IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.473-SB of 1996

Date of Decision : April 30, 2008

1. Ram Sarup S/o Kartar Singh,
   R/o Sardulgarh (Punjab) (now deceased)

2. Richpal Singh @ Pali S/o Jagtar Singh, ...Appellants
   R/o Adamka, Tehsil Sardulgarh,
   Distt. Mansa (Punjab)

Versus

The State of Haryana ....Respondent

CORAM: HON'BLE MR. JUSTICE SHAM SUNDER

Present: Mr.R.K.Girdhar, Advocate, for
Ram Sarup, appellant (since deceased).

None for Richpal Singh, appellant.

Mr. R.S.Arya, AAG, Haryana,
for the respondent.

SHAM SUNDER, J.

This appeal is directed against the judgment of conviction dated 12.6.1996, and the order of sentence dated 13.6.1996, rendered by the court of Addl. Sessions Judge, Bhiwani, vide which it convicted the accused/appellants, for the offence, punishable under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter called as 'the Act' only) and sentenced them, to undergo rigorous imprisonment for a period of ten years each, and to pay a fine of Rs.1 lac each, and in default of payment of the same, to undergo rigorous imprisonment for another period of 2 ½ years each, for having been found in possession of 9 bags, each containing 40 Kgs. poppy-husk, without any permit or licence.

2. The facts, in brief, are that on the night intervening 16/17.8.1993, Ranbir Singh, SI, alongwith other police officials, was present in the area of

village Behal, at Sorda Minor, in connection with holding a picket, when at about 3.30 AM on 17.8.1993, Siri Niwas, DSP, came there. Murari Lal, a public witness, was also joined with the police party. They were having conversation, with each other, when a jeep came from Rajasthan side, having registration No.HR-24-A-0355. On seeing the police party, holding a picket, the jeep was stopped by the driver thereof, at a distance of about 100 yards. The driver tried to turn back the jeep. Suspecting something wrong, the police party went there. The driver of the jeep, and another person, alighted therefrom, and ran away. The police party followed them, for some distance, but, ultimately, could not succeed, in apprehending them at the spot. The jeep was checked. It was found containing 9 bags. On search of the same, each bag was found containing 40 Kgs. poppy-husk. A sample weighing 500 grams, was taken out from each bag, and the remaining poppy-husk, was kept into the same bags. The samples, and the bags aforesaid, were duly sealed with the seal, bearing impression 'RS' belonging to Ranbir Singh. The DSP also affixed his own seal, bearing impression 'SN' on the samples, and the case property. Thereafter, the samples, and the case property, were taken into possession. Ruqa was sent to the Police Station, on the basis whereof, formal FIR was registered. The statements of the witnesses, were recorded.

3. On 1.9.1993, some respectables of Fatehabad, produced both the accused, before Ranbir Singh, SI. They were arrested, in this case. They were asked to keep their faces muffled, and produced before the Judicial Magistrate on 2.9.1993. They, however, refused to join the identification parade. After the completion of investigation, the accused were challaned.

4. On appearance, in the Court, the copies of documents, relied upon by the prosecution, were supplied to the accused. Charge under Section 15 of the Act, was framed against them, to which they pleaded not guilty and claimed trial.

5. The prosecution, in support of its case, examined Siri Niwas Kaushik, DSP (PW-1), Gurnam Singh S/o Makhan Singh (PW-2), Bal Kishan, HC (PW-3), Lachhman Dass S/o Munshi Ram, (PW-4), Subhash Goyal, CJM, Hisar (PW-5), and Ranbir Singh, SI (PW-6). Murari Lal, Banwari Lal, and Raj Kumar, Pws, were given up, as won over by the accused, vide application of the police, mark-X, and thereafter, the Public Prosecutor for the State, closed the prosecution evidence.

6. The statements of the accused under Section 313 Cr.P.C., were recorded, and they was put all the incriminating circumstances, appearing against them, in the prosecution evidence. They pleaded false implication. Ram Sarup, accused, in his statement recorded under Section 313 Cr.P.C. stated that, he was brought from his house, at about 8.00 PM, but he did not remember the date, on which he was brought. He further stated that he had no concern with any jeep or poppy-husk. He further stated that he did not hold any driving licence. He further stated that, he did not know, how to drive a jeep. He further stated that, he was running a Kariyana shop, in his house, at Sardulgarh, Distt. Mansa.

