

Consequently, the impugned order of sentence dated 23.01.1989 (Annexure P-5), order dated 06.02.1989 passed by respondent No.3 (Annexure P-6) and order dated 18.05.1989 (Annexure P-7) passed by respondent No.2, are hereby set aside. Consequences would follow and law will take its own course.

(19) Resultantly, with the abovesaid observations made, present criminal writ petition stands allowed, however, with no order as to costs.

P.S. Bajwa

Before Gurmit Ram, J.

AVTAR SINGH ALIAS TARI — *Petitioner*

versus

STATE OF PUNJAB — *Respondent*

CRA-S No.1473-SB-2005

September 02, 2015

Narcotic Drugs and Psychotropic Substances Act, 1985 — S.15 (c) — High Court acquitted the accused against conviction order passed by Special Court, Patiala on the ground that accused was not apprehended at the spot — Accused had no connection with car from which recovery of poppy husk was made during naka — Owner of car not part of investigation — Independent witness — Member Panchayat at time of naka not examined during trial — Appeal allowed by giving the benefit of doubt and acquitted of charge under Section 15 (c) of NDPS Act.

Held that in this case, it was an admitted fact that appellant was not apprehended at the spot. He slipped away from the spot after stopping his vehicle at some distance from the *naka* place by telling HC Amrik Singh that his vehicle had gone out of order. Then it was also case of prosecution that appellant was identified by HC Amrik Singh only. This HC Amrik Singh (PW3) in his cross-examination stated that he himself never arrested appellant Avtar Singh in any case. He did not know how many brothers the appellant has. He had no dealing with the appellant. The lights of the car in question were on when it was at the distance of 20 paces from the place of *naka*. So, in the light of this cross-examination of PW3, it is difficult to say that this witness had been in a position to identify the appellant at the relevant time since he

did not have any kind of acquaintance with him prior to this. Except the statement of this witness, there is no other evidence on the record to connect the appellant-accused with this case since the other members of the police party were not knowing him prior to it.

(Para 18)

Further held, that then in this case, it had come on the record that the vehicle contessa car bearing No.DL-2CG-1746 on which the appellant had come at the spot at the relevant time was belonging to one firm of New Delhi. The owner of this vehicle was never joined in the investigation of this case nor any explanation was brought on the record by the prosecution during the trial of the case in order to link the same with the present appellant. Herein the principles of law as laid down by this Court in *Subhash Versus State of Haryana, 2014(3) R.C.R. (Criminal) 612* are followed.

(Para 19)

K.P.S. Virk, Advocate for

K.S. Dhaliwal, Advocate *for the appellant*.

A.S. Klar, Assistant A.G., Punjab.

GURMIT RAM, J.

(1) The above noted criminal appeal has been filed by appellant Avtar Singh alias Tari, who was accused before the learned trial Court, against the judgment and order of sentence dated 1.7.2005 passed by the learned Judge, Special Court, Patiala vide which he was held guilty for the offence punishable under Section 15 (c) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (in short – the Act) in criminal case bearing FIR No.188 dated 6.8.2003, Police Station Patran, District Patiala and convicted there under.

(2) The case of the prosecution as put forth during the trial of the case, in brief, was that on 6.8.2003, Tarsem Singh ASI of Police Station, Patran along with ASI Gurpartap Singh and other police officials was present at the turning point of village Deogarh on Patran-Jakhal road in connection with special NAKABANDI. One Chajju Ram, Ex-Member, Panchayat of village Hamjhari came there with whom the said ASI Tarsem Lal was talking. At about 8:00 p.m., there came one Contessa car bearing No.DL2CG-1746 from the side of village Hamjhari which stopped at some distance from the NAKA point on seeing the police party. One Hindu gentleman alighted from this car

who was identified as Avtar Singh alias Tari son of Parsan Singh, resident of village Kahangarh, P.S. Patran by HC Amrik Singh. HC Amrik Singh asked from him the reason for stopping the vehicle, who in reply said “the vehicle has gone out of order” and went back at once. He was waited for some time, but he did not turn up. Thereafter, the search of this car was conducted on the basis of suspicion and during its search two filled bags lying on rear seat and three filled bags from the dicky of the car were recovered. On checking, these bags were found containing poppy-husk. Two samples weighing 250 gms. each were separated from each of the bags and the remaining contents of each of the bags on weighing were found to be 34.5. kgs. All the above-said sample parcels and the five bags containing the remaining poppy-husk were sealed by ASI Tarsem Lal with his seal of 'TL'. Specimen seal was prepared separately. Thereafter, above-said all the sample parcels and five bags containing remaining poppy-husk duly sealed were taken into police possession vide a memo along with the above-said car. Accordingly, ruqqa was sent to the police station, on the basis of which the instant case under Section 15(c) of the Act was registered against the accused since he could not produce any licence to keep the said narcotics in his possession. Site-plan of the place of recovery was prepared. No document of above-said car was recovered on checking from its dash board. On return to police station, case property was produced before the concerned SHO and was deposited with MHC. On the next date, it was also produced before the Court concerned. Statements of witnesses were recorded. Later on, the appellant-accused was arrested in this case on 16.12.2003 and grounds of arrest were also disclosed to him. On receipt of report of Chemical Examiner as well as on completion of investigation, challan was presented before the Special Court, Patiala.

