

(2023) 10 SHI CK 0053

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 512 Of 2018, 67 Of 2019

Mausam Deen And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 16-10-2023

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 20, 29, 51, 55, 57
Code Of Criminal Procedure, 1973 — Section 313
Evidence Act, 1872 — Section 106

Citation : (2023) 10 SHI CK 0053

Hon'ble Judges : Tarlok Singh Chauhan, J;Ranjan Sharma, J

Bench : Division Bench

Advocate : M.A. Safee, Jyotirmay Bhatt, Anup Rattan, Sharmila Patial, J. S. Guleria

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J

1. Since both these appeals emanate from a common judgment, therefore, they were taken up together for consideration and are being disposed of by way of a common judgment.

2. The case of the prosecution against the appellants is that on 10.11.2015, HC Virender Singh (PW-11) alongwith HHC Mohd. Aslam (PW-2), C. Yog Raj (PW-1) and C. Sanjay Kumar were present at Jassourgarh Zero Point in connection with Nakkabandi and traffic checking alongwith government vehicle, I.O. bag, Mega light, government Camera vide rapat No.3 (Ext.PY). At about 12.15 a.m. (night), one vehicle bearing registration No. HP-44-2087 (Maruti car) came from Jassourgarh road to Jassourgarh Zero point. In the above said vehicle only the driver was sitting. The vehicle was signalled to stop and the documents were asked from the driver for checking. On asking the credentials of the driver, he disclosed his name as Varinder Singh son of Sh. Gian Singh, r/o VPO Kalhel. While HC Virender Singh (PW-11) was talking to the driver, at the same time two

persons came from the side of Madhuwad road towards Jassourgarh Zero Point. One of them was carrying a Pithu Bag at that time. On seeing the police party, both the persons turned back and tried to run away from the spot. On suspicion, both the persons were nabbed at some distance by the IO/ HC Virender Singh (PW-11) with the help of police personnel present on the spot. The person, who was carrying the Pithu bag, disclosed his name Mausam Deen and the other person, disclosed his name as Rasheed Mohd.

Thereafter, HC Virender Singh (PW-11) checked the Khakhi coloured Pithu bag in presence of the police officials and witness Sh. Virender Singh (PW-3). On opening the Pithu bag, black coloured hard substance in the shape of rounds and sticks was found. On the basis of smell and experience, it was found to be Charas /cannabis. The cannabis was weighed with the help of scale and the same was found to be 6 kgs. The recovered cannabis/ charas was put in the Khakhi coloured Pithu bag in the same manner and the Pithu bag was sealed in a white piece of cloth with five seal impressions of seal 'N'.

3. Thereafter, the NCB forms in triplicate Ext.PW-11/A were filled-in on the spot. The seal 'N' was embossed on the NCB forms in triplicate. Sample seal (Ext.PW-1/A) was drawn on a separate piece of cloth. The seal after use was handed over to C. Yog Raj (PW-1). The parcel containing charas, NCB forms in triplicate, sample seal were taken into possession vide recovery and seizure memo Ext.PW-1/B. The sample seal Ext.PW-1/A, recovery, seizure memo Ext.PW-1/B and sealed parcel Ex.P-1 were signed by HC Virender Singh (PW-11), witnesses Sh. Virender Kumar (PW-3), HHC Mohd. Aslam (PW-2) and C. Yog Raj (PW-1) and the appellants. Thereafter, HC Virender Singh (PW-11) prepared the rukka Ext.PW-11/B and sent the same to P. S. Tissa through HHC Mohd. Aslam (PW-2) for the registration of the FIR. On the basis of rukka, ASI Ravinder Singh registered the FIR EX.PW-13/A. The copy of the rukka Ex.PW-8/A was sent through C. Sanjay Kumar to S. P. Chamba for information.

