

**(2001) 07 CHH CK 0005**  
**In the Chhattisgarh High Court**  
**Case No : Criminal Appeal No. 1298/94**

|                       |    |            |
|-----------------------|----|------------|
| Dalvinder Singh       | Vs | APPELLANT  |
| State of Chhattisgarh |    | RESPONDENT |

**Date of Decision :** 13-07-2001

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374(1)  
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 18, 8

**Citation :** (2002) CriLJ 1434 : (2001) 4 MPHT 9

**Hon'ble Judges :** R.S. Garg, J

**Bench :** Division Bench

**Advocate :** Shri Awadh Tripathi, for the Appellant; Shri Praful Bharat, for the Respondent

**Final Decision :** Allowed

## Judgement

R.S. Garg, J.—The appellant being aggrieved by judgment, dated 13-9-1994 passed in Sessions Trial No. 152 of 1994 by the learned First Additional Sessions Judge, Raigarh convicting the appellant u/s 8 read with Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 sentencing him to undergo R.I. for ten years and pay fine of Rs. One lac in default of payment of fine to undergo further R.I. for six months, has filed this appeal.

2. The prosecution case in brief is that on 8-6-1994 P.W. 6 Satyendra Pandey, Station House Officer, Police Station, Kharasia was going to Raigarh for attending certain Court proceedings, he saw a truck coming in a very high speed from opposite direction, he required the truck to stop but as the truck did not stop he felt suspicious and chased the said truck. The said truck could be intercepted at Madanpur barrier in Kharasia. The occupants of the truck were required to board down from the truck. The registration papers, licence and other documents were also checked. According to the prosecution in the personal search of the accused a purse was recovered from him. On opening of the purse in one portion of the same some money was found while in the second portion of the said purse about

nine grams opium was found. After finding the contrabands proper steps were taken, the contrabands were weighed on the spot and thereafter the truck, present appellant his associate and others were brought back to the police station. The First Information Report was registered and the samples drawn from the said article were sent for analysis. The F.S.L. informed that the sample was of opium. Being armed with the statements of the witnesses, the seizure memo and the report of the F.S.L. the police agency filed challan against the accused. The accused denied the commission of the offence, therefore, the accused was put to trial. The learned Trial Court, on 19-8-1994 framed the charges against the present appellant. It would be necessary to quote the charge.

;g fd fnukad 8&6&1994 dks 14-25 cts vkj{kh dsUnz [kjfl;k ds {ks=kUrxZr vkus okys xzke enuiqj csfj;j esa Fkkuk izHkkjh lrsUnz ikaMs }kjk ryk"kh fy;s tkus ij rqEgkjs dCts esa ilZ esa yisVk gqvk vQhe otuh 9 xzke fcuk vuqKk i= ds ik;k x;k vkSj bl izdkj rqEgkjs }kjk eknd nzO; ,oa euks?kstd inkFkZ vf/kfu;e] 1985 dh / kkjk 8 ?lh? ds izko/kkuksa dk mYya?ku fd;k x;k tks fd blh vf/kfu;e dh /kkjk 18 ds vUrxZr naMuh; gS vkSj esjs izlaKku ds vUrxZr gS A

The accused denied the commission of the offence, therefore, the learned Trial Court recorded the statements of the witnesses, heard the parties and delivered its judgment holding that the prosecution could bring home the guilt. It accordingly convicted and sentenced the accused.

3. Shri Awadh Tripathi, learned counsel for the appellant submits that the prosecution came with the case that the narcotics were recovered on person of the accused especially in search of his purse and as the learned Court below in para 22 of its judgment had clearly recorded that the opium was not recovered from his purse but was recovered from the truck, the appellant deserves to be acquitted. He further submitted that the appellant was answerable to the charge levelled against him and the Trial Court could not make out a new case for the prosecution and convict the appellant.

4. On the other hand, Shri Praful Bharat, learned counsel for the State submits that it was immaterial whether the contrabands were recovered from the purse or pocket of the accused or from his truck. According to him, the accused was found in conscious possession of the contrabands and as the Trial Court has held that the accused was in conscious possession of the truck and conscious possession of the contrabands the Trial Court was justified in convicting the appellant.

