form. He prepared the re-sealing certificate (Ext.

PW9/F). He handed over the parcel, sample seals and NCB-I form to HC-Balbir Singh (PW15), who was posted as MHC. HC-Balbir Singh

deposited all the articles in malkhana. He made an entry in the register (Ext. PW15/A). He handed over the case property to Constable Rizwan Ali

(PW2) with a direction to carry it to SFSL Junga vide RC No. 79/16 (Ext. PW15/B). A special report (Ext.PW1/B) was prepared and sent to the

Additional Superintendent of Police, Sirmaur at Nahan through Constable Kailash. Constable Kailash handed over the special report to the Additional

Superintendent of Police. The Additional Superintendent of Police made an endorsement on the report and handed it over to his Reader HC-Ramesh

Kumar (PW1), who made an entry in the register (Ext. PW1/A) and retained the report on record. HC-Hari Chand (PW14) conducted the

investigation. The owner of the truck produced an affidavit (Ext. PW5/A) which was seized vide memo (Ext. PW5/B). Report of analysis (Ext.

PW14/A) was issued, in which, it was shown that the exhibit stated as opium was a sample of opium, which contained 6.05% w/w morphine in it. The

statements of the remaining witnesses were recorded as per their version and after the completion of the investigation, the challan was prepared and

presented before the learned Trial Court.

3. Learned Special Judge-II, Sirmaur at Nahan (learned Trial Court) charged the accused with the commission of offences punishable under Sections

18 and 29 of the NDPS Act to which the accused pleaded not guilty and claimed to be tried.

4. The prosecution examined 15 witnesses to prove its case. HC-Ramesh Kumar (PW1) was posted as a Reader to the Additional Superintendent of

Police, Nahan to whom the special report and the report under Section 42 of the NDPS Act were handed over. Constable Rizwan Ali (PW2) carried

the case property to SFSL, Junga. Mohammad Tahir (PW3) proved the entry in the daily diary. Om Prakash (PW4) and Jaideep Pal (PW7) are the

independent witnesses who did not support the prosecution case. Vivek Sharma (PW5) is the owner of the vehicle. HHC-Rupinder Singh (PW6)

carried the case property from Police Station Nahan to District malkhana. HHC-Krishan Kumar (PW8) developed the photographs. SI-Yoginder

Singh (PW9) was posted as SHO who re-sealed the parcel. Constable Kailash (PW10) carried the information from the spot to the Additional

Superintendent of Police, Nahan. Amrik Singh (PW11) brought the case property and the result of the analysis from SFSL, Junga to the Police

Station. Constable Amit Kumar (PW12) was a member of the police party. ASI Rajinder Singh (PW13) effected the recovery and conducted the

initial investigation. Hari Chand (PW14) conducted the investigation and was a member of the police party. HC Balbir Singh (PW15) deposited all the

articles in the malkhana.

5. The accused in their statements recorded under Section 313 of Cr.P.C. denied the prosecution case in its entirety. They stated that they were

arrested from a Dhaba in Haryana. The photographs were taken at some distance from the police station. They were innocent and were falsely

implicated. Statements of HHC-Mohammad Furkan (DW1) and Constable Harish Kumar (DW2) were recorded in defence.

6. Learned Trial Court held that the police had complied with the requirement of Section 42 of the NDPS Act. Section 52(A) of the NDPS Act did not

apply to the present case. Section 50 did not apply because the recovery was not effected from the personal search of the accused. Independent

witnesses did not support the prosecution case but the same is not sufficient to discard it. The testimonies of the official witnesses proved the recovery

of the backpack. There is a presumption regarding the culpable mental state and the burden shifts upon the accused to rebut the presumption. The

defence taken by the accused that they were arrested when they were having a meal in a dhaba in Haryana was not established by any evidence;

therefore, the accused were convicted of the commission of an offence punishable under Section 18 of the NDPS Act but acquitted of the

commission of an offence punishable under Section 29 of NDPS Act.

7. Being aggrieved from the judgment and order passed by the learned Trial Court, the accused have filed the present appeal. It was asserted that the

learned Trial Court erred in convicting and sentencing the accused. The police failed to comply with the mandatory requirement of Section 50 of the

NDPS Act. There were material contradictions in the statements of official witnesses, which were wrongly ignored. The independent witnesses

categorically stated that no recovery was effected in their presence. This made the prosecution case doubtful. Therefore, it was prayed that the

present appeal be allowed and the judgment and order passed by the learned Trial Court be set aside.

8. We have heard Mr. Kulwant Singh Gill, learned counsel for the appellants/accused and Ms. Seema Sharma, learned Deputy Advocate General, for

the respondent/State.

9. Mr. Kulwant Singh Gill, learned counsel for the appellants/accused submitted that the learned Trial Court erred in convicting and sentencing the

accused. The statements of prosecution witnesses were full of contradictions. Independent witnesses did not support the prosecution case. The police

had not complied with the mandatory requirement of Section 52(A) of the NDPS Act. A joint option was given to the accused under Section 50 of the

NDPS Act, which is fatal. The integrity of the case property was not established and the entries in the daily diary were not produced to corroborate

the testimonies of the police officials. Therefore, he prayed that the present appeal be allowed and the judgment and order passed by the learned Trial

Court be set aside. He relied upon the judgments of Vishawjit versus State of H.P, 2015 (3) Shimla Law Cases, 1668 and Sanjeet Kumar Singh @

Munna Kumar Singh versus State of Chhattisgarh in Criminal Appeal No. 871 of 2021 decided on 30.08.2022 in support of his submission.

10. Ms Seema Sharma, learned Deputy Advocate General, for the respondent/State submitted that the prosecution case cannot be discarded merely

because independent witnesses had turned hostile. The testimonies of the police officials cannot be discarded without any cogent reasons. The

contradictions were bound to come with time and were not sufficient to discard the prosecution case. Therefore, she prayed that the present appeal be

dismissed.

11. We have given considerable thought to the submissions made at the bar and have gone through the records carefully.

12. The official witnesses to the recovery Constable-Amit Kumar (PW12), ASI Rajinder Singh (PW13) and ASI Hari Chand (PW14) supported the

prosecution case, however, independent witnesses Om Prakash (PW4) and Jaideep Pal (PW7) did not support the prosecution case. They stated that

the police had called them to the police station to sign some papers. No recovery was effected in their presence. They denied the prosecution case

that they were travelling in a car that was stopped by the police and they were associated as the witnesses. They denied that a truck bearing

registration No. HP-10B-1117 came from Kala Amb which was stopped by the police. They denied the presence of the accused persons in the truck

and the recovery of the backpack containing opium from the truck. They admitted their signatures on the memos. They admitted that they were visible

in the photographs. They denied the previous statements recorded by the police. Om Prakash (PW4) stated that he was 8th pass and he does not put

his signatures on any document without going through its contents. He denied that he had put signatures on the documents after going through them.

Jaideep Pal Singh (PW7) stated that he was matriculate and does not put signatures on documents without going through them. The police did not

exert any pressure on him to put his signature on the documents.

13. Both the witnesses are literate. Both of them admitted that they do not put their signatures on the documents without reading them. They failed to

give any reason as to why they had put their signatures on the documents and the pieces of cloth without witnessing anything in the present case.

They admitted their presence in the photographs. The contraband is being weighed in one of the photographs in which the witnesses are visible, which

shows that the statements made by them in the Court that nothing happened in their presence is incorrect. Their credit has been impeached with

reference to their previous statements recorded by the police and they are shown to have made two inconsistent statements on two different

occasions.

14. It was submitted that the testimonies of the witnesses are sufficient to discard the prosecution case, when the independent witness did not support

the prosecution case, two versions appear on the record and the version favourable to the accused has to be preferred to the version which is

favourable to the prosecution. It is necessary to understand the concept of the hostile witness to appreciate this submission. This concept was

explained by the Honâ€™ble Supreme Court in Sat Paul v. Delhi Admn., (1976) 1 SCC 727: 1976 SCC (Cri) 160I. t was held that initially, it was

not permissible for a party to discredit his witness when he turned unfavourable to him, however, this rule was subsequently discarded and the concept

of hostile and unfavourable witness was introduced. A hostile witness is the one, who is not desirous of telling the truth while an unfavourable witness

is the one who does not prove the fact, which is sought to be proved by examining him. The Indian Evidence Act did not adopt this distinction and

simply permitted the party to put the questions in the nature of cross-examination to a witness with the permission of the Court. The permission is not

dependent upon the fact that the witness has shown hostility to the party. Therefore, no party is precluded from relying upon any part of the statement

of the witness, who has been called by a party. It was observed:

â€œ30. The terms â€œhostile witnessâ€, â€œadverse witnessâ€, â€œunfavourable witnessâ€, and â€œunwilling witnessâ€ are all terms of English law. At Common law,

if a witness exhibited manifest antipathy, by his demeanour, answers and attitude, to the cause of the party calling him, the party was not, as a general rule, permitted

to contradict him with his previous inconsistent statements, nor allowed to impeach his credit by general evidence of bad character. This rule had its foundation on

the theory that by calling the witness, a party represents him to the Court as worthy of credit, and if he afterwards attacks his general character for veracity, this is not

only mala fide towards the Court, but, it â€œwould enable the party to destroy the witness if he spoke against him, and to make him a good witness if he spoke for him

with the means in his hand of destroying his credit if he spoke against himâ€. (See Best on Evidence, p. 630, 11th Edn.)

