Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 681 OF 2011

Kulwinder Singh & Anr. ... Appellants

Versus

State of Punjab ... Respondent

J U D G M E N T

Dipak Misra, J.

In this appeal, two appellants, namely, Kulwinder Singh and Amrik Singh faced trial along with three others for the offence punishable under Section 15 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act") before the Special Court, Sangrur and were found guilty for the said offence and sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1 lakh each and, in default of payment of fine, to suffer rigorous imprisonment for a further period of one year. The conviction and sentence were called in question

before the High Court in Criminal Appeal No. 384-SB of 1998 and the High Court after re-appreciating the evidence, gave the stamp of approval to the same.

2. The prosecution case, as unfurled, is that on 17.4.1988, Jarnail Singh, ASI, along with other police officials was patrolling on the canal bridge in the area of village Raidhriana. In the early part of the morning, a truck bearing no. DIL-781 came from the side of village Raidhriana and it was proceeding towards the canal bridge. When the truck reached near the police party, Jarnail Singh, gave a signal with a torch light and asked the driver to stop. After the vehicle stopped, it was circled by the police officials. The driver of the truck, on enquiry, disclosed his name as Balwinder Singh and Devender Singh and Bagga Singh were sitting by his side on the front seat. Jagminder Singh and four others were sitting on the back side of the truck and on a query being made, all except Jagminder Singh jumped from the truck and took to their heels. Chase by the police party was unsuccessful. The persons who were successful in running away are Satta @ Satnam Singh, Amrik Singh, Kulwinder Singh @ Kala and

Jagdev Singh @ Jagga. The Investigating Officer apprehended Jagminder Singh, Balwinder Singh, Devinder Singh and Bagga Singh; and in their presence, the vehicle was searched. On a search being made, the police found 110 bags of poppy husk and each bag contained 38 kgs. Samples were collected from each bag, duly sealed and recovery memos were prepared and eventually they were sent for chemical examination. The present accused-appellants and Satta @ Satnam Singh were arrested on 11.5.1988 by ASI, Gurdas Singh, PW-1. In course of investigation, the investigating agency recorded statements of certain witnesses, obtained FSL report and ultimately placed the chargesheet before the concerned Magistrate, who in turn committed the matter to the Special Court under the NDPS Act. The accused persons pleaded not guilty and claimed to be tried.

3. The prosecution in order to substantiate the charge, examined seven witnesses. The main witnesses are ASI, Gurdas Singh, PW-1, Jagjivan Singh, PW-2, Ajit Singh, PW-3 and Om Prakash, PW-7. ASI, Jarnail Singh, could not be examined as he had expired before the commencement of

the evidence of the prosecution. The accused-appellants took the plea that they were brought from the village and falsely implicated in the case and there was no recovery effected from them. The defence in support of its stand examined nine witnesses, DW-1 to DW-9.

4. The learned trial Judge appreciating the evidence on record found the appellants and two others guilty of the offence and sentenced them, as has been stated hereinbefore. Being dissatisfied with the judgment of conviction and order of sentence, the appellants along with two others preferred Criminal Appeal No. 384 of 1998 and Bagga Singh and Balwinder Singh preferred separate appeals. It was contended before the High Court that the identity of the appellants were not established during the trial inasmuch as no identification parade was conducted by the investigating officer; that the prosecution had not proved that the accused-appellants were in conscious possession of the poppy husk; that Labh Singh and Harvinder Singh though had joined the investigating officer at the time of alleged search and seizure, they were not examined by the prosecution; and that the prosecution had

miserably failed to prove the involvement of the appellants in the crime in question. The High Court dealt with each of the contentions and found no merit in any of them and resultantly dismissed the appeal.

