

(2016) 06 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : Cr. Appeal No. 490 of 2009

State of Himachal Pradesh

APPELLANT

Vs

Jugal Kishore

RESPONDENT

Date of Decision : 16-06-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 29

Citation : (2016) 4 CriCC 795 : (2016) ILRHP 1946 : (2016) 4 RCRCriminal
222 : (2016) 3 SimLC 1469

Hon'ble Judges : Sanjay Karol and Ajay Mohan Goel, JJ.

Bench : Division Bench

Advocate : V.S. Chauhan, Addl. Advocate General and Vikram Thakur, Dy.
Advocate General, for the Appellant; Anoop Chitkara, Advocate, Praveen
Chauhan, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ajay Mohan Goel, J.—The present appeal has been filed by the State against judgment dated 29.6.2009 passed by the Court of learned Special Judge, Fast Track, Kullu in Sessions Trial No. 22 of 2008, vide which the learned Trial Court has acquitted the accused for the commission of offence under Section 20 read with Section 29 of the Narcotic Drugs & Psychotropic Substance Act, 1985 (in short the "Act").

2. In brief the case of the prosecution was that on 21.11.2007, H.C. Moti Ram along with HHC Lal Singh, HHC Jai Krishan and Constable Chaman Lal were present in connection with patrol and Nakabandi duty at Samod Nalla at around 5:00 a.m., when one vehicle came from Manikaran side and was signaled to stop by the police party. The registration number of the said Santro Car was DL 2 CW-1248 and the same was read with the aid of torch light. The driver of the car was questioned and he disclosed his name as Tarun Kumar R/o New Delhi. The other occupant of the car disclosed his name as Jugal Kishore R/o Palampur.

3. The car was searched with the aid of torch light and on search one attache case kept near the feet of accused Jugal Kishore was recovered. The attache case was black in colour having zip and sticker on its body. The checking of the same revealed that it was containing polythene envelope wrapped with the aid of cello tape "khaki" in colour and black colour substance had been kept inside the polythene envelop in the shape of balls, sticks and chocolates. The recovered substance was emitting the smell of charas.

4. As it was a dark and secluded place and no independent witness was found present on the spot, H.C. Moti Ram along with accused persons and other police personnel came to police post Manikaran where scale and weights were taken from HHC Chander Prakash. HHC Lal Singh and Constable Chaman Lal were associated as witnesses. The attache case was opened and it was found that charas had been kept in all the envelopes found inside the attache case and the same was kept in the shape of balls, sticks and chapattis. The recovered charas was weighed and the same was found weighing 7Kg 400 Gram. Two samples of charas weighing 25 grams each were separated from the recovered charas and were sealed in separate parcels. Remaining charas was further sealed in separate parcel. Three seal impressions of "T" were affixed on each sample parcel and nine seal impressions of "T" were affixed on bulk parcel. NCB-I in triplicate were filled by H.C. Moti Ram and sample of seal impressions "T" were obtained separately and seal after use was handed over to HHC Lal Singh. Seizure memo was prepared on the spot and the Santro Car along with documents was also taken into possession by the police. H.C. Moti Ram prepared rukka which was sent to police station Kullu through HHC Jai Krishan, on the basis of which, FIR was registered against the accused. Thereafter, H.C. Moti Ram along with accused persons and other police officials returned back to the spot. H.C. Moti Ram inspected the spot in the presence of accused and site plan was prepared. Accused Jugal Kishore and Tarun Kumar disclosed that they had purchased the charas from Manikaran. H.C. Moti Ram returned back to Manikaran along with the accused persons. A futile attempt was also made to search the person who had sold the charas to the accused person. Accused persons were apprised about the commission of offence and punishment prescribed under the NDPS Act. Separate arrest memos were prepared which were duly signed by the accused persons. During the course of Jamatalashi of accused Tarun Kumar, two barrier slips were recovered and the same were also taken into possession. On 22.11.2007, H.C. Moti Ram came to Police Station Kullu along with accused persons and case property for the purpose of resealing before SHO Pratap Singh. SHO Pratap Singh resealed the case property and deposited the same in Malakhana Kullu with MHC Manoj Kumari. Entry to this effect was made in Malakhana Register by MHC Manoj Kumari. During the course of investigation, accused Jugal Kishore made disclosure statement that charas had been purchased from holder of Mobile No. 93187-47963. Accused Naresh Kumar was arrested on 10.12.2007 and on 13.12.2007 he made a disclosure statement while in police custody that mobile phone No. 93187-47963 has been thrown in

