

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

CRA-D-821-DB-2013 (O&M)

Reserved on: 04.02.2025

Date of decision: 10.02.2025

KARNAIL SINGH

...Appellant

Versus

STATE OF PUNJAB

...Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Japneet Singh Wadhwa, Advocate and
Ms. Anu Chaudhary, Advocate for the appellant.

Mr. Mohit Kapoor, Sr. D.A.G., Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 01.06.2013, upon SC No.19T of 05.09.2011, by the learned Judge Special Court, Patiala, wherethrough in respect of a charge drawn against the accused *qua* an offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the Act"), the learned trial Judge concerned, proceeded to record a finding of conviction against the accused-appellant. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, imposed upon, the convict both sentence(s) of imprisonment as well as sentence(s) of fine, but in the hereinafter extracted manner:

"xxx

Therefore, keeping in view the nature of the offence committed by the convict, he is sentenced to undergo rigorous imprisonment for 12 years and to pay a fine of Rs.1 lacs and in default of payment of fine to further undergo rigorous imprisonment for 2 years."

2. The period of detention undergone by the convict, during the investigations, and, trial of the case, was, in terms of Section 428 of the Cr.P.C., rather ordered to be set off, from the above imposed sentence(s) of imprisonment.

3. The accused-convict become aggrieved from the above drawn verdict of conviction, besides also, becomes aggrieved from the consequent therewith sentences of imprisonment, and, of fine as became imposed, upon him, by the learned convicting Court concerned, and, hence has chosen to institute thereagainst the instant criminal appeal.

Factual Background and Investigation proceedings

4. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. PL/1 is assigned. The narrations carried in Ex.PL/1, are that on 13.07.2001, SI Gurbaj Singh along with other police officials were present at Bhawanigarh Chowk, Samana in connection with patrolling and in search of bad elements, where SI Gurbaj Singh received secret information that accused Karnail Singh and Vijay Kumar are in the habit of selling opium and today they are coming in Tata Sumo No.HR-07C/5956 and if a nakabandi is held, they can be apprehended. Believing this information to be trustworthy, SI Gurbaj Singh sent ruqa to the police station, on the basis of which formal FIR was registered. After joining one Mashoor Singh in the police party, Nakabandi was held at bus stand village Geora. At about 8.30AM, Tata Sumo No.HR-07C/5956 came from the side of Nawangaon, which was being driven by Vijay Kumar and Karnail Singh was sitting along with him. Accused were apprehended and on inquiry, they disclosed their names, parentage and address.

5. SI Gurbaj Singh disclosed his identity to the accused persons and asked them that he suspects some contraband with them and wants to search the

vehicle. They were informed about their right to get their search conducted in the presence of some Gazetted Officer or Magistrate who can be called at the spot, if the accused desires. Both the accused opted to get their search conducted in the presence of a Gazetted officer. Their dissent memos were prepared. In the meantime, DSP Shamsheer Singh came at the spot and disclosed his identity to both the accused persons. They were informed about their right to get their search conducted in the presence of some other Gazetted Officer or Magistrate who can be called at the spot, but the accused reposed faith in DSP Shamsheer Singh, who prepared consent memo of the accused attested by the witnesses. On the direction of DSP, SI Gurbaj Singh conducted the search of the vehicle, which led to the recovery of one bag lying on the thighs of Karnail Singh containing opium wrapped in a polythene envelop. Two samples of 10 gm each from the said bag were separated and the remaining opium was found to be 24 Kg. 480 grams on weighing. The sample parcels and bulk parcels of the opium were sealed by DSP Shamsheer Singh and SI Gurbaj Singh with their respective seal impressions SS and GS. The sample seal was also prepared. The search of accused Vijay Kumar led to the recovery of opium wrapped in a polythene envelop lying in the right pocket of his pent. Two samples of 10 gm each from the said bag were separated and the remaining opium was found to be 480 gm on weighing. The sample parcels and bulk parcels of the opium were sealed by DSP Shamsheer Singh and SI Gurbaj Singh with their respective seal impressions SS and GS. sample parcels and residue parcels were taken into possession by preparing memo which was attested by the witnesses. SI Gurbaj Singh prepared rough site plan, arrested the accused, disclosed their grounds of arrest and prepared personal search memos and memos of information of arrest of the

accused persons. The Tata Sumo vehicle was also taken into police possession. The statements of witnesses were also recorded.

6. On return to the police station, case property, sample seals, witnesses and the accused were produced before SHO/SI Budh Ram, who verified about the factum of recovery, affixed his seal on the case property and on the sample seal. On the directions of the officiating SHO, case property was deposited with the MHC. On the next day, the case property along with inventory was produced before the Ld. Illaqa Magistrate. On receipt of report of chemical examiner and on conclusion of investigation, challan against both the accused was presented in the Court for trial.

