
(2017) 01 AHC CK 0211
In the Allahabad High Court
Case No : Criminal Appeal No. 4526 of 2008

Shyam Narain Pandey

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 13-01-2017

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20B(ii)(C)

Citation : (2017) 1 AllCrRulings 713 : (2017) 3 AllLJ 385

Hon'ble Judges : Mrs. Vijay Lakshmi, J.

Bench : Single Bench

Advocate : Suresh Chandra Dwivedi and Prashant Kumar Singh and Amrish Kumar, Advocates, for the Appellant in Criminal Appeal No. 4526 of 2008; Govt. Advocate, for the Respondent in Criminal Appeal No. 4526 of 2008; Vijay Tripathi and O.P. Singh, Advocates, for the Appellant in Connected with Criminal Appeal No. 4444 of 2008; Govt. Advocate, for the Respondent in Connected with Criminal Appeal No. 4444 of 2008

Final Decision : Dismissed

Judgement

Mrs. Vijay Lakshmi, J.—As both these appeals relate to the same occurrence and the impugned judgment, whereby both the appellants have been convicted and sentenced by the learned Sessions Judge, is also the same, both are being decided by a common judgment.

2. Aggrieved by the common judgment of conviction dated 18.7.2008, passed by the Additional Sessions Judge, Court No. 3, Kanpur Nagar, in two consolidated sessions trials, S.T. No. 480 of 1994, State v. Shyam Narayan and S.T. No. 479 of 1994, State v. Prem Shanker, both the appellants, who were found guilty for the offence u/s 20B(ii)C of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short NDPS Act) and were sentenced to undergo rigorous imprisonment for 14 years with fine of Rs. One lac on each and in default of payment of fine six months additional rigorous imprisonment, have preferred these appeals.

3. Heard Sri Prashant Kumar Singh and Mr. Satya Prakash Srivastava holding

brief of Mr. Ashish Srivastava for the appellants as well as Sri Shanti Prakash Patel, learned AGA on behalf of the State. Perused the record.

4. The prosecution case in brief is that a first information report was lodged in the intervening night of 9.5.1994 and 10.5.1994 at 00.10 A.M. at Police Station Naubasta, District Kanpur Nagar, by S.I. Ram Shiromani Pandey, S.H.O., P.S. Naubasta, District Kanpur Nagar, mentioning therein that in the preceding night i.e. on 9.5.1994 at 8.00 P.M. he along with S.I. Dhirendra Singh, S.I. Raghubansh Singh, Constable Shashi Kumar, Suresh Chandra, Arvind Kumar, Dilip Kumar, S.I. Vijayveer Singh, Constable Ashok Kumar, Arvind Kumar Singh, Kaushalendra Bahadur Singh and Constable driver Ashwasthama Dikshit (who was driving the police Jeep) was patrolling in search of an accused Dara Singh. While returning, they saw two persons standing in the dark. Seeing the police jeep, they tried to run away from there. However, the police party, after using some force, arrested both of them. Meanwhile Constable Uday Narayan also reached there. When the police party asked their names and the reason for their running away, they informed that their names are Shyam Narayan Pandey and Prem Shanker Tiwari, resident of Village Sivan, Police Station Shivli, District Kanpur Dehat (the appellants). They also informed that they had with them "Charas" kept in the briefcase and the bag they were carrying. When they were asked whether they would like to give their search before any Gazetted Officer or a Magistrate, both of them jointly stated that as the police party has arrested them and they have already confessed to have Charas with them, the police party may do as it thinks fit. After that the appellant Shyam Narayan Pandey, who was carrying a light blue coloured briefcase with a printed green coloured cover on it, was asked to open the briefcase, from which 10 Kg. of Charas kept in white and blue polythene bags was recovered. From the possession of the appellant Prem Shanker Tiwari, 4 Kg. of Charas, kept in a white coloured bag made of gunny bag used to store fertilizer, was recovered. Both the appellants failed to show any license for keeping the contraband with them and repeatedly apologized for the same. They informed that they had brought the Charas from one Shailendra Gupta. They also informed that their neighbour Tapeshwari, too, has brought 10 Kg. of Charas from Shailendra Gupta and they were waiting for the said Tapeshwari, when the police party arrested them. On receiving this information some members of the police party were instructed to arrest Tapeshwari. Out of the recovered Charas two samples of 10 gms. each were sealed separately. The remaining Charas in the briefcase and the bag, was left inside the bag and the briefcase and was sealed by putting seal on the briefcase and the bag. The copy of the recovery memo was given to the appellants and their signatures were obtained on it.

