

2025:PHHC:075179



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I. **CRA-S-2832-SB-2010**

KULJIT SINGH

... APPELLANT

Vs.

STATE OF PUNJAB

... RESPONDENT

II. **CRA-S-2878-SB-2010**

LAKHWINDER SINGH

... APPELLANT

Vs.

STATE OF PUNJAB

... RESPONDENT

Reserved on:16.05.2025

Pronounced on: 29.05.2025

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by:- Mr. R.S. Ghuman, Advocate,
for the appellant in CRA-S-2832-SB-2010.

None for the appellant in CRA-S-2878-SB-2010.

Mr. Animesh Sharma, Addl. A.G., Punjab.

DEEPAK GUPTA, J.

The two accused Kuljit Singh (*appellant of CRA-S-2832-SB-2010*); and Lakhwinder Singh (*appellant in CRA-S-2878-SB-2010*) were tried by the Court of learned Special Court at Sri Muktsar Sahib, in a case arising out of FIR No.49 dated 02.03.2005, registered at Police Station Lambi under Section 18 of the NDPS Act. Both of them were found to be guilty and so, convicted under Section 18 of the NDPS Act, by learned Special Court, Sri Muktsar Sahib vide judgment dated 08.11.2010. Vide a separate order of the even date, both of them were sentenced to undergo rigorous imprisonment for a period

of 4 years each and also to pay fine of ₹30,000/- each with default sentence of 1 year rigorous imprisonment.

2. Against the aforesaid conviction and sentence, both the convicts have filed the present separate appeals.

3. CRA-S-2832-SB-2010, pertaining to appellant-Kuljit Singh, was admitted on 23.11.2010; whereas CRA-S-2878-SB-2010, pertaining to appellant-Lakhwinder Singh, was admitted on 03.12.2010.

4. Before final hearing in these appeals, Ld. State Counsel placed on record the respective custody certificates of both the appellants, which revealed that appellant-Lakhwinder Singh had already undergone actual custody period of 1 year and 12 days; whereas appellant-Kuljit Singh had already undergone actual custody period of 1 year and 15 days. None of them are involved in any other case. This Court asked the learned counsel for the appellants as to whether the appellants would be satisfied, in case their sentence is reduced to the period already undergone by them. However, learned counsel for the appellants insisted that both the appellants deserve acquittal, as they have been falsely implicated.

5. This Court has considered submissions of both the sides and has appraised the record.

6.1 As per prosecution version, on 02.03.2005, a Police party headed by ASI Mukhtiar Singh (PW1) along with other officials was holding a *naka* at Chowk Berrian at Village Mann. One Balkaran Singh (DW3) of Village Adhanian was joined in the police party. At about 4:40 PM, a car bearing registration No.DL-2CE-9272 was spotted coming from village Badal. On the signal given by the IO, the driver halted the car. Two persons alighted from the same and tried to flee in different directions. Both of them were apprehended and their whereabouts were enquired. The person driving the car disclosed his name as Lakhwinder Singh; and the person sitting beside him disclosed his name as Kuljit Singh. ASI Mukhtiar Singh told them that he suspected contraband in their possession and so, wanted to search them and

their car. Both of them were apprised of their legal right to be searched either before the Magistrate or before a Gazetted Officer. However, both of them reposed faith in the IO i.e. ASI Mukhtiar Singh. Consent memo Ex.PA in this regard was prepared, which was duly attested by HC Amrik Singh (PW5) and Balkaran Singh i.e. independent witness besides the accused.

6.2 On search of the car, opium wrapped in a glazed paper was recovered from the dashboard of the car. Sample of 10 gm thereof was separated and converted into parcel. On weighing, the remaining opium came to be 990 grams, which was also converted into separate parcel. Both the parcels were duly sealed by the IO with his seal bearing 'MS'. Specimen seal Ex.P1 was prepared and after use, the seal was handed over to HC Gurjant Singh. The case property was taken into possession vide recovery memo Ex.PB. *Ruqqa* Ex.PC was sent to the police station and on that basis FIR Ex.PC/1 was registered by SI Karam Singh. The personal search memo of accused Lakhwinder resulted in the recovery of mobile and a sum of ₹110/-, whereas an amount of ₹40/- was recovered from Kuljit Singh, regarding which separate recovery memo Ex.PE was prepared. Car was also taken into possession vide memo Ex.PB. The accused were arrested and grounds of arrest were disclosed to them. Rough site plan Ex.PD was prepared at the spot. All the memos were attested by the same set of witnesses.