river Parbati Manikaran out of fear when he came to know about the recovery of charas which had been sold by him to the other accused. On the basis of the said disclosure statement, he lead the police party to Manikaran bus stand near bridge and identified the place from where mobile phone No. 93187-47963 was thrown in river Parbati. MHC Manoj Kumari had sent sample along with relevant documents on 22.11.2007 to FSL, Junga through Constable Sukh Dev. He obtained the receipt from the laboratory and handed back the same to MHC Manoj Kumari. The case property was not tampered at any stage. H.C. Moti Ram also prepared a special report and handed over the same to Dy. SP Kullu. Report of FSL, Junga was received according to which contents of the sample were found to be that of charas. After completion of investigation, the accused were charged for the offences punishable under Section 20 and 29 of the NDPS Act to which they pleaded not guilty and claimed trial.

5. In order to substantiate its case, the prosecution, in all, examined 13 witnesses.

6. PW 1, HHC Lal Singh, deposed that on 21.11.2007 he along with HHC Jai Krishan, Constable Chaman Lal and H.C. Moti Ram were present at Samod Nalla in connection with nakabandi. At around 5:00 a.m., one vehicle came from Manikaran side and the same was signaled to stop with the aid of torch. The registration number of the said vehicle was DL-2-CW-1248 which was Santro Car. On questioning, driver of the car has disclosed his name as Tarun Kumar resident of Delhi. The second person who was occupying the seat near the driver disclosed his name as Jugal Kishore resident of Palampur. The vehicle was checked by H.C. Moti Ram and on search one attache was found having been kept near the feet of accused Jugal Kishore. The attache was black in colour and it was having a zip and there was a sticker of RCM on the same. He further deposed as under:-

"The attache was checked by H.C. Moti Ram and it was found containing 12 packets having been wrapped with the aid of cello tape khakhi in colour. One packet was opened and it was found containing black coloured substance. This substance was in the shape of chapattis, chocolate, sticks and balls. This substance was emitting smell of charas. It was secluded place. There was darkness on the spot. No independent person was present on the spot. Further proceedings could not be conducted on the spot due to darkness." He also deposed that both the accused along with attache and the recovered charas were brought to Police Post, Manikaran in the Santro car and thereafter H.C. Moti Ram obtained scale and weights from HHC Chander Prakash. H.C. Moti Ram again opened the attache in Police Post Manikaran and 12 packets lying in the attache were again checked and these packets were found in the form of chapattis, chocolates, balls and sticks. The weight of the recovered charas was 7Kg 400 grams. Two samples of charas of 25 grams each were separated from recovered charas and thereafter sealed in separate parcels and remainder was put back in the same 12 packets and the packets were put back in the same attache and

were sealed in separate parcels by affixing three seal impressions of "F. NCB-I in triplicate was filled on the spot and samples of seal impressions "F were obtained separately and Ext. PA was handed over to him. Search and seizure memo was prepared by H.C. Moti Ram at the spot. The car was taken into possession by H.C. Moti Ram. Rukka was prepared by H.C. Moti Ram and was sent to PS Kulu through HHC Jai Krishan. Thereafter, the accused were brought to the spot by H.C. Moti Ram. PW 1 and Constable Chaman Lal were present with H.C. Moti Ram who had accompanied them to the spot. Site plan of occurrence was prepared by H.C. Moti Ram and thereafter all of them returned back to PP Manikaran.

7. PW 2, HHC Jai Krishan, also corroborated the story of prosecution. In his statement he has deposed as under:-

"HC Moti Ram opened zip of attache and it was found containing 12 packets having been wrapped with the aid of cello tape khakhi in colour. One packet was opened and checked and it was found containing black coloured substance in the shape of chapattis, balls and sticks. This packet was emitting smell of charas. The attache was closed by H.C. Moti Ram. It was secluded place and it was dark on the spot and as such, it was not possible to conduct further proceedings on the spot."