7. Richhpal Singh, accused, in his statement recorded, under Section 313 Cr.P.C. stated that he had four sisters. He further stated that his third sister was married to Balbir of Delhi, who is in service. He further stated that there was matrimonial dispute, between his sister, and his brother-in-law. He further stated that, they filed a case, in a Court at Mansa, and secured the presence of Balbir, with the help of police, in the aforesaid matrimonial case, because Balbir was not producing his second married wife. It was further stated by him, that on account of this enmity, he (Balbir), had got him (accused) falsely implicated, in this case. It was further stated by him, that Balbir had also implicated his another brother-in-law, in a case under Section 326 IPC, by managing injuries on his person.

8. The accused, however, examined Raj Singh S/o Bhura Singh (DW-1), and Lila Singh S/o Mehar Singh (DW-2). Thereafter, they closed their defence evidence.

9. 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/appellants, as stated hereinbefore.

10. 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/appellants.

11. Ram Sarup, one of the appellants, died during the pendency of the appeal, and copy of his death certificate, alongwith the report of the SHO, Police Station Behal, was placed on record, by the Counsel for the respondent. According to the copy of the death certificate, Ram Sarup, died on 18.11.2005. Copy of the death certificate is marked as Annexure 'A' and copy of the report in the form of letter of the SHO, Police Station Behal, is marked as Annexure 'B'.

12. Despite due notice, that the appeal was fixed for regular hearing, on the board of this Court, none appeared, on behalf of Richpal Singh, appellant.

13. I have heard Mr. R.K.Girdhar, Advocate, for Ram Sarup, appellant (since deceased), the Counsel for the respondent, and have gone through the evidence and record of the case, carefully.

14. The Counsel for appellant Ram Sarup (now deceased), at the very out-set, submitted that both the appellants were not named in the FIR, nor they were arrested, at the spot, at the time of the recovery. He further submitted that their identity was not established, as they were not identified by any of the members of the raiding party. It was further contended that the Judicial Magistrate, before whom, the appellants were produced, in muffled faces,

allegedly recorded their joint statement, that they did not want to participate in the identification parade. It was further contended that the story set up by the prosecution, that some respectables, produced the appellants, before Randhir Singh, SI, was nothing, but a tissue of lies, as none of those respectables was examined, to prove this factum. It was further contended that since, the identity of the appellants, was not established, as the perpetrators of crime, they were not at all connected with the instant case, and were liable to be acquitted, but the trial Court, failed to take into consideration, this very important fact, as a result whereof, miscarriage of justice occasioned. None of the members of the raiding party, identified the accused, at the spot. Siri Niwas, DSP (PW-1), stated that two persons, from the jeep alighted, and both of them started running, in the opposite direction. The police party followed them, for some distance, but they succeeded in running away. He further stated that those persons were of young age, wearing kurtas and pyjamas, and both were having parnas, tied on their heads. He also stated, during the course of his cross-examination, that it was a dark night. He could not give any other description of the persons, who allegedly alighted from the jeep, and ran away. Ranbir Singh, SI (PW-6), the Investigating Officer, also stated that the driver of the jeep, and the other occupant of the same, succeeded in running away, at about 3.3.0 AM, on 17.8.1993. No doubt, he stated that both the persons, who were arrested on 1.9.1993, were the accused, who ran away, from the jeep, on the night of the occurrence. During the course of cross-examination, it was stated by him, that one Raj Kumar, a driver of Behal area, had told him, about the accused persons, and their identity because somehow or the other both of them (accused) had stated before him, that their jeep with 9 bags of poppy-husk, had been seized by the Police. Ranbir Singh, SI, did not have any personal knowledge, with regard to the persons, who ran away, after alighting from the jeep. There is nothing, in his statement, that the accused were ever arrested by