4. Thereafter, HC Virender Singh (PW-11) telephonically informed SHO, P.S. Tissa, SI Babu Ram (PW-12) at about 3:10 a.m. regarding apprehending the appellants alongwith 6 kgs. charas/cannabis and requested him to send an independent Investigating Officer to the spot. SI Babu Ram (PW-12) alongwith the other police officials came to the spot in government vehicle. Thereafter, HC Virender Singh (PW-11) handed over the case property and documents prepared by him on the spot to SI Babu Ram (PW-12) alongwith the appellants vide inventory list Ext.PW-1/C. On the demarcation of HC Virender Singh (PW-11), SI Babu Ram (PW-12) prepared spot map Ext.PW- 12/A and filled the relevant columns of the NCB forms. Thereafter, SI Babu Ram (PW-12) recorded the statements of the witness - C. Yog Raj (PW-1) and independent witness Sh. Virender Singh (PW-3). SI Babu Ram (PW-12) conducted the interrogation of the appellants at the spot. Thereafter, the appellants were arrested vide memo Ext.PW-10/A and Ext.PW10/B, respectively. The information of their arrest was given to their relatives. After their arrest the jamatalashi of the appellants were

conducted vide memo Ext.PW-10/C and Ext.PW10/D. After the receipt of the case file, SI Babu Ram (PW-12) recorded the statement of HHC Mohd. Aslam (PW-2) on the spot.

5. Thereafter, the police party alongwith the appellants and case property came back to Police Station, Tissa. On reaching Police Station, SI Babu Ram (PW-12) handed over the case property to MHC alongwith documents with the direction to deposit the same in the Malkhana. HC Deep Kumar (PW-4) deposited the same in the Malkhana and entered the articles in the Malkhana Register No.19 at Sr. No.333. On 11.11.2015 vide R. C. No. 147/15 (Ex.PW-4/B), he sent the case property to FSL, Junga alongwith documents through HHC Jagdish Chand (PW-5) . HHC Jagdish Chand (PW-5) after depositing the case property, handed over the RC to MHC Deep Kumar (PW-4) on his return. On 11.11.2015, SI Babu Ram (PW-12) sent the special report Ex.PW-8/C to S. P. Chamba. SI Babu Ram (PW-12) also recorded the statements of witnesses MHC Deep Kumar (PW-4), HHC Jagdish (PW-5), LHC Ashok Kumar (PW-10) and Ishwar Dutt (PW-6). On 18.12.2015, HC Deep Kumar (PW-4) received the case property alongwith report of the FSL Junga through LHC Ashok Kumar (PW-10). HC Deep Kumar (PW-4) entered the same in the Malkhana register at Sr. No.333. On 23.02.2016 HC Deep Kumar (PW-4) sent the case property to District Malkhana vide RC No.21/16 through HHC Dharmender Kumar. C. Raj Kumar (PW-7) issued CIPA certificate Ext.PW-7/A. He also entered rapat No.5 Ext.PW-7/B regarding the departure of the police party from Police Station, Tissa on the information of HC Varinder Singh.

6. The Chemical Examiner on analysis of the charas/cannabis opined per report Ext. PX that the substance examined was extract of cannabis and sample of charas and quantity of resin found therein was 16.17% w/w. After the receipt of the FSL report (Ext.PX), SI Babu Ram (PW-12) prepared the challan and presented the same in the Court for trial.

7. On consideration, the appellant Mausam Deen was charged for the commission of offence punishable under sections 20 read with section 29 of the Narcotics Drugs and Psychotropic Substance Act, 1985 (for short 'NDPS Act') and the appellant Rasheed Mohd. was charged for the commission of offence punishable under section 29 of the NDPS Act to which they pleaded not guilty and claimed trial.

8. The prosecution in support of its case has examined 13 witnesses.

9. After the completion of the prosecution evidence the appellants were examined under Section 313 Cr. P.C. The defence of the appellants was denial simplicitor that they have been falsely implicated. In defence evidence the appellant- Rasheed Mohd. sought the permission to summon defence witness Hussain Beg, who was summoned by the Court, but the learned counsel for the appellant-Mausam Deen did not examine him and given him up.

10. The learned Special Judge after evaluating the material on record, convicted

and sentenced the appellant Mausam Deen to undergo rigorous imprisonment for the period of ten years and to pay a fine of Rs. 1,00,000/- and in default of payment of fine to further undergo simple imprisonment for one year under Sections 20 and 29 of the NDPS Act and the appellant Rasheed Mohd. Was convicted and sentenced to undergo rigorous imprisonment for the period of ten years and to pay a fine of Rs. 1,00,000/- and in default of payment of fine to further undergo simple imprisonment for one year under Section 29 of the NDPS Act.