6.3 Statement of witnesses under Section 161 CrPC were recorded. On returning to the police station, the IO produced the accused and the case property before SHO Karam Singh (PW3) along with the personal search memo and the car, who checked the case property, sealed it with his seal 'KS' and took the same into his possession vide memo Ex.PH.

6.4 On 03.03.2005, SHO Sukhpal Singh produced the accused and the case property in the Court of learned Magistrate vide request/application Ex.PK and inventory report Ex.PL. Photographs Ex.PT and Ex.PU of the case property were taken. The Court drew one additional sample from the bulk sample and sealed the same along with bulk parcel with its seal impression

FSD/MLT. Order Ex.PM was passed. Property was then handed over back to the SHO, who deposited the same with MHC Jaswinder Singh (PW2), with seals intact. Detailed report Ex.PN was sent to the DSP concerned. Thereafter, on receipt of report of the Chemical Examiner Ex.PZ and after completion of all necessary formalities of investigations, final report under Section 173 Cr.P.C was presented in the Court.

7. After supplying copies of the challan to the accused as required under law, they were charge-sheeted under Section 18 of the Act. Both the accused pleaded not guilty and claimed trial.

8. Prosecution examined as many as five witnesses to support its case. The incrementing material appearing in the evidence of the prosecution was confronted to the accused in their respective statements recorded under Section 313 Cr.P.C. They refuted the same and pleaded their false implication. In their defence, accused examined three witnesses i.e. DW-1 Rajinder Singh, DW-2 HC Sewak Singh and Balkaran Singh as DW-3.

9. After hearing both the sides, the trial Court held that prosecution has successfully proved its case and as such, convicted both the accused, and sentenced them, as already stated.

10.1 Assailing the conviction, it is contended by learned counsel for the appellants that the judgment of conviction is perverse and without appreciating the evidence properly.

10.2 Learned counsel has pointed out that Balkaran Singh, who was joined by the police as an independent witness, is in fact is a stock witness of the police. Prosecution did not examine him. It is the accused, who examined him as DW-3 and his testimony supported by the documentary evidence would reveal that he was cited as an independent by the Police in more than 15 cases. It is argued that all those cases were registered in the same Police Station Lambi. The testimony of this witness also revealed that he was friend of ASI Mukhtiar Singh (IO). Learned counsel argued that it is hard to believe

that the same witness will be available to the police at every spot, as and when the crime is allegedly detected, which in itself shows that he was a stock witness and so, the falsity of the prosecution case is established.

10.3 It is further argued that no specific questions with regard to possession, much less conscious possession, were put to the accused while recording their statements under Section 313 CrPC and this in itself is sufficient to record the acquittal.

10.4 Another contention raised by learned counsel is that sanctity of the offending material was violated, inasmuch as after reaching the police station, the case property was not deposited in the *Malkhana* of police station on 02.03.2005 and rather, the same remained in the custody of the SHO.

10.5 Not only this, neither the CFSL form was prepared at the spot nor deposited in the *Malkhana*. Long delay in sending the sample parcel to the chemical examiner is also specifically pointed out by counsel for the appellant besides the fact that cover of the sample parcel was loose and the seal was not eligible.

10.6 Ld. Counsel further argued that joint offer made to both the accused to apprise them of their right to be searched before the Gazette officer or Magistrate is also illegal.

10.7 Learned counsel has also drawn attention towards the major contradictions appearing in the statement of the prosecution witnesses.

10.8 It is contended that in the aforesaid circumstances, the conviction of the appellants has been wrongly recorded. Prayer is accordingly made for acquittal to the accused-appellants.