5. We have heard Mr. J.P. Dhanda, learned counsel for the appellants and Mr. Jayant K. Sud, learned AAG for the State.

6. Learned counsel for the appellants, apart from raising the similar contentions which had been raised before the High Court, has also urged that there has been non-compliance of Section 50 of the NDPS Act, which vitiates the conviction. He has also emphasised on the issue of conscious possession by the appellants and has seriously criticized non-conducting of the test identification parade. Learned counsel for the State, per contra, has contended that in the instant case there was no need for holding a test identification parade inasmuch as PW-2 and PW-3 have identified the accused persons in court and they had occasion to see the appellants as they had stopped the truck and had time to see them and their evidence has not

been dented despite roving cross-examination. Learned counsel for the State would also contend that the running away of the accused persons from the spot and their abscondance thereafter prove the factum of their special knowledge about the contents in the bags loaded in the truck and that establishes the conscious state of their mind.

7. Resisting the submission about the non-examination of independent witnesses, namely, Labh Singh and Harvinder Singh, it is contended by the learned counsel for the State that as they were won over by the defence, the prosecution though it appropriate not to examine them as their witnesses and the same has been proven to be a fact, for they have been examined as defence witnesses. As regards non-compliance of Section 50 of the NDPS Act, it is submitted by the learned counsel for the respondent-State as the recovery was from a truck there was no need for compliance of Section 50 of the NDPS Act.

8. First, we shall deal with the facet of test identification parade. There is no dispute that the test identification parade has not been held in this case. The two witnesses,

namely, PW-2 and PW-3 have identified the accused-appellants in court. As per their evidence they had seen the accused-appellants in torch light and they had also seen them running away. It has also come in the evidence that they chased them but they could not be apprehended. Learned trial Judge as well as the High Court has taken note of the fact that it was 4:00 a.m. in the month of April and, therefore, it was not all that dark and with the help of torch light, they could have identified the accused persons. The suggestion given to these witnesses is absolutely vague. Nothing really has been elicited in the cross-examination to discard the testimony of these witnesses.

9. In ***Matru v. State of U.P.***[1], it has been held that the identification test does not constitute substantive evidence and it is primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation of an offence is proceeding on the right lines.

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1 (1971) 2 SCC 75

10. In ***Santokh Singh v. Izhar Hussain***[2], it has been observed that the identification can only be used as corroborative of the statement in Court.

11. In ***Malkhan Singh & Others v. State of M.P.***[3], it has been held thus:-

> "..... The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be . attached to such identification should be a matter for the courts of fact."

12. In this context, a reference to passage from ***Visveswaran v. State***[4], would be apt. It is as follows:-

> "The identification of the accused either in test identification parade or in Court is not a sine qua non in every case if from the circumstances the guilt is otherwise established. Many a time, crimes are committed under the cover of darkness when none is able to identify the accused. The commission of a crime can be proved also by circumstantial evidence."

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[2] (1973) 2 SCC 406
[3] (2003) 5 SCC 746
[4] (2003) 6 SCC 73

13. In the case at hand, as the witnesses have identified the accused-appellants in the Court and except giving a bald suggestion that they have not seen the accused persons, there is nothing in the cross-examination we are disposed to accept the identification in Court. Hence, the submission canvassed by the learned counsel for the appellants on this score pales into insignificance.

14. The next ground of assail pertains to factum of conscious possession. The submission of the learned counsel for the appellants is that they were only moving in the truck and had no knowledge what the bags contained. As the evidence on record would show, two of the accused persons were sitting by the side of the driver and the rest of the accused persons were sitting on the body of the truck. 110 bags of poppy husk weighing 4180 kgs. were in the truck. At the instance of the police when the truck was stopped, had the accused-appellants no knowledge about the contents of the bags, they would not have run away from the spot. That apart, they absconded for few days from their village. They have not taken the plea that they

were taking any lift in the truck and their presence in the truck has been proven by the prosecution. It is not a small bag lying in the corner of the truck that the accused-appellants can advance the plea that they were not aware of it. In the instant case, there were 110 bags of poppy husk being carried in the truck. Their presence which has been proven, establishes their control over the bags. The circumstances clearly establish that they were aware of the poppy husk inside the bags and in such a situation, it is difficult to accept that they were not in conscious possession of the said articles.

