

CRA-S-55-SB-2008
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Whether only operative part of the judgment is Pronounced or the full judgment is pronounced:	operative part/full judgment
1. The operative part of the judgment is pronounced. 2. The full judgment is pronounced.	1. The operative part of the judgment is pronounced. 2. The full judgment is pronounced.

...Appellants

Versus

....Respondent

Present:- Mr. Vrishank Suri, Advocate (*Amicus Curiae*)
for the appellants.

Mr. Sahil Chowdhary, AAG, Punjab.

MANDEEP PANNU, J.

1. The present appeal has been filed by the appellants challenging the judgment of conviction and order of sentence dated 06.12.2007 passed by the learned Special Judge, Bathinda, in FIR No. 95 dated 08.11.2005, registered under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Raman, whereby both the appellants have been convicted for the offence under Section 18 of the NDPS Act and sentenced as under:-

Under Section	Imprisonment awarded	Fine	Imprisonment in default of payment of fine
Section 18 of NDPS Act	R.I. for 03 years and 06 months each	Rs.1,000/- each	R.I. for 02 months each



2. The brief facts of the prosecution case, as emerging from the record, are that on 08.11.2005, a police party headed by SI Balwant Singh of Police Station Raman, comprising HC Kulwant Singh No. 553 and other police officials, was present in the area of village Ramsra in connection with patrol duty in a government vehicle bearing registration No. PB-12-G/9061. At that time, Major Singh son of Chhota Singh, resident of Tarkhanwala, came from the side of Tarkhanwala and joined the police party. At about that time, a white-coloured Maruti car bearing registration No. PB-05A/5555 came from the same side. Two persons were sitting in the car. The car was stopped and the driver disclosed his name as Gurcharan Singh son of Sukhmander Singh. The other person sitting with him on the front seat disclosed his name as Jaspal Singh son of Ajmer Singh. It is alleged that a white-coloured plastic jhola was lying on the front seat between the two persons. SI Balwant Singh suspected that the plastic jhola contained some contraband articles in the possession of the accused. He accordingly gave the accused an option of getting the search conducted before a Gazetted Officer or a Magistrate. The accused, however, opted for their search before a Gazetted Officer, and a memo to this effect was prepared. Thereafter, DSP Jaspal of Talwandi Sabo, Circle Talwandi Sabo, was called to the spot of recovery. DSP Jaspal disclosed his identity as a Gazetted Police Officer to the accused and again gave them an option of getting the search conducted before some other Gazetted Officer or a Magistrate. The accused expressed their confidence in DSP Jaspal and consented to the search being conducted in his presence. Consent memos of the accused were accordingly prepared. SI Balwant Singh, under the supervision and directions of DSP Jaspal, then



searched the contents of the plastic jhola which was allegedly in the possession of the accused. Opium wrapped in glazed paper was recovered therefrom. On weighment, the recovered contraband was found to be 1 kilogram and 200 grams. A sample of the recovered contraband was thereafter separated at the spot. The sample and the remaining case property were duly sealed with the seal of SI Balwant Singh, and the seal after use was entrusted to independent witness Major Singh. A sample seal was also prepared at the spot. The driving licence of witness Major Singh, along with its photocopy, was recovered from the car and taken into police possession vide a separate memo. The case property was thereafter taken into police possession vide a separate recovery memo, which was attested by the witnesses. Personal search of accused Jaspal Singh was also conducted, during which one mobile phone, one wrist-watch and currency notes amounting to ₹650/- were recovered. Similarly, from the personal search of accused Gurcharan Singh, one mobile phone and currency notes amounting to ₹350/- were recovered. These articles were also taken into police possession vide separate memos. Thereafter, a ruqa was sent to the Police Station.

