

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr. Appeals No. 22, 25 & 60 of 2017

Reserved on: 23.09.2020

Decided on: 30.09.2020

Cr. Appeal No. 22 of 2017

Aman Kumar	VersusAppellant
State of H.P.	Respondent

Cr. Appeal No. 25 of 2017

Rahul Chauhan	VersusAppellant
State of H.P.	Respondent

Cr. Appeal No. 60 of 2017

Atul Singh	VersusAppellant
State of H.P.	Respondent

Coram

The Hon'ble Mr. Justice Sureshwar Thakur, Judge.

The Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge.

¹ *Whether approved for reporting? Yes.*

For the appellant(s):	Ms. Sheetal Vyas, Advocate.
For the respondent/State:	Mr. Hemant Vaid, Mr. Hemanshu Mishra and Mr. Narinder Guleria, Addl. AGs with Mr. J.S. Guleria and Mr. Vikrant Chandel, Dy. AGs.

Sureshwar Thakur, Judge.

All the criminal appeals arise from, a, common verdict
recorded, on 31.08.2016, by the learned Special Judge (II), Shimla,

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

H.P., upon Sessions Trial No. 25-S/7 of 2015, wherethrough, all the accused/convicts became convicted, for, a charge drawn, under, Sections 22 & 29 of Narcotic Drugs, and, Psychotropic Substances Act, 1985 (hereinafter for the sake of brevity referred to as “the NDPS Act”), and also, therethrough they became sentenced to undergo rigorous imprisonment, for, a term extending upto 10 years each, and also became sentenced to pay, fine borne in a, sum, of, rupees 1 lac each. Besides, upon, apposite defaults being made, vis-à-vis, the afore imposed fine amounts, upon, each of the convicts, thereupon they became further sentenced to undergo simple imprisonment extending upto a term of one year. Obviously, becoming aggrieved therefrom, and, hence they preferred thereagainst the extant appeals, and all the afore appeals, are, amenable for a common verdict, being recorded thereons.

2. Brief facts of the case, as emanating from the records, are that on 11.02.2015 Inspector Munish Chauhan alongwith ASI Mohinder, HC Inder, Constables Anoop, Gaurav and Kapil and HHG Tejinder was on routine patrol and traffic checking duty at Khalini. The afore police party also associated LHC Shanta from nearby Police *Gumti* (kiosk) at Khalini Chowk. Around 12:15 p.m., when the police party was ascending the stairs of Keonthal Guest House, they noticed a boy, who, on seeing the police party, fled and

entered room No. 102 of Keonthal Guest House, Khalini. As the conduct of the boy was suspicious, police associated Sh. Kuldeep Kumar, attendant, of the afore Guest House and room No. 102 was opened. There were three boys inside the room and one of them, was the one, who, on seeing the police party, fled from the staircase. All the boys were baffled and on being inquired, they divulged their names as Atul, Rahul and Aman (accused-convicts). The police party, in presence of Sh. Kuldeep Singh, offered their personal search to the accused persons, through *Fard Jamatalashi*, Ext. PW-1/C. Thereafter, a thorough search of the room was conducted and from the eastern corner of the room, a rexine bag, black and khakhi in colour, having inscription 'Polo Sport', with two strings, was found. The accused persons, on being asked, admitted that the bag belongs to them. Subsequently, the bag was opened, and it was found stuffed with 104 corex vials, 100 ml each, and 4 packets Bonogesic injections, total 20 injections, 2 ml each. The accused persons could not produce any valid permit or license qua the afore psychotropic substance. During the process of completion of codal formalities, spot was photographed, exhibits whereof are PW-10/A-1 to PW-10/A-6. The bag was kept inside a plastic sack after tying with a string and sealed with a seal having impression 'M' of English alphabet. Facsimile seal, Ext. PW-1/B was taken separately. NCB form, in triplicate, were filled in,