15. In this context reference to the decision in ***Madan Lal v. State of H.P.***[5] would be fruitful wherein it has been held thus:-

> "22. The expression "possession" is a polymorphous term which 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*[6] to work out a completely logical and precise definition of "possession" uniformally applicable to all situations in the context of all statutes.

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[5] (2003) 7 SCC 465
[6] (1979) 4 SCC 274

> 23. The word "conscious" means awareness about a particular fact. It is a state of mind which is deliberate or intended.
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> 24. As noted in *Gunwantlal* v. *State of M.P.*[7] 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.
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> 25. The word "possession" means the legal right to possession (see *Heath* v. *Drown*[8]). 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*[9].)"

16. In ***Dharampal Singh v. State of Punjab***[10], it has been ruled that the expression "possession" is not capable of precise and complete logical definition of universal application in the context of all the statutes. Recently, in ***Mohan Lal v. State of Rajasthan***[11], after referring to certain authorities, this Court has held as follows:-

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[7] (1972) 2 SCC 194
[8] (1972) 2 All ER 561
[9] (1976) 1 All ER 844
[10] (2010) 9 SCC 608
[11] (2015) 5 SCALE 330

> "From the aforesaid exposition of law it is quite vivid that the term "possession" for the purpose of Section 18 of the NDPS Act could mean physical possession with animus, custody or dominion over the prohibited substance with animus or even exercise of dominion and control as a result of concealment. The animus and the mental intent which is the primary and significant element to show and establish possession. Further, personal knowledge as to the existence of the "chattel" i.e. the illegal substance at a particular location or site, at a relevant time and the intention based upon the knowledge, would constitute the unique relationship and manifest possession. In such a situation, presence and existence of possession could be justified, for the intention is to exercise right over the substance or the chattel and to act as the owner to the exclusion of others. In the case at hand, the appellant, we hold, had the requisite degree of control when, even if the said narcotic substance was not within his physical control at that moment. To give an example, a person can conceal prohibited narcotic substance in a property and move out thereafter. The said person because of necessary animus would be in possession of the said substance even if he is not, at the moment, in physical control. The situation cannot be viewed differently when a person conceals and hides the prohibited narcotic substance in a public space. In the second category of cases, the person would be in possession because he has the necessary animus and the intention to retain control and dominion."

17. In view of the aforesaid enunciation of law, once possession is found, the accused is presumed to be in

conscious possession as has been held in ***Ram Singh v. Central Bureau of Narcotics***[12]. If the accused takes a stand that he was not in conscious possession, he has to establish the same, as has been held in ***Dharampal Singh*** (supra). As the materials brought on record would show, the accused-appellants were sitting in the truck; their presence in the truck has been clearly established; and they had run away from the spot and absconded for some days from the village. It is proven that there were 110 bags of poppy husk in the truck and the accused-appellants were in control of the articles in the truck. Therefore, there can be no iota of doubt that they were in conscious possession of the same. In view of the aforesaid analysis, we do not find any force in the submission of the learned counsel for the appellants.

18. The next contention that has been raised by the learned counsel for the appellants relates to non-compliance of Section 50 of the NDPS Act. It is undisputed that the bags containing poppy husk were seized from the truck. Thus, it is not a case of personal search of a person. In

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[12] (2011) 11 SCC 347

Megh Singh v. State of Punjab[13], it has been held that Section 50 only applies in case of personal search of a person, but it is not extended to a search of a vehicle or a container or a bag or premises.