7. To prove its case, the prosecution examined PW1 Inspector Budh Ram, who was the SHO of the police station at the relevant time, before whom, case property, accused and witnesses were produced for verification and thereafter, present accused Karnail Singh got absented himself from the Court on 19.2.2004 and when his presence could not be procured through warrants of arrest, he was declared as proclaimed offender vide order dated 15.5.2004. His co-accused Vijay Kumar was convicted and sentenced vide judgment dated 10.12.2007.

Trial Proceedings

8. The learned trial Judge concerned, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charge against the accused, for an offence punishable under Section 18 of the Act. The afore drawn charge was put to the accused, to which he pleaded not guilty, and, claimed trial.

9. In proof of its case, the prosecution examined 7 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution

evidence. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. The accused also chose to adduce defence evidence, and 3 witnesses were led into the witness box.

10. As above stated, the learned trial Judge concerned, proceeded to convict the accused for the charge (supra), as became drawn against him, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonment, as well as of fine, upon the convict.

Submissions of the learned counsel for the appellant

11. The learned counsel for the aggrieved convict-appellant has argued before this Court, that the impugned verdict of conviction, and, consequent therewith order of sentence, require an interference. He supports the above submission on the ground, that it is based on a gross misappreciation, and, non-appreciation of evidence germane to the charge.

Submissions of the learned State counsel

12. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent therewith sentence(s) (supra), as become imposed upon the convict, is well merited, and, does not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the instant appeal, as preferred by the convict, be dismissed.

Analysis of the case

13. Through recovery memo Ex.PG, the recovery of the contraband became allegedly recovered from the site concerned. In proof of the prosecution case, Inspector Gurbaj Singh stepped into the witness box as PW-6, and, in his examination-in-chief, he made speakings therein, which concur with the contents of the appeal FIR, to which Ex.PL/1 is assigned.

14. The prosecution though has been able to lead cogent evidence, in proof of the recovery of the seizure, thus being effected at the crime site, and, the same thus being sealed with the relevant seal impressions. Moreover, though the prosecution has also been able to cogently establish, that the sealed cloth parcels, became deposited in the malkhana concerned. In addition, though the prosecution has been able to establish, that the case property travelled in an untampered condition to the FSL concerned.

15. A reading of the report (Ex.PT), as made by the FSL concerned, whereto the relevant seizure became sent for an examination being made of the stuff inside the sealed cloth parcels, though reveals, that the examined stuff inside the sealed cloth parcels, as became sent to it for examination, thus being poppy heads. The said report is *ad verbatim* extracted hereinafter.

“x x x x

7) <i>Weight of sample</i>	<i>10 grams of brown-black coloured substance</i>
8) <i>Purpose</i>	<i>Analysis and result</i>
9) <i>Identify test</i>	<i>Present</i>
<i>Meconic Acid</i>	
<i>Other general alkaloids</i>	<i>Present</i>
<i>of Morphine & Opium</i>	<i>3.5%</i>

REPORT

On the analysis of the substance in parcel under reference, it has been concluded that this substance is opium and the quantity of morphine in it is 3.5%.

*Sd/- Examiner (in English)
Deputy Director (Toxicology)
Forensic Science Laboratory,
Punjab, Chandigarh.”*

16. Be that as it may, though a reading of the report (supra) of the FSL also discloses, that the sealed cloth parcels, became received there, hence with the seal impressions thereons being intact. However, the chemical examiner at the FSL concerned, after making examinations of the stuff inside the sealed cloth

parcels, and, thereafter his drawing the report (supra), yet omits to mention in the report Ex.PT, about his re-enclosing the examined stuff inside the cloth parcels, and, his thereons affixing the seals of the FSL concerned.

17. The above was required to be mandatorily done, as, thereupon the imperatively required to be proven, thus unbroken links in the chain of incriminatory evidence, commencing from the seizure being made from the crime site, through recovery memo Ex.PG, and, lasting upto the production of the case property in Court, thereby thus would become convincingly proven, rather to remain unsealed or unbroken. In the above event alone the charge drawn against the accused would be concluded to become cogently established. However, as above stated, for want of the chemical examiner concerned, after making examination(s) of the stuff inside, the sealed cloth parcels, thus re-enclosing the examined stuff inside the cloth parcels, and, his further failure to emboss thereons, rather the seals of the FSL concerned, whereafter the examined stuff was to be produced in Court, for its being shown to the investigating officer concerned, for thereby thus, on evident surging-forth of the above requisite primary evidence, rather the charge drawn against the accused, could be concluded to be convincingly proven.