one of which is Ext. PW-10/B and the seal impression was obtained on NCB form. Seal after its use was handed over to witness Sh. Kuldeep Singh. The afore recovered psychotropic substances, facsimile seal and NCB form were taken into possession through seizure memo Ext. PW-1/A in presence of the witnesses. Thereafter, *rukka* was sent to Police Station New Shimla through Constable Anoop. On the anvil of *rukka*, Ext. PW-3/A, FIR Ext. PW-6/A was registered and endorsement on the *rukka* qua registration of FIR is Ext. PW-6/B. A site plan, vis-à-vis, the place of occurrence, Ext. PW-10/C, was prepared. The abstract of the guest register Mark 'X' was procured and the statements of the witnesses were recorded. The statement of Sh. Kuldeep Singh is Ext. PW-10/D. The personal search of the accused persons was conducted through *Fard Jamatalashi* Ext. PW-1/E to PW-1/G. On 12.02.2015, special report, Ext. PW-5/A was sent to Deputy Superintendent of Police, Shimla, through Constable Pankaj. Investigating Officer, through letters, Ext. PW-8/A and PW-9/A, requested Drug Inspector for ascertaining the quantity of psychotropic substance in the afore recovered contraband and the Drug Inspector issued reports, Ext. PW-9/B and PW-9/C. The Certified Identity Protection Advisor (CIPA) certificate Ext. PW-10/F was issued by HC Nikka Ram. After receipt of the FSL report Ext. PW-10/E, Investigating Officer prepared final police report, which

was presented in the Court and the accused were produced to face trial.

3. The accused were charged for committing offences punishable, under Section 22, and, under Section 29 of the NDPS Act. In proof of the prosecution case, the prosecution examined 11 witnesses. On conclusion of recording, of, prosecution evidence, the statements of the accused persons, under, Section 313 Cr.P.C. were recorded by the learned Trial Court, wherein, they claimed false implication. However, they did not lead any evidence in their defence.

4. On an appraisal of evidence on record, the learned trial Court, recorded findings of conviction, against, the accused/convicts/appellants herein.

5. The appellants/convicts, are aggrieved, by the judgment of conviction, as recorded, against them, by the learned Special Judge (II), Shimla, H.P.

6. The learned counsel for the appellants/convicts, has concerted, and, vigorously contended qua the findings of conviction recorded by the learned Special Judge, standing not based, on a proper appreciation, by her, of the evidence on record, rather, theirs standing sequelled by gross mis-appreciation, by her, of the material on record. Hence, she contends qua the findings of conviction being reversed by this Court, in the exercise of its

appellate jurisdiction, and, theirs being replaced by findings of acquittal.

7. Conversely, the learned Additional Advocate General for the respondent-State, has with compatible force and vigour, contended that the findings of conviction recorded, by the learned Court below, standing based on a mature and balanced appreciation of evidence, on record, and, theirs not necessitating any interference, rather theirs meriting vindication.

8. This Court, with the able assistance, of, the learned counsel on either side, has, with studied care and incision, evaluated the entire evidence on record.

9. Recovery of 104 bottles of corex, and, of 4 packets, of, Bonogesic injections (psychotropic substances), became effectuated, through, proven memo, borne in Ext. PW-1/A. The afore recovery, became effectuated, from the room, reflected in the site, hence borne in Ext. PW-10/C. The afore recovery became effectuated, from, a carry bag, kept on the eastern corner, of, room No. 102, of, Keonthal Guest House, Khalini. The FIR recorded, vis-à-vis, the apposite recoveries, as made from the conscious, and, exclusive possession of the accused persons, becomes borne in Ext. PW-6/A.

10. In Ext. PW-1/A, narration(s) exist(s), vis-à-vis, three seal impression(s), each carrying thereon(s), English alphabet 'M',

becoming embossed, upon the seized psychotropic substance(s), and, thereafter, upon, the NCB form, embodied in Ext. PW-10/B, hence compatible therewith narration(s), authored by the Investigating Officer concerned, also, become(s) scribed therein, to, hence exist, upon, the case property. Subsequently, the case property became transmitted through proven, road certificate, embodied in Ext. PW-4/B, to, the FSL concerned, and thereon, also echoing(s), bearing all the apposite compatibilities, and, appertaining to the number(s), of, seal impression(s), and, to English alphabet 'M', carried upon, the seized case property(ies), become visibly unfolded. Upon the case property(ies), becoming deposited with the FSL concerned, the latter as unfolded by Ext. PW-10/E, made affirmative articulations thereon, qua, the contents thereof, being psychotropic substance(s).

11. The learned trial Court, in making the impugned verdict, of, conviction, upon the accused, has assigned reasons, inasmuch as; (a) the statement(s) of vital prosecution witnesses, including the Investigating Officer, besides, of, a singular independent witness, vis-à-vis, the relevant proceedings, inasmuch as, PW-1, hence, with the completest intra se, and, inter se corroboration(s), rendering unequivocal depositions, vis-à-vis, the charge; (b) there existing no evidence qua the fact, that, during the process of sealing, of, the afore psychotropic substances, and

thereafter sending them, to, the FSL concerned, for, chemical analysis, hence the case property becoming tampered; (c) the report of chemical analysis revealing, that, the total quantity of psychotropic substance being 104 recovered vials, and, weighing 12604.8 grams (approximately 12.604 kgs), and, the afore report further revealing, that, 20 injections weight 39.48 grams, of, psychotropic substance, and hence, the weight of the afore recovered psychotropic substance(s), constituting commercial quantity(ies) or commercial weight(s) thereof, and, thereupon the charge becoming sustained.