11. Refuting the aforesaid contentions, it is argued by learned State counsel that prosecution successfully proved its case and that there is no flaw in the findings as recorded by the trial Court. It is argued that

independent witness Balkaran Singh had been won-over by the accused and therefore, he was given up and that his non-examination by the prosecution, is not sufficient to put a dent on their case. It is also argued that minor discrepancies here and there cannot be sufficient to discard the testimonies of the prosecution witnesses. Defending the impugned judgment of conviction and sentence, as imposed by the trial Court, prayer is made for dismissal of the both these appeals.

12. This Court has considered submissions of both the sides and have appraised the record carefully.

13. In order to prove the recovery of the offending material from the possession of the two accused-appellant, prosecution has relied upon the testimony of PW1-ASI Mukhtiar Singh and PW5-HC Amrik Singh. Though both of them testified in terms of the prosecution case to prove the recovery, but their cross-examination reveal following numerous contradictions, as have been pointed out by learned counsel for the appellants.

- PW1-ASI Mukhtiar Singh says that scale and weights for taking weighment of contraband was brought by Constable Jangir Singh. Contrary to the same, PW5 HC Amrik Singh says that though the weighing scale was arranged from outside along with the box but the small scale was already with the IO.
- PW1 says that Constable ,who had taken the Ruqqa, came back to the Police Station at 8 PM and had gone there on a bicycle; whereas PW5 says that he had come back at 9 PM and had gone there on foot.
- PW1 says that Constable Jangir Singh, who bought the weighing material went on motorcycle at 4.00 PM and came after one hour; whereas accused was apprehended at 4.40 PM as per the own prosecution case. It is not explained that in case accused were apprehended at 4:40 PM, why official was sent to arrange for weighing material at 4: 00 PM.
- Still further, PW1 says that the jeep on which the police party had gone to the spot was arranged by HC Amrik Singh. On the other hand, PW5 says that

a private jeep was provided by the SHO and that he had not arranged any such jeep.

- PW1 says that writing work was done while sitting in the jeep in the torch light, whereas contrary to the same, PW5 says that writing work was done while sitting on the ground.
- As per PW1, the cloth meant for preparing the parcels was already in his investigation kit measuring 2 mtrs and that parcel of the cloth was prepared by him with the help of needle and thread. Contrary to the same, PW5 says that IO was already having stitched bag and mouth of the bulk parcel was tied with thread.
- PW1 says that independent witness Balkaran was freed at 6.30 PM, whereas contrary to the same, PW5 says that said witness stayed at the spot with the police party till they remained at spot.
- PW1 says that he had not sent any detailed report to the superior officer and that it was sent by SHO Karam Singh. Contrary to the same, PW3 Karam Singh says that detailed report Ex.PN was got prepared from ASI Mukhtiar Singh.
- PW3-SI Karam Singh says that application Ex.PK and inventory Ex.PL are his own handwriting and bear his signature. But in cross-examination, PW3 says that inventory report was returned by ASI Mukhtiar Singh and only signed by him.

14. Though, if the aforesaid contradictions are seen separately, they are quite minor in nature, but when seen cumulatively, they assume significance, in the light of the fact that independent witness Balkaran has not been examined by the prosecution and rather, examination of this witness in the defence, shatter the prosecution case, particularly when it is found that this witness namely Balkaran Singh is in fact a stock witness.

15. As per the legal position, it is imperative for the IO to join as independent witness, to vouch-safe the fair investigation, if available. In

present case, it is contended by the prosecution that Balkaran Singh had met them at the spot and was joined in the proceedings. PW1 ASI Mukhtiar Singh specifically stated that he did not know Balkaran Singh earlier and that the said Balkaran had never come to the Police Station Lambi earlier. He even denied that this witness was cited in any other case.

16. However, contrary to above statement, Balkaran Singh examined as DW3 testified that on 02.03.2005, he was called by ASI Mukhtiar Singh, the IO of the case at Police Station Lambi at 5 PM. He specifically stated that said ASI Mukhtiar Singh is his friend and had taken his signature on some blank papers. Recovery was neither effected from the accused person present in the Court in his presence nor he was joined by the police in investigation. He does not even know the accused. As per him, no recovery memo was prepared in his presence nor his statement was recorded. Most importantly, PW3 says that police of Police Station Lambi has cited him as a witness in numerous cases. He has given details of many such FIRs.