3. On receipt thereof, the FIR in the present case was recorded at Police Station Raman by ASI Sadhu Singh. The usual investigation was completed at the spot by SI Balwant Singh. On return to the police station on the same day, SI Balwant Singh, who was also SHO of the said Police Station, preserved the case property in his custody. He subsequently produced the case property before the learned Magistrate and moved an application for preparation of the inventory report as well as another



application under Section 52-A of the Act. The orders of the learned Magistrate were obtained thereupon, and the entire case property was deposited in accordance with the applicable rules and the orders passed by the learned Magistrate.

4. On receipt of the report of the Chemical Examiner, Patiala, wherein the contents of the samples were opined to be opium, and upon completion of the investigation, the challan was presented against the accused by the SHO of Police Station Raman. On receipt of the challan and after completion of necessary formalities, charge was framed against both the accused for the offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the “Act”), to which they pleaded not guilty and claimed trial, whereupon the prosecution was directed to lead its evidence.

5. In order to prove its case, the prosecution examined PW1 HC Gian Chand, a formal witness, who proved on record his affidavit Ex.PA. PW2 SI Balwant Singh, the Investigating Officer, was thereafter examined. PW3 Constable Gurjant Singh, a formal witness, proved on record DDR No.6. PW4 DSP Jaspal, the Gazetted Officer, was also examined by the prosecution. PW5 Sh. Swaran Singh, Junior Assistant from the office of the District Transport Officer, Ferozepur, proved on record the registration certificate (RC) of the Maruti car, which was registered in the name of Manjeet Singh alias Bhola. Thereafter, the prosecution closed its evidence. Thereafter, statements of both the accused were recorded under Section 313 Cr.P.C. Both the accused pleaded not guilty and claimed false implication. In their defence, the accused examined DW1 Jaspal Singh, DW2 HC Dhani



Ram and DW3 HC Kulwant Singh, thereafter, closed their defence evidence. Learned trial Court thereafter heard the arguments advanced by learned APP for the State as well as learned defence counsel and, upon appreciation of the evidence and material on record, convicted both the accused for the offences as detailed in paragraph No. 1 of the judgment.

6. Feeling aggrieved by the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred by both the appellants, as detailed above.

7. At the very outset, learned *Amicus Curiae* for the appellants argued that the learned trial Court has wrongly convicted the appellants while ignoring the serious infirmities and inconsistencies appearing in the case of the prosecution. It is argued that, although an independent witness, namely Major Singh, was allegedly joined at the time of search and recovery and the seal was stated to have been handed over to him, yet the said witness was not examined by the prosecution and was rather given up as having been won over. According to learned *Amicus Curiae*, non-examination of such a material independent witness assumes significance in the facts of the present case and creates a serious doubt regarding the manner of recovery itself. It is further argued that no effort whatsoever was made by the investigating agency to ascertain or trace the source of the alleged contraband, which assumes significance particularly when the prosecution case is based upon recovery of a substantial quantity of contraband. Learned *Amicus Curiae* further submitted that the cogent defence evidence led by the appellants has been brushed aside by the learned trial Court without assigning convincing reasons. According to learned *Amicus Curiae*, the statements of DW1, DW2



and DW3 lend support to the defence version that a dispute had arisen between the occupants of the car and the police party on account of the car being fitted with a gas cylinder and that, thereafter, the appellants were taken away by the police and falsely implicated in the present case.

8. Learned *Amicus Curiae* further argued that the mandatory safeguards and procedural requirements under the NDPS Act have not been complied with in their true letter and spirit and that the link evidence produced by the prosecution is not free from doubt. It was specifically contended that the case property was not deposited with the MHC of the police station immediately after the alleged recovery. Rather, PW2, who was himself the Investigating Officer as well as the SHO, admittedly retained the case property with himself before it was sent to the Chemical Examiner. According to learned *Amicus Curiae*, such custody of the case property by the very officer who had conducted the investigation and effected the recovery creates a serious break in the chain of custody and casts doubt upon the sanctity and integrity of the case property. It was further argued that the Chemical Examiner's report does not disclose the precise scientific tests conducted for arriving at the conclusion regarding the nature of the substance, thereby leaving the link evidence incomplete.