12. Recovery of Psychotropic substances, as made, vide proven memo, Ext. PW-1/A, became effectuated from a carry bag, kept inside a room, and, the afore recovery became effectuated, through proven memo, embodied in Ext. PW-1/A, and therein narrations, occur, qua (a) three seal impressions, each carrying thereon(s), English alphabet 'M', becoming embossed, on, cloth parcel, Ext. PW-1/B, (b) proven NCB form, borne in Ext. PW-10/B, carries compatible therewith narrations, hence, authored by the Investigating Officer. Thereafter, the SHO concerned deposited, a, plastic sack, sealed with seal 'M', containing a rexine bag, stuffed with 104 corex bottles, each 100 ml, and, 4 packets, containing 20 Bonogesic injections, 2 ml each, alongwith facsimile seal, and, NCB form in triplicate, hence, with, PW-4, HC Nikka Ram; (c) moreover

road certificate embodied in Ext. PW-4/B, also carries compatible therewith narrations. The FSL report embodied in Ext. PW-10/E also carries conforming therewith recitals, and, in the report of the FSL, embodied in Ext. PW-10/E, there is also a recital, vis-à-vis, the chemical examiner concerned, embossing on cloth parcel, Ex.PW-1/A, hence, one seal, of, the FSL concerned. However, all the afore compatibilities, hence appertaining to the afore number(s) of seal impression(s) embossed thereon(s), and, vis-à-vis, the existence(s) thereon(s), respectively, of English alphabet 'M', rather, upto the stage, whereat the case property, became delivered, at, the FSL concerned, may not, *per se*, nail the charge against the accused, (d) unless in contemporaneity, vis-à-vis, the production of case property in the Court, hence, all the afore compatibilities also invincibly existed. Reading(s) of the Court observations, as made during the course of recording, of, the examination-in-chief of PW-6, HC Inder Singh, wheretowhom the case property stood shown, hence, is imperative for the afore purpose, Court observations whereof stand(s) extracted hereinafter:

"On opening the plastic sack Ext. P-1, there is recovery of one ruck sack bag Ext. P-2 was found, wherein there are 104 bottles of Corex cough syrup Ext. P-3 to Ext. P-106, four packets Ext. P-107 to P-110 were recovered in which 12 injections bonogesic Ext. P-111 to P-122. The case property is found to be the same recovered from the possession of the accused."

Reading(s), of, the afore(s), does make, visible upsurging(s) vis-à-vis, all the afore compatibilities, as become respectively narrated in

the apt memos, hence also emerging upon the production, of, case property, borne in Ex. PW-1/B, hence, in the Court (e) and all the afore apt congruities appertaining to the afore factum probandum, became not contested by the defence, whereupon, an inference becomes drawn vis-à-vis, the defence acquiescing(s), vis-à-vis, at the stage of its production, in Court, it being, the one hence recovered, from, the conscious and exclusive possession, of, the accused persons, hence, through memo Ext. PW-1/A, (f) and, also sparks a concomitant inference, especially with the accused persons, not, denying the existence, of, their respective signatures, on Ext. PW-1/A, nor theirs contesting the occurrence of the signatures upon all the other memos, qua hence, the accused also, accepting, the, authenticity(ies), of all the recitals, embodied in all the relevant memos, whereons, their unchallenged authentic signatures exist, (g) besides with theirs not challenging, the occurrence, of, their authentic signatures, upon, the relevant cloth parcels, thereupon, concomitantly they become inferred, to, hence, also acquiesce, vis-à-vis, their authentic signatures becoming borne thereon, besides they are also inferable, to, admit qua all the contents borne therein, as, reported by the FSL, hence being psychotropic substance(s).

13. Be that as it may, all the afore made inferences, garner strengthened vigour, from, the apposite abstract of *malkhana*

register, embodied in Ex.PW-4/A, hence becoming proved, by its author, inasmuch as, by, PW-2; (a) who upon stepping into the witness box, makes echoings, qua PW-4/A, unveiling all the therein made scribings, hence, carrying completest congruity(ies) and similarity(ies), hence appertaining, to, the number(s) of seal(s) embossed, upon, cloth parcel(s), also vis-à-vis, the English alphabet(s) 'M', made upon the embossed seal impressions. Since, the afore testification, of, PW-4 remains unchallenged; (b) thereupon, his testimony, metes corroboration to the testimonies, of, the official witnesses, and, also to the testimony of PW-1, an independent witness to the relevant proceedings, and hence, does also obviously mete reinforced evidentiary vigor, vis-à-vis, the charge drawn against the accused.