17. The prosecution could have urged that DW3 has been won over by the accused and therefore, he cannot be relied for not supporting its case. However, contention is not available to the prosecution considering the fact that testimony of DW3-Balkarn Singh is supported by the information provided by Sr. Superintendent of Police, Muktsar contained in Ex.DW3/A, which would reveal that Balkaran Singh has been cited as an independent witness by the said Police Station, Lambi during 2001 to 2005 in as many as 16 different FIRs. All these 16 FIRs, as per the details provided in Ex.DW3/A, were recorded during 06.05.2001 to 02.03.2005. It is absolutely not believable that a same person will be available to the investigating officers at every spot, as and when the recovery is to be effected from an accused pertaining the NDPS Act, considering the fact that all the 16 FIRs, as detailed in Ex.DW3/A, pertain to the NDPS Act, registered in the same Police Station. This single fact that a stock witness was cited as an independent witness by the Investigating Officer in itself cast a strong doubt on the prosecution story

coupled with the discrepancies pointed out in the testimony of PW1 and PW5.

18. Proceeding further, the sanctity of the offending material is completely violated, as will be evident from the evidence on record, as the case property after alleged recovery was not deposited in the Malkhana of the Police Station. As per the testimony of PW1 ASI Mukhtiar Singh, the IO of the case, after effecting the recovery on 02.03.2005 and after reaching at the Police Station, he had handed over the same i.e. sample parcel as well as the sealed bulk parcel to SHO Karam Singh, who put his own seal and took the same in his possession vide memo Ex.PH. It is on next date i.e. 03.03.2005 that SHO Karam Singh took it to the Court for necessary inventory certification. As the testimony of PW3-SHO Karam Singh would reveal that the contraband remained in his possession during the night of 2/3.03.2005. As per his testimony, he kept the case property in his quarter and no entry was made in this regard in the DDR.

19. Not only above, PW4-Contable Jangir Singh, who had taken the sample to the office of the Chemical Examiner, Punjab, Chandigarh on 07.03.2005, instead of taking the sample parcel straight to FSL, Chandigarh choose to stay for night at Police Line, Muktsar, where he parted with the possession of said sample parcel entrusted to him for depositing with FSL, with one police official of Police Line, Muktsar to keep in his Almirah as disclosed by this witness in his statement.

20. These lapses on the part of the prosecution are coupled with the fact that CFSL form was neither prepared at the spot nor was deposited in the Malkhana, as has come in the testimony of PW5-HC Amrik Singh. Further, despite certifying of the inventory by the Magistrate on 03.03.2005 and depositing the same with the Malkhana, it was not taken within reasonable time to the FSL. Rather, it was sent on 07.03.2005 through constable Jangir Singh to FSL, Chandigarh, and as already noticed above that said Constable

Jangir Singh parted with the said parcel to an official of the Police Line, Muktsar in the night time and then next day, he went to Chandigarh.

21. All the aforesaid circumstances would reveal that the credibility/sanctity of the case property is impeached and compromised and therefore, benefit must go to accused.

22. Apart from above, at the time of alleged recovery, ASI Mukhtiar Singh chose to give a joint offer to both the accused to be searched either from the Gazetted Officer or a Magistrate instead of making any separate offer to them. He preferred to effect the recovery at his own, without calling any senior officer at the spot. Not only this, there is no evidence that the car, in the dashboard of which the contraband was found, *belonged* to any of the accused.

23. In all the aforesaid facts and circumstances, this Court is of the considered view that prosecution could not establish its charge against the accused beyond reasonable doubt. The conviction and sentence as imposed by the trial Court in these circumstances cannot be sustained.

24. As such, giving strong benefit of doubt to both the appellants-accused, they were acquitted of the charge by setting aside the impugned judgment of conviction, and order of sentence as passed by the trial Court.

Both the appeals are accordingly accepted.

(DEEPAK GUPTA)
JUDGE

29.05.2025

Vivek

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>No</i>