18. Be that as it may, when the chemical examiner concerned, after examining the stuff inside the sealed cloth parcels, omitted to re-enclose the examined stuff inside the cloth parcels, and, also omitted to emboss thereons the seals of the FSL concerned. Therefore, it appears, that the stuff after becoming examined by the chemical examiner concerned, was thus enclosed in loose cloth parcels, and, thereafter the said loose cloth parcels, became sent in an unsealed condition, thus to the incharge of the malkhana concerned. Subsequently, it appears that such loose, and, unsealed cloth parcels, thus comprising the case

property Ex.MO1 and MO2, rather became produced in Court, and, as revealed on a reading of the examination-in-chief of PW-6, also became identified, as such by PW-6. In the wake of the above, it appears, that despite the identification of the case property, being made in Court by PW-6, and, also irrespective of the fact, that the exhibit marks were made, during the makings of testifications by PW-6, thus on the said case property, upon its, becoming produced in Court, but since there is no recorded observation by the learned trial Judge concerned, about Ex.MO1 and Ex.MO2, thus occurring within sealed cloth parcels.

19. Therefore, though Ex.MO1 to MO2 may appertain to the relevant stuff, as became examined at the FSL concerned. However, yet in the wake of no observations (supra), being made by the learned trial Judge concerned, at the time of production of Ex.MO1 and MO2 in Court, and, also in the wake of the report (supra) of the FSL concerned, omitting to specifically state therein, about the examined stuff, being re-enclosed in sealed cloth parcels, whereons, became embossed the seals of the FSL concerned, thus leads to the hereinafter conclusion; (a) The prosecution has not been able to co-relate the report (supra) to Ex.MO1 and MO2; (b) the loose cloth parcels, Ex.MO1 and MO2, as became produced in Court, in support of the report (supra) of FSL concerned, do not become related to the said examined stuff. Resultantly, when scope is, thus left for an inference *qua* either the case property, thus not relating to the report (supra) of the FSL concerned, and/or to the enclosures inside Ex.MO1 and MO2, being introduced therein, thereby the report of the FSL (supra), rather looses its evidentiary vigour. A further scope is also left, that the case property, if any, became tampered with. Moreover, much scope is also left for the drawing of an inference, that the case property other than the one related to the charge drawn against the accused, thus became produced in Court. As but a natural corollary,

when the primary evidence for proving the charge drawn against the accused, does come under a cloud of deep suspicion. Resultantly, this Court is constrained to conclude, that the charge drawn against the accused did not come to be cogently established.

20. Moreover, in paragraph 35 of the judgment rendered by the Hon'ble Apex Court in **“Noor Aga V. State of Punjab and another” Criminal Appeal No.1034 of 2008, decided on 09.07.2008**, paragraph whereof becomes extracted hereinafter, thus becomes spelt the imperative *sine qua non*, rather requiring to become cogently proven hence for therebys the charge drawn against the accused becoming declared to become unflinchingly proven. However, since after the examination(s) being made of the stuff inside the sample parcels, thus by the FSL concerned, rather the latter did not re-enclose them in the sealed cloth parcels, hence carrying thereons the seals' of the FSL concerned. Moreover, when the said sample parcel(s) became never returned to the office wherefrom they generated nor when they became produced in Court.

“35. The High Court proceeded on the basis that non-production of physical evidence is not fatal to the prosecution case but the fact remains that a cumulative view with respect to the discrepancies in physical evidence creates an overarching inference which dents the credibility of the prosecution. Even for the said purpose the retracted confession on the part of the accused could not have been taken recourse to.”

21. Consequently, the expostulation of law carried in verdict (supra), remains unsatiated thereby the accused become entitled to an acquittal.

22. The said view is also supported by a judgment rendered in case titled as **“Gaunter Edwin Kircher V. State of Goa, Secretariat Panji, Goa”**, **Criminal Appeal No.642 of 1991, decided on 16.03.1993**, relevant paragraph whereof becomes extracted hereinafter.

“J. Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 52A and 53 – Customs Act, 1962, Section 110(IB) – Physical evidence – Case Property – Recovery of heroin from accused – Case property destroyed and not produced – Physical evidence relating to three samples taken from the bulk amount of heroin were also not produced – Bulk quantity was destroyed the samples were essential to be produced and proved as primary evidence for the purpose of establishing the fact of recovery of heroin as envisaged under Section 52A of the Act.”

Final order

23. The result of the above discussion, is that, this Court finds merit in the appeal, and, is constrained to allow it. Consequently, the appeal is allowed. The impugned judgment convicting, and, sentencing the appellant, and, as becomes recorded by the learned trial Judge concerned, is quashed, and, set aside. The appellant is acquitted of the charge framed against him. The fine amount, if any, deposited by him, be, in accordance with law, refunded to him. The personal, and, surety bonds of the accused shall stand forthwith cancelled, and, discharged. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal. The appellant, if in custody, and, if not required in any other case, be forthwith set at liberty. Release warrants be prepared accordingly.

24. Records be sent down forthwith.

25. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(VIKAS SURI)
JUDGE

10.02.2025

Ithlesh

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No