14. A very conspicuous and emphatic argument, is, projected before this Court, by the learned counsel, for the convicts-appellants, inasmuch, as, the learned trial Court failing, to, mete apt deference, to, the defence projected by the convicts inasmuch as, one Rahul Chauhan, becoming belabored, by, the police, and, thereafter the latter disingenuously foisting a false case, upon, afore Rahul Chauhan and, also upon other co-accused. However, the afore meted argument before this Court, is, extremely frail, as, no best medical evidence, qua therewith becomes adduced nor any suggestion qua thereto becomes, meted

to any prosecution witnesses. Preeminently, also, upon, the afore co-accused becoming produced before the learned Court below, there is no asking for his medical examination, being conducted by an authorized medical practitioner, nor, also the afore co-accused meted a complaint, vis-à-vis; (a) the afore facet before, any officer superior in hierarchy, to, the investigation officer; (b) thereupon, this Court concludes that the afore projected defence, by the accused, is, extremely rudderless, and, cannot purvey any firm exculpatory benefits, to, the convicts.

15. In addition, the personal *jamatalashi* of each of the accused, became respectively conducted through memo(s) drawn, on, 11.02.2015, and, therethrough the items reflected therein, became recovered, and, also prior thereto through memo drawn in Ext. PW-1/C, the, *jamatalashi*, of, the Police officials was offered to the accused, and, in the presence of witness(es), thereto(s), and, after conclusion(s) thereof, no, incriminatory material became recovered, upon, the respective *jamatalashies*, of, the accused persons, being made, or upon, the respective *jamatalashies* of the police officials, becoming conducted, hence in the presence of independent witness(es). The effect thereof is especially when the defence, does not make, any projection, vis-à-vis, any fragment, of, incriminatory item(s), becoming recovered during, the course of conducting *jamatalashies* of the police officials, and, thereafter it

becoming, disingenuously planted or part or fragment of the recovered items, becoming planted upon the accused. Besides, when no further projection is meted, by the defence inasmuch as the police officials thereafter disingenuously planting, them, on the accused; (a) thereupon, there was no prior statutory necessity of any consent, within, the ambit of Section 50, of, the, NDPS Act, becoming elicited, from, each of the accused. Even otherwise, since the cache, as became recovered, from the conscious and exclusive possession of the accused persons, was a huge one, thereupon, even the effect of non-elicitations or non-meteings, of, the apposite consent, is, irrelevant, nor non-elicitation of the apposite consent from each of the accused, is, relevant; (b) as obviously and reiteratedly, given its size, it is unamenable, to be carried, either upon persons of the each of the accused or by upon persons of each of the police official(s) concerned; (c) nor also the defence can make any valid espousal, vis-à-vis, the police planting inside the relevant room, the afore made recoveries, as made under, memo borne in Ex. PW-1/A, unless cogent evidence qua therewith, stood adduced; (d) since the afore evidence is grossly amiss, thereupon, the defence cannot make any valid argument, vis-à-vis, the afore recovery(ies) being contrived or being, a sequel, of, disingenuous planting(s), hence, within the room occupied by the accused, at, the relevant time, rather by the Investigating Officer.

Preponderantly, the learned defence counsel, during the course of his holding PW-10, to, cross-examination, rather meteing suggestion, hence holding affirmative, and, acquiescing echoings, inasmuch as, none of the accused handling the incriminatory carry bag, in contemporaneity, vis-à-vis, the police entering, the, relevant room, and, with an affirmative acquiescing answer thereto, emanating from PW-10. Thereupon, the following inferences become sparked (e) the defence acquiescing, vis-à-vis, the presence of the accused inside the room; (f) whereupon, absence of corroborative evidence, comprised in entries, becoming made, in the relevant register, by the manager of the afore hotel, and, theirs displaying, vis-à-vis, the accused occupying the relevant room, does not cause, any fatality to the prosecution case. (g) Contrarily therethrough, the accused are to be concluded, to, be available at the relevant time, hence, inside the relevant room, and, also are inferred to acquiesce qua, the afore made recoveries, becoming effectuated therefrom, through memo borne in Ex. PW-1/A. Furthermore, it is also to be inferred therefrom, especially when no evidence becomes adduced, that the relevant room was prior to, its being occupied by the accused, its hence becoming occupied by some other visitor(s), who, rather had left the afore bag therein, qua rather the relevant room, at the relevant time, becoming occupied by the accused persons. In aftermath, the bag, wherefrom

the apposite recoveries were made, rather is also concluded, to be, in the conscious and exclusive possession, at the relevant time, of, each of the accused.