(3) Copies of all the documents as annexed with the challan were supplied to the accused as required under the provisions of Section 207, Cr.P.C. Further, he was charge-sheeted for the offence punishable under Section 15(C) of the Act, to which, he pleaded not guilty and claimed trial.

(4) The prosecution in order to prove its case against the accused examined as many as eight witnesses during the trial of the case.

(5) Then the accused was duly examined as required under the provisions of Section 313 of Cr.P.C. Entire incriminating evidence as brought on the file against him during trial of the case was put to him,

which was denied by him entirely. Further he pleaded that he had no concern with the Contessa car bearing No.DL-2CG-1746 and that he was involved in this case falsely since SHO Tarun Rattan, P.S. Patran was inimical towards him. Further he pleaded his innocence and denied that any contraband as alleged had been recovered from him. In his defence, he also examined Constable Bhola Singh No.419, P.S. Patran as DW1.

(6) The learned trial Court after hearing the learned Additional Public Prosecutor for the State, learned defence counsel and going through the record as well held the accused guilty for the offence punishable under Section 15(c) of the Act and sentenced him accordingly vide the impugned judgment and order of sentence dated 1.7.2005.

(7) Appellant/accused being not satisfied with the impugned judgment and order of sentence has come up in the instant appeal before this Court, notice of which was given to the State. Record of the learned trial Court was also requisitioned.

(8) I have heard the learned counsel for the appellant, learned State counsel and have also gone through the record with their able assistance.

(9) Learned counsel for the appellant has contended that it was the case of prosecution that the appellant was identified by HC Amrik Singh, who was allegedly one of the members of police party headed by ASI Tarsem Lal, Investigating Officer at the time of the alleged recovery. Herein he has contended that said HC Amrik Singh appeared during the trial of the case as PW3 and he had failed to establish the identity of the appellant beyond the shadow of doubt for his complicity in the case in hand. Then it is further his contention that the car in question was neither owned nor possessed by the appellant. Rather this car as per record was registered in the name of Leading Engineer Works Pvt. Ltd., New Delhi and its owner was not joined in the investigation of this case at any stage nor there is any explanation on the part of prosecution as to how this car came into the possession of the appellant. Then it is further his contention that as per the prosecution case one Chhaju Ram Ex-Member, Panchayat was joined in the police party as an independent witness, but the prosecution did not examine him during the trial of the case. Then further he has contended that there are material contradictions in the statements of material witnesses of prosecution which render the case of the prosecution to be highly doubtful. Further he has referred to the

statement of DW1 Constable Bhola Singh who proved the photocopy of register No.19 Ex.DW1/A, photocopy of FIR Ex.DW1/B along with list of witnesses Ex.DW1/C.

(10) On the other hand, learned State counsel has strongly denied the above contentions of learned counsel for the appelland and has vehemently contended that the prosecution has succeeded in proving its case during the trial of the case beyond all the shadow of doubt. It is further his contention that during the trial of the case, the prosecution led the entire evidence to prove its case and as such there is nothing on the record of which benefit could be granted to the appelland. Few contradictions in the statements of PWs, if any, are stated to be natural as well as due to the lapse of time between the date of alleged recovery and the date of recording of the statements of PWs in the Court. Further prayer is made to dismiss the instant appeal.

(11) For the proper appreciation of the above rival contentions of both the parties, I deem it essential to have a bird's eye view of the evidence led by both the parties.