him, earlier in any other case. He also did not state that the accused were cited as witnesses by him, in any other case. He also did not state that he personally knew the accused, earlier to the present case. He could not tell the descriptive features of the persons, who ran away, from the spot. Raj Kumar, and other respectables, who allegedly produced both the accused on 1.9.1993, before Ranbir Singh, SI, were not examined, as witnesses by the prosecution, so as to prove that the accused were those persons, who were in the jeep, on the relevant day, and on seeing the police party, alighted therefrom, and ran away. If any information was allegedly supplied to Ranbir Singh, SI by Raj Kumar, and other respectables, with regard to the alleged commission of crime, by the accused, and that they ran away from the spot, after leaving the jeep there, in the absence of their statements, in the Court, the evidence of Randhir Singh, SI aforesaid, could only be said to be hearsay. None of the accused was either the driver or the owner of the jeep, in question. Gurnam Singh, (PW-2), on the other hand, stated that he was the driver of the jeep of Lachhman Dass, which bore No.HR-24-A-0355. Lachhman Dass, (PW-4) stated that he was working as a Clerk (Munshi) in the Jeep Union, and the jeep aforesaid, was owned by him. He further stated that Gurnam Singh, was the driver of the jeep, aforesaid, in the year 1993. He did not state that any of the accused was driver of the jeep, or he had handed over the same, to anyone of them, for any purpose. There is, therefore, no substantive evidence, to prove the identity of the accused, as the perpetrators of crime. The accused, therefore, were not at all connected with the commission of crime.

15. No doubt, Subhash Goyal, Chief Judicial Magistrate, Hisar (PW-5), was examined by the prosecution, before whom the accused were produced in muffled faces, on 2.9.1993. He recorded their joint statement, Ex.PE/1, to the effect, that they did not want to participate in the identification parade. The statement allegedly made by the accused, before Subhash Goyal,

CJM, could only be said to be their previous statement. Had substantive evidence been produced, in the Court, to the effect, that the accused were the same persons, who were the occupants of the jeep, and, on seeing the police party, alighted therefrom, and ran away, the refusal of the accused, to participate in the identification parade, would have provided corroboration to the same. The accused might have refused to participate, in the identification parade, for a variety of reasons. Their previous joint statement, before the Judicial Magistrate, to the effect, that they did not want to participate, in the identification parade, could not be used against them, in the absence of any substantive evidence, regarding the establishment of their identity, as the perpetrators of crime, in the Court. In order to prove its case, against the accused, the prosecution was required to establish their identity, beyond a reasonable doubt. If the prosecution fails to establish the identity of the accused, beyond a reasonable doubt, then its case is bound to dwindle down. In the instant case, as stated above, no substantive evidence, was produced, by the prosecution, to establish the identity of the accused. Under these circumstances, no help can be drawn by it, from the alleged joint statement, made by the accused, that they did not want to participate in the identification parade. It was held in ***Budhsen and Another Vs. State of U.P., AIR 1970 SC 1321*** that facts which establish the identity of an accused person, are relevant under Section 9. As a general rule, the substantive evidence of a witness, is a statement made in the Court. The evidence of mere identification of the accused person, at the trial, for the first time, is from its very nature, inherently of a weak character. The evidence, in order to carry conviction, should ordinarily clarify, as to how, and, under what circumstances, a particular witness, came to pick out a particular accused person, and the details of the part, which the accused played, in the crime, in question, with reasonable particularity. The purpose of a prior test identification, therefore, is to test and

strengthen the trustworthiness of that evidence. It is, accordingly, considered a safe rule of prudence to generally look for corroboration of the sworn testimony of the witnesses in the Court, as to the identity of the accused, who are strangers to them, in the form of earlier identification proceedings. There may, however, be exceptions to this general rule, when, for example, the Court is impressed by a particular witness, on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the investigation stage. They are generally held during the course of investigation, with the primary object of enabling the witnesses, to identify persons, concerned in the offence, who were not previously known to them. This serves to satisfy the investigating officers of the bona fides of the prosecution witnesses, and also to furnish evidence to corroborate their testimony in Court. Identification proceedings, in their legal effect, amount simply to this: that certain persons are brought to jail or some other place and make statements either express or implied, that certain individuals whom they point out, are persons whom they recognize as having been concerned in the crime. They do not constitute substantive evidence. These parades are essentially governed by Section 162 Cr.P.C. The principle of law, laid down, with regard to test identification parade in ***Ramanathan Vs. The State of T.N. AIR 1978 Supreme Court 1204*** was as under :-

> *"Identification parades have been in common use for a very long time, for the object of placing a suspect in a line up with other persons for identification is to find out whether he is the perpetrator of the crime. This is all the more necessary where the name of the offender is not mentioned by those who claim to be eye-witnesses of the incident but they claim that although they did not know him earlier, they could recall his features in sufficient details*

and would be able to identify him if and when they happened to see him. The holding of a test identification in such cases is as much in the interest of the investigating agency or the prosecution as in the interest of the suspect or the accused. For while it enables the investigating officer to ascertain the correctness or otherwise of the claim of those witnesses who claim to have seen the perpetrator of the crime and their capacity to identify him and thereby fill the gap in the investigation regarding the identity of the culprit, it saves the suspect or the accused form the sudden risk of being identified in the dock by the self same witnesses during the course of the trial. The line up of the suspect in a test identification parade is therefore a workable way of testing the memory and veracity of witnesses in such cases and has worked well in actual practice."