16. Since, the Hon'ble Apex Court, in, a, judgment rendered, in case, titled ***Jeet Ram vs. The Narcotics Control Bureau, Chandigarh***, case whereof, became assigned, bearing Criminal Appeal No.688 of 2013, has, made expostulation, of, law, vis-à-vis, (a) the onus became rested upon the convict, to, explain, the, apposite possession, and, (b) in absence of the afore onus, being discharged, thereupon, the, presumption, under Section 54 of the NDPS Act, becomes attracted against the accused. Since, the convict, has not efficaciously discharged the onus, inasmuch as, his failing, to, explain his possession, within, or of, the apposite room, thereupon, the presumption, cast, under Section 54 of the NDPS Act, became, aroused, against him, and, disables him, to, contend that he was never, in *de facto*, in possession, of, the relevant contraband.

17. At the fag end, the learned counsel, for, the appellants/convicts, submitted before this Court, that eventhough, as evidently surfaces, on, the reading(s), of, the depositions, of, the official witnesses, that the relevant place is, a, thickly inhabited place, hence, the Investigating Officer, was enjoined to associate independent witnesses, other than PW-1, for, hence, benumbing

any conclusion qua his making a skewed, and, slanted investigation(s), into the relevant offences. However, the afore made submission, is, also extremely weak, as a catena of judgments made by the Hon'ble Apex Court, do not carry any postulations, vis-à-vis, the numerical strength, of, the independent witnesses, being imperative, for meteing succor, to, the depositions, of, the police witnesses, rather, an expostulation of law hence, becomes cast(s) therein vis-à-vis, the evidentiary weight, of, the testification(s) of independent witness(es), being the preponderant, and, prime consideration, for, the relevant purposes, than, numerical strength(s) thereof. Since PW-1, an independent witness to the relevant proceedings, has fully corroborated the statements, of, the police witnesses, and, also when the fullest opportunity, became allowed to the defence, to impeach his credit, and, yet his credit remaining, unimpeached; (a) thereupon, his testimony cannot be marginalized, and also cannot be invalidated merely upon more independent witnesses, than, him being in proximity, to the site of occurrence, hence available. Furthermore, it also becomes propounded, in, a catena of the decisions, made by the Hon'ble Apex Court, that, the testimonies of official witnesses, cannot become invalidated, merely for non-association, of, independent witness(es), (b) unless cogent evidence is adduced, and, its making graphic echoings, vis-à-vis, the afore relevant

connectivities, and, similarities, hence commencing from happening, of, seizure, of, the case property, at the site of occurrence, upto its production, in, Court becoming delinked or snapped; (c) and whereas, when rather, wherefrom an inference would become drawable, vis-à-vis, there being an intentional and deliberate omission, of, the Investigating Officer, to despite availability, of, independent witnesses, in the vicinity of the relevant site, of, occurrence, hence, his not joining them, in the relevant proceedings, is, concludable qua his suppressing and smothering, the, veracity of the prosecution case. Significantly, when rather contrarily hereat, the, afore apt congruities and similarities, do, for all the afore stated reasons, evidently surge forth, thereupons, the testimonies of the official witnesses cannot be discredited.

18. Be that as it may, since the sample seals also become embossed, on a cloth parcel, and, the afore samples seals pasted, on, the cloth parcel, carry thereon(s) English alphabet 'M', and, when the afore made English alphabet 'M', on the sample seals, as, pasted on a cloth parcel, does bear absolute congruity and similarity, vis-à-vis, the seals embossed, on the incriminatory bag, borne in Ex. P-2; (a) thereupon all imperative links and connectivities appertaining to the afore, become clinchingly proven,

hence commencing from the seizure, of, the incriminatory bag, at the site of occurrence, upto, its production in the Court.

19. For the reasons, which have been recorded hereinabove, this Court holds that the learned Trial Court has appraised the entire evidence, on record, in a wholesome and harmonious manner.

20. Accordingly, there is no merit in the appeals, and, the same are dismissed. The verdict of conviction and consequent therewith sentences, imposed upon the convicts/appellants, are, affirmed. The records of the learned Trial Court be sent back forthwith.

(Sureshwar Thakur)
Judge

(Chander Bhusan Barowalia)
Judge

30.09.2020
(raman/virender)