

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Crl. Appeal No.940-SB of 1999

Date of Decision : July 31, 2008

Chamkaur Singh S/o Nahar Singh,
R/o Galab Kalan.

...Appellant

Versus

The State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE SHAM SUNDER

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr. A.S.Virk, Advocate,
for the appellant.

Mr. S.S.Bhullar, DAG, Punjab,
for the respondent.

SHAM SUNDER, J.

This appeal is directed against the judgment of conviction, and the order of sentence dated 25.8.1999, rendered by the Judge, Special Court, Ludhiana, vide which he convicted the accused/appellant, for the offence, punishable under Section 18 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 two years, for having been found in possession of 10 Kgs. opium, without any permit or licence.

2. The facts, in brief, are that on 9.2.1998, Balwinder Singh, SI/SHO, Police Station Sidhwan Bet, alongwith other police officials, was on patrol duty, in official Alwyan Nishan bearing registration No.PB-10-E-9690, and when the

police party reached on the bridge of the water course, in the area of village Galib Kalan, Jaswant Singh, Member Panchayat of the village, happened to meet. He was talking to the police party, when at about 9.40 AM, the accused was seen coming from the side of village Galib Kalan, on a cycle. On the carrier of that cycle, one bag was found tied. He was apprehended, on suspicion. On enquiry, he told his name as Chamkaur Singh S/o Nahar Singh. On search of the bag, lying on the carrier of the cycle, in the presence of the DSP, who was called to the spot, by sending a telephonic message, it was found containing 10 Kgs. opium. Two samples of 10 grams each, were taken out of the same, and the remaining opium, was converted into a separate container. The samples, and the container, containing the remaining opium, were converted into parcels, duly sealed, and taken into possession, vide a separate recovery memo. Ruqa was sent to the Police Station, on the basis whereof, 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 appearance, in the Court, the copies of documents, relied upon by the prosecution, were supplied to the accused. Charge under Section 18 of the Act, was framed against him, to which he pleaded not guilty, and claimed judicial trial.

4. The prosecution, in support of its case, examined Ashok Puri, DSP (PW-1), Waryam Singh, ASI (PW-2), Balwinder Singh, SI (PW-3), Janak Raj, HC (PW-4), and Jagir Singh, Constable (PW-5). Thereafter, the Addl. Public Prosecutor for the State, closed the prosecution evidence, after tendering report Ex.PJ, of the Chemical Examiner.

5. The statement of the accused, under Section 313 Cr.P.C., was recorded, and he was put all the incriminating circumstances, appearing against

him, in the prosecution evidence. He pleaded false implication. It was stated by him, that two days prior to the alleged occurrence, some unknown persons had thrown opium, near their village, and that opium was picked up by the police. It was further stated by him, that on suspicion, the villagers were called to the police post, by Waryam Singh, ASI. It was further stated by him, that he had enmity with Balbir Singh, Sarpanch, who owed money to him, and it was at his (Sarpanch) instance, that he was falsely involved, in this case. He, however, examined Sanjeev Kumar, Constable (DW-1) and Jaswant Singh (DW-2), in his defence. Thereafter, he closed his defence evidence.

6. After hearing the Addl. 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/appellant, 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 learned 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, submitted that that Jaswant Singh, independent witness, was joined by the Investigating Officer, yet he was not examined, and, on the other hand, was given up by the Addl. Public Prosecutor for the State, without any rhyme reason. He further submitted that the prosecution, thus, withheld the best evidence, in its possession, and an adverse inference could be drawn that, had he been examined, he would not have supported its case. It is, no doubt, true that Jaswant Singh, independent witness, was joined, at the time of the alleged recovery, but was given up as won over, by the Addl. Public Prosecutor for the State, vide statement dated 2.7.1998, as he sided with the accused, during the course of trial. The fact that he was won over by the accused, was duly strengthend, when he was examined