5. On the basis of aforesaid information, a criminal case against the appellants was got registered and investigation was started. The sample of Charas was sent to Forensic Science Laboratory, Lucknow, for chemical examination on 4.6.1994 from where the report was received on 17.6.1994, and it was found positive for "Charas".

6. In the trial court, charge u/s 20-B(ii) of the NDPS Act was framed against both the appellants and the trial proceeded. The prosecution in order to prove its case against the appellants produced, seven witnesses in all. All the prosecution witnesses fully supported the prosecution case, as alleged in the FIR, during trial. The briefcase and the bag along with the contraband, were also produced in the court. After conclusion of the prosecution evidence, statements of the appellants under section 313 Cr. P.C. were recorded in which both of them denied from the allegations and stated that the police of Police Station Shivli, District Kanpur Dehat, had arrested them from their village on 9.5.1994. Nothing was recovered from their possession at the time of their arrest. They were forced to sign on some blank papers and were falsely implicated in this case. The appellants in support of their averments have produced four defence witnesses, all of whom are residents of Village Shivli, District Kanpur Dehat.

7. The learned trial court, after discussing the entire evidence in detail, convicted and sentenced both the appellants by the impugned judgment, the legality and correctness of which has been challenged in this appeal, mainly on the following grounds:

1. There is no independent witness of the alleged recovery of Charas.
2. The mandatory provisions of sections 42 and 50 of the NDPS Act have not been complied with by the police party. The provisions of section 57 of the NDPS Act were also not complied as no report was sent to any superior officer with regard to the arrest of the appellants.
3. There is material difference in the weight of the Charas said to have been recovered from the possession of the appellants and the weight of total Charas sent to Vidhi Vigyan Prayogshala for chemical examination.
4. The statements of prosecution witnesses suffer from material contradictions and are unreliable.
5. All the witnesses are police personnel, who are highly interested witnesses.
8. Per contra learned AGA has contended that the appellants were rightly held guilty by the learned trial court as they were caught red-handed with huge quantity of Charas i.e. 14 Kgs, which is multiple times more than its commercial quantity, which is only one Kg.
9. Considered the rival submissions of learned counsel for the parties.
10. For the purpose of coming to a right conclusion in this case, it is necessary to have a bird's eye view on the statements of the witnesses, produced from both the sides.
11. P.W. 1 is constable Layak Singh, who has prepared the check report. He has stated that when he was posted as Head Moharrir in P.S. Naubasta, the S.H.O. Sri Ram Shiromani Pandey had come to police station along with two accused persons, in the night of 9/10.5.1994. He had with him a recovery memo, the

seized contraband and its samples in sealed position. On the basis of the recovery memo he had prepared the check report (exhibit Ka-1). This witness has been cross-examined at length by learned defence counsel but nothing could have been elicited to show that he is not speaking true facts. During cross-examination this witness has stated that the relevant G.D. has been weeded out as per the rules and he cannot remember whether any other case was registered prior to this case or not.