(12) ASI Tarsem Lal, the Investigating Officer as PW7 narrated about the holding of *NAKA* by his police party on 6.8.2003 on the turning point of village Deogarh, Jakhal-Patran Road, where one Chajju Ram, Ex-member, Panchayat also came. At about 8:00 p.m., one Contessa Car bearing No.DL2CG-1746 came from the side of village Hamjheri which was stopped by its driver at some distance from *NAKA* place. One Hindu gentleman alighted from that car, who was identified by HC Amrik Singh No.1423 to be Avtar Singh @ Tari, the present appelland (accused). On asking the reasons for stopping the car, he replied that his vehicle has gone out of order and then slipped away from the spot. After waiting him for some time, the police party carried out the search of this car, which led to the recovery of two bags lying on the rear seat and three bags from its dicky which were found containing poppy-husk. Two samples weighing 250 gms. each were separated from each of the bags and the remaining contents of each of the bags were found to be 34 kgs. 500 gms. which were duly sealed by him with his seal of 'TL' and the same were taken into police possession vide memo Ex.PA along with the above-said contessa car. Further he proved the specimen impression of seal used Ex.PB, ruqqa Ex.PH, FIR Ex.PH/1, site-plan Ex.PJ and special report Ex.PK. Then on return to police station, the case property was produced before the SHO Tarn Rattan, who after checking the same and verifying the factum of recovery, sealed it with his seal of 'TR'. Then he proved the

application Ex.PC vide which the case property was produced in the Court on the next day. Further he also proved the second sample parcels Ex.P1 to Ex.P5, residue parcels Ex.P6 to Ex.P10 and Chemical Examiner report Ex.PL.

(13) PW3 HC Amrik Singh, who was one of the members of the police party headed by PW7 ASI Tarsem Lal at the time of alleged recovery identified the appellant-accused and corroborated the statement of PW7 ASI Tarsem Lal with regard to the alleged recovery of narcotics. PW8 ASI Gurpartap Singh also supported the prosecution version since he was also present at the spot of recovery at the relevant time being one of the members of the police party headed by ASI Tarsem Lal, the Investigating Officer. Then he also stated about the producing of case property before the Illaqa Magistrate on the next day of the alleged recovery.

(14) PW1 Tarun Ratan, Inspector was posted as SHO, P.S. Patran on the day of recovery. He also corroborated the fact that after the alleged recovery of narcotics, the case property of this case was produced before him and he put his seal bearing impressions 'TR' on all the parcels of case property as well as the sample seal Ex.PB. As per his direction, ASI Tarsem Lal deposited the case property with MHC Satnam Singh. On the next date, the case property was produced in the Court on his application Ex.PC and the order passed by the Illaqa Magistrate on it was Ex.PC/1.

(15) The statement of PW6 ASI Gurdev Singh is to the effect that on 16.12.2003, the accused was produced before him by Nachattar Singh, Sarpanch of village Kahangarh, who was arrested by him vide memo Ex.PG after disclosing him the grounds of arrest vide memo Ex.PG/1.

(16) PW4 HC Satnam Singh and PW5 C II Karanbir Singh were the formal witnesses in this case and they tendered their duly sworn affidavits Ex.PE and Ex.PF AS a part of their respective statements.

(17) PW2 Randhir Singh, Dealing Clerk, Transport Department, Government of N.C.T. Dehli, Tilak Marg, New Dehli produced the original record with regard to contessa car bearing No.DL-2CG-1746, correct copy of which is Ex.PD. As per the record, this vehicle was registered in the name of Leading Engineer Works Pvt. Ltd., 31, New Rohtak Road, Anand Parbat, Industrial State, New Delhi.

(18) In this case, it was an admitted fact that appellant was not apprehended at the spot. He slipped away from the spot after stopping

his vehicle at some distance from the NAKA place by telling HC Amrik Singh that his vehicle had gone out of order. Then it was also case of prosecution that appellant was identified by HC Amrik Singh only. This HC Amrik Singh (PW3) in his cross-examination stated that he himself never arrested appellant Avtar Singh in any case. He did not know how many brothers the appellant has. He had no dealing with the appellant. The lights of the car in question were on when it was at the distance of 20 paces from the place of NAKA. So, in the light of this cross-examination of PW3, it is difficult to say that this witness had been in a position to identify the appellant at the relevant time since he did not have any kind of acquaintance with him prior to this. Except the statement of this witness, there is no other evidence on the record to connect the appellant-accused with this case since the other members of the police party were not knowing him prior to it.

(19) Then in this case, it had come on the record that the vehicle contessa car bearing No.DL-2CG-1746 on which the appellant had come at the spot at the relevant time was belonging to one firm of New Delhi. The owner of this vehicle was never joined in the investigation of this case nor any explanation was brought on the record by the prosecution during the trial of the case in order to link the same with the present appellant. Herein the principles of law as laid down by this Court in *Subhash versus State of Haryana*¹ are followed.

