

**(2005) 02 SC CK 0002**

**In the Supreme Court Of India**

**Case No :** Criminal Appeal No. 547 of 2004

Balwinder Singh and Another

APPELLANT

Vs

Asstt. Commissioner, Customs and Central Excise

RESPONDENT

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**Date of Decision :** 22-02-2005

**Acts Referred:**

Customs Act, 1962 — Section 108

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 18, 22, 23, 25, 28

Penal Code, 1860 (IPC) — Section 120B

**Citation :** (2005) 3 ACR 3243 : (2005) 5 ALT 27 : (2005) 2 ALT(Cri) 319 :  
(2005) 124 ECR 135 : (2005) 4 SCC 146

**Hon'ble Judges :** K. G. Balakrishnan, J;B. N. Srikrishna, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## **Judgement**

K.G. Balakrishnan and B.N. Srikrishna, JJ.—These two Appellants, along with two others, were found guilty by the District Judge, Ludhiana for the offences punishable under Sections 18, 22, 23, 25, 28, 29 and 30 of the N.D.P.S. Act and Section 120 of the Indian Penal Code. Two of them i.e. Tarlochan Singh, s/o Chet Singh and Devinder Singh were acquitted by the High Court and the present Appellants, i.e., Balwinder Singh and Tarlochan Singh, s/o Darshan Singh were found guilty. It is against this that the Appellants have come up before this Court by way of these appeals, i.e. , Criminal Appeal No. 547 of 2004 was preferred by Balwinder Singh and Criminal Appeal No. 548 of 2004 was preferred by Tarlochan Singh.

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2. The facts of this case are that on 6.1.1988 two trucks bearing Registration Nos. P.J.A. 8677 and D.I.L 3372 were intercepted by the Central Excise and Customs Department, Ludhiana Division. The officers of the Customs Department conducted search of the vehicle in the presence of witnesses and it was found

that the truck bearing Registration No. P.J.A. 8677 was having a secret compartment and found that 175 kg. of heroin and 39 kg of opium of foreign origin were concealed in this chamber. The sample was taken and it was found that these articles were opium and heroin as contended by the prosecution. During the course of investigation, the statement of the Appellant was taken u/s 108 of the Customs Act and 15 witnesses have been examined. The Appellant herein completely denied his culpability in the crime.

3. The present Appellant has been found guilty on the ground that he was the registered owner of the vehicle P.J.A. 8677. Counsel for the Appellant contends that he purchased this lorry in 1982, along with one Kesar Singh but in 1986 he transferred the vehicle to a third party and the Investigating Officer, P.W. 13, who was examined, deposed that during the course of his investigation he came to know that though the present Appellant was the original owner of vehicle bearing Registration No. P.J.A. 8677, he had sold the vehicle to one Sucha Singh in 1986, however, the registration was not changed in his name. This Appellant was convicted solely for the reason that he was the registered owner of the vehicle P.J.A. 8677. There is no evidence to prove that he knowingly allowed any person to use the vehicle for any illegal purpose. There is also no evidence to prove the conspiracy set up by the prosecution. Therefore, it is clear that though the articles were recovered from the lorry, there is no evidence to show that the Appellant had any control over the vehicle nor was he in possession of these drugs. In the result, we allow the appeal and acquit the Appellant Balwinder Singh of all charges framed against him.

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4. In this case, the Appellant Tarlochan Singh was the driver of the vehicle D.I.L. 3372. He was also in custody of vehicle P.J.A. 8677. His statement was recorded u/s 108 of the Customs Act. From his possession, the articles of opium and heroin were recovered and in his statement, he admitted that he knew about the presence of these drugs in the vehicle and about the transport of the drugs illegally from Ludhiana to Bombay. It is evident from the statement made by him that he committed the offences punishable under Sections 18, 21, 22, 23, 25, 29 and 30 of the N.D.P.S. Act.

5. We find no reason to interfere with the conviction and sentence entered against the Appellant Tarlochan Singh and the criminal appeal stands dismissed. We are told that the Appellant was convicted of this offence for the first time. The sentence imposed on him was imprisonment for a period of 14 years. Having regard to the facts and circumstances of this case, we reduce the sentence from 14 years to 10 years each for the offences under the N.D.P.S. Act and for the offence u/s 120B, I.P.C. The sentences shall run concurrently. The direction to pay fine is maintained, but the default sentences shall also run concurrently.