

(2008) 02 P&H CK 0342

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Appeal No. 433-SB of 1997

Sher Singh

APPELLANT

Vs

The State of Haryana

RESPONDENT

Date of Decision: Feb. 20, 2008**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 20

Hon'ble Judges: Sham Sunder, J**Bench:** Single Bench**Advocate:** Vivek Goel, for the Appellant; Kartar Singh, AGG, Haryana, for the Respondent**Final Decision:** Allowed

Judgement

Sham Sunder, J.

This appeal is directed against the judgment of conviction dated 15.5.1997, and the order of sentence dated 22.5.1997, rendered by the Court of Addl. Sessions Judge (1st), Bhiwani, vide which it convicted the accused/appellant Sher Singh, for the offence punishable u/s 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter called as "the Act" only) and sentenced him to undergo rigorous imprisonment for a period of ten years, and to pay a fine of Rs. 1 lac, and in default of payment of the same, to undergo rigorous imprisonment for another period of five years.

2. The facts, in brief, are that on 2.4.1996, Phool Singh, SI, alongwith other police officials, including Jagat Singh, ASI, etc. was present on Dhani Harsukh turning in the area of Gujrani, when they noticed the accused coming from the side of Dhani Harsukh. On seeing the police party, the accused turned towards Chang road to avoid his apprehension. Phool Singh, SI, however, apprehended him. He was carrying a bag (thaila), on his right shoulder, at that time. Search of the bag (thaila), in accordance with the provisions of law, was conducted. It was found containing

650 grams charas. A sample of 50 grams, was separated, and the remaining charas, was put in a separate container. Both the containers were sealed, with the seal bearing impression "CM", and taken into possession vide separate recovery memo. Ruqa was sent to the Police Station, on the basis whereof, the formal FIR was registered. Rough site plan of the place of recovery, with correct marginal notes, was prepared. The statements of the witnesses were recorded. The accused was arrested. After the completion of investigation, the accused was challaned.

3. On his appearance, in the Court of the Committing Magistrate, the copies of documents, relied upon by the prosecution, were supplied to the accused. After the case was received by commitment, in the Court of Sessions, charge u/s 20 of the Act, was framed against him, to which he pleaded not guilty and claimed judicial trial.

4. The prosecution, in support of his case, examined Sukhraj Singh, SI (PW-1), Nar Singh, ASI (PW-2), Ved Singh, HC (PW-3), Sunil Kumar, Constable (PW-4), Rameshwar Kumar, SI (PW-5), Jagat Singh, ASI (PW-6), and Phool Singh, SI (PW-7). Thereafter, the Public Prosecutor for the State, closed the prosecution evidence.

5. The statement of the accused u/s 313 Cr.P.C., was recorded, and he was put all the incriminating circumstances, appearing against him, in the prosecution evidence. The accused took the following plea in his statement:

"I alongwith some other persons of our village were standing at Hansi gate and were waiting for a bus. It was 4.00 or 4.30 PM. A jeep which carries passengers on hire, came there. It belonged to a person of Jatu Lohari. The Baba Harhargir of our temple was also standing there at Hansi Gate. All the passengers boarded the jeep including Babal and then two persons from the police came there. The police took the jeep alongwith the triver and the passengers to Police Station Sadar. The driver of the jeep was sent by the police during the night time. All others were detained for the night. One of us was Naresh, whose father succeeded in taking him away. Besides the Baba of our village, there was another Baba. The other Baba was also released as he said that he was suffering from fever. K.C. Sharma of our village, who is IAS officer gave a ring to the Police Station and then the Baba was also released by the police. I was detained by the police and I have been challenged. This is the whole story."

He, however, did not lead any evidence, in his defence.

6. After hearing the Public Prosecutor for the State, the Counsel for the accused, and, on going through the evidence, on record, the trial Court, convicted and sentenced the accused, as stated hereinbefore.

7. Feeling aggrieved, against the judgment of conviction and the order of sentence, rendered by the trial Court, the instant appeal, was filed by the accused/appellant.