5. I have heard the parties and gone through the records.

6. In support of the search and seizure the prosecution has examined Sanjay Agrawal (P.W. 3). Said Sanjay Agrawal had clearly stated that the Thanedar had informed him that a purse was seized from accused Dalvinder Singh. He, however, did not support the prosecution case that the opium was seized on the spot. In para 1 he further stated that the opium was recovered from the possession of the present appellant. In para 2 he had clearly stated that the

opium recovered from the accused was not sealed in his presence and Talashi Panchanama (search memo) was not prepared in his presence. P.W. 4 Trilokchand Sharma had stated that the opium, money and documents relating to the truck were seized. He, however, did not support the prosecution case that the opium was recovered from the purse of the accused. In the cross-examination he admitted the defence suggestion that he was unable to remember that the opium was found in the pocket of the accused. He was also unable to say whether articles recovered on the spot were sealed on the spot or not. Satyendra Pandey (P.W. 6) had clearly stated that after intercepting the truck he took search of Balvinder Singh and the present appellant Dalvinder Singh. According to him he took the search of the accused persons. In the search of Dalvinder Singh he found a purse which was containing some money and about nine grams opium. He also stated that the seized article was weighed on the spot and it was sealed. The accused were arrested and were later on brought to the police station. In the cross-examination it was suggested to him that he had falsely implicated the accused persons.

7. The learned Trial Court after appreciating the evidence of these three witnesses recorded a clear finding in para 22 of the judgment. The said finding says that the prosecution has failed to establish that the opium was recovered in the personal search of the accused. After recording the finding the learned Trial Court proceeded further to find whether the opium was recovered from the truck and whether the truck was in possession of the appellant or not. In para 23 of the judgment the Court recorded that on the strength of the independent and reliable evidence it could be held that the accused and his companion were in exclusive possession of the truck. There is no dispute before me that the accused was not alone in the said truck. His companion Balvinder Singh was also sitting in the truck. It is also not in dispute that the prosecution after making recovery of the opium had registered separate cases against each of the occupant of the truck. If the contrabands were not in exclusive possession of the accused or were not in his pocket or on his person then the prosecution would be obliged to prove beyond shadow of doubt or atleast to reasonable certainty that the accused was in exclusive possession of the contrabands. When two persons are occupying a truck then each of them can be presumed to be in exclusive possession of the vehicle and the articles in it but it would be too much to say that each of the accused or each of the occupant would be in exclusive possession of separate articles found in the truck and each would be answerable to a separate charge. I could understand the case of the prosecution if it had come with the case that the two accused persons were in joint possession of the contrabands. If such was the case then each of the accused was required to explain his conduct and the articles kept in the truck.

8. The Trial Court in its wisdom had framed the charges and required the accused to answer the same. The language of the charge framed against the accused clearly says that on 8-6-1994 at about 14.25 his search was taken. In the search a purse was obtained and in the said purse in a plastic wrapper about nine grams

opium was recovered. The Trial Court did not frame any alternative charge nor it required the accused to say or defend himself on the further charge that the contrabands were recovered from the truck and the said truck was in his exclusive possession. If the accused was required to answer the above charge then it would be too much to expect from him that he would explain a charge or a fact which has not been levelled against him. In the accused statements the Trial Court did not require the accused to explain that the contrabands were recovered from the truck. The Trial Court simply required the accused to answer the question that according to P.W. 6 Satyendra Pandey his search was taken and from his purse carried on his body, nine grams opium wrapped in a plastic sheet was recovered. Neither the prosecution came with the case that the accused had carried or kept the contrabands in the truck nor the Court did ask the accused that the contrabands were found in the truck and were not on his body, therefore, he was required to explain his position. When a particular charge is framed against the accused then he is required to answer the said charge and nothing beyond that. It is the pious duty of every Court to put the circumstances to the accused which can be used against him. In the present case the prosecution did not come with the allegations that the contrabands were recovered from the truck nor the Court required the accused to explain that the contrabands were recovered from the truck. The Court below had recorded a positive finding in para 22 of the judgment. If that finding is accepted to be final then it must be held that the prosecution failed in proving that the opium was recovered from the purse of the accused.

9. The findings recorded by the Trial Court that the opium was recovered from the truck which was in exclusive possession of the appellant are contrary to record and are beyond the case projected by the prosecution. It does not even meet the charges levelled against the accused or the questions put to him u/s 313 of the Code of Criminal Procedure.

10. The findings recorded in para 23 of the judgment deserve to and are accordingly set aside. Being inconfirmit with the findings recorded by the Trial Court I also hold that the prosecution failed in proving that the accused kept nine grams opium in his purse and the said purse was found on his person.

11. As the prosecution had failed to prove the allegations made so also the charges levelled against the accused, the accused deserves to and is accordingly acquitted. The accused/appellant appears to be in jail, he be immediately released if not required in any other case.

12. Criminal Appeal allowed.