11. Aggrieved by the judgment passed by the learned Special Judge, the appellants have filed the instant appeals.

12. It is vehemently argued by Mr. M. A. Safee, learned counsel for the appellant in Cr. A. No. 67 of 2019 that the learned Court below erred in convicting the appellant Mausam Deen without taking into consideration the testimony of the independent witness, who would have not at all supported the case of the prosecution. Moreover, there are major contradictions, inconsistencies and embellishment, which go to the root of the prosecution case and, therefore, the appellant ought to have been acquitted. Adverse inference ought to have been drawn against the prosecution case, for the reasons that as per its case, photographs had been clicked on the spot but the same were deliberately withheld from the Court.

13. Mr. Jyotirmay Bhatt, learned counsel for the appellant in Cr. A. No. 512 of 2018, apart from adopting the arguments advanced by Mr. M. A. Safee, Advocate, would argue that there is no evidence led by the prosecution, which could in any manner sustain the charge framed against appellant Rasheed Mohd. under Section 29 of the NDPS Act, as there was no abetment, much less criminal conspiracy between his client and the appellant in Cr. A. No. 67 of 2019.

14. On the other hand, Ms. Sharmila Patial, learned Additional Advocate General, would argue that the official witnesses were present on the spot i.e. PW1 HC Yog Raj, PW2 HHC Mohammad Aslam and PW11 HC Virender Singh, who have fully supported and corroborated every aspects of the prosecution case. As regards the photographs, as contended that since nothing appeared in these photographs because of night time, they were not appended alongwith the charge-sheet. Moreover, it was not only difficult but impossible for the prosecution to have plant such a huge bulk of the contraband and as regards the appellant in Cr. A. No. 512 of 2018-Rasheed Mohd. there is sufficient evidence to connect him to sustain charge under Section 29 of the Act.

We have heard learned counsel for the parties and have gone through the records of the case.

15. Since all the points raised by the learned Counsel for the appellants are intrinsically interconnected and interlinked, therefore, they are being taken up together for consideration. However, before doing so, we would proceed to discuss the case of the prosecution in a greater detail.

16. In order to prove its case, prosecution apart from examining the spot witnesses PW1 HC Yog Raj and PW2 HHC Mohammad Aslam, has examined the Investigating Officer HC Virender Singh as PW11, who in his deposition stated that on 10.11.2015, he alongwith HHC Mohd. Aslam (PW2), C. Yog Raj (PW1) and C. Sanjay Kumar were present at Jassourgarh Zero Point in connection with Nakkabandi and traffic checking alongwith I.O. bag, Mega light, government camera vide rapat No.3 Ext.PY. At about 12.15 a.m. (night), they spotted one vehicle bearing registration No. HP 44-2087 (Maruti car) coming from Jassourgarh road to Jassourgarh Zero point. The vehicle was signalled to stop and it was found that only driver was sitting in the car. On asking the credentials of the driver of the vehicle, he disclosed his name as Varinder Singh son of Sh. Gian Singh, r/o VPO Kalhel. When he was talking to the driver, at the same time two persons came towards Jassourgarh Zero Point from Madhuwad road, out of them one person was carrying a Pithu Bag. On seeing the police party, both the persons turned back and tried to run away from the spot. On suspicion, they were nabbed at some distance with the help of police personnels present at the spot. The person who was carrying the Pithu bag disclosed his name as Mausam Deen, while the other person disclosed his name as Rasheed Mohd. Thereafter, he checked the Khakhi coloured Pithu bag carried by the appellant Mausam Deen and found black coloured hard substance in the shape of rounds and sticks. On the basis of smell and experience, it was found to be Charas/cannabis. The cannabis was weighed with the help of electronic scale and the same was found to be 6 kgs. The recovered cannabis/ charas was put back in the Khakhi coloured Pithu bag and thereafter sealed in a white piece of cloth with five seal impressions of seal 'N'. The NCB forms in triplicate Ext.PW-11/A were filled on the spot. The seal 'N' was embossed on the NCB forms in triplicate. The sample seal Ext.PW- 1/A was drawn on a separate piece of cloth. The seal after use was handed over to C. Yog Raj. The photographs of the proceedings on the spot were clicked. The parcel containing charas, NCB forms in triplicate alongwith sample seal were taken into possession vide recovery and seizure memo Ext.PW-1/B. The sample seal Ext.PW-1/A, recovery and seizure memos Ext.PW-1/B and sealed parcel Ext.P-1 were signed by him and the witnesses Sh. Virender Kumar (PW3), HHC Mohd. Aslam (PW2) and C. Yog Raj (PW1) and the appellants. Thereafter, he prepared rukka Ext.PW-11/B and sent the same to P. S. Tissa through HHC Mohd. Aslam for the registration of the FIR. The copy of the rukka Ex.PW-8/A was sent to S. P. Chamba for information through C. Sanjay Kumar. Thereafter, he telephonically informed SHO, P.S. Tissa, SI Babu Ram regarding apprehending of the appellants alongwith charas and requested him to send an independent Investigating Officer to the spot. SI Babu Ram alongwith other police officials came to the spot in government vehicle. Thereafter, he handed over the case property, accused persons and documents prepared by him on the spot to SI Babu Ram vide inventory Ex.PW-1/C, which bears my signature under red circle 'A'. SI Babu Ram prepared the spot map on his demarcation.