This theory or assumption gave rise to a considerable conflict of opinion as to whether it was competent for a party to show that his own witness had made

statements out of court inconsistent with the evidence given by him in court. The weight of the ancient authority was in the negative.

31. In support of the dominant view it was urged that to allow a party directly to discredit or contradict his own witness would tend to multiply issues and enable the

party to get the naked statement of a witness before the jury, operating in fact as substantive evidence, that this course would open the door wide open for collusion

and dishonest contrivance.

32. As against this, the exponents of the rival view, that a party should be permitted to discredit or contradict his witness who turns unfavourable to him, argued that

this course is necessary as a security against the contrivance of an artful witness, who otherwise might recommend himself to a party by the promise of favourable

evidence and afterwards by hostile evidence ruin his cause. It was reasoned further parties that this is a question in which not only the interests of litigating panics

are involved, but also the more important general interests of truth, in criminal as well as in civil proceedings, that the ends of justice are best attained by allowing a

free and ample scope for scrutinising evidence and estimating its real value, and that in the administration of criminal justice more especially, the exclusion of the

proof of contrary statements might be attended with the worst consequences. Besides it by no means follows that the object of a party in contradicting his witness is

to impeach his veracity, it may be to show the faultiness of his memory. (See Best, p. 631, 11th Edn.)

33. The rigidity of the rule prohibiting a party to discredit or contradict its own witness was to an extent relaxed by evolving the terms â€œhostile witnessâ€ and

â€œunfavourable witnessâ€ and by attempting to draw a distinction between the two categories. A â€œhostile witnessâ€ is described as one who is not desirous of

telling the truth at the instance of the party calling him, and an â€œunfavourable witnessâ€ is one called by a party to prove a particular fact in issue or relevant to the

issue who fails to prove such fact, or proves an opposite fact. (See Cross on Evidence, p. 220, 4th Edn., citing Stephen's Digest of the Law of Evidence.)

34. In the case of an â€œunfavourable witnessâ€, the party calling him was allowed to contradict him by producing evidence aliunde but the prohibition against

cross-examination by means of leading questions or by contradicting him with his previous inconsistent statements or by asking questions with regard to his

discreditable past conduct or previous conviction continued. But in the case of a â€œhostileâ€ witness, the Judge could permit his examination-in-chief to be

conducted in the manner of cross-examination to the extent to which he considered necessary in the interests of justice. With the leave of the court, leading

questions could be put to a hostile witness to test his memory and perception or his knowledge of the facts to which he was deposing. Even so, the party calling him,

could not question him about his bad antecedents or previous convictions, nor could he produce evidence to show that the veracity of the witness was doubtful. But

the position as to whether a previous inconsistent statement could be proved against a hostile witness remained as murky as ever.

35. To settle the law with regard to this matter, Section 22 of the Common Law Procedure Act, 1854 was enacted. It was originally applicable to civil proceedings but

was since re-enacted in Section 3 of the Criminal Procedure Act, 1865 and extended in identical terms to proceedings in criminal courts as well.

36. Section 3 provides:

â€œA party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness shall, in the opinion

of the Judge, prove adverse, contradict him by other evidence, or by leave of the Judge, prove that he has made at other times a statement inconsistent with his

present testimony, but before such last-mentioned proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion,

must be mentioned to the witness, and he must be asked whether or not he has made such statement,â€

(emphasis added)

37. The construction of these provisions, however, continued to cause difficulty, particularly in their application to â€œunfavourableâ€ witnesses.

In Greenough v. Eccles [(1859) 5 CBNS 786: 28 LJCP 160: 141 ER 315], these provisions were found so confusing that Cockburn, C.J. said that â€œthere has

been a great blunder in the drawing of it, and on the part of those who adopted itâ€.

38. To steer clear of the controversy over the meaning of the terms â€œhostileâ€ witness, â€œadverseâ€ witness, and â€œunfavourableâ€ witness which had given

rise to considerable difficulty and conflict of opinion in England, the authors of the Indian Evidence Act, 1872 seem to have advisedly avoided the use of any of

those terms so that, in India, the grant of permission to cross-examine his own witness by a party is not conditional on the witness being declared â€œadverseâ€ or

â€œhostileâ€. Whether it be the grant of permission under Section 142 to put leading questions, or the leave under Section 154 to ask questions which might be put in

cross-examination by the adverse party, the Indian Evidence Act leaves the matter entirely to the discretion of the court (see the observations of Sir Lawrence

Jenkins in Baikuntha Nath v. Prasannamoyi [AIR 1922 PC 409: 72 IC 286]). The discretion conferred by Section 154 on the court is unqualified and untrammelled,

and

is apart from any question of â€œhostilityâ€. It is to be liberally exercised whenever the court from the witnesses' demeanour, temper, attitude, bearing, or the tenor

and tendency of his answers, or from a perusal of his previous inconsistent statement, or otherwise, thinks that the grant of such permission is expedient to extract

the truth and to do justice. The grant of such permission does not amount to an adjudication by the court as to the veracity of the witness. Therefore, in order

granting such permission it is preferable to avoid the use of such expressions, such as â€œdeclared hostileâ€, â€œdeclared unfavourableâ€, the significance of which

is still not free from the historical cobwebs which, in their wake bring a misleading legacy of confusion, and conflict that had so long vexed the English courts.

39. It is important to note that the English statute differs materially from the law contained in the Indian Evidence Act in regard to cross-examination and contradiction

of his own witness by a party. Under English law, a party is not permitted to impeach the credit of his own witness by general evidence of his bad character, shady

antecedents or previous conviction. In India, this can be done with the consent of the court under Section 155. Under the English Act of 1865, a party calling the

witness can â€œcross-examineâ€ and contradict a witness in respect of his previous inconsistent statements with the leave of the court, only when the court

considers the witness to be â€œadverseâ€. As already noticed, no such condition has been laid down in Sections 154 and 155 of the Indian Act and the grant of such

leave has been left completely to the discretion of the Court, the exercise of which is not fettered by or dependent upon the â€œhostilityâ€ or â€œadversenessâ€ of

the witness. In this respect, the Indian Evidence Act is in advance of English law. The Criminal Law Revision Committee of England in its Eleventh Report, made

recently has recommended the adoption of a modernised version of Section 3 of the Criminal Procedure Act, 1865, allowing contradiction of both unfavourable and

hostile witnesses by other evidence without leave of the court. The report is, however, still in favour of retention of the prohibition on a party's impeaching his

witness by evidence of bad character.

40. The danger of importing, without due discernment, the principles enunciated in ancient English decisions, for interpreting and applying the Indian Evidence Act,

has been pointed out in several authoritative pronouncements. In Praphulla Kumar Sarkar v. Emperor [AIR 1931 Cal 401: ILR 58 Cal 1404: 32 Cri LJ 768 (FB)]

an eminent Chief Justice, Sir George Rankin cautioned, that

â€œWhen we are invited to hark back to dicta delivered by English Judges, however eminent, in the first half of the nineteenth century, it is necessary to be careful

lest principles be introduced which the Indian Legislature did not see fit to enact.â€

It was emphasised that these departures from English law â€œwere taken either to be improvements in themselves or calculated to work better under Indian

conditionsâ€.

41. Unmindful of this substantial difference between English law and Indian law, on the subject, the Calcutta High Court in some of its earlier decisions, interpreted

and applied Section 154 with reference to the meaning of the term â€œadverseâ€ in the English statute as construed in some English decisions, and enunciated the

proposition that where a party calling a witness requests the court to declare him â€œhostileâ€, and with the leave of the court, cross-examines the witness, the

latter's evidence should be excluded altogether in criminal cases. This view proceeds on the doctrine enunciated by Campbell, C.J. in the English case, Faulkner v.

Brine [(1858) 1 F&F 254] that the object of cross-examination of his own witness by a party is to discredit the witness in toto and to get rid of his testimony

altogether. Some of these decisions in which this view was taken are: Luchiram Motilal v. Radhe Charan [AIR 1922 Cal 267 : (1921) 34 CLJ 107]; E. v. Satyendra

Kumar Dutt [AIR 1923 Cal 463: 36 CLJ 173: 24 Cri LJ 193]; Surendra v. Ranee Dassi [AIR 1923 Cal 221: ILR 47 Cal 1043: 70 IC 687], Khijiruddin v. E. [AIR

1926 Cal 139: 42 CLJ 506: 27 Cri LJ 266] and Punchanan v. R. [AIR 1930 Cal 276: ILR 57 Cal 1266: 31 Cri LJ 1207 (DB)]

42. The fallacy underlying this view stems from the assumption that the only purpose of cross-examination of a witness is to discredit him; it ignores the hard truth

that another equally important object of cross-examination is to elicit admissions of facts which would help build the case of the cross-examiner. When a party with

the leave of the court, confronts his witness with his previous inconsistent statement, he does so in the hope that the witness might revert to what he had stated

previously. If the departure from the prior statement is not deliberate but is due to faulty memory or a like cause, there is every possibility of the witness veering

around to his former statement. Thus, showing the faults of the memory in the case of such a witness would be another object of cross-examining and contradicting

him by a party calling the witness. In short, the rule prohibiting a party to put questions in the manner of cross-examination or a leading form to his own witness is

relaxed not because the witness has already forfeited all right to credit but because from his antipathetic attitude or otherwise, the court feels that for doing justice,

his evidence will be more fully given, the truth more effectively extricated and his credit more adequately tested by questions put in a more pointed, penetrating and

searching way.