15-A Keeping in view, the principle of law, laid down, in the aforesaid authorities, now let us see, as to whether the prosecution, was able to prove that the appellants were the perpetrators of crime. The appellants were not known to the Police earlier. As stated above, their distinctive features, were not mentioned by Siri Niwas, DSP, and Ranbir Singh, SI, in the FIR. With a view, to prove its case, against the accused, it was obligatory upon the prosecution, to pin-point their identity, as the perpetrators of crime. In the instant case, the prosecution miserably failed to pin-point the identity of the accused, beyond a reasonable doubt, as the perpetrators of crime. Had the accused been identified at the spot, or had they been earlier known to the witnesses, they would have been arrested immediately after they allegedly ran away. Since, they were not known to the witnesses, they could not be arrested, and, were, ultimately,

allegedly produced on 1.9.1993. Since the identity of the accused/appellants, as the perpetrators of crime, was not proved, beyond a reasonable doubt, they were not connected with the present case. They were, thus, liable to be acquitted. The trial Court was, thus, wrong in holding that the identity of the accused, as the perpetrators of crime, stood established. The finding of the trial Court, in this regard, is not correct, and deserves to be set aside. The submission of the Counsel for the appellants, carries substance, and is accepted.

16. It was next contended by the Counsel for the appellants, that the link in the chain of the prosecution evidence was incomplete, in as much as, the sample impression of the seal was not sent to the office of the Forensic Science Laboratory, and, therefore, it could not be said, as to whether, seals on the sample parcels, were the same, as were allegedly affixed immediately after the seizure. The submission of the Counsel for the appellant, in this regard, appears to be correct. Ex.PA is the affidavit of Dhoop Singh, Constable. In para No.3 of the affidavit, it was stated by him, that he was handed over 9 sample parcels, duly sealed with the seal, bearing impressions 'RS' and 'NS', and he deposited the same in the office of the Forensic Science Laboratory on 25.8.1993. He did not state even a single word, that the sample impression of the seals, was also handed over to him. Since he was not handed over the sample impression of the seals, the question of deposit thereof, in the office of the Forensic Science Laboratory, did not at all arise. When the sample impression of the seals, was not handed over to Dhoop Singh, Constable, for deposit, in the office of the Forensic Science Laboratory, it is not known, as to wherefrom, the said specimen impression of the seals came in the office of the Forensic Science Laboratory. Under these circumstances, the report Ex.PJ, of the Forensic Science laboratory, to the effect that the seals, on the parcel were found intact and tallied with the specimen seal, as per forwarding authority, became doubtful. In ***State of Rajasthan Vs. Gurmail Singh 2005(2) RCR***

(Criminal) 58, (Supreme Court), the sample seal was not sent to the Laboratory, at the time of sending the sample parcel. The Apex Court, held that the case of the prosecution was doubtful, on account of this reason. In this view of the matter, the instant case, also became doubtful. The trial Court, did not take into consideration, this aspect of the matter,as a result whereof, miscarriage of justice occasioned.

17. In view of the above discussion, it is held that the judgment of conviction and the order of sentence, rendered by the Court below, are not based on the correct appreciation of evidence, and law, on the point. The trial Court did not take into consideration, the infirmities and lacunae, enumerated, in the aforesaid paragraphs. Had these infirmities and lacunae, been taken into consideration, by the trial Court, the result would have been different. The judgment of conviction, and the order of sentence, warrant interference, and are liable to be set aside.

18. For the reasons recorded, hereinbefore, the appeal is accepted. The judgment of conviction dated 12.6.1996, and the order of sentence dated 13.6.1996, are set aside. The appellants shall stand acquitted of the charge framed against them. If, Richpal Singh @ Pali, appellant, is on bail, he shall stand discharged of his bail bonds. If he is in custody, he shall be set at liberty, at once, if not required in any other case.

April 30, 2008 **(SHAM SUNDER)**
Vimal **JUDGE**