as DW-1, by the accused. Under these circumstances, in my considered opinion, the Public Prosecutor for the State, took a wise decision in giving up, such a witness, as he very well knew that, in case, he was examined, he would damage the case of the prosecution. In **Masalti Vs. State of Uttar Pradesh, AIR 1965 (S.C.) 202**, it was held that it is, undoubtedly, the duty of the prosecution to lay before the Court, all material witnesses, available to it, whose evidence is necessary for unfolding its case, but it would be unsound to lay down it, as a general rule, that every witness, must be examined, even though his evidence, may not be very material or, even if, it is known that he has been won over or terrorized. In **Roop Singh Vs. State of Punjab 1996 (1) RCR 146**, a Division Bench of this Court, held that no adverse inference can be drawn, when the only independent witness, was given up by the prosecution, as won over by the accused. It was further held, in the said authority, that the panch witnesses, being human beings, are quite exposed and vulnerable to human feelings of yielding, browbeating, threats and inducements and giving up of the public witnesses, as won over, is fully justified, in the present day situation prevailing in the society. In **Karnail Singh Vs. State of Punjab 1983 Criminal Law Journal, 1218 (DB)**, it was held that where the independent witness was won over by the accused, and only the official witnesses were examined, who were considered to be not interested persons, their evidence cannot be doubted, on the ground of their official status. Similarly in **Appa Bai and another Vs. State of Gujrat AIR 1988 S.C. 696**, it was held that the prosecution story cannot be thrown out, on the ground, that an independent witness had not been examined by it. It was further held that civilized people, are generally insensitive, when a crime is committed, even in their presence, and they withdraw from the victim's side, and from the side of the vigilant. They keep themselves away from the Courts, unless it is inevitable. Moreover, they think the crime like a civil dispute, between two individuals, and do not involve

themselves in it. The principle of law, laid down, in the said authorities, is fully applicable to the facts of the present case. In this view of the matter, the trial Court was, thus, right in recording conviction and awarding sentence, to the accused. The submission of the Counsel for the appellant, being without merit, must fail, and the same stands rejected.

10. It was next submitted by the Counsel for the appellant, that though Jaswant Singh, independent witness, was joined by the Investigating Officer, at the time of the alleged search and seizure, yet the seal after use, was not handed over to him. He further submitted that this clearly goes to prove that the case property was tampered with, as the seal remained, with the police officials, with whom the sample parcels remained. It is, no doubt, true that the seal after use was not handed over by Balwinder Singh, SI/SHO, to the independent witness. He, on the other hand, handed over the same to Waryam Singh, ASI. However, from the evidence, on record, it is proved that the seal, did not remain in the possession of the same person, in whose possession the case property, and the sample parcels remained. There was, therefore, no possibility of tampering with the case property, and the samples, at any point of time. In **Piara Singh Vs. The State of Punjab 1982 C.L.R. (2) 447**, a case decided by a Full Bench of this Court, the seal, on the sample of illicit liquor, recovered from the accused, was not entrusted to an independent person forthwith. Similarly, the independent person, though entrusted with the seal, by the Investigating Officer, later on, was not produced as a witness. In these circumstances, it was held that this fact alone, was not sufficient to affect the merits of the trial, and the prosecution case, could not be thrown out, on that score alone. It was further held, in this case, that it was not incumbent upon the Police Officer, to hand over the seal to a third person forthwith, and even, in cases, where he had done so, it was not obligatory for him, to produce such person, as a witness, during trial, as there was no statutory requirement, whatsoever, to this effect. The

principle of law, laid down, in the aforesaid authority, is fully applicable to the facts of the present case. Entrustment of seal to Waryam Singh, ASI, by Balwinder Singh, SI/SHO, in view of the cogent, convincing, reliable, and trustworthy evidence, produced by the prosecution, regarding the completion of link evidence, did not at all affect the merits of the case. In this view of the matter, the finding of the trial Court, is endorsed.

11. It was next submitted by the Counsel for the appellant, that according to Balwinder Singh, SI/SHO, the Investigating Officer, the case property, and the sample parcels, were deposited by him, with the MHC. He further submitted, that according to Janak Raj, HC (PW-4), Satwant Singh, SI, deposited the case property, and the sample parcels, with him. He further submitted that Satwant Singh, SI, was not examined by the prosecution, as a result whereof, the link evidence became incomplete. The Counsel for the appellant, in this regard, does not appear to be correct. Janak Raj, HC (PW-4), during the course of his cross-examination, no doubt, desposed that he might have stated, in his statement, under Section 161 Cr.P.C. that the samples, and the case property, were deposited with him, by Satwant Singh, SI. However, in the same breath, he stated that it was Balwinder Singh, SI, who deposited the case property, and the sample parcels with him, in the presence of Satwant Singh, SI. Janak Raj, HC (PW-4), corrected himself, as to who deposited the case property, and the sample parcels, with him. Even if, it is assumed for the sake of arguments, that it was Satwant Singh, SI, who deposited the case property with the MHC that hardly mattered. Nothing could be brought out during the course of cross-examination of Balwinder Singh, SI, that the case property and the sample parcels, were tampered with, at any point of time. The Court is required to take into consideration, the entire evidence, produced by the prosecution, to come to the conclusion, as to whether, there was any possibility of tampering with the samples, until the same reached the office of the