12. P.W. 2 S.I. Raghubansh Singh, was one of the members of the police party accompanying the S.H.O. Ram Shiromani Pandey at the time when the accused persons were arrested with Charas. He has stated that on 9.5.1994 he was posted as Sub Inspector at P.S. Naubasta where Sri Ram Shiromani Pandey was the S.H.O. He has reiterated the FIR version of the prosecution story. He has stated that due to sudden arrest of the appellants and as it was night, no public witness could be procured at the time of their arrest. He has further stated that after registering the case the superior officers were informed, the recovered contraband was kept intact and no one was permitted to touch it or to tamper it. This witness has also faced lengthy cross-examination done by the defence counsel. During cross-examination, he has stated that he cannot remember the exact number of packets kept in the briefcase or the bag. He is also unable to remember whether there was any electric pole on the spot or not and the size of the briefcase. He has stated that there was no weighing scale to measure the weight of the recovered Charas and the weight of Charas as mentioned in the recovery memo was based on the guesswork.

13. It is relevant to mention here that P.W. 2 has been reexamined on the same day, when the briefcase and the bag containing the Charas were produced in the court. The description of the briefcase produced in the court is mentioned in the statement of P.W. 2. He has stated that the briefcase having a cover, in sealed position has been produced in the court and its seal along with the signature of the S.H.O. is intact. When the briefcase was opened before the court, this witness stated that it was the same briefcase, containing the same contraband in polythene bags, which had been recovered in his presence on the day when the appellants were arrested. During the testimony of this witness (P.W. 2) the bag recovered from the appellant Prem Shanker Tiwari was also produced in the court in sealed position. The seal was broken before the court and the bag was opened. P.W. 2 has identified the bag and the polythene bags kept inside it containing Charas. All the articles produced in trial court were marked as material exhibits. P.W. 2 during cross-examination has stated that the briefcase is of light blue colour having a printed green, black and white cover. He has stated that weighing scale and weights of 1 Kg, 100 gm, ? Kg. and 5 Kg. were already in the police jeep with which the contraband was weighed at the time of recovery. However, he has admitted that no separate report was prepared at the spot about the information sent to the superior officers.

14. P.W. 3 is the first informant Dy. S.P. Ram Shiromani Pandey, who was posted

as S.H.O. P.S. Naubasta, Kanpur Nagar, at the time of occurrence. He has corroborated the FIR version in his examination in chief. During his cross-examination he has admitted that there were shops and residential houses near the place from where the appellants were arrested but due to the reason that the incident of recovery of "Charas" and the arrest of the appellants, had taken place all of a sudden, there was no time to call any independent witness. He has also stated that they had not made any raid at that time at the place of Shailendra Gupta and Tapeshwari. He has stated that the I.O. had inspected the spot along with him and he has shown the place where the recovery memo was prepared by him and also the place from where the accused persons were arrested by him. He had altogether denied the suggestion led by learned defence counsel that the appellants were arrested from their village and were falsely implicated in this case on the basis of a planted recovery.

15. P.W. 3 has been cross-examined at length by learned defence counsel mainly on the point of discrepancy in the weight of Charas. As it has been seen earlier, in the FIR it has been alleged that 10 Kg of Charas was recovered from the possession of the appellant Shyam Narayan Pandey and 4 kg of Charas was recovered from the possession of Prem Shanker Tiwari. Initially, samples of only 10-10 gms of Charas, recovered from each appellants were sent for chemical analysis to Vidhi Vigyan Prayogshala. Later on, on an application moved by the accused-appellant Shyam Narayan Pandey, the total Charas recovered was sent to Vidhi Vigyan Prayogshala, where its weight was found less than what it weighed at the time of its recovery, and at Vidhi Vigyan Prayogshala, the weight of the charas recovered from the appellant Shyam Narayan Pandey was found only 6 Kg 140 gms and the weight of the Charas recovered from the appellant Prem Shanker Tiwari was found only 3 Kg. 110 gms as against 10 Kgs and 4 Kgs respectively. Thus the weight of remaining Charas, which had been sent to Vidhi Vigyan Prayogshala in pursuance of the order dated 29.9.2003 of the trial court, was found less than its weight, as mentioned in recovery memo. P.W. 3, when cross-examined with regard to the difference in the weight of Charas, has categorically stated that the Charas when recovered was wet, in due course of time, it got dried, and as a result, its weight got reduced. He has also stated that as a matter of routine the police party keeps weighing scale and measurement weights in the police jeep while proceeding on duty.