8. PW 3, HHC Grander Prakash, deposed that he was posted as HHC at P.P. Manikaran w.e.f. August, 2005 to June, 2008. On 21.11.2007, H.C. Moti Ram obtained scale and weights from him. The scale was manual and weights were from the range of 5 grams to 1 Kg. He was also associated with the investigation of the case by H.C. Moti Ram. He further stated that one attache of black in colour was opened in P.P. Manikaran in his presence by H.C. Moti Ram. Accused persons were also present at P.P. Manikaran and besides them Constable Chaman Lal, HHC Lal Singh and HHC Jai Krishan were also present. The attache was found containing 12 packets which were wrapped with cello tape khakhi in colour. Each packet was checked and opened and the same were found containing charas in the form of chapattis, chocolates, balls and sticks. The recovered charas was weighed and it was found to be 7Kg 400 grams. He has further deposed as under:-

"Two samples of charas were separated from the recovered charas and were sealed in separate parcels. Each sample was 25 grams in weight. Remainder of charas was put in the same attache and 12 empty packets were also put in the same attache and were sealed in separate parcel. Three seal impressions of T were affixed on each sample parcel and bulk parcel was sealed by affixing 9 seal impressions of T. NCB-I in triplicate were filled by H.C. Moti Ram. Samples of seal impressions T were obtained separately and one such sample is Ext. PA. Seal after use was handed over to HHC Lal Chand."

He further deposed that on 13.12.2007 accused Naresh Kumar had given disclosure statement to H.C. Moti Ram in his presence as well as in the presence

of Constable Chaman Lal to the effect that he had thrown his mobile phone in river Parbati. This statement was reduced into writing which was signed by him, Constable Chaman Lal and the accused. He also stated that during police custody accused Naresh Kumar disclosed that he had been receiving constant calls on his mobile phone to the effect that charas had been recovered by the police from the possession of accused Tarun Kumar and Jugal Kishore and thereafter he had thrown the said mobile phone in river Parbati. Pursuant to this disclosure statement, accused Naresh Kumar took the police to Manikaran and identified the place where the mobile phone was thrown in river Parbati by him.

9. PW 4, H.C. Moti Ram, also corroborated the case of the prosecution. In his statement he has deposed as under:-

"The Centro car was checked with the light of torch. One attachee black in colour was found having kept near the feet of Jugal Kishore. Accused Jugal Kishore was asked by me to get his attache checked. The smell of charas was emitting from the attache. Attache was opened and one packet was also opened and it was found containing black coloured substance. This black coloured substance had been kept in the packet in the shape of sticks, chocolates, chapattis and balls. It was secluded place. No independent person was present on the spot. It was dark on the spot and as such, further proceedings could not be conducted there. Thereafter, I along with case property, accused persons and police officials returned back to P.P. Manikaran in the centro car. In police post Manikaran, attache was reopened. 12 packets containing charas were found in the attache. Scale and weights were obtained from HHC Chander Prakash. Recovered charas was weighed and it was found to be 7Kg and 400 grams."

10. PW 5, Constable Inder Singh, had brought the Rojnamcha of P.P. Manikaran. PW 6, Gita Gopal, was the caretaker of Reliance Tower at Manikaran who has deposed that his mobile phone number is 98170-06026 and that of accused Naresh Kumar mobile number was 98173-32474. He has further stated that he knew accused Naresh Kumar and used to converse with him on telephone. He was declared as a hostile witness.

11. PW 7, MHC Manoj Kumari deposed that on 22.11.2007, SHO Pratap Singh deposited three sealed parcels, NCB-I in triplicate, samples of seal impressions T and H and other concerned documents with her. Necessary entries were made by her in Malkhana Register and on the same day she handed over the same to Constable Sukh Dev vide RC No. 316/2007 with a direction to deposit the same at FSL, Junga. She also deposed that case property remained intact in her custody and the same was not tampered at any stage.

12. PW 8, Alok Kapoor, was the Customers' Care Executive in Reliance Info Ltd. Shimla who provided necessary detail calls of mobile No. 93187-47963. PW 9, Ajay Kumar, proved the toll tax receipt Ext. P.M. which had been issued by him. He was serving as a Supervisor at Toll Tax Barrier at Swarghat.