8. I have heard the Counsel for the parties, and have gone through the evidence and record of the case, carefully.

9. The Counsel for the appellant, at the very outset, contended that though the alleged recovery was effected on 2.4.1996, yet the sample was sent to the office of the Forensic Science Laboratory, Madhuban, on 15.4.1996. He further submitted that no explanation was furnished by the prosecution witnesses, as to why, the sample was sent to the office of the Forensic Science Laboratory Haryana, Madhuban, after a delay of 13 days. He further submitted that, on account of delay, in sending the sample to the office of the Forensic Science Laboratory Haryana, Madhuban, the possibility of tampering with the same, could not be ruled out. No explanation, whatsoever, was furnished, as to why, the sample was not sent to the office of the Forensic Science Laboratory, for about a period of 13 days. Had any explanation been furnished, the matter would have been considered, in the light thereof, but in the absence of any explanation having been furnished, in this regard, the Court cannot coin any of its own. In *Gian Singh v. State of Punjab* 2006 (2) RCR (Cri) 611, there was a delay of 14 days, in sending the sample to the office of the Chemical Examiner. Under these circumstances, it was held that the possibility of tampering with the sample, could not be ruled out, and the link evidence was incomplete. Ultimately, the appellant was acquitted in that case. On account of this infirmity, the appellant is liable to be acquitted.

10. The seal after use was given to Jagat Singh, ASI, who is junior to Phool Singh, SI. Both Phool Singh, SI and Jagat Singh, ASI, at the relevant time, were posted in the same Police Station. The case property, was for some time remained with Phool Singh, SI, and thereafter, it was deposited in the malkhana, which was under the control of the said Sub Inspector. Since, there was delay of 13 days, in sending the sample to the Forensic Science Laboratory, Madhuban, the mere fact that the seal remained in the possession of the Police official, throughout until the sample was sent to the said laboratory, in itself was sufficient to cast a doubt on the prosecution story, as it could not be safely held that the contents of the sample parcel, could not be changed. This fact coupled with other infirmities and lacunae pointed out, cast a cloud of doubt on the prosecution story.

11. It was next contended by the Counsel for the appellant, that no independent witness was joined, despite availability. It is, no doubt, true that the evidence of the official witnesses, cannot be doubted, merely, on account of the reason, that no independent witness was joined by the Investigating Officer. However, in peculiar circumstances of the present case, when the accused alleged that he was falsely implicated, in this case, it can be held that non-joining of an independent witness, despite availability, clearly cast a doubt on the prosecution story. Since, the alleged recovery was effected, from a public place, and the independent witnesses were present, even at the time, when the accused was allegedly apprehended, it became the bounden duty of the Investigating Officer, to join one of them, so as to show the genuineness of proceedings. The prosecution case also becomes doubtful, on this ground.

12. The affidavit Ex.PA, tendered by Ved Singh, MHC, is defective. According to this affidavit on 2.4.1996 Phool Singh, SI, deposited with him two parcels, sealed with the seal bearing impression "CM" and "RK", with seals intact. It is further evident from the said affidavit, that the sample parcel, duly sealed with seal bearing impressions "CM" and "RK", was handed over to Sunil Kumar, Constable on 15.4.1996, for depositing the same, to the office of the Forensic Science Laboratory, Madhuban. There is nothing, in the affidavit Ex.PA, that sample impression of the seal was handed over to Sunil Kumar, Constable, for deposit in the office of the Forensic Science Laboratory, Madhuban. When the sample seal was not handed over to Sunil Kumar, Constable, for deposit in the office of the Forensic Science Laboratory, Madhuban, it is not known, as to wherefrom the said specimen seal came in the office of the Forensic Science Laboratory, Madhuban. Under these circumstances, the report of the Forensic Science Laboratory, Madhuban, to the effect that the seals, on the parcel, tallied with the sample seal, became doubtful. The link, in the chain of the prosecution evidence was, therefore, incomplete. It was the bounden duty of the prosecution to prove beyond doubt, that none tampered with the sample, till it reached the office of the Forensic Science Laboratory. In the instant case, the prosecution failed to prove, as to whether, the seals on the sample, when deposited in the office of the Forensic Science Laboratory, Madhuban, were intact and how the said seals were compared with the sample seal, which was not sent to this office. In this view of the matter, the case of the prosecution, also became doubtful. The trial Court did not take into consideration, this aspect of the matter, as a result whereof, miscarriage of justice occasioned.

13. In view of the above discussion, it is held that the judgment of conviction and the order of sentence, rendered by the trial Court, are not based on the correct appreciation evidence, and law, on the point, and the same are liable to be set aside.

14. For the reasons recorded, hereinbefore, the appeal is accepted. The judgment of conviction dated 15.5.1997, and the order of sentence dated 22.5.1997, are set aside. The appellant shall stand acquitted of the charge framed against him. He is discharged of the bail bonds.