16. P.W. 4 Daya Nand Pundir is the second I.O. of this case, who after receiving the report from the Forensic Science Laboratory has filed charge sheet in this case. He has stated that he has not recorded statement of any witness. He has only perused the report of the Forensic Science Laboratory and has filed the charge sheet in this case.

17. P.W. 5 S.I. Devi Dayal Prajapati is the first I.O. of the case. He was posted at P.S. Naubasta at the time of occurrence, who was entrusted with the investigation of this case. This witness has also fully supported the prosecution case in his testimony. He has been cross-examined at length by the defence

counsel but nothing has been elicited casting any doubt on his deposition, which has remained unshaken.

18. P.W. 6 is Constable Ravindra Singh, who has taken the alleged contraband in a sealed position to Vidhi Vigyan Prayogshala, Lucknow, for chemical examination. He has stated that on 9.10.2003 he had taken a sealed bundle with sealed samples, from the police station to Vidhi Vigyan Prayogshala, Lucknow, and the Clerk of Vidhi Vigyan Prayogshala, Lucknow, had received those articles with his signature and seal on the dockets. He has proved the dockets in the court as exhibit Ka-9 and exhibit Ka-10.

19. P.W. 7 is Head Constable Munendra Pal Singh, who has appeared in the court along with "Malkhana Register" and has proved the entries related to Case Crime Nos. 435 of 1994 and 436 of 1994 (relating to both the appellants) as exhibit Ka-11. Before this witness, the Charas recovered from the briefcase, was weighed once again and its weight was found to be 5.5 Kg. This witness has also faced lengthy cross-examination by the learned defence counsel. But he has answered all the questions satisfactorily and has properly explained the reason regarding some minor discrepancies found in the photocopy of Malkhana Register by stating that the Malkhana Register being very voluminous, these minor faults may occur during photocopy procedure.

20. The appellants have produced four defence witnesses, namely D.W. 1 Gopalji, D.W. 2 Karuna Shanker, D.W. 3 Umesh Chandra and D.W. 4 Ashok Kumar. All of them have stated that the appellants were arrested from their house by the police. The police took them on the pretext of making some enquiry, giving them assurance that they will be sent back after interrogation, but they arrested them. All the defence witnesses have stated that nothing was recovered from the possession of the appellants.

21. It is noteworthy that all these defence witnesses during their cross-examination have stated about the newspaper reporting of recovery of huge quantity of Charas from the possession of the appellants, admitting at the same time that they did not make any complaint to anybody with regard to false implication of appellants.

22. Learned counsel for the appellants has vehemently argued that as the Investigating Agency has contravened the mandatory provisions of sections 50 and 57 of the NDPS Act, the conviction, recorded by the trial court is patently illegal and non-est in law. The learned counsel has contended that adherence to the mandate of Section 50 of the Act is indispensable. Likewise, after the recovery of contraband, report must be sent to superior officers. However, in the instant case, as no report of the recovery undertaken by the Investigating Agency involving the alleged seizure of the contraband, had been reported to the superior officers concerned, the exercise was in gross defiance of the edict of Section 57 of the Act, rendering the same null and void. It has also been argued that there is no evidence on record to show that from 10.5.1994 till 8.10.2003,

at which place the alleged recovered articles and sealed samples were kept. There is also no evidence on record as to who took the first sample to Vidhi Vigyan Prayogshala, Lucknow. Learned counsel has also pointed out towards some discrepancies in the statements of witnesses regarding colour of polythene bags in which the Charas was kept. It has been contended that in the recovery memo the colour of the recovered polythene bags is said to be of blue and white whereas in the statement of P.W. 2 before whom the briefcase was opened in Court during trial, has stated its colour as green, yellow and white and admitting that there was no blue polythene bag.

23. Learned counsel for the appellants has further pointed out towards the discrepancy in the weight of Charas as initially the Charas recovered from the appellant Shyam Narayan was found to be 10 Kg and later on from the report received from Vidhi Vigyan Prayogshala, Lucknow, it was found to be of 6.140 Kg and ultimately when it was weighed for the third time before the court, its weight was found 5.5 Kg only.