43. Protesting against the old view of the Calcutta High Court, in Shobraj v. R. [AIR 1930 Pat 247: ILR 9 Pat 474: 124 IC 836] Terrell, J., pointed out that the main

purpose of cross-examination is to obtain admission, and it would be ridiculous to assert that a party cross-examining a witness is therefore prevented from relying on

admission and to hold that the fact that the witness is being cross-examined implies an admission by the cross-examiner that all the witness's statements are

falsehood.

44. The matter can be viewed yet from another angle. Section 154 speaks of permitting a party to put to his own witness â€œquestions which might be put in cross-

examinationâ€. It is not necessarily tantamount to â€œcross-examiningâ€ the witness. â€œCross-examinationâ€, strictly speaking, means cross-examination by the

adverse party as distinct from the party calling the witness (Section 137 of the Evidence Act). That is why Section 154 uses the phrase â€œput any questions to him

which might be put in cross-examination by the adverse partyâ€. Therefore, neither the party calling him, nor the adverse party is, in law, precluded from relying on

any part of the statement of such a witness.

45. The aforesaid decisions of the Calcutta High Court were overruled by a Full Bench in the Praphulla Kumar Sarkar case. After an exhaustive survey of case law,

Rankin, C.J. who delivered the main judgment, neatly summed up the law at p. 1428-30 of the report:

â€œIn my opinion, the fact that a witness is dealt with under Section 154 of the Evidence Act, even when under that section he is â€˜cross-examinedâ€™ to credit, in

no way warrants a direction to the jury that they are bound in law to place no reliance on his evidence, or that the party who called and cross-examined him can take

no advantage from any part of his evidence. There is moreover no rule of law that if a jury thinks that a witness has been discredited on one point they may not give

credit to him on another. The rule of law is that it is for the jury to say.â€

46. After answering in the negative, the three questions viz. whether the evidence of a witness treated as â€œhostileâ€ must be rejected in whole or in part, whether it

must be rejected so far it is in favour of the party calling the witness, whether it must be rejected so far as it is in favour of the opposite party, the learned Chief

Justice proceeded:

â€œ... the whole of the evidence so far as it affects both parties favourably or unfavourably must go to the jury for what it is worth.

* * *

If the previous statement is the deposition before the committing Magistrate and if it is put in under Section 288 of the Criminal Procedure Code, so as to become

evidence for all purposes, the jury may in effect be directed to choose between the two statements because both statements are evidence of the facts stated therein.

But in other cases, the jury may not be so directed, because prima facie the previous statement of the witness is not evidence at all against the accused of the truth of

the fact stated therein. The proper direction to the jury is that before relying on the evidence given by the witness at the trial the jury should take into consideration

the fact that he made the previous statement, but they must not treat the previous statement as being any evidence at all against the prisoner of the facts therein

alleged.

* * *

In a criminal case, however, the previous unsworn statement of a witness for the prosecution is not evidence against the accused of the truth of the facts stated

therein save in very special circumstances, e.g., as corroboration under Section 157 of his testimony in the witness-box on the conditions therein laid down.

If the case be put of the previous statement having been made in the presence and hearing of the accused, this fact might under Section 8 alter the position; but the

true view even then is not that the statement is evidence of the truth of what it contains, but that if the jury think that the conduct, silence or answer of the prisoner at

the time amounted to an acceptance of the statement or some part of it, the jury may consider that acceptance as an admission (King v. Norton [(1910) 2 KB 496],

Percy William v. Adams [(1923) 17 Crim App Rep 77]). But apart from such special cases, which attract special principles, the unsworn statement, so far as the

maker in his evidence does not confirm and repeat it, cannot be used at all against the accused as proof of the truth of what it asserts.â€

47. We are in respectful agreement with this enunciation. It is a correct exposition of the law on the point.

48. The Bombay [E. v. JehangirCama, AIR 1927 Bom 501: 29 Bom LR 996: 28 Cri LJ 1012 (DB)], Madras [Ammathayar v. Official Assignee, AIR 1933 Mad 137

(DB): ILR 56 Mad 7], Patna [Nebti v. R.ILR 19 Pat 369: AIR 1940 Pat 289: 41 Cri LJ 910 (DB); Shahdev v. Bipti, AIR 1969 Pat 415: 1969 Cri LJ 1527],

Rajasthan [Nandkishore v. Brijbehari, : AIR 1955 Raj 65 (DB): ILR 1954 Raj 822], Oudh [Shyam Kumar v. E., AIR 1941 Oudh 130: 42 Cri LJ 165: 191 IC 466],

Punjab [Khushal Singh Sunder Singh Bhatia v. State, AIR 1955 NUC (Punj) 5715.]. Madhya Pradesh [In re Kalusingh, AIR 1964 MP 30 : (1964) 1 Cri LJ 198],

Orissa [Rana v. State, AIR 1965 Ori 31 : (1965) 1 Cri LJ 315: 30 Cut LT 517], Mysore [In Re KaibannaTippanna AIR 1966 Mys 248: 1966 Cri LJ 1155], Kerala

[Raman Pillai Gangadharan Pillai v. State, 1951 Ker LT 471 (DB)] and Jammu and Kashmir [Badri Nath v. State, AIR 1953 J&K 41: 1953 Cri LJ 1719 (DB)]

courts have also taken the same view.

49. In the case of an unfavourable witness, even in England the better opinion is that where a party contradicts his own witness on one part of his evidence, he does

not thereby throw over all the witness's evidence, though its value may be impaired in the eyes of the court. (Halsbury, 3rd Edn., Vol. 15, para 805.)

50. In Bradley v. Ricardo [(1831) 8 Bing 57: 131 ER 321: 1 LJ CP 36] when it was urged as an objection that this would be giving credit to the witness on one point after

he has been discredited on another, Tindal, C.J. brushed it aside with the observation that â€œdifficulties of the same kind occur in every cause where a jury has to

decide on conflicting testimonyâ€.

51. In Narayan NathuNaik v. State of Maharashtra [(1970) 2 SCC 101: 1970 SCC (Cri) 316 : (1971) 1 SCR 133] the court actually used the evidence of the prosecution

witnesses who had partly resiled from their previous statements to the extent they supported the prosecution, for corroborating the other witnesses.â€

15. Ultimately, it was held that when a witness is cross-examined, his evidence is not washed off the record and it is for the Judge to consider whether

as a result of such cross-examination, the witness stands thoroughly discredited or can still be believed. He may rely upon his testimony in the light of

other evidence on record but where his credit has been shaken altogether, his testimony has to be discarded in the whole. It was observed:

â€œ52. From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the

court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each

case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his

testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the

witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy

and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the

Judge should, as a matter of prudence, discard his evidence in toto.

53. It was in the context of such a case, where, as a result of the cross-examination by the Public, the Prosecutor, the prosecution witness concerned stood

discredited altogether, that this Court in Jagir Singh v. State (Delhi Admn.) with the aforesaid rule of caution â€" which is not to be treated as a rule of law â€" in mind,

said that the evidence of such a witness is to be rejected en bloc.

54. In the light of the above principles, it will be seen that, in law, part of the evidence of the panch witnesses who were thoroughly cross-examined and contradicted

with their inconsistent police statements by the Public Prosecutor, could be used or availed of by the prosecution to support its case. But as a matter of prudence, on

the facts of the case, it would be hazardous to allow the prosecution to do so. These witnesses contradicted substantially their previous statements and as a result of

the cross-examination, their credit was substantially if not wholly, shaken. It was, therefore, not proper for the courts below to pick out a sentence or two from their

evidence and use the same to support the evidence of the trap witnesses.â€ (Emphasis supplied)

16. Section 155 (3) of the Indian Evidence Act permits a party to impeach the credit of a witness by proving a former statement inconsistent with any

part of his evidence, which is liable to be contradicted. When Sections 154 and 155(3) are read together, it is apparent that when a witness is

discredited by showing that he had made an inconsistent statement on the former occasion, he stands discredited to that extent. The party can rely

upon the other part of the evidence of such a witness. Thus, the question is whether the credit of the witness has been impeached with reference to

his previous statement or not and if so his testimony has to be discarded to that extent and if not the same can be relied upon.

17. In the present case, the witnesses have denied their previous statements in their entirety, therefore, their credit has been shaken completely and no

reliance can be placed upon their testimonies.

18. This Court has also laid down in Ian Stilman versus. State 2002(2) Shim. L.C. 16 that where a witness has been cross-examined by the

prosecution with the leave of the Court, his statement cannot be relied upon. It was observed:

12. It is now well settled that when a witness who has been called by the prosecution is permitted to be cross-examined on behalf of the prosecution, such a witness

loses credibility and cannot be relied upon by the defence. We find support for the view we have taken from the various authorities of the Apex Court. In Jagir Singh

v. The State (Delhi Administration), AIR 1975 Supreme Court 1400, the Apex Court observed :

It is now well settled that when a witness, who has been called by the prosecution, is permitted to be cross-examined on behalf of the prosecution, the result of that

course being adopted is to discredit this witness altogether and not merely to get rid of a part of his testimony"".