17. As observed above, PW1 HC Yog Raj and PW2 HHC Mohammad Aslam have

fully supported and corroborated the version put-forth by PW11 HC Varinder Singh on all material aspects.

18. PW12 SI/SHO Babu Ram deposed in his examination-in-chief that on 10.11.2015, he received a telephonic message at 3.40 a.m. from HC Virender Singh (PW11) regarding apprehending of the appellants alongwith 6 Killograms charas/ cannabis at Jassourgarh Zero Point. On the basis of the information, he proceeded to the spot alongwith police officials in the government vehicle vide rapat No.5 Ex.PW-7/B. When he reached at the spot, HC Virender Singh as per the inventory list Ext.PW-1/C handed over to him the sealed parcel alleged to be containing 6 Kgs. charas/ cannabis, documents prepared by him and the appellants. He identified his signature in the inventory list under red circle 'B' as receiver of the articles. On the demarcation of HC Virender Singh, he prepared the spot map Ext.PW12/A and filled in the relevant columns of the NCB forms. Thereafter, he recorded the statements of the witness C. Yog Raj (PW1) and independent witness Virender Singh (PW3). He conducted the interrogation of the appellants at the spot, who thereafter arrested them vide memo Ex.PW- 10/A and Ext. PW10/B, respectively. The information of the arrest was given to the relatives of the appellants. After the arrest of the appellants, the jamatalashi was conducted vide memo Ex.PW-10/C and Ext.PW10/D, respectively. After the receipt of the case file on the spot by HHC Mohd. Aslam, he recorded his statement on the spot. Thereafter, the police party came back to Police Station, Tissa. On reaching the Police Station, he handed over the case property to MHC alongwith documents with the direction to deposit the same in the Malkhana.

19. On 11.11.2015, PW 12 SI Babu Ram sent the special report Ext.PW8/C to S. P., Chamba. He further deposed that he also recorded the statements of witnesses MHC Deep Kumar (PW4), HHC Jagdsish (PW5), LHC Ashok Kumar (P)W10) and HHC Ishwar Dutt (PW6). He further recorded the statement of witness Virender Singh vide Ext.PW-12/B. The rapats No.23 Ext.PW-12/C was entered at his instance at P.S. Tissa. After the receipt of FSL report Ext.PX, he prepared the challan and presented the same in the Court.

20. HC Ashok Kumar, who was examined as PW10, has corroborated the version of PW12 SI Babu Ram regarding the proceedings conducted in his presence on the spot. He also proved on record arrest memos Ext.10/A and Ext. PW10/B and also the jamatalashi memos Ext.PW10/C and Ext. PW10/D, respectively. He also proved regarding bringing back of the case property and result of the chemical analysis from FSL.

21. Now, advertng to the testimony of PW3 Varinder Singh, he in his deposition stated that he did not remember the date but it was about one and half years back that HC Varinder Singh (PW11) had called him and informed that the vehicle had been broken down and requested him to come to Jassourgarh Zero Point and he accordingly reached at Jassourgarh Zero Point and he further told him that they had nabbed two persons with some contraband. However, since he refused to identify those persons in the Court claiming it to be night time and

further disputed the recovery that was allegedly effected from the appellants in his presence, he was declared hostile and permitted to be cross-examined.