9. Learned *Amicus Curiae* has also pointed out material contradictions and discrepancies between the statements of PW2 SI Balwant Singh and PW4 DSP Jaspal with regard to the circumstances prevailing at the spot and the manner in which the proceedings were conducted. PW2 stated in his cross-examination that several persons had passed through the spot during the proceedings, though none of them was joined in the police



party. On the other hand, PW4 stated that, till he remained at the spot, no person had passed by their side. Thus, according to learned *Amicus Curiae*, there is a direct inconsistency between the two material prosecution witnesses on the availability of independent persons at the place of recovery, which assumes significance when the independent witness allegedly joined by the police was subsequently not examined.

10. It is further argued that the two witnesses have also given inconsistent versions regarding the writing work conducted at the spot. PW2 stated that the writing work was done while placing the papers on the bonnet of the vehicle and further stated that some of the writing work was done by him and the remaining by HC Kulwant Singh, while he was unable to specify, without seeing the documents, which particular writing had been done by him and which by HC Kulwant Singh. In contrast, PW4 stated that the writing work was done by the SHO, namely PW2 SI Balwant Singh, on the bonnet of the car. Learned *Amicus Curiae* contended that this discrepancy regarding who actually prepared the documents and conducted the writing work at the spot is material, particularly when several documents forming part of the alleged recovery proceedings were prepared there.

11. Learned *Amicus Curiae* has further pointed out inconsistency regarding the agricultural crop standing in the fields surrounding the place of recovery. PW2 expressed his inability to recall in which area or in which direction the paddy crop was standing, whereas PW4 specifically stated that paddy crop was standing in the fields near the place of recovery. According to learned *Amicus Curiae*, the differing recollection of the two principal witnesses regarding the physical surroundings of the alleged place of



recovery further affects the reliability of their version concerning the spot proceedings.

12. It is next argued that the prosecution has failed to satisfactorily establish the ownership or possession of the vehicle from which the alleged contraband was recovered. Learned *Amicus Curiae* submitted that, apart from an affidavit relied upon by the prosecution to suggest that accused Gurcharan Singh had purchased the Maruti car, there is no registered sale document, transfer document or other reliable documentary evidence on record establishing that the vehicle had in fact been purchased by or belonged to the said accused. According to learned *Amicus Curiae*, mere reliance upon such an affidavit, without cogent documentary evidence of ownership or transfer, cannot by itself establish the appellants' connection with the vehicle.

13. Learned *Amicus Curiae*, therefore, submitted that the aforesaid discrepancies, omissions, defective link evidence, failure to establish the ownership and conscious possession of the vehicle and contraband, coupled with the non-examination of the independent witness and the defence evidence supporting the plea of false implication, render the prosecution case doubtful. It was accordingly argued that the conviction of the appellants rests upon conjectures and surmises rather than legally reliable and cogent evidence and that they are entitled to the benefit of doubt.

14. Learned State counsel, on the other hand, has opposed the appeal and supported the judgment of conviction and order of sentence passed by the learned trial Court. It is argued that the prosecution has duly established the recovery of the contraband from the vehicle in which both



the appellants were travelling and that the evidence of the official witnesses is consistent and trustworthy. Learned State counsel submitted that merely because PW2 SI Balwant Singh, who was also the SHO, retained the case property with himself after returning to the police station, the same would not by itself lead to an inference that the case property had been tampered with. It is submitted that the relevant parcels were ultimately received with the seals intact and the report itself records that the parcels had been properly sealed. There is nothing on record to suggest any tampering with the case property or the seals. It is further pointed out that not even a single suggestion was put to PW1 or PW3, the formal witnesses, that the seals on the parcels had been tampered with at any stage. Even PW2 was not confronted with any suggestion that he had himself tampered with the case property or that the seals were not intact. Thus, in the absence of any such suggestion or evidence, the mere fact that the SHO retained the case property with himself cannot be treated as sufficient to discard the prosecution case.