13. PW 10, Constable Sukh Dev, deposed that on 22.11.2007 MHC Manoj Kumari

had handed over sealed sample parcels, samples of seal impressions T and H and other documents vide RC No. 316 of 2007 with a direction to deposit the same at FSL, Junga. MHC Manoj Kumari had handed over two sealed sample parcels containing 25 grams of charas each to him for being taken to FSL, Junga which were deposited at FSL, Junga on 23.11.2007 and receipt obtained from the laboratory was handed over to MHC Manoj Kumari at PS Kullu. He was declared as a hostile witness and in his cross-examination he stated that only 25 gram charas had been handed over to him by MHC Manoj Kumari for being taken to FSL, Junga.

14. PW 11, H.C. Balbir, proved the copy of special report Ext. PZ which was received by Dy.SP Kullu and who after appending his endorsement handed over the same to him.

15. PW 12, Inspector Pratap Singh, stated that on 21.11.2007 rukka Ext. PG was received at PS Kullu through HHC Jai Krishan and on the basis of which FIR Ext. PA/C was registered at PS Kullu. He also stated that on 22.11.2007 at around 9:30 a.m. H.C. Moti Ram had produced three sealed parcels, NCB-I in triplicate and case property for the purpose of resealing. He resealed bulk parcel by affixing nine seal impressions of H and each sample parcel was resealed by affixing three seal impressions of H. Bulk parcel had already been sealed by affixing nine seal impression of T and one sample parcel was bearing three seal impressions of T and second sample parcel was bearing three seal impressions of seal T.

16. PW 13, SI Ramesh Chand, had recorded the statement of witness Gita Pal under Section 161 Cr.P.C. and had taken into possession receipt book from Gara Mora Barrier, Distt. Bilaspur vide Ext. PA/G.

17. The learned Trial Court framed the following points for the purpose of determination:--

"1. Whether on 21.11.2007, at 5.00 am, at Samod nullah near Manikaran, accused Jugal Kishore and Tarun Kumar were found in the conscious and exclusive possession of 7KG and 400 grams of charas while transporting the same in vehicle No. DL. 2CW-1248, as alleged?

2. Whether on 21.11.2007, at Manikaran, accused Naresh Kumar had committed criminal conspiracy with co-accused Jugal Kishore and Tarun Kumar to transport 7 KG and 400 grams of charas in vehicle No. DL. 2CW-1248 as alleged?

3. Whether link evidence is present and complete in order to connect the recovered stuff with the sample having been analysed in the laboratory?

4. Whether there is non-compliance of provisions of Section 42 of NDPS Act?

5. Whether there is non-compliance of provisions of Section 50 of NDPS Act?

6. Final order."

18. These points were answered as under by the learned Trial Court:--

"Point No. 1.

No.

Point No. 2

No.

Point No. 3.

No.

Point No. 4.

No.

Point No. 5.

No.

Point No. 6.

All the accused are acquitted per operative portion of the Judgment."

19. Thus, the learned Trial Court on the basis of material produced on record by the prosecution concluded that the prosecution had failed to bring home the guilt of the accused for the commission of the offences punishable under Section 20 and 29 of the NDPS Act beyond any reasonable shadow of doubt and accordingly it acquitted all the accused by giving them benefit of doubt.

20. Mr. V.S. Chauhan, learned Additional Advocate General has strenuously argued that the judgment passed by the learned Trial Court whereby it had acquitted the accused for committing offences under Section 20 and 29 of the NDPS Act, 1985 was not sustainable in the eyes of law. Mr. Chauhan submitted that the learned Trial Court had acquitted the accused persons on flimsy grounds on the basis of hypothetical reasoning and had erred in not appreciating the evidence on record in the correct perspective. According to him, the reasoning returned by the learned Trial Court was manifestly unsustainable and there was no occasion for the learned Trial Court to have had discarded the consistent testimony of the prosecution witnesses on material points. According to Mr. Chauhan, the learned Trial Court had wrongly brushed aside the cogent and trustworthy evidence of PW No. 1, PW No. 2 and PW No. 4 by holding that there were contradictions in their testimonies which were fatal to the case of the prosecution, whereas the testimony of the said witnesses was cogent, reliable and there were no major contradictions so as to disbelieve their statements. He further argued that the learned Trial Court had erred in coming to the conclusion that PW 4 was not supported by PW 1 and PW 2. According to him, both PW 1 as well as PW 2 had categorically stated that when the attache case was checked, 12 packets having been wrapped with the aid of cello tape, khakhi in colour were

