

**IN THE HIGH COURT OF PUNJAB & HARYANA**  
**CHANDIGARH**

**Criminal Appeal No.319-SB OF 1996**

**Date of Decision: JULY 31, 2007**

BAKSHI RAM

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

. . .

**CORAM:** HON'BLE MR. JUSTICE A.N.JINDAL

**Present:** Mr.Vivek Goyal, Advocate for the appellant.

Mr. Anter Singh Brar, DAG, Punjab.

**A.N.JINDAL, J**

This appeal is directed against the judgment of conviction and sentence dated 07.03.1996 passed by Addl. Sessions Judge, Jalandhar whereby the accused appellant (hereinafter referred to as the 'accused') was convicted under Section 15 of the NDPS Act for keeping in his possession 19 KG and 750 Gms of poppy husk and was sentenced to undergo RI for 10 years and to pay a fine of Rs. 1,00,000/-

Succinctly speaking the allegations as unfolded by the prosecution which culminated into the trial and conviction of the accused are that on 26.04.1994 ASI Surinder Lal(PW1) along with other police officials was present at the canal minor bridge in the area of village Mukandpur where the accused was seen coming from the side of abadi of Bazigars via Kacha passage. He was

apprehended, the search was affected upon him according to law and on search, he was found in possession of poppy husk contained in the gunny bag carried by him on his head. On weighment it came to be 19KG and 750 Gms, out of which a sample of 250 Gms was taken out. Thereafter, the sample as well as remaining poppy husk were converted into parcels and were taken into possession by the Investigating Officer vide recovery memo Ex. PB; site plan was prepared; ruqa Ex. PC was sent on the basis of which FIR was recorded by MHC, Jaswinder Singh. The chemical examiner who analysed the sample, vide his report Ex.PE declared the contents of the sample to be that of poppy husk(a contraband). On the completion of the investigation, charge report was submitted. Consequently, he was charged under Section 15 of the NDPS Act to which he pleaded not guilty and claimed trial.

Prosecution examined Surinder Pal (PW1), Jiwan Dass Constable(PW2), Ranbir Singh, Inspector(PW3). Thereafter, incriminating circumstances appearing in prosecution evidence were put to the accused in his statement under Section 313 Cr. P.C which were denied as incorrect. He also examined Joginder Ram (DW1) in defence. Ultimately the trial ended in conviction. Hence this appeal.

I have heard Mr. Vivek Goel, Advocate counsel for the appellant. Mr. Anter Singh Brar, DAG, Punjab. The counsel for the appellant has stated that his case is basically on the grounds that no independent witness has been examined. One person Joginder Ram was asked to join but he

refused to join, further, he appeared as a defence witness and refuted the prosecution allegations. There is a delay of 23 days in sending the sample. Though the prosecution tendered into evidence the affidavits of Constable Kuldeep Rai Ex.PG and HC Jaswinder Singh Ex. PH but neither these witnesses were tendered for cross examination nor the contents of the affidavits were put to the accused during statement under Section 313 of the Cr. P.C, therefore, the link evidence will be taken as missing in the case, the benefit of which should go to the accused.

Having given my thoughtful consideration to the aforesaid arguments I find some substance in the same. The perusal of affidavit Ex. PG of HC Jaswinder Singh and PH of HC Kuldeep Rai indicates that they were material witnesses. Affidavit of Constable Kuldeep Rai tendered in evidence as Ex.PG reveals that on 18.05.1994 Jaswinder Singh HC had handed over the sample of the poppy husk for depositing the same in the office of Assistant Chemical Examiner and he deposited the same and similarly affidavit of Jaswinder Singh HC No.1966 reveals that on 26.04.1994 Sh. Surinder Singh,ASI deposited with him the bag containing poppy husk as well as the sample parcel. Thereafter, he handed over the said sample to Sh. Kuldeep Rai on 18.05.1994. Though the affidavits of both the witnesses were not tendered for cross examination by the accused, therefore, the accused certainly was deprived of the opportunity to cross examine these witnesses consequently,

the valuable right of the accused stood prejudiced and not only this, the contents of their affidavits were not put to the accused in his statement under Section 313 Cr.P.C. As such the link evidence is certainly missing in this case. I find support to my this view from the judgment delivered in case BHOOLAN VS.STATE OF PUNJAB, 1995(3) R.C.R (CRIMINAL) 505 wherein it was observed as under:-

“The above contention is forceful. The possibility of tampering with the sample is not ruled out by the prosecution. The affidavits produced in evidence are not in accordance with law. The deponents were not kept present in the Court, thereby no opportunity was given to the accused to cross-examine these deponents and lastly when accused was examined under Section 313 Code of Criminal Procedure, this link evidence was not put to the accused. Only one question was put that the sample was deposited with MHC Manjit Singh which he denied. Thus it is obvious that not only serious prejudice has been caused to the accused but this link evidence cannot be considered on account of facts enumerated above and resultantly the report of the Chemical Analyst Ex. PD cannot be read in evidence. Thus, there is no evidence on record to prove that on 17.07.1986 accused was in possession of the aforesaid contraband articles.”

The report Ex.PE given by the chemical examiner appears to have been prepared in mechanical manner. A rubber stamp containing the result was affixed. Furthermore, this report does not disclose as to on which date the sample was analysed. It would also be pertinent to mention here that Kuldip Rai took the sample on 18.05.1994. After getting the docket prepared on the same day. From the affidavit, it transpires that he was handed over the sample

on that very day(i.e. 18.05.1994) but the docket appears to have been got prepared on 16.05.1994. Since the docket was not received by Kuldip Rai, on 16.05.1994, therefore, preparing of the docket by Kuldip Rai on 16.05.1994, without presenting the sample before SSP Jalandhar also creates a doubt regarding the identity of the sample with regard to which he got prepared the docket. Again according to Kuldip Rai, he had deposited the sample on the same day with the Chemical Examiner Punjab, Amritsar whereas the report reveals that sample was deposited on 25.05.1994. It is not explained by the prosecution as to where the sample remained from 18.05.1994 to 25.05.1994. The aforesaid aspects of the case were not taken into consideration by the Trial Court. While recording the conviction against the accused. The aforesaid facts, however, if taken cumulatively, create a dent in the prosecution case and are sufficient to extend benefit of doubt to the accused. Consequently, the interference in the impugned judgment at my end has become inevitable.

For the foregoing reasons the impugned judgment is set aside, the appeal is accepted and the accused is acquitted of the charges framed against him and he is directed to set at liberty forthwith. Fine if any deposited may be refunded to him.

July 31,2007  
Ruchika

(A.N.JINDAL)  
JUDGE

**To be referred to reporter: Yes/No**