15. With regard to the ownership of the vehicle, learned State counsel submitted that the prosecution has placed on record Ex.P3, the relevant DDR entry, along with the affidavit Ex.P2 showing purchase of the Maruti car by accused Gurcharan Singh. It is argued that, in any event, the question of formal ownership is not determinative when the prosecution has established that the vehicle was in the possession and control of the accused at the relevant time. Both the accused were travelling in the said car from which the polythene containing the contraband was recovered. Learned State counsel submitted that the polythene containing the contraband was not



concealed at any secret place but was lying in between the two accused, thereby clearly establishing their knowledge of and conscious possession over the contraband.

16. Learned State counsel further argued that the defence evidence does not inspire confidence. DW1 has failed to establish any previous animosity or dispute between the accused and the police party. There was no material brought on record to show that the police officials had any reason to falsely implicate the appellants. The version sought to be projected by DW1, namely, that one accused was travelling in the truck while the other was present in the car and that, merely on account of a dispute regarding the gas cylinder, the police took away the occupants of the car as well as the accused travelling in the truck and subsequently falsely implicated them, is wholly improbable and does not inspire confidence. Learned State counsel submitted that DW1 himself had only a slight acquaintance with the accused and his testimony does not establish the alleged motive for false implication.

17. As regards the discrepancies pointed out by learned State counsel in the statements of PW2 and PW4, it is submitted that the same are minor and inconsequential in nature. Such variations with regard to peripheral details of the spot proceedings, the presence of persons passing through the place of recovery, the manner in which writing work was conducted and the nature of the crop standing in the adjoining fields are natural and bound to occur with the passage of time. According to learned State counsel, such minor discrepancies, rather than affecting the substratum of the prosecution case, lend assurance that the witnesses were not tutored



and were deposing from their individual recollection. The prosecution case cannot, therefore, be discarded merely on account of such trivial variations.

18. It is further submitted that all the mandatory provisions and safeguards prescribed under the NDPS Act have been duly complied with and there is no violation of any provision which could render the recovery illegal or otherwise doubtful. Learned State counsel also argued that non-examination of an independent witness is not, by itself, fatal to the prosecution case. The testimony of police officials cannot be discarded merely because they are official witnesses, particularly when their evidence is otherwise reliable and is corroborated by the documentary and other evidence on record.

19. Learned State counsel further submitted that, in the present case, Major Singh cannot be treated as a wholly independent and natural witness in the manner suggested by the appellants. It is argued that DW2 has brought on record various FIRs in an attempt to show that Major Singh had been cited as a witness in several cases and was thus a stock witness of the police. His non-examination, therefore, cannot be used to discard the otherwise reliable testimony of the police officials who actually conducted the recovery proceedings. According to learned State counsel, the evidence of PW2 and PW4 is sufficient to establish the recovery and their testimony does not become unreliable merely because Major Singh was not examined.

20. Learned State counsel has also contended that the fact that the CFSL form was not prepared at the spot is not, in itself, sufficient to vitiate the prosecution case. The material consideration is whether the samples sent for chemical examination remained duly sealed and whether the prosecution



has satisfactorily established the identity and safe custody of the case property and samples. Since the parcels were received with the seals intact and there is no evidence or even a suggestion of tampering with the seals, the mere non-preparation of the CFSL form at the spot would not, according to the State, constitute a fatal defect. It is, therefore, argued by learned State counsel that the prosecution has established the recovery of the contraband from the conscious possession of the appellants beyond reasonable doubt; the alleged discrepancies are minor; the defence version is inherently improbable; the non-examination of Major Singh is not fatal; and there is no material on record indicating tampering with the case property or breach of the chain of custody. Learned State counsel accordingly prayed for dismissal of the appeals and affirmation of the judgment of conviction and order of sentence passed by the learned trial Court.