19. Further, the learned Trial Court had rightly held that the mere fact that witnesses turn hostile in the cases registered under the NDPS Act is not

uncommon. It was laid down by this Court in Budh Ram Versus State of H.P. 2020 Cri.L.J.4254 that merely because independent witnesses have

turned hostile is no reason to discard the prosecution version. It was observed:

â€œThough the independent witnesses, PW-1 Rajiv Kumar and PW-2 Hira Lal, were declared hostile and were cross-examined, however, the law in respect of

appreciating the testimonies of such witnesses is well settled. Hon'ble Apex Court in titled Sudru versus State of Chhattisgarh, (2019) 8 SCC 333 relying upon

Bhajju versus State of M.P., 2010 4 SCC 327, has again reiterated the well-settled principle that evidence of hostile witness can be relied upon by the prosecution

version. Merely because a witness has turned hostile, the same does not render his evidence or testimony inadmissible in trial and such conviction can be based

upon such testimony, if it is corroborated by other reliable evidence.

In a case titled Raja and Others versus State of Karnataka, (2016) 10 SCC 506 the Apex Court observed that the evidence of a hostile witness cannot be altogether

discarded and as such it is open for the Court to rely on the dependable part of such evidence which stands duly corroborated by other reliable evidence on record.

In a case titled Selvaraj @ Chinnapaiyan versus State represented by Inspector of Police, (2015) 2 SCC 662 the Apex Court has observed that in a situation/case,

wherein, the witness deposes false in his/her cross-examination, that itself is not sufficient to outrightly discard his/her testimony in examination-in-chief. The Court

held that a conviction can be recorded believing the testimony of a such witness given in examination-in-chief, however, such evidence is required to be examined

with great caution.

In Ashok alias Dangra Jaiswal versus State of Madhya Pradesh, (2011) 5 SCC 123, has held as under:-

the seizure witness turning hostile may not be very significant by itself, as it is not an uncommon phenomenon in criminal trial particularly in cases relating to NDPS

Act.â€

20. Therefore, the accused cannot be acquitted merely because the independent witnesses have turned hostile.

21. When the testimonies of the independent witnesses are seen carefully, it is apparent that they have admitted the presence of the police on the spot.

They also admitted their signatures on various documents, sample seals and the case property. They stated that they were literate and did not put their

signatures on the documents without reading them. They have not given any explanation for putting their signatures without reading the documents in

the present case. In similar circumstances, it was observed by the Honâ€™ble Supreme Court in RaveenK umar v. State of H.P., (2021) 12 SCC

557: (2023) 2 SCC (Cri) 230: 2020 SCC OnLine SC 86 9that the testimonies of the hostile witnesses are not sufficient to discard the prosecution

case. It was observed at page 566 :

Â â€œ21. Although declared hostile by the prosecution, Nam Singh (PW 1), admits to being literate and having signed his statement on the spot. During cross-

examination he admits to having duly perused the contents of these documents before having signed them, and of not being under any form of police pressure, thus,

seriously undermining any oral statement to the contrary. His deposition independently establishes that the Maruti van of the appellant had indeed been stopped,

the appellant's consent was taken, a search had been conducted, certain items were seized and some substances had been weighed and sealed. Although PW 1

claimed not to have specifically witnessed the seizure of the charas, but he has not denied so either. He submits that he had gone back to his shop to attend to some

customers at that stage of the search. However, he admits to having been shown the extracted sample of charas, which he identified before the trial court. Thus, far

from undermining the prosecution version, PW 1's statement broadly corroborates and strengthens the seizure of contraband substance from the possession of the

appellant.

22. Therefore, the prosecution case cannot be discarded due to the independent witnesses turning hostile.

23. It was submitted that there are various contradictions in the statements of the official witnesses due to which the statements are to be discarded.

The following contradictions were highlighted:-

1) Constable Kailash (PW10) stated that he was not aware of how the information was received by the Investigating Officer. He volunteered to say that the

information was disclosed to them on the spot. Constable Amit Kumar (PW12) stated that information under Section 42(2) was written by the Investigating Officer at

Sainwala and the spot is at a distance of 200 meters from Sainwala. ASI Rajinder Singh (PW13) stated that a person met him near the spot and gave the information

that some contraband was being brought in the truck bearing registration No. HP-10B-1117 from Kala Amb to Nahan.

2) Constable Amit Kumar (PW12) stated that the private car was parked in the middle of the road to block the movement of the truck. He stated in his cross-

examination that the car was taken in front of the truck as soon as the truck approached. ASI-Rajinder Singh (PW13) stated in his examination-in-chief that the truck

bearing registration No. HP-10B-1117 arrived on the spot from Kala Amb which was stopped for checking by parking the private car in the middle of the road. He

stated in his cross-examination that the nakka was laid on the spot at 2:30 pm. Alto car was parked on the side of the road and the police party was standing on the

road.

3) Constable Amit Kumar (PW12) stated in his cross-examination that Constable Rizwan (PW2) did not accompany them on 11.07.2016. He did not meet them on

11.07.2016 on the spot at the police station Kala Amb. ASI-Rajinder Singh (PW13) stated that he was in charge of the Special Investigating Unit and all the officials

were assigned duty by him. Constable Rizwan Ali did not visit the spot or Kala Amb on 11.07.2016. HC Hari Chand (PW14) stated that Constable Rizwan Ali had

visited the spot but he was not aware who had called him and why he had visited the spot. HHC-Mohammad Furkan (DW1) stated that Rizwan Ali was sent to police

station Kala Amb at 5:30 pm and he returned to the SIU Office along with the SIU team at 10:30 pm.

4) Constable Kailash (PW10) stated that the police team disbursed at 7:15 pm on the spot. Hari Chand (PW14) stated that they left the spot for police station Kala

Amb at 5:30 pm.

5) ASI-Rajinder Singh (PW13) stated that he had not recorded the statements of other witnesses on the same day even after returning to the police station. He had

only recorded the statements of two witnesses on the spot. ASI-Hari Chand (PW14) stated that the statements of all the witnesses were recorded by IO Rajinder on

11.07.2016.

24. It was submitted that these discrepancies are fatal and sufficient to discard the prosecution case. This submission is not acceptable. The incident

occurred on 11.07.2016 and the statement of Constable-Kailash (PW10) was recorded on 11.06.2018, the statement of Amit Kumar (PW12) was

recorded on 22.11.2018, the statement of ASI-Rajinder (PW13) was recorded on 24.11.2018 and statement of ASI-Hari Chand (PW14) was

recorded on 14.12.2018. Thus, more than two years had elapsed between the incident and the recording of the statements. The contradictions were

bound to come with time due to differences in the power of observations and retention. The principles of appreciation of ocular evidence were

explained by the Honâ€™ble Supreme Court in Balu Sudam Khalde v. State of Maharashtra 2023 SCC OnLine SC 355, as under:-

â€œ25. The appreciation of ocular evidence is a hard task. There is no fixed or straightjacket formula for appreciation of the ocular evidence. The judicially evolved

principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

â€œI. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once

that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and

infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and

whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the

appellate court which did not have this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty

and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III. When an eyewitness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when

discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the

evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection

of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two

statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the

mental screen.

VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence, which so often has an element of surprise.

The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one

person's mind whereas it might go unnoticed on the part of another.

IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport

of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to the exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guesswork on the spur of the moment at

the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time sense of individuals

which varies from person to person.

XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events, which take place in rapid succession or in a short time span. A witness is

liable to get confused, or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination by counsel and out of nervousness mix

up facts, get confused regarding the sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness

sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence

witnessed by him.

XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement

has the potency to discredit the latter statement, even if the latter statement is at variance with the former to some extent it would not be helpful to contradict that

witness.â€

[See Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, 1983 Cri LJ 1096: ((1983) 3 SCC 217: AIR 1983 SC 753) Leela Ram v. State of Haryana, (1999) 9 SCC

525 : AIR 1999 SC 3717 and Tahsildar Singh v. State of UP (AIR 1959 SC 1012)]

25. It was laid down by the Honâ€™ble Supreme Court in Karan Singh v. State of U.P., (2022) 6 SCC 52 : (2022) 2 SCC (Cri) 479 : 2022 SCC

OnLine SC 253, that the Court has to examine the evidence of the witnesses to find out whether it has a ring of truth or not. The Court should not

give undue importance to omission, contradictions and discrepancies which do not go to the heart of the matter. It was observed at page 60:-

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â€œ38. From the evidence of Mahender Singh, PW 4, it appears that no specific question was put to him as to whether the appellant was present at the place of

occurrence or not. This Court in Rohtash Kumar v. State of Haryana [Rohtash Kumar v. State of Haryana, (2013) 14 SCC 434 : (2014) 4 SCC (Cri) 238] held : (SCC

p. 446, para 24)

â€œ24. â€¦ The court has to examine whether evidence read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for

the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate

them to find out whether it is against the general tenor of the evidence given by the witnesses and whether the earlier evaluation of the evidence is shaken, as to

render it unworthy of belief. Thus, the court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to the heart

of the matter, and shake the basic version of the prosecution witness.â€

39. ReferringÂ to NarayanÂ ChetanramÂ Chaudhary v. StateÂ of Maharashtra [Narayan Chetanram Chaudhary v. State of Maharashtra, (2000) 8 SCC 457:

2000 SCC (Cri) 1546], Mr Tyagi argued that minor discrepancies caused by lapses in memory were acceptable, contradictions were not. In this case, there was no

contradiction, only minor discrepancies.