found and on opening one packet black coloured substance in the shape of chapattis, chocolate, sticks and balls was found and the substance recovered was emitting the smell of charas. He further contended that both PW 1 and PW 2 had categorically stated that the place where the recovery was effected was secluded place and no independent witness was available and due to darkness the proceedings could not be carried out at the spot. According to him, the testimony of all these witnesses was clear and categorical and there were no material contradictions and the prosecution in fact had been successful in bringing home the guilt of the accused. He further argued that the learned Trial Court has heavily relied upon minor discrepancies in the statements of PW 1, PW 2 and PW 4 for disbelieving the case of the prosecution. He further urged that the conclusions arrived at by the learned Trial Court to the effect that accused Naresh Kumar was not involved and that the charas had not been purchased from him by accused Jugal Kishore and Tarun Kumar was contrary to the records. According to him, it stood established from the record that Naresh Kumar was the holder of mobile No. 93187-47963 and it stood proved that he was involved in the business of charas and when he came to know that accused Jugal Kishore to whom he sold the charas was caught by police he threw the said mobile phone in river Parbati. Therefore, he urged that judgment passed by the learned Trial Court was liable to be set aside and the accused were liable to be convicted for offences with which they were charged.

21. Mr. Anoop Chitkara, learned counsel for respondents has argued that there was no merit in the appeal filed by the State and the judgment passed by the learned Trial Court was neither perverse nor were the findings contrary to material on record produced by the prosecution. According to him, the findings arrived at by the learned Trial Court were based on material placed on record by the prosecution and the learned Trial Court had rightly come to the conclusion that the prosecution had failed to bring home the guilt of the accused. According to him, the accused persons were falsely implicated to save one Mr. Ronit who happened to be an influential person and because accused persons were being implicated by concocting a story, it was for this reason that the prosecution had not associated any independent witnesses at the time of search etc. Further according to him, the learned Trial Court had rightly come to the conclusion that there were major contradictions in the statements of PW 1, PW 2 and PW 4 which were fatal to the case of the prosecution and according to him the State had not been able to make out any case so as to warrant interference in the well reasoned judgment passed by the learned Trial Court. Thus, according to him, it could not be said that the findings which were returned by the learned Trial Court were either perverse or were not borne out from the record of the case. Mr. Chitkara, thus prayed that there was no merit in the appeal and the same was liable to be dismissed and the judgment passed by the learned Trial Court was liable to be upheld.

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

23. As per the case of prosecution, the alleged incident took place on 21.11.2007 at around 5:00 a.m. H.C. Moti Ram signaled the Santro Car to stop which was being driven from Manikaran side by accused Tarun Kumar. According to PW 1, the vehicle was checked by H.C. Moti Ram and one attache was found kept near the feet of accused Jugal Kishore. This attache was checked by H.C. Moti Ram and it was found containing 12 packets wrapped with the aid of cello tape and when one packet was opened, it was found containing black colour substance which was emitting smell of charas. He further deposed that it was a secluded place and there was darkness on the spot and no independent witness was present on the spot. Thus, it is evident from his statement that the attache was opened by H.C. Moti Ram at the spot itself and 12 packets were found in the same out of which one was opened at the spot itself.

24. PW 2, HHC Jai Krishan, has also deposed that the car was signaled to stop by H.C. Moti Ram and when H.C. Moti Ram checked the car with the aid of torch, one attache was found lying near the feet of accused Jugal Kishore which was opened by H.C. Moti Ram in which 12 packets were found wrapped with cello tape, out of which one packet was opened which was containing black colour substance and was emitting smell of charas. He has thereafter deposed that the attache was closed by H.C. Moti Ram and as it was a secluded place and it was dark, therefore, it was not possible to conduct further investigation on the spot. Thus, according to this witness also the attache was opened by H.C. Moti Ram on the spot and out of which 12 packets was found inside the attache and one packet was opened on the spot.