21. I have heard learned counsel for the parties and have carefully gone through the record of the case, including the evidence led by the prosecution as well as the defence.

22. The submissions advanced by learned *Amicus Curiae* for the appellants, in my considered opinion, merit acceptance, particularly when the prosecution evidence is examined cumulatively. The first and foremost infirmity which assumes significance is the non-examination of Major Singh, who was admittedly associated by the prosecution as an independent witness at the time of the alleged recovery. It is the specific case of the prosecution that after the alleged seizure and sealing of the case property, the seal was handed over to Major Singh. Thus, his role was not merely that of a formal witness, rather, he was the independent witness who could have



corroborated the factum of recovery as well as the entrustment and safe custody of the seal. However, Major Singh has not been examined by the prosecution and has been given up as having been won over. In these circumstances, his non-examination assumes considerable significance. Reliance can be placed upon the judgment of a Co-ordinate Bench of this Court in ***“Sukhdev Singh v. State of Punjab”, 2011 (1) RCR (Criminal) 486***, wherein, in similar circumstances, the independent witness, though stated to have been won over, was not examined by the prosecution. The Co-ordinate Bench held that even if an independent witness had been won over, it was incumbent upon the prosecution to produce him in Court so that he could be confronted with his earlier statement recorded by the police and the truth could be elicited with regard to the prosecution version. The aforesaid principle assumes greater significance in the present case as Major Singh was not only an independent witness associated with the alleged recovery but was also the person to whom the seal was allegedly entrusted. The prosecution, therefore, ought to have examined him so as to enable the Court to test the truthfulness of the prosecution version and also to establish that the seal, after its alleged entrustment, remained beyond the reach of the Investigating Officer. The same view finds support from another judgment of a Co-ordinate Bench of this Court in ***“Hukam Chand v. State of Punjab”, 2025 LawFinder (P&H) 8005***, wherein, in the context of an independent witness to whom the seal had been handed over but who was not examined, the Court noticed that the prosecution had failed to establish that the original seal remained with the independent witness and observed that the prosecution was required to prove the safe custody of the seal with



such witness in order to rule out any opportunity for tampering with the sample and the bulk. The facts of the present case bear a striking similarity to the aforesaid cases. Consequently, the withholding of Major Singh, despite his having been associated as an independent witness and despite the alleged entrustment of the seal to him, creates a material dent in the prosecution case.

23. The next infirmity pointed out by learned *Amicus Curiae* for the appellants relates to the custody of the case property after the alleged recovery. PW2, who himself was the Investigating Officer as well as the SHO, has admitted that the case property was not deposited with the MHC of the police station and that it remained with him. The prosecution case further shows that the case property/sample was forwarded for chemical examination only after an intervening period of about two days. Thus, the prosecution was required to satisfactorily account for the custody of the seized contraband during this intervening period. The significance of this circumstance cannot be appreciated in isolation from the fact that the seal was allegedly handed over to Major Singh, but Major Singh has not been examined. In other words, the person who, according to the prosecution, was entrusted with the seal has not been brought into the witness box, whereas the case property itself remained with the Investigating Officer for about two days and was not deposited with the MHC. The prosecution has, therefore, failed to place before the Court satisfactory evidence demonstrating an unbroken and unimpeachable chain of custody during this crucial period. It is not sufficient merely to show that the sample ultimately reached the Chemical Examiner with the seals intact, the prosecution must also



satisfactorily establish the safe custody of the case property from the time of seizure till its dispatch. The possibility of tampering, particularly in a case involving stringent penal consequences under the NDPS Act, has to be ruled out by cogent and reliable evidence. In the present case, the absence of the Malkhana deposit, coupled with the retention of the case property by the IO and the non-examination of the very witness to whom the seal was allegedly entrusted, gives rise to a reasonable doubt regarding the integrity of the link evidence. The observations made by the Co-ordinate Bench in ***Hukam Chand (supra)***, particularly with regard to the necessity of proving safe custody of the case property and the seal and the significance of the intervening period during which the whereabouts of the case property are not satisfactorily accounted for, lend further support to this conclusion.