24. The learned counsel has assailed the reliability and trustworthiness of prosecution witnesses on the basis of contradictions occurred in their statements. He has pointed out that P.W. 2 has stated that the recovery memo was prepared in the electricity light whereas P.W. 3 has stated it to be prepared in the torch light. Likewise P.W. 4 has stated that there was no measurement machine and on the basis of guesswork its weight was mentioned as 10 Kg and 4 Kg in the recovery memo, but later on, P.W. 2 himself made a contradictory statement by stating that the measurements and weighing machine were with the police party at the time of recovery. The reliability of the statement of P.W. 2 was also challenged on the ground that in his examination in chief he has stated that as the arrest and recovery was made all of a sudden and it was a lonely place, no public witness could be made available, whereas at a later stage he has stated that no effort was made by them to summon any independent witness, even though the recovery was made at a busy road. The entire recovery process has also been challenged on the ground that when the bag and the briefcase were produced in the court a Baniyan was also found inside the bag, about which the recovery memo is silent.

25. In support of his contention learned counsel for the appellants has placed reliance on following judgments:-

1. Meghraj v. State of U.P., 2009(3) JIC 764 (Allahabad),
2. Hasan Ali v. State of U.P., 2011(1) JIC 312 (Allahabad),
3. Jitendra Singh v. State of U.P., 2014 (84) ACC 598,
4. State of Rajasthan v. Gurmail Singh, 2005(1) JIC 844 (SC),
5. Karan Singh v. State of Uttarakhand, 2016 JIC 555,
6. Jameela @ Khatoon v. State of U.P., 2008(1) J.I.I. 868 (Allahabad),

7. Gulshan Dhingara v. State, 2010(3) 689,
8. Shri Ram Pal v. State of U.P., 2005(2) JIC 751 (Allahabad),
9. Mathura Prasad Mishra v. State of U.P., 2005(1) JIC 970 (Allahabad),
10. Sanjay Chaudhary v. State, 2012(76) ACC 125,
11. Jagtar Singh v. State of Punjab, 1996(1) Cr. L.J. 4355

26. During course of arguments the learned counsel for the applicants, while placing reliance on a judgment of Hon''ble Uttarakhand High Court, rendered in Man Mohan Singh @ Mannu v. State of U.P., 2010(3) JIC 642 in which the Hon''ble Uttarakhand High Court has set aside the judgment of conviction passed by the trial court and has acquitted the appellants on the ground that specimen seal was not produced before the court and the provisions of Section 57 of the NDPS Act were not complied with by the police party, has vehemently argued that in view of the above legal position, the appeals deserve to be allowed, the appellants are entitled to be acquitted and the impugned judgment is liable to be set aside.

27. After having heard the learned counsel for the parties and perused the record, this court does not find any force in the arguments advanced by learned counsel for the appellants.

28. Hon''ble Apex Court in its recent judgment delivered on 28.11.2016 in Criminal Appeal No. 1096 of 2016, Dalbagh Singh v. State of Punjab, while relying on its earlier judgment rendered in Sajan Abraham v. State of Kerala (2001)6 SCC 692 by a Bench of three Hon''ble Judges, has held that section 57 of the NDPS Act is not mandatory in nature but only directory, and unless it is demonstrated that non-compliance of it has caused prejudice to the accused persons and has resulted in failure of justice, these rules, which deal with the steps to be taken by the officers after making arrest or seizure, will not invalidate such arrest or seizure.

29. The Hon''ble Apex Court in its one more recent judgment delivered on 7.9.2016 in Criminal Appeal Nos. 1020-1021 of 2009, Girish Raghunath Mehta v. Inspector of Customs and others, has held that where the recovery is from a public place, strict compliance by the Investigating Agency should not be required in an emergency situation so as to avoid misuse by drug peddlers.