22. In his cross-examination, he admitted that his brother-in-law was residing at Jassourgarh. He further denied that on 09.11.2015, he had visited the house of his brother-in-law and while he was coming from the house of his 'Sadu' at about 12:15 a.m., the police had signalled him to stop at the Jassourgarh Zero Point. He denied that the police party had asked him to show documents of the car. He further denied the suggestion that while showing the documents of the car, two persons were seen coming from the side of Madhuwad road. He further denied the suggestion that these persons tried to flee away from the spot on which the police party nabbed them. He also denied that the pithu bag was searched by the police in his presence. He further denied the recovery of charas from the bag of the appellants. He further denied that on being weighed, the charas was found to be 6 kgs. He also denied the suggestion that the charas was sealed in a white piece of cloth in his presence and the recovered charas was taken into possession by the police in his presence vide memo Ext. PW1/B. However, he admitted his signature on this exhibit. He further denied the sample seal Ext. PW1/A was drawn in his presence, however, he admitted his signatures on it. He further denied that the seal 'N' was embossed on NCB form in triplicate. He further denied that the seal after use was handed over to C. Yog Raj. However, he admitted that the police had prepared documents on the spot and asked him to sign the same. He denied that the police had recorded his statement. However, after long denial, he finally admitted that he had voluntarily signed the documents and had never made any complaint to any police officials or higher officials regarding the police having asked him to sign these documents.

23. On being cross-examined by the defence counsel, he stated that he was knowing the I.O. Varinder Singh for the last 4-5 years as he was his relative. He further stated that he had never been associated in any NDPS case prior to this case and further stated that no document has been prepared in his presence, but admitted that he on the asking of HC Varinder Singh had signed the documents.

24. PW4 HC Deep Kumar was the MHC at the relevant time and deposed that on 10.11.2015 SI Babu Ram (PW12) handed over to him one sealed parcel with five seal impressions of seal 'A' alleged to be containing 6 kgs. charas alongwith sample seal and documents. He also handed over jamatalashi articles of the appellants and deposited all these articles in the Malkhana and made entry at serial No. 333 of Register No. 19. On 11.11.2015, vide RC No. 147/15 (Ext. PW4/B), he sent the case property to FSL, Junga alongwith documents through HHC Jagdish (PW5) and handed over the RC to him on his return. On 18.12.2015, he received the case property of the case alongwith the report of FSL, Junga through LHC Ashok Kumar (PW10). He entered the same in the Malkhana Register against the same at serial No. 333. On 23.02.2016 and sent the case property to District Malkhana vide RC No. 21/16 through HHC Dharmender Kumar.

25. PW5 HHC Jagdish Kumar deposited the case property at FSL, Junga alongwith documents.

26. PW6 C. Raj Kumar delivered the special report to Additional S.P., Chamba.

27. PW7 C. Raj Kumar entered the rapat No. 5 (Ext. PW7/B) regarding departure of the police party from the police station, Tissa on the information of HC Varinder Singh (PW11) and further rapat No. 16 (Ext. PW7/C) regarding the arrival of the police party.

28. PW8 HC Pawan Kumar was the Reader to the S.P. at the relevant time and has proved the receipt of the rukka (Ext.PW8/A) and special report Ext. PW8/C and the same was entered by him in the receipt register.

29. PW9 HC Hakam Singh recorded the statement of HC Pawan Kumar (PW8).

30. PW13 ASI Ravinder Singh lodged the FIR Ext. PW13/A on the basis of the rukka Ext.PW11/B.

31. The appellants had though summoned Hussain Beg as defence witness but then he was given up.

32. Adverting to the first contention of the learned counsel for the appellants, it is settled law that evidence of official witnesses is not to be disbelieved or discarded, merely for the reasons that they are official witnesses. Presumption is that every witness is impartial and independent, unless proved contrary. There is no presumption for doubting the credibility of official witnesses, in principle. Statements of official witnesses can be the basis for the conviction of the accused; however, before basing conviction on the evidence of official witness, strict scrutiny with care and caution is required. In cases where the evidence of the official witnesses is found to be cogent, reliable and credible, conviction can be based only on the evidence of the official witnesses.

33. Reliance in this regard can conveniently be placed on one of the latest judgments rendered by three-Judge Bench of the Hon'ble Supreme Court in Sathyan Versus State of Kerala, 2023 INSC 703.