(20) Then the photocopy of the register No.19 containing relevant entry of this FIR was brought on the record during the trial of the case as Ex.DW1/A in the statement of DW1 Constable Bhola Singh. From its perusal, it is found that five sample parcels of this case were got deposited by Constable Karanvir Singh in the office of Chemical Examiner vide rapat No.172 dated 11.8.2003. This entry in the register No.19 is not in consonance with other evidence led by the prosecution in order to prove its link evidence. As per the affidavit Ex.PE, HC Satnam Singh was posted as MHC in the police station on the date of the alleged recovery. He handed over the sample parcels of this case to said Constable Karanbir Singh on 19.8.2003 vide RC No.179 dated 19.8.2003 for depositing the same in the office of Chemical Examiner. This fact is further corroborated by said Constable Karambir (PW5) in his affidavit Ex.PF. So link evidence in this case is found to be completely missing since both the affidavits Ex.PE and Ex.PF above-said are found to be contrary to the above-said entry made in Ex.DW1/A.

¹ 2014(3) R.C.R. (Criminal) 612

(21) Then certain discrepancies were also found in the statements of material PWs which are detailed as under:-

According to PW1 Inspector Tarun Rattan, Chajju Ram, who joined the police party as an independent witness was a sikh gentleman having a small beard and of the age of 40/42 years and whereas PW7 ASI Tarsem Lal on this point stated that said Chajju Ram was a Hindu gentleman and was of about 50 years old. Then according to PW3 HC Amrik Singh, the NAKA was held in a scattered manner and ASI Tarsem Lal was standing opposite to him on the other side, whereas PW7 on this point stated that they were standing in one group. Regarding writing work PW3 HC Amrik Singh stated that it was done while sitting on the side of the metalled road and whereas PW7 on this point stated that it was done while sitting on the scooter and even one wooden single bed (Takhatposh) was there, which was used for doing the writing work. Then according to PW3, the police party remained at the spot for about 4 ½ hours and whereas PW7 ASI Tarsem Lal on this point stated that police party had remained at the spot for about three hours. Then according to PW3 they did not stop on the way and on this point PW7 stated that many persons were checked on the way.

(22) Then in this case, the prosecution did not examine the above-said independent witness Chajju Ram on the plea being won over by the accused. Then in the defence, the accused brought on record copy of one FIR No.262 dated 30.9.2002 of P.S. Patran Ex.DW1/B in which the above-said Chajju Ram is depicted as a member of the police party being an independent witness. This case is also under Section 15 of the Act. Then in the list of witnesses of this case Ex.DW1/C name of said Chajju Ram is shown at serial No.2. So, this fact shows that said Chajju Ram was the stock witness of the police and on this ground also serious dent had been caused in the case of prosecution which could not be justified by giving any kind of explanation. The mere fact that the appellant had surrendered in this case before the police does not mean that he had admitted the case of prosecution or that prosecution had been absolved from its liability to prove its case against the accused beyond the shadow of doubt.

(23) In the light of the above discussion, it is held that there is merit in this appeal and hence it deserves to be accepted. So, accordingly, it stands accepted. The impugned judgment and order of sentence under appeal are set aside. The appellant is acquitted of the charge under Section 15(c) of the Act by giving him benefit of doubt. He is ordered to be released immediately, if he is in jail in this case and

not required in any other case. The case property, if any, be dealt with as per the law after the result of appeal or revision, if any.

(24) Intimation be sent to the quarter concerned for strict compliance.

Arihant Jain

Before Gurmit Ram, J.

SOMI DEVI AND ANOTHER—Appellants

versus

STATE OF HARYANA—Respondent

CRA-S No.2146-SB of 2003

September 23, 2015

Indian Penal Code, 1860 — Ss. 304-B, 201, 120-B and 34 — Raja Ram complainant (father of deceased Bhateri) lodged FIR No.397 dated 23.08.2002 under Sections 304-B, 201, 120-B, 34 IPC against Rajinder Kumar (husband), Somi Devi (mother-in-law), Mehar Singh (father-in-law) and other relations — Prosecution based on complaint made “soon before the death”— Demand made by Rajinder Kumar-husband of the deceased in the month of January, 2002 — Thereafter, the daughter of the complainant (since deceased) taken to matrimonial home on 25.05.2002, expired on 28.05.2002 — Complaint registered on coming to know of death on 25.09.2002 — The words “soon before the death” cannot be confined to a particular limit in time — General trend to rope in all relatives in unnatural death cases — Conviction to father-in-law and mother-in-law set-aside.

Held, that so far the words “soon before the death” are concerned, the same cannot be described or defined within any prescribed limit. This concept as such is to be determined by the Court in the light of the circumstances of each and every case and the conduct of the parties. What is required for this purpose is that there should not be any inordinate delay between the alleged cruelty and the date of death of the victim. Meaning thereby there must be proximity between these two events. Facts of the case in hand have already been discussed above in para No.2 of this judgment. For clarity sake, it is mentioned herein that appellant Rajinder Kumar made a demand of Rs.50,000-55,000/- from the complainant in the month of January, 2002 on the plea of getting some government job. The complainant expressed