30. The Hon''ble Supreme Court in both the above cases, denied to interfere with the order of conviction and sentence awarded to the appellants and dismissed the appeals.

31. In view of the latest judgments of Hon''ble Apex Court, as cited above, the judgment of Uttarakhand High Court, Allahabad High Court and Punjab and Haryana High Court referred by the learned counsel for the appellants are of no help to the appellants.

32. The only one judgment of Hon"ble Apex Court, cited by learned counsel for the appellants i.e. State of Rajasthan v. Gurnail Singh, 2005(1) JIC 844 is also of no help to the appellants because the facts are entirely different. In Gurnail Singh's case, Malkhana Register was not produced in court whereas in the case in hand, P.W. 7 has appeared in the court along with Malkhana Register and he has proved its entries, which were marked as exhibits.

33. In so far as the contention raised by learned counsel for the appellant with regard to interestedness of the witness is concerned, there is no doubt that all the prosecution witnesses in this case are members of police force but it is settled law that the statements of police officials should not be discarded only on this ground alone. No reason has been shown by the appellant Shyam Narayan Pandey for his false implication in this case. The appellant Prem Shanker Tiwari has stated that he has falsely been implicated in this case due to the enmity of election of Gram Pradhanship. However, he has not stated anything as to how several police officials became inimical with him due to enmity of Gram Pradhan's election. In fact nothing has been put to any of the witnesses to elicit that he was anyway personally interested to get the appellant convicted.

34. The Hon"ble Apex court in its recent judgment rendered in Baldev Singh v. State of Haryana, 2016 Cri. L.J. 154 has held as under:

"There is no legal proposition that evidence of police officials unless supported by independent evidence is unworthy of acceptance. Evidence of police witnesses cannot be discarded merely on the ground that they belong to police force and are interested in the investigation and their desire to see the success of the case. Prudence however requires that the evidence of police officials who are interested in the outcome of the result of the case needs to be carefully scrutinized and independently appreciated. Mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness."

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"In his statement under Section 313 Cr. P.C., no plea has been taken that the appellant was not in conscious possession of the contraband. The appellant has only pleaded that he is being falsely implicated and that a false case has been foisted against him in the police station. In his statement under Section 313 Cr. P.C., the appellant had not stated anything as to why would the police foist the false case against the appellant. It is to be noted that huge quantity of poppy straw was recovered from the possession of the appellant. Admittedly, the police officials had no previous enmity with the appellant. It is not possible to accept the contention of the appellant that he is being falsely implicated as it is highly improbable that such a huge quantity has been arranged by the police officials in order to falsely implicate the appellant."

In Tahir v. State (Delhi), (1996) 3 SCC 338, dealing with a similar question, the Hon"ble Apex Court has held as under:

"Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case."

35. The amount of Charas recovered from the possession of the appellants is multiple times more than its commercial quantity. The appellants were in conscious possession of Charas and both of them have been caught red handed with the contraband, the quantity of being such huge that it can not be planted by the police. In Baldev Singh's case (supra) the Apex Court has observed as under:-

Once the physical possession of the contraband by the accused has been proved, Section 35 of the NDPS Act comes into play and the burden shifts on the appellant-accused to prove that he was not in conscious possession of the contraband. Section 35 of the NDPS Act reads as under:-

35. Presumption of culpable mental state. - (1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation. - In this section "culpable mental state" includes intention, motive knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.

Explanation to sub-section (1) of Section 35 expanding the meaning of "culpable mental state" provides that "culpable mental state" includes intention, knowledge of a fact and believing or reason to believe a fact. Sub-section (2) of Section 35 provides that for the purpose of Section 35, a fact is said to be proved only when the Court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of the probability. Once the possession of the contraband by the accused has been established, it is for the accused to discharge the onus of proof that he was not in conscious possession. Burden of proof cast on the accused under Section 35 of the NDPS Act can be discharged through different modes. One of such modes is that the accused can rely on the materials available in the prosecution case raising doubts about the prosecution case. The accused may also adduce other evidence when he is called upon to enter on his defence. If the circumstances appearing in the prosecution case give reasonable assurance to the Court that the accused could not have had the knowledge of the required intention, the burden cast on him under Section 35 of the NDPS Act would stand discharged even if the accused had not adduced any other evidence of his own when he is called upon to enter

on his defence."