34. No doubt, in the instant case, the so-called independent witness Varinder Singh (PW3) was declared hostile but this witness accepted his signatures on the various memos and further admitted that he had signed these documents voluntarily and had never made any complaint to the higher police officials or any other authorities. Now, once his signatures are admitted, then the presence of the appellants at the spot is not disputed and going by the testimony of the official witnesses as discussed above, it stands duly proved that the contraband was recovered from the appellants.

35. As regards the contention regarding their being major contradictions, inconsistencies and embellishments, it is argued that PW12 ASI Babu Ram stated that the police party had not given the personal search to the appellants before taking the jamatalashi of the appellants after their arrest. Whereas, on the other

hand, PW10 HC Ashok Kumar has stated in his cross-examination that before taking the jamatalashi of the appellants, the police party had given their personal search to the appellants. Even if this is assumed to be inconsistency or contradictions, the same otherwise has no bearing on the case as the jamatalashi is effected only when one is arrested in an offence. It hardly makes a difference whether the police party had given their personal search or not, as the jamatalashi is not to be confused or equated with personal search as contemplated under the NDPS Act, which is effected prior to an accused is arrested.

36. It is next argued that PW12 SI Babu Ram, in his cross examination, has stated that HC Varinder Singh (PW11) prepared the inventory list in his presence. Whereas PW 11 HC Varinder Singh has stated that inventory list was prepared by C. Yog Raj under his dictation. We really see no contradiction in the statement, since there is no dispute with the inventory itself.

37. As a last ditch effort, learned counsel for the appellant in Cr. A. No. 67 of 2019, argued that as per PW1 HC Yog Raj, the number of vehicle of the independent witness was HP44-2984, whereas the I.O. has stated the number to be HP 44-2087. However, again the so-called contradiction does not affect the core of the prosecution case as the independent witness Varinder Singh (PW3) has not denied his presence at the relevant time and date on the spot.

38. Even otherwise there bound to be some discrepancies and contradictions in every criminal case, but then unless the contradiction is of a material dimension, the same cannot be used to jettison the evidence in its entirety, after all, discrepancies have to be distinguished from contradictions, while minor discrepancies or variance in evidence will not make the prosecution case doubtful.

39. The above principle of law has been laid down in State of H.P. vs. Lekh Raj 2000(1) SCC 247, relevant portion whereof reads as under:-

In support of the impugned judgment the learned counsel appearing for the respondents vainly attempted to point out some discrepancies in the statement of the prosecutrix and other witnesses for discrediting the prosecution version. Discrepancy has to be distinguished from contradiction. Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecution's case doubtful. The normal course of the human conduct would be that while narrating a particular incidence there may occur minor discrepancies, such discrepancies in law may render credential to the depositions. Parrot like statements are disfavoured by the courts. In order to ascertain as to whether the discrepancy pointed out was minor or not or the same amounted to contradiction, regard is required to be had to the circumstances of the case by keeping in view the social status of the witnesses and environment in which such witness was making the statement. This Court in Ousu Varghese v. State of Kerala, [1974] 3 SCC 767, held that minor variations in the accounts of the witnesses are often the hallmark of the truth of their

testimony. In *Jagdish v. State of Madhya Pradesh*, [1981] SCC (Cri.) 676, this Court held that when the discrepancies were comparatively of a minor character and did not go to the root of the prosecution story, they need not be given undue importance. Mere congruity or consistency is not the sole test of truth in the depositions. This Court again in *State of Rajasthan v. Kalki & Anr.*, [1981] 2 SCC 752 held that in the depositions of witnesses there are always normal discrepancy, however, honest and truthful they may be. Such discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person.

40. It is then contended by the learned counsel for the appellants that the case property has not been re-sealed by the SHO and, thus, there is non-compliance of Section 55 of the NDPS Act, which reads as follows:-

55. Police to take charge of articles seized and delivered.?An officer-in-charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station.

41. Suffice it to say that the provisions of Section 55 of the NDPS Act are not mandatory but are directory in nature as held by the Hon'ble Supreme Court in *Babu Bhai Odharji Patel & Ors. vs. State of Gujarat* (2005) 8 SCC 725, as observed as under:-

8. The learned counsel further contended that the seized articles were not kept in custody and there was violation of Sections 51, 55 and 57 of the NDPS Act. He placed reliance upon *Balsala versus State of Kerala* 1993 Supp.-3 SCC 665 "we do not think that there is much force in his contention. This Court in *Gurbaksh Singh versus State of Haryana* 2001 (13) SCC 28 held that these provisions are not mandatory provisions and they are only directory."