Chemical Examiner, or not. The statements, under Section 161 Cr.P.C., can only be used for the purpose of contradiction, and nothing else. When the substantive evidence produced by the prosecution, is cogent, to the effect that the case property, and the samples, were deposited by Balwinder Singh, SI, then the statement under Section 161 Cr.P.C., of Janak Raj, HC, loses, its significance. Besides the other evidence, produced by the prosecution, to complete the link evidence, there is report Ex.PJ, of the Chemical Examiner. It is per se admissible under Section 293 Cr.P.C., in toto. It is evident from Ex.PJ, that the sample parcels, with seals intact were received in the office of the Chemical Examiner. It is further evident that the seals, on the sample parcels, tallied with the specimen impression of the seals. The report, Ex.PJ, therefore, completely ruled out, the possibility of tampering with the sample parcels, until the same reached the office of the Chemical Examiner. Under these circumstances, it could not be said, that the link evidence was incomplete. The submission of the Counsel for the appellant, in this regard, being without merit, must fail, and the same stands rejected.

12. Sanjeev Kumar, Constable (DW-1), stated that according to Ex.D-1, entry in the rojnamcha, the case property was produced by Balwinder Singh, SI, before Satwant Singh, SI, who was acting as SHO, on that day. He further stated that Satwant Singh, SI, deposited the case property, with the MHC. He also stated that there was no entry in register No.19, regarding the deposit of sample impression of the seal. Jaswant Singh (DW-2), who was joined as prosecution witness, but was given up as won over, stated that no recovery was effected, in his presence, but his signatures were obtained on 3-4 papers, by the police. The question as to who deposited the case property, with the MHC, and as to whether, the same was tampered with, or not, has already been discussed above, in detail. After discussion, it has been held that whether the case property was deposited by Balwinder Singh, SI, or by Satwant Singh, SI, with

the MHC, that hardly mattered, as the evidence produced by the prosecution was sufficient, to hold that none tampered with the sample parcels, until the same reached the office of the Chemical Examiner. That question, therefore, in view of the cogent, and convincing evidence, that none tampered with the sample, at any point of time, became inconsequential. The statement of Sanjeev Kumar, Constable (DW-1), therefore, was hardly of any help to the accused. It has also been discussed above, that no reliance, on the statement of Jaswant Singh (DW-2), could be placed. He admitted his signatures on the documents, prepared by the Investigating Officer, at the time of search and seizure. He did not state that his signatures on these documents, were obtained, by the police, under pressure or forcibly. Since, he appended his signatures, on the documents, at the time of search and seizure of the bag, containing opium, being carried by the accused, it means that he could be said to be a well-read person. It, therefore, could not be expected of him, to sign any document, without going through the same. He apparently made a false statement, to the effect that no recovery was effected from the accused, in his presence, as he was bent upon siding with him (accused), and actually sided with him, by appearing as DW-2. In *State of Rajasthan Vs. Udai Lal, 2008(2) RCR (Criminal) 956 (S.C.)*, 4 independent witnesses were joined, and examined, by the prosecution. They resiled from their statements. They, however, admitted their signatures, on the documents. In these circumstances, it was held by the Apex Court, that their evidence did not affect the merits of the case, as the other evidence produced by the prosecution, was sufficient to prove its case. The defence evidence, therefore, was of no avail to the accused, to prove that the case of the prosecution was doubtful. The trial Court, rightly discarded the defence evidence. This Court, on reappraisal of the evidence, also comes to the same conclusion.

13. No other point, was urged, by the Counsel for the parties.

14. 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 based on the correct appreciation of evidence, and law, on the point. The same do not warrant any interference, and are liable to be upheld.

15. For the reasons recorded, hereinbefore, the appeal is dismissed. The judgment of conviction, and the order of sentence dated 25.8.1999, are upheld. If the appellant is on bail, then his bail bonds, shall stand cancelled. The Chief Judicial Magistrate, Ludhiana, shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 of the Cr.P.C. and compliance report be sent within 2 months.

16. The proceedings regarding the confiscation of cycle, in question, if already not initiated, shall be initiated by the trial Court, in accordance with law, and completed within 2 months, from the date of receipt of a copy of the judgment. Thereafter, compliance report shall be sent to this Court.

July 31, 2008
Vimal

(SHAM SUNDER)
JUDGE