40. In Kuriya v. State of Rajasthan [Kuriya v. State of Rajasthan, (2012) 10 SCC 433: (2013) 1 SCC (Cri) 202], this Court held: (SCC pp. 447-48, paras 30-32)

â€œ30. This Court has repeatedly taken the view that the discrepancies or improvements which do not materially affect the case of the prosecution and are

insignificant cannot be made the basis for doubting the case of the prosecution. The courts may not concentrate too much on such discrepancies or improvements.

The purpose is to primarily and clearly sift the chaff from the grain and find out the truth from the testimony of the witnesses. Where it does not affect the core of the

prosecution case, such discrepancy should not be attached undue significance. The normal course of human conduct would be that while narrating a particular

incident, there may occur minor discrepancies. Such discrepancies may even in law render credentials to the depositions. The improvements or variations must

essentially relate to the material particulars of the prosecution case. The alleged improvements and variations must be shown with respect to the material particulars

of the case and the occurrence. Every such improvement, not directly related to the occurrence, is not a ground to doubt the testimony of a witness. The credibility of

a definite circumstance of the prosecution case cannot be weakened with reference to such minor or insignificant improvements. Reference in this regard can be made

to the judgments of this Court in Kathi Bharat Vajsur v. State of Gujarat [Kathi Bharat Vajsur v. State of Gujarat, (2012) 5 SCC 724 : (2012) 2 SCC (Cri)Â 740],

Narayan Chetanram Chaudhary v. State of Maharashtra [NarayanÂ Chetanram Chaudhary v. State of Maharashtra, (2000) 8 SCC 457: 2000 SCC (Cri) 1546],

Gura Singh v. State of Rajasthan [Gura Singh v. State of Rajasthan,Â (2001)Â 2Â SCCÂ 205: 2001Â SCCÂ (Cri)Â 323] and Sukhchain Singh v. StateÂ Â ofÂ

Haryana [Sukhchain Singh v. State of Haryana, (2002) 5 SCC 100: 2002 SCC (Cri) 961].

31. What is to be seen next is whether the version presented in the Court was substantially similar to what was said during the investigation. It is only when

exaggeration fundamentally changes the nature of the case, the Court has to consider whether the witness was stating the truth or not. [Ref. Sunil Kumar v. State

(NCT of Delhi) [Sunil Kumar v. State (NCT of Delhi), (2003) 11 SCC 367: 2004 SCC (Cri) 1055]].

32. These are variations which would not amount to any serious consequences. The Court has to accept the normal conduct of a person. The witness who is

watching the murder of a person being brutally beaten by 15 persons can hardly be expected to state a minute-by-minute description of the event. Everybody, and

more particularly a person who is known to or is related to the deceased, would give all his attention to take steps to prevent the assault on the victim and then to

make every effort to provide him with medical aid and inform the police. The statements which are recorded immediately upon the incident would have to be given a

little leeway with regard to the statements being made and recorded with utmost exactitude. It is a settled principle of law that every improvement or variation cannot

be treated as an attempt to falsely implicate the accused by the witness. The approach of the court has to be reasonable and practicable. Reference in this regard can

be made to Ashok Kumar v. StateÂ Â of Haryana [Ashok Kumar v. State of Haryana, (2010) 12 SCC 350 : (2011) 1 SCC (Cri) 266] and Shivlal v. State ofÂ Â

Chhattisgarh [Shivlal v. State of Chhattisgarh, (2011) 9 SCC 561 : (2011) 3 SCC (Cri) 777] .â€

41. In Shyamal Ghosh v. State of W.B. [Shyamal Ghosh v. State of W.B., (2012) 7 SCC 646 : (2012) 3 SCC (Cri) 685], this Court held : (SCC pp. 666-67, paras 46 &

49)

â€œ46. Then, it was argued that there are certain discrepancies and contradictions in the statement of the prosecution witnesses inasmuch as these witnesses have

given different timing as to when they had seen the scuffling and strangulation of the deceased by the accused. â€¦ Undoubtedly, some minor discrepancies or

variations are traceable in the statements of these witnesses. But what the Court has to see is whether these variations are material and affect the case of the

prosecution substantially. Every variation may not be enough to adversely affect the case of the prosecution.

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49. It is a settled principle of law that the court should examine the statement of a witness in its entirety and read the said statement along with the statement of other

witnesses in order to arrive at a rational conclusion. No statement of a witness can be read in part and/or in isolation. We are unable to see any material or serious

contradiction in the statement of these witnesses which may give any advantage to the accused.â€

42. In Rohtash Kumar v. State of Haryana [Rohtash Kumar v. State of Haryana, (2013) 14 SCC 434 : (2014) 4 SCC (Cri) 238], this Court held : (SCC p. 446, para

24)

â€œ24. â€¦ The court has to examine whether the evidence read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary

for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and

evaluate them to find out whether it is against the general tenor of the evidence given by the witnesses and whether the earlier evaluation of the evidence is shaken,

as to render it unworthy of belief. Thus, the court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to the

heart of the matter, and shake the basic version of the prosecution witness.â€

26. Similar is the judgment in Anuj Singh v. State of Bihar, 2022 SCC OnLine SC 497: AIR 2022 SC 2817, wherein it was observed:-

â€œ[17] It is not disputed that there are minor contradictions with respect to the time of the occurrence or injuries attributed on hand or foot but the constant

narrative of the witnesses is that the appellants were present at the place of occurrence armed with guns and they caused the injury on informant PW-6. However, the

testimony of a witness in a criminal trial cannot be discarded merely because of minor contradictions or omissions as observed by this court in Narayan Chetanram

Chaudhary & Anr. Vs. State of Maharashtra, 2000 8 SCC 457. This Court while considering the issue of contradictions in the testimony, while appreciating the

evidence in a criminal trial, held that only contradictions in material particulars and not minor contradictions can be ground to discredit the testimony of the

witnesses. The relevant portion of para 42 of the judgment reads as under:

42. Only such omissions which amount to a contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police

statement by itself would not necessarily render the testimony of the witness unreliable. When the version given by the witness in the court is different in material

particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in

the statements of truthful witnesses as memory sometimes plays false and the sense of observation differs from person to person. The omissions in the earlier

statement if found to be of trivial details, as in the present case, the same would not cause any dent in the testimony of PW

2. Even if there is a contradiction of statement of a witness on any material point, that is no ground to reject the whole of the testimony of such witness.

27. Therefore, in view of the binding precedents of the Honâ€™ble Supreme Court, the statements of the witnesses cannot be discarded due to

omissions, contradictions or discrepancies. The Court has to see whether the discrepancies affect the prosecution case adversely or not and whether

they are related to the core of the prosecution case or the details.

28. In the present case, the contradictions pointed out are not significant. The contradiction regarding the taking of car to the middle of the road to

block the movement of the truck is no contradiction at all because ASI-Rajinder Singh (PW13) stated that the car was parked on the side of the road

at 2:30 pm when the nakka was laid. He categorically stated in his examination-in-chief that the car was taken to the middle of the road to block the

movement of the truck. Thus, he had made the statement as per other witnesses that the car was taken to the middle of the road; hence, there is no

contradiction and the prosecution case cannot be discarded due to so-called â€˜contradictionâ€™.

29. ASI-Rajinder Singh (PW13) stated in his cross-examination that Sainwala is a big village having shops and houses along the way. The spot is at a

distance of 200-250 meters from Sainwala bifurcation. ASI Hari Chand (PW14) also stated in his cross-examination that Sainwala is a big village

having number of shops and houses along the road. Thus, Sainwala is not a small place, which can be pinpointed. The place of the incident is at a

distance of about 200 meters from the Sainwala bifurcation. Therefore, if some of the witnesses have referred to the spot as Sainwala, it is merely an

error of perception, which is insufficient to discard the prosecution case.

30. Mohammad Furkan (DW1) stated that Constable Rizwan Ali was sent to police station Kala Amb at 5:30 pm and an entry in the daily diary was

recorded; however, the entry in the daily dairy vide which he was sent was not proved on record and the statement regarding the contents of a written

document is inadmissible because the document can be proved by primary evidence namely the document itself as per Section 64 of Indian Evidence

Act. Thus, the statement regarding the contents of the documents is inadmissible and no advantage can be derived from the same. Even otherwise, as

per his statement, Constable Rizwan Ali was not sent to the spot but to the police station Kala Amb. Therefore, the statements of the witnesses that

Constable Rizwan Ali did not visit the spot on that day are correct. The statement that Rizwan Ali did not meet them on the date of the incident can

occur due to the failure of memory with time. This discrepancy does not affect the core of the prosecution case, namely, the recovery and is

insufficient to discard the same.