42. Apart from above, it would be noticed that in the instant case the initial proceedings were conducted on the spot by HC Varinder Singh (PW11) who thereafter informed the SHO Police Station SI Babu Ram (PW12) about the apprehending of the appellants alongwith the charas and requested him to send an independent I.O. to the spot. It is then SHO/SI Babu ram (PW12) himself alongwith other police officials came to the spot and I.O. Varinder Singh (PW11) handed over the case property, documents and the appellants to SI Babu Ram (PW13) vide inventory list Ext.PW1/C, as such, there is no occasion for the SHO Babu Ram (PW12) to have then affixed a seal on the case property. Even otherwise, the handing over of the case property to the SHO on the spot is a

substantial compliance of Section 55 of the NDPS Act, especially, when the appellants have failed to point out any prejudice which may cause to them on account of non-resealing of the case property by the SHO. Given the fact that when the case property reached the FSL, it was found to be intact.

43. The Court cannot be oblivious to the fact that the recovery effected in this case is huge quantity of 6 kgs. of charas, which otherwise is not easily available in the market and it would be highly improbable that the police would have planted such a huge quantity and falsely implicated the appellants, more especially, when no enmity or biasness has been pleaded or argued much less proved by the appellants.

44. It is then contended by the learned counsel for the appellants that as per the admitted case of the prosecution, photographs of the spot had been taken but the same have not been placed on record, therefore, an adverse inference should be drawn. We, however, find no merit in such contention as it has specifically come in the deposition of the I.O. that due to darkness and the light of the vehicle and mega light, the photographs were dark and not clear due to which the same were not placed on record. The explanation offered by the I.O. is absolutely plausible and even otherwise reasonable. Moreover, in case the appellants felt that these photographs could turn the table in their favour, nothing prevented them from calling for these photographs in their defence. It is then if the prosecution had failed to produce the photographs that the Court could have plausibly drawn an adverse inference and not otherwise as it is then that the Court could have concluded that the prosecution was probably withholding the photographs and if produced on record would have gone against them or in any case help the appellants.

45. The learned counsel for the appellant in Cr. A. No. 512 of 2018, apart from adopting the arguments of the appellant in Cr. A. No. 67 of 2019, has vehemently contended that the prosecution has failed to prove beyond reasonable doubt the involvement of his client in the so-called conspiracy in carrying the contraband with the appellant Mausam Deen. In furtherance of its arguments, it is contended that even as per the prosecution case, his client was bare handed and nothing was recovered from his possession. It was also urged that the prosecution has led no evidence to establish that his client had knowledge that other co-accused was carrying the contraband with him or in any manner had accompanied with the other co-accused.

46. Here it needs to be noticed that the appellant Rashid Mohd. when examined under Section 313 Cr.P.C. simply denied the case of the prosecution and stated nothing beyond that. In addition to the aforesaid, this appellant did not even choose to make any complaint before the Magistrate regarding his illegal arrest when he was produced before him for remand.

47. This Court in *Andre Moll versus State of H.P.* 2010 (3) Shim. L.C. 131, observed as under:-

"When the accused was produced before the Magistrate for his remand within 24 hours of arrest and no complaint was made by him regarding false implication, such plea cannot be accepted."

48. Here it also needs to be noticed that the appellant Rashid Mohd. had been accompanying the co-accused Mausam Deen in the odd hours of the night and why he had been accompanying him was within his knowledge and, therefore, it was incumbent upon him to have proved the said factum as required under Section 106 of the Indian Evidence Act.

49. As observed above, the appellant Rashid Mohd. has not explained either in his statement under Section 313 Cr.P.C. or has not led any defence as to why he accompanied the co-accused in the odd hours.

50. In the given circumstances, the learned trial Court has rightly concluded that the prosecution has proved its case by leading clear, cogent, convincing and reliable evidence regarding exclusive possession of the contraband from the appellant Mausam Deen (Cr. A. No. 67 of 2019) and conscious possession of the appellant Rashid Mohd. (Cr. A. No. 512 of 2018).

51. In view of the aforesaid discussion, we find no merit in these appeals and the same are accordingly dismissed, so also pending applications, if any.