19. In ***State of H.P. v. Pawan Kumar***[14], it has been held that:-

> "10. We are not concerned here with the wide definition of the word "person", which in the legal world includes corporations, associations or body of individuals as factually in these type of cases search of their premises can be done and not of their person. Having regard to the scheme of the Act and the context in which it has been used in the section it naturally means a human being or a living individual unit and not an artificial person. The word has to be understood in a broad common-sense manner and, therefore, not a naked or nude body of a human being but the manner in which a normal human being will move about in a civilised society. Therefore, the most appropriate meaning of the word "person" appears to be — "the body of a human being as presented to public view usually with its appropriate coverings and clothing". In a civilised society appropriate coverings and clothings are considered absolutely essential and no sane human being comes in the gaze of others without appropriate coverings and clothings. The appropriate coverings will include footwear also as normally it is considered an essential article to be worn while moving outside one's home. Such appropriate coverings or clothings or footwear, after being worn, move along with the human

[13] (2003) 8 SCC 666
[14] (2005) 4 SCC 350

body without any appreciable or extra effort. Once worn, they would not normally get detached from the body of the human being unless some specific effort in that direction is made. For interpreting the provision, rare cases of some religious monks and sages, who, according to the tenets of their religious belief do not cover their body with clothings, are not to be taken notice of. Therefore, the word "person" would mean a human being with appropriate coverings and clothings and also footwear.

11. A bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even remotely be treated to be part of the body of a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a *thaila*, a *jhola*, a *gathri*, a holdall, a carton, etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word "person" occurring in Section 50 of the Act."

Similar view has been expressed in ***Jarnail Singh v. State of Punjab***[15] and ***Ram Swaroop v. State (Government of NCT of Delhi)***[16].

20. In view of the aforesaid, the submission that non-compliance of Section 50 vitiates the conviction, leaves us unimpressed.

21. The last plank of submission of the learned counsel for the appellants is that no independent witness has been examined to substantiate the allegation of the prosecution. It is worth to note that Labh Singh and Harvinder Singh have not been examined by the prosecution. The explanation has been offered that the investigating agency was of the view that they had been won over. The said explanation has been totally substantiated inasmuch as they have been examined as defence witnesses. In such a situation, no adverse inference can be drawn for non-examination of the said witnesses. That apart, the case of the prosecution cannot be rejected solely on the ground that independent witnesses have not been examined when, on the perusal of the evidence on record the Court finds

[15] (2011) 3 SCC 521
[16] (2014) 14 SCC 235

that the case put forth by the prosecution is trustworthy. When the evidence of the official witnesses are trustworthy and credible, there is no reason not to rest the conviction on the basis of their evidence. In this regard, it is profitable to reproduce a passage from ***State (Govt. of NCT of Delhi) v. Sunil***[17] which reads as follows:-

> "We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust. We are aware that such a notion was lavishly entertained during the British period and policemen also knew about it. Its hangover persisted during post-independent years but it is time now to start placing at least initial trust on the actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact

[17] (2001) 1 SCC 652

> that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions."

22. In the case at hand, the evidence is unimpeachable and beyond reproach and the witnesses cited by the prosecution can be believed and their evidence has been correctly relied upon by the trial court and the High Court to record a conviction. It is well settled in law that what is necessary for proving the prosecution case is not the quantity but the quality of the evidence.

23. In view of the aforesaid premised reasons, we do not perceive any merit in this appeal and it is accordingly dismissed.

.....J.
[Dipak Misra]

.....J.
[N.V. Ramana]

New Delhi
May 05, 2015

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 681/2011

KULWINDER SINGH & ANR. **Appellant(s)**

VERSUS

STATE OF PUNJAB **Respondent(s)**

Date : 05/05/2015 This appeal was called on for judgment today.

For Appellant(s) **Dr. J. P. Dhanda, Adv.**
Ms. Raj Rani Dhanda, Adv.
Mr. Vineet Dhanda, Adv.

For Respondent(s) **Mr. Jayant K. Sud, AAG**
Mr. ishal Dabas, Adv.
Mr. B. Singh, Adv.
Mr. Ajay P. Tushir, Adv.
Ms. Kaveeta Wadia, Adv.

Hon'ble Mr. Justice Dipak Misra pronoucned the judgment of the Bench consisting His Lordship and Hon'ble Mr. Justice N.V. Ramana.

The appeal is dismissed in terms of the signed reportable judgment.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master

(Signed reportable judgment is placed on the file)