24. The third circumstance which cannot be completely brushed aside relates to the material discrepancies appearing in the statements of PW2 and PW4. PW2 stated that several persons had passed through the place where the police party was present, though none was joined in the proceedings, whereas the version of PW4 regarding the presence or passage of persons at the relevant time is at variance with that of PW2. There are also discrepancies regarding the manner and place in which the writing work was carried out and as to who actually prepared the documents at the spot. PW2 stated that the writing work was carried out on the bonnet of the vehicle and that part of the writing was done by him and the remaining by HC Kulwant Singh, while he could not specify, without seeing the documents, which particular writing had been done by him and which by the said Head Constable. There is also variance in the evidence regarding the



crop standing at the place of recovery. These discrepancies, if considered individually and in isolation, may perhaps be characterised as minor inconsistencies arising from lapse of time. However, the Court is required to examine the prosecution case in its entirety. When these discrepancies are considered cumulatively with the non-examination of Major Singh, the alleged entrustment of the seal to a witness whose testimony has been withheld, the repeated association of Major Singh as an independent witness in other police cases as brought out through the testimony of DW2, and the failure of the prosecution to establish the safe custody of the case property during the intervening period of about two days, they cannot be dismissed as wholly inconsequential. The cumulative effect of these circumstances creates a reasonable doubt about the manner in which the alleged recovery was effected and the subsequent preservation of the seized contraband.

25. It is true that the testimony of police officials can form the basis of conviction and that the non-examination of an independent witness is not, as an abstract proposition of law, invariably fatal to the prosecution. Likewise, the fact that the Investigating Officer himself effected the recovery and conducted the investigation would not, by itself, render the entire prosecution case illegal. However, the present case is not being decided on any such isolated circumstance. It is the cumulative effect of the infirmities which is decisive. The prosecution associated an independent witness, allegedly entrusted the seal to him, but did not examine him, the said witness has been shown through the defence evidence to have repeatedly figured as an independent witness in other police cases, the case property was retained by the IO/SHO and was not deposited with the MHC,



remaining in his custody for about two days before its further transmission, and the statements of the material prosecution witnesses contain discrepancies regarding the presence of persons at the spot, preparation of the documents and the physical circumstances of the place of recovery. In a prosecution under the NDPS Act, where the consequences of conviction are stringent, these circumstances cannot be ignored. The prosecution was required to establish the foundational facts and the link evidence with a high degree of confidence. In the present case, the evidence falls short of that standard and gives rise to a reasonable possibility which is sufficient to extend the benefit of doubt to the appellants.

26. Consequently, this Court is of the considered opinion that the prosecution has failed to establish the charge against the appellants beyond reasonable doubt. The appellants are, therefore, entitled to the benefit of doubt.

27. Accordingly, the present appeal is allowed. The judgment of conviction and order of sentence passed by the learned trial Court are set aside. Both the appellants, namely, Jaspal Singh and Gurcharan Singh, are acquitted of the charge under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985, by extending to them the benefit of doubt. Their bail bonds, if any, stand discharged. The case property, if any, shall be dealt with in accordance with law. The amount of fine, if deposited, shall be dealt with in accordance with law. The trial Court record be sent back forthwith along with a copy of this judgment.

28. Before parting with the judgment, this Court places on record its appreciation for the able assistance rendered by the learned *Amicus*



Curiae for the appellants. The learned *Amicus Curiae* has taken considerable pains to assist the Court by placing the relevant facts, evidence and legal submissions in their proper perspective, which has facilitated the Court in arriving at the aforesaid conclusion.

29. All pending applications, if any, also stand disposed of.

11.09.2026
Anu

(MANDEEP PANNU)
JUDGE

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