36. In *Abdul Rashid Ibrahim Mansuri v. State of Gujarat*, AIR 2000 SC 821, the Hon"ble Apex Court has clearly observed that where an accused admits that narcotic drugs were recovered from bags that were found in his possession at the time of his apprehension, in terms of Section 35 of NDPS Act the burden of proof is then upon him to prove that he had no knowledge that the bags contained such a substance.

37. So far as the discrepancy in the weight of Charas is concerned, it is to be noted that Charas has been recovered in May 1994. Though its sample containing 10 gms only was sent to Vidhi Vigyan Prayogshala, Lucknow, on the next day, but the remaining Charas was sent to Vidhi Vigyan Prayogshala, Lucknow, in October 2003. P.W. 3 has categorically stated that due to lapse of time Charas got dried and its weight got reduced. There does not appear anything unnatural in the aforesaid statement of P.W. 3, the first informant, that the discrepancies in the weight of Charas had occurred due to passage of time as the Charas got dried resulting in reduction of its weight.

38. With regard to the discrepancy found in the colour of the polythene bags containing Charas, a perusal of the evidence available on record shows that the colour of briefcase (sky blue) and the gunny bag (white) is the same in the statement of all the witnesses. The discrepancy has occurred only in the colour of polythene bags, kept inside the briefcase and the bag, as in the recovery memo the colour of polythene bags is mentioned as blue and white but when those were produced in court, their colour was found to be green, yellow and white. It is to be noted that the recovery memo was prepared in the dark place in the light of torch, as per the statement of P.W. 3, therefore, the possibility cannot be ruled out that the green colour might have appeared somewhat bluish and the yellow as creamish white in the torch light.

39. Be that as it may, only for the reason of this minor discrepancy, the entire case of the prosecution cannot be discarded. It has been observed earlier that it is not possible for the police to plant such a huge amount i.e. 14 Kgs of "Charas" (which is very expensive) just to falsely implicate the appellants, moreso, when no reason has been disclosed by the appellants for their false implication.

40. The argument advanced by learned counsel for the appellants with regard to non-compliance of section 57 NDPS Act, appears baseless in view of the law laid down by Hon"ble Apex Court in *Baldev Singh's* case (supra). Apart from that, it is also noteworthy that P.W. 2 has categorically stated that he had informed his superior officers by wireless just after the arrest, hence it cannot be said that no compliance of section 57 of the NDPS Act was made.

41. It is to be kept in mind that the occurrence has taken place in the year 1994 and the statements of the witnesses have been recorded in the years 2003 to 2008. During such a long period some minor contradictions are bound to occur in

the statements of witnesses as the memory fades with the passage of time.

42. A perusal of the testimony of prosecution witnesses fully substantiate the recovery of the contraband i.e. Charas from the conscious possession of the accused-appellants. The fact that samples were properly sealed in the presence of the appellants and were sent to the Forensic Science Laboratory through Malkhana, also stands established because the seals affixed on the briefcase and the bag were found intact when those articles were produced in the court. Thus, it rules out the possibility of any tampering therewith. The amount of the recovered contraband is substantial so much so that it negates even remote possibility of the same being planted by the police. Further more no evidence with regard to bias or malice against the Investigating Agency has been adduced.

43. In the wake of the above, this court is of the considered opinion that the prosecution has been able to prove the charges against the accused/appellants beyond reasonable doubt. The learned trial court has also discussed in detail each and every aspect of the case and factual perspective. The findings recorded by the trial court do not require any interference in this appeal.

44. Accordingly, both these appeals are dismissed.

45. Let the record be sent back to the trial court along with a copy of this judgment. The trial court is directed to take immediate follow up steps so as to ensure that the sentence awarded is served out by the accused-appellants.