31. The discrepancy regarding the place where the information was received and the manner of the receipt of the information can be attributed to the

failure of memory. It also does not affect the core of the prosecution case, namely, the recovery and is insufficient to discard the prosecution case.

32. The contradiction regarding the time is insignificant because no person remembers the time by looking at the watch. The witnesses give their

estimation of time when they are asked about the time; hence, any discrepancy regarding the time is not significant.

33. The discrepancy regarding the recording of the statements on the spot is also not fatal because it can arise due to the passage of time and does not

affect the core of the prosecution case, namely, the recovery. Therefore, the learned Trial Court had rightly held that the discrepancies in the

statements of the prosecution witnesses were insufficient to discard the prosecution case.

34. It was submitted that a joint memo under Section 50 of the ND&PS Act was prepared which is fatal to the prosecution case. This submission is

not acceptable. No recovery was effected from the personal search of the accused and there was no requirement to comply with the provisions of

Section 50 of the NDPS Act. It was laid down by the Honâ€™ble Supreme Court in the State of Punjab Versus Baljinder Singh & another, (2019) 10

SCC 473, that where the recovery was effected from the bag, briefcase etc., non-compliance with Section 50 is not fatal. It was observed:

â€œ14. The law is thus well settled that an illicit article seized from the person during a personal search conducted in violation of the safeguards provided in Section

50 of the Act cannot by itself be used as admissible evidence of proof of unlawful possession of contraband. But the question is if there be any other material or

article recovered during the investigation, would the infraction with respect to personal search also affect the qualitative value of the other material circumstance?

15. At this stage we may also consider the following observations from the decision of this Court in Ajmer Singh v. State of Haryana [(2010) 3 SCC 746] : (2010

AIR SCW 1494, Para 16).]

15. The learned counsel for the appellant contended that the provision of Section 50 of the Act would also apply while searching the bag, briefcase, etc. carried by

the person and its non-compliance would be fatal to the proceedings initiated under the Act. We find no merit in the contention of the learned counsel. It requires to

be noticed that the question of compliance or non-compliance with Section 50 of the NDPS Act is relevant only where a search of a person is involved and the said

section is not applicable nor attracted where no search of a person is involved. Search and recovery from a bag, briefcase, container, etc. do not come within the

ambit of Section 50 of the NDPS Act, because firstly, Section 50 expressly speaks of search of person only. Secondly, the section speaks of taking of the person to be

searched by the gazetted officer or a Magistrate for the purpose of the search. Thirdly, this issue in our considered opinion is no more res Integra in view of the

observations made by this Court in Madan Lai v. State of H.P. [(2003) 7 SCC 465] : (AIR 2003 SC 3642). The Court has observed: (SCC p. 471, para 16) (at p. 3645, para

17 of AIR)

16. A bare reading of Section 50 shows that it only applies in the case of a personal search of a person. It does not extend to a search of a vehicle or a container or a

bag or premises (see Kalema Tumba v. State of Maharashtra[(1999) 8 SCC 257]: (AIR 2000 SC 402), State of Punjab v. Baldev Singh [(1999) 6 SCC 172] : (AIR

1999 SC 2378) and Gurbax Singh v. State of Haryana [(2001) 3 SCC 28]): (AIR 2001 SC 1002). The language of Section 50 is implicitly clear that the search has

to be in relation to a person as contrasted to a search of premises, vehicles or articles. This position was settled beyond doubt by the Constitution Bench in the

Baldev Singh case. Above being the position, the contention regarding non-compliance with Section 50 of the Act is also without any substance.

16. As regards the applicability of the requirements under Section 50 of the Act is concerned, it is well settled that the mandate of Section 50 of the Act is confined to

personal search"" and not to search of a vehicle or a container or premises.

17. The conclusion (3) as recorded by the Constitution Bench in para 57 of its judgment in Baldev Singh (AIR 1999 SC 2378) clearly states that the conviction may not

be based ""only"" on the basis of possession of an illicit article recovered from personal search in violation of the requirements under Section 50 of the Act but if there

be other evidence on record, such material can certainly be looked into.

In the instant case, the personal search of the accused did not result in the recovery of any contraband. Even if there was any such recovery, the same could not be

relied upon for want of compliance of the requirements of Section 50 of the Act. But the search of the vehicle and recovery of contraband pursuant thereto having

stood proved, merely because there was non-compliance of Section 50 of the Act as far as ""personal search"" was concerned, no benefit can be extended so as to

invalidate the effect of recovery from the search of the vehicle. Any such idea would be directly in the teeth of conclusion (3) as aforesaid.

18. The decision of this Court in Dilip's (AIR 2007 SC 369) case, however, has not adverted to the distinction as discussed herein above and proceeded to confer an

advantage upon the accused even in respect of recovery from the vehicle, on the ground that the requirements of Section 50 relating to personal search were not

complied with. In our view, the decision of this Court in said judgment in Dilip's case is not correct and is opposed to the law laid down by this Court in Baldev Singh

(AIR 1999 SC 2378) and other judgments.

19. Since in the present matter, seven bags of poppy husk each weighing 34 kgs. were found from the vehicle which was being driven by accused Baljinder Singh

with the other accused accompanying him, their presence and possession of the contraband material stood completely established.â€

35. This position was reiterated in Kallu Khan Vs State, AIR 2022 SC 50 and it was observed:-

â€œ15. Simultaneously, the arguments advanced by the appellant regarding non-compliance with Section 50 of the NDPS Act are bereft of any merit because no

recovery of contraband from the person of the accused has been made to which compliance with the provision of Section 50 NDPS Act has to follow mandatorily. In

the present case, in the search of a motorcycle at a public place, the seizure of contraband was made, as revealed. Therefore, compliance with Section 50 does not

attract in the present case. It is settled in the case of Vijaysinh(supra) that in the case of the personal search only, the provisions of Section 50 of the Act are required

to be complied with but not in the case of the vehicle as in the present case, following the judgments of Surinder Kumar(supra) and Baljinder Singh(supra).

Considering the facts of this Court, the argument of non-compliance of Section 50 of NDPS Act advanced by the counsel is hereby repelled.â€

36. Similar is the judgment in Dayalu Kashyap versus State of Chhattisgarh, 2022 (1) RCR(Cri) 815(SC), wherein it was observed:-

â€œ5. Learned counsel submits that the option given to the appellant to take a third choice other than what is prescribed as the two choices under sub-Section (1) of

Section 50 of the Act is something which goes contrary to the mandate of the law and in a way affects the protection provided by the said Section to the accused. To

support his contention, he has relied upon the judgment of State of Rajasthan v. Parmanand & Anr., 2014 5 SCC 345, more specifically, para 19. The judgment, in

turn, relied upon a Constitution Bench judgment of this Court in State of Punjab v. Baldev Singh, 1999 6 SCC 172 to conclude that if a search is made by an

empowered Officer on prior information without informing the person of his right that he has to be taken before a Gazetted Officer or a Magistrate for search and in

case he so opts, failure to take his search accordingly would render the recovery of the illicit article suspicious and vitiate the conviction and sentence of the accused

where the conviction has been recorded only the on basis of possession of illicit articles recovered from his person. The third option stated to be given to the

accused to get himself searched by the Officer concerned not being part of the statute, the same could not have been offered to the appellant and thus, the recovery

from him is vitiated.

6. In the conspectus of the facts of the case, we find the recovery was in a polythene bag which was being carried on a Kanwad. The recovery was not in person.

Learned counsel seeks to expand the scope of the observations made by seeking to contend that if the personal search is vitiated by violation of Section 50 of the

NDPS Act, the recovery made otherwise also would stand vitiated and thus, cannot be relied upon. We cannot give such an extended view as is sought to be

contended by learned counsel for the appellant.â€

37. Since, in the present case, the recovery was effected from the cabin of the truck, therefore, the failure to comply with the provisions of Section 50

of the NDPS Act is not fatal to the prosecution case.