25. Now when we see the statement of PW 4 Moti Ram, his deposition is in total contrast and total contradictions to what has been mentioned by PW 1 and PW 2. According to him, when the car in issue was checked with the help of torch, one attache black in colour was found kept near the feet of accused Jugal Kishor and accused was asked by him to get his attache checked. He further deposed that the smell of charas was emitting from the attache. In other words according to PW 4 H.C. Moti Ram even before the attache in issue was opened he was aware of the fact that the smell of charas was emitting from the same. He has further deposed that thereafter the attache was opened and one packet was also opened and it was found containing black colour substance. Thereafter, according to him, as it was a secluded place and no independent person was present on the spot and it was dark, he along with accused persons and police officials returned back to P.P. Manikaran in the Santro car with the case property and in Police Post Manikaran attache was opened and 12 packets of charas was found in the attache.

26. Thus, it is clear that PW 4 has not stated that at the spot when the attache was opened, 12 packets were found inside the attache. According to him, the attache was opened and one packet was also opened. He has not mentioned the number of packets which were found in the attache at the spot. According to him, it was in the police post when the attache was reopened 12 packets

containing charas were found in the same.

27. However, PW 1 and PW 2 are very categoric that when PW 4 opened the attache at the spot it was found containing 12 packets which were wrapped with cello tape khakhi in colour. PW 1 and PW 2 do not mention anywhere that smell of charas was emitting from the attache, whereas PW 4 is very categoric that even before the attache was opened, the smell of charas was emitting from the same.

28. PW 1, PW 2 and PW 4 in unison have stated that the spot from where the car was stopped was a secluded place due to which no independent witness could be associated. It is further their case that as it was dark, therefore, no further investigation could be carried out at the spot and in these circumstances H.C. Moti Ram brought the accused in the car along with other police officials and the case property to P.P. Manikaran. Further proceedings in the matter according to the prosecution were thereafter conducted at P.P. Manikaran. If the version of the prosecution has to be believed then the prosecution has miserably failed to explain as to why no independent witness was associated by the police in police post Manikaran. Even if we were to believe the story of the prosecution that the place where the car was stopped was secluded, therefore, no independent witness could be associated, we fail to understand as to what prevented the police from associating independent witness at P.P. Manikaran. By no stretch of imagination it can be said that Manikaran is a secluded place or that no independent witness whatsoever was available in and around P.P. Manikaran. All these facts when taken together shroud the case of the prosecution with suspicion.

29. Similarly, perusal of Ext. PB i.e., search and seizure memo will demonstrates that there is no mention in the same that 12 packets were found inside the attache case when it was opened which were wrapped with cello tape khakhi in colour. What has been stated by PW 1, PW 2 and PW 4 in their depositions is not borne out from the contents of Ext. PB. In their statements, these witnesses have categorically stated that bulk parcel was sealed by affixing nine seals of impression 'T' whereas in Ext. PB it is mentioned that bulk parcel was sealed with three seal impressions of 'T'. This discrepancy also remains totally unexplained by the prosecution.

30. The consistency in the inconsistencies of the version of PW 1, PW 2 and PW 4 is strengthened by the mode and manner in which they have deposed about the manner of the arrival of the police party at P.P. Manikaran from the spot where the car was stopped by the police party. PW 1, HHC Lal Singh, has deposed that in police post Manikaran proceedings were conducted in the office room and one police Constable was present at the room when they reached the police post. PW 2, HHC Jai Krishan has deposed that no police official was present in the room when they reached P.P. Manikaran and the office room was unbolted by H.C. Moti Ram. H.C. Moti Ram stated that HHC Chander Prakash was present in the Police Post when he reached at the said police post. This inconsistency in the statement

of police witnesses gains relevance and importance keeping in view the fact that no independent witness has been associated by the police in the course of proceedings conducted by the police party in P.P. Manikaran. Though the learned Additional Advocate General has tried to submit that these contradictions are minor and cannot be