38. It was submitted that the entries in the daily diary were not produced to show the arrival of the police party in police station Kala Amb, their

departure from police station Kala Amb and their arrival in the office of the Special Investigation Unit which is fatal. This submission is not

acceptable. It was laid down by the Hon'ble Supreme Court in Kalpnath Versus State AIR 1998 SC 201t hat the prosecution is not expected to

produce the diaries as a matter of course and the defence can move the court to bring the daily diary. It was observed:

â€œNo doubt Daily Diary is a document which is in constant use in the police station. But no prosecution is expected to produce such diaries as a

matter of course in every prosecution case for supporting the police version. If such diaries are to be produced by the prosecution as a matter of

course in every case, the function of the police station would be greatly impaired. It is neither desirable nor feasible for the prosecution to produce

such diaries in all cases. Of course, it is open to the defence to move the Court for getting down such diaries if the defence wants to make use of it.â€

39. This position was reiterated in Chet Ram Versus State of H.P. Cr. Appeal no. 191/06, decided on 25.7.2008 (HP) and it was held as under:

â€œIt is true that Rojnamcha was not produced in the Court to prove the departure of PW-8 HC Ram Lal and other police officials for organizing a ""Nakka"" at the site,

in question, or to prove their return to the Police Station from the said site, but merely for this omission, it cannot be held that PW-8 HC Ram Lal, accompanied by

PW-6 LHC Narpat Ram, PW-7 Constable Dhan Dev and other police officials, did not go to the spot to organize a ""Nakka"", especially when the appellant has not

taken the plea that he was picked up from some different place and brought to the police station.â€

40. Therefore, the prosecution's version cannot be doubted due to the failure to produce the entry in the daily diary.

41. It was submitted that the prosecution has not complied with the requirement of Section 52(A) of the NDPS Act. The samples were to be taken in

the presence of the Magistrate but no samples were taken. This is fatal to the prosecution case. This submission is not acceptable. It was laid down

by this Court in Sandeep Kumar versus State of H.P. 2022 Law Suit HP 149 that the provisions of Section 52A is not mandatory and its non-

compliance is not fatal to the prosecution case. It was observed:-

â€œ24. It has also been strenuously argued on behalf of the appellants that the investigating agency had failed to comply with the provisions of Section 52-A of the

NDPS Act and thus cast a shadow of doubt on its story. The contention raised on behalf of appellants is that the rules framed for investigations under the NDPS Act

are mandatory and have to be strictly followed. Neither the required sample was taken on the spot nor the samples were preserved by complying with Section 52-A of

the Act. It has been argued that compliance of Section 52-A of the Act is mandatoryâ€¦..

xxxxxx

27. The precedent relied upon on behalf of the appellants, however, did not lay down the law that non-compliance with Section 52-A of the Act is fatal to the

prosecution case under the NDPS Act. On the other hand, in State of Punjab vs. Makhan Chand, 2004 (3) SCC 453, the Hon'ble Supreme Court while dealing with the

question of the effect of non-compliance of Section 52-A has held as under: -

10. This contention too has no substance for two reasons. Firstly, Section 52A, as the marginal note indicates, deals with the ""disposal of seized narcotic drugs and

psychotropic substances"". Under Sub-section (1), the Central Government, by notification in the Official Gazette, is empowered to specify certain narcotic drugs or

psychotropic substances having regard to the hazardous nature, vulnerability to theft, substitution, constraints of proper storage space and such other relevant

considerations, so that even if they are material objects seized in a criminal case, they could be disposed of after following the procedure prescribed in Sub-sections

(2) & (3). If the procedure prescribed in Sub-sections (2) & (3) of Section 52A is complied with and upon an application, the Magistrate issues the certificate

contemplated by Subsection (2), then Sub-section (4) provides that, notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872 or the Code

of Criminal Procedure, 1973, such inventory, photographs of narcotic drugs or substances and any list of samples drawn under Sub-section (2) of Section 52A as

certified by the Magistrate, would be treated as primary evidence in respect of the offence. Therefore, Section 52A(1) does not empower the Central Government to

lay down the procedure for the search of an accused but only deals with the disposal of seized narcotic drugs and psychotropic substances.

11. Secondly, when the very same standing orders came up for consideration in Khet Singh v. Union of India, 2002 (4) SCC 380, this Court took the view that they

are merely intended to guide the officers to see that a fair procedure is adopted by the Officer-in-Charge of the investigation. It was also held that they were not

inexorable rules as there could be circumstances in which it may not be possible for the seizing officer to prepare the mahazar at the spot if it is a chance recovery,

where the officer may not have the facility to prepare the seizure mahazar at the spot itself. Hence, we do not find any substance in this contention.â€

42. It was laid down by this Court in Narayan Singh versus State of H.P.,2023:HHC:9715 that where the whole bulk was sent to the Chemical

Analyst, there is no requirement to take the sample. It was observed;

â€œ19. After going through aforesaid judgments, we are of the considered view that the same do not apply to the facts of the instant case. It would be noticed that in

all the earlier judgments, the Honâ€™ble Court was dealing with cases where samples had been drawn from the bulk and then samples had been sent for chemical

analysis and the residue or bulk sample remained with the investigating agency. However, this is not the fact obtaining situation in the instant case. Here, the entire

contraband had been sent for chemical analysis that too on the very next date of its recovery. In such circumstances, there could be no better and primary evidence

for the purpose of trial.â€

43. Therefore, the submission that the prosecution case is to be discarded because of failure to take the samples in the presence of the Magistrate

cannot be accepted.

44. The police officials consistently stated that the recovery was effected from the vehicle in which all the accused persons were travelling. In

Madan Lal versus State of H.P. (2003) 7 SCC 465: 2003 SCC (Cri) 1664: 2003 SCC OnLineSC 8,7 t4he contraband was recovered from a

vehicle and it was held that all the occupants of the vehicle would be in conscious possession of the contraband. It was observed:

â€œ19. Whether there was conscious possession has to be determined with reference to the factual backdrop. The facts which can be culled out from the evidence on

record are that all the accused persons were travelling in a vehicle and as noted by the trial court they were known to each other and it has not been explained or

shown as to how they travelled together from the same destination in a vehicle which was not a public vehicle.

20. Section 20(b) makes possession of contraband articles an offence. Section 20 appears in Chapter IV of the Act which relates to offences for possession of such

articles. It is submitted that in order to make the possession illicit, there must be conscious possession.

21. It is highlighted that unless the possession was coupled with the requisite mental element i.e. conscious possession and not mere custody without awareness of

the nature of such possession, Section 20 is not attracted.

22. The expression â€œpossessionâ€ is a polymorphous term that assumes different colours in different contexts. It may carry different meanings in contextually

different backgrounds. It is impossible, as was observed in Supdt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja [(1979) 4 SCC 274: 1979 SCC

(Cri) 1038: AIR 1980 SC 52] to work out a completely logical and precise definition of â€œpossessionâ€ uniformly applicable to all situations in the context of all

statutes.

23. The word â€œconsciousâ€ means awareness about a particular fact. It is a state of mind which is deliberate or intended.

24. As noted in Gunwantlal v. State of M.P. [(1972) 2 SCC 194: 1972 SCC (Cri) 678: AIR 1972 SC 1756] possession in a given case need not be physical

possession but can be constructive, having power and control over the article in the case in question, while the person to whom physical possession is given holds

it subject to that power or control.

25. The word â€œpossessionâ€ means the legal right to possession (see Heath v. Drown [(1972) 2 All ER 561: 1973 AC 498 : (1972) 2 WLR 1306 (HL)]). In an

interesting case it was observed that where a person keeps his firearm in his mother's flat which is safer than his own home, he must be considered to be in

possession of the same. (See Sullivan v. Earl of Caithness [(1976) 1 All ER 844: 1976 QB 966 : (1976) 2 WLR 361 (QBD)] .)

26. Once possession is established, the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is

within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position in

terms of Section 54 where also presumption is available to be drawn from possession of illicit articles.

27. In the factual scenario of the present case, not only possession but conscious possession has been established. It has not been shown by the accused-

appellants that the possession was not conscious in the logical background of Sections 35 and 54 of the Act.â€

45. It was laid down by the Honâ€™ble Supreme Court in Union of India v. Mohd. Nawaz Khan, (2021) 10 SCC 100: (2021) 3 SCC (Cri) 721:

2021 SCC OnLine SC 1237 that a person is in possession if he is in a position to exercise control over the article. It was observed on page 111:

â€œ25. We shall deal with each of these circumstances in turn. The respondent has been accused of an offence under Section 8 of the NDPS Act, which is punishable

under Sections 21, 27-A, 29, 60(3) of the said Act. Section 8 of the Act prohibits a person from possessing any narcotic drug or psychotropic substance. The concept

of possession recurs in Sections 20 to 22, which provide for punishment for offences under the Act. In Madan Lal v. State of H.P. [Madan Lal v. State of H.P.,

(2003) 7 SCC 465: 2003 SCC (Cri) 1664] this Court held that: (SCC p. 472, paras 19-23 & 26)

â€œ19. Whether there was conscious possession has to be determined with reference to the factual backdrop. The facts which can be culled out from the evidence on

record are that all the accused persons were travelling in a vehicle and as noted by the trial court they were known to each other and it has not been explained or

shown as to how they travelled together from the same destination in a vehicle which was not a public vehicle.

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within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position in

terms of Section 54 where also presumption is available to be drawn from possession of illicit articles.â€

26. What amounts to â€œconscious possessionâ€ was also considered in Dharampal Singh v. State of Punjab [Dharampal Singh v. State of Punjab, (2010) 9 SCC

608 : (2010) 3 SCC (Cri) 1431], where it was held that the knowledge of possession of contraband has to be gleaned from the facts and circumstances of a case.

The standard of conscious possession would be different in the case of a public transport vehicle with several persons as opposed to a private vehicle with a few

persons known to one another. In Mohan Lal v. State of Rajasthan [Mohan Lal v. State of Rajasthan, (2015) 6 SCC 222: (2015) 3 SCC (Cri) 881], this Court also

observed that the term â€œpossessionâ€ could mean physical possession with animus; custody over the prohibited substances with animus; exercise of dominion

and control as a result of concealment; or personal knowledge as to the existence of the contraband and the intention based on this knowledge.â€

46. Therefore, the learned Trial Court had rightly held that all the accused were in possession of the stuff recovered from the truck.

47. The backpack containing the stuff was put in a parcel and the parcel was sealed on the spot with five impressions of seal â€˜Hâ€™. It was

produced before SI-Yoginder Singh (PW9), who re-sealed it with three impressions of seal â€˜Xâ€™. He handed it over to HC-Balbir Singh (PW15)

who deposited it in Malkhana and made the entry in the malkhana register. He sent the case property to SFSL, Junga through Constable Rizwan Ali

(PW2) vide RC No. 79/16 (PW15/B). The report of analysis (Ext. PW14/A) shows that the parcel was bearing five seals of seal â€˜Hâ€™ and three

seals of seal â€˜Xâ€™. Seals were found intact and were tallied with subsequent seals and by the forwarding authority and seal impressions on the

form NCB-I. This report shows that the case property remained intact till its analysis in the laboratory.

48. It was held in Baljit Sharma vs. State of H.P 2007 HLJ 707 ,where the report of analysis shows that the seals were intact, the case of the

prosecution that the case property remained intact is to be accepted as correct. It was observed:

â€œA perusal of the report of the expert Ex.PW8/A shows that the samples were received by the expert in a safe manner and the sample seal separately sent tallied

with the specimen impression of a seal taken separately. Thus, there was no tampering with the seal and the seal impressions were separately taken and sent to the

expert also.â€

49. Similar is the judgment in Hardeep Singh vs. State of Punjab 2008(8) SCC 557 wherein it was held:

â€œIt has also come on evidence that till the date the parcels of the sample were received by the Chemical Examiner, the seal put on the said parcels was intact. That

itself proves and establishes that there was no tampering with the previously mentioned seal in the sample at any stage and the sample received by the analyst for

chemical examination contained the same opium, which was recovered from the possession of the appellant. In that view of the matter, a delay of about 40 days in

sending the samples did not and could not have caused any prejudice to the appellant.â€

50. In State of Punjab vs. Lakhwinder Singh 2010 (4) SCC 402 the High Court had concluded that there could have been tampering with the case

property since there was a delay of seven days in sending the report to FSL. It was laid down by the Honâ€™ble Supreme Court that case property

was produced in the Court and there was no evidence of tampering. Seals were found to be intact, which would rule out the possibility of tampering. It

was observed:

â€œThe prosecution has been able to establish and prove that the aforesaid bags, which were 35 in number, contained poppy husk and accordingly the same were

seized after taking samples therefrom which were properly sealed. The defence has not been able to prove that the aforesaid seizure and seal put in the samples were

in any manner tampered with before it was examined by the Chemical Examiner. There was merely a delay of about seven days in sending the samples to the Forensic

Examiner and it is not proved as to how the aforesaid delay of seven days has affected the said examination when it could not be proved that the seal of the sample

was in any manner tampered with. The seal having been found intact at the time of the examination by the Chemical Examiner and the said fact having been recorded

in his report, a mere observation by the High Court that the case property might have been tampered with, in our opinion is based on surmises and conjectures and

cannot take the place of proof.

17. We may at this stage refer to a decision of this Court in Hardip Singh v. State of Punjab reported in (2008) 8 SCC 557 in which there was a delay of about 40

days in sending the sample to the laboratory after the same was seized. In the said decision, it was held that in view of cogent and reliable evidence that the opium

was seized and sealed and that the samples were intact till they were handed over to the Chemical Examiner, the delay itself was held to be not fatal to the prosecution

case. In our considered opinion, the ratio of the aforesaid decision squarely applies to the facts of the present case in this regard.

18. The case property was produced in the Court and there is no evidence to show that the same was ever tampered with.â€

51. Similar is the judgment of the Hon'ble Supreme Court in Surinder Kumar vs. State of Punjab, (2020) 2 SCC 563, wherein it was held:-

10. According to learned senior counsel for the appellant, Joginder Singh, ASI to whom Yogi Raj, SHO (PW-3) handed over the case property for producing the same

before the Illaqa Magistrate and who returned the same to him after such production was not examined, as such, link evidence was incomplete. In this regard, it is to

be noticed that Yogi Raj SHO handed over the case property to Joginder Singh, ASI, for production before the Court. After producing the case property before the

Court, he returned the case property to Yogi Raj, SHO (PW-3) with the seals intact. It is also to be noticed that Joginder Singh, ASI was not in possession of the seals

of either the investigating officer or Yogi Raj, SHO. He produced the case property before the Court on 13.09.1996 vide application Ex.P-13, the concerned Judicial

Magistrate of First Class, after verifying the seals on the case property, passed the order Ex.P-14 to the effect that since there was no judicial malkhana at Abohar, the

case property was ordered to be kept in safe custody, in Police Station Khuian Sarwar till further orders. Since Joginder Singh, ASI was not in possession of the seals

of either the SHO or the Investigating Officer, the question of tampering with the case property by him did not arise at all.

11. Further, he has returned the case property, after production of the same, before the Illaqa Magistrate, with the seals intact, to Yogi Raj, SHO. In that view of the

matter, the Trial Court and the High Court have rightly held that the non-examination of Joginder Singh, did not, in any way, affect the case of the prosecution.

Further, it is evident from the report of the Chemical Examiner, Ex.P-10, that the sample was received with seals intact and that the seals on the sample tallied with the

sample seals. In that view of the matter, the chain of evidence was complete.â€ (Emphasis supplied)

52. Therefore, the prosecution version is to be accepted as correct that the case property remained intact till its analysis at FSL, Junga.

53. It was submitted that the seal was not produced before the Court and this is fatal. This submission cannot be accepted. It was laid down by the

Hon'ble Supreme Court in Varinder Kumar Versus State of H.P. 2019 (3) SCALE 50 that failure to produce the seal in the court is not fatal. It was

observed:-

â€œ6. We have considered the respective submissions. PW10 is stated to have received secret information at 2.45 P.M. on 31.03.1995. He immediately reduced it into

writing and sent the same to PW8, Shri Jaipal Singh, Dy.S.P., C.I.D., Shimla. At 3.05 P.M. PW7, Head Constable Surender Kumar stopped PW5, Naresh Kumar and

another independent witness, Jeevan Kumar travelling together, whereafter the appellant was apprehended at 3.30 P.M. with two Gunny Bags on his Scooter which

contained varying quantities of â€˜charasâ€™. PW8, Shri Jaipal Singh, Dy.S.P., C.I.D., Shimla who had arrived by then gave notice to the appellant and obtained his

consent for carrying out the search. Two samples of 25 gms. each were taken from the two Gunny Bags and sealed with the seal â€˜Sâ€™, and given to PW5. PW2,

Jaswinder Singh the Malkhana Head Constable resealed it with the seal â€˜Pâ€™. The conclusion of the Trial Court that the seal had not been produced in the Court

is therefore perverse in view of the two specimen seal impressions having been marked as Exhibits PH and PK. It is not the case of the appellant that the seals were

found tampered with in any manner.â€

54. It was specifically held in Virender Kumar (supra) that when the sample seals were produced before the Court, the conclusion of the Trial Court

that seals were not produced before the Court was perverse.

55. In the present case, the prosecution has produced the sample seals (Ext. PW4/D and Ext. PW9/D) and NCB-I form (Ext. PW9/E) containing the

seal impression. Thus, the Court had sample seals with it to compare the seal impressions put on the parcel. The Court had specifically recorded in the

statement of Constable-Amit Kumar that the parcel (Ext. PA) was sealed with five impressions of seal â€˜Hâ€™, three impressions of seal â€˜Xâ€™

and four impressions of â€˜SFSLâ€™ and the same were intact. Thus, the integrity of the case property was duly established before the Court and

the submission that the integrity of the case property was not established is not acceptable.

56. The prosecution had also complied with the requirement of Section 57 of the NDPS Act. ASI-Rajinder Singh Â (PW13) stated that he prepared a

special report (Ext. PW1/B) on 12.07.2016 and sent it to the office of Additional Superintendent of Police, Nahan through Constable Kailash. Ramesh

Kumar (PW1) Reader to the Additional Superintendent of Police, Nahan deposed that the special report was handed over to him on 12.07.2016 by the

Additional Superintendent of Police, Nahan after making his endorsement. The recovery was effected on 11.07.2016 and the special report was sent

on 12.07.2016 within 48 hours, which is sufficient compliance with Section 57 of the NDPS Act.

57. The result of the analysis shows that the substance analyzed was found to be opium since the chain of custody has been duly proved, therefore,

the learned Trial Court had rightly held that the stuff recovered from the vehicle was opium and had rightly convicted the accused of the commission

of an offence punishable under Section 18 of the NDPS Act.

58. Learned Trial Court had sentenced the accused to undergo rigorous imprisonment for ten years and to pay a fine of ₹1,00,000/- each. The

accused were found in possession of 2.724 kilograms of opium, which is a commercial quantity and is punishable with a minimum imprisonment of 10

years and a fine of ₹1,00,000/- each. Therefore, the learned Trial Court has taken a lenient view and no interference is required with the sentence

imposed by the learned Trial Court.

59. No other point was urged.

60. In view of the above, the judgment and order passed by the learned Trial Court are fully sustainable. Consequently, the present appeal fails and the

same is dismissed.

61. A copy of this judgment alongwith the records of the learned Trial Court be sent back forthwith. Pending miscellaneous application(s), if any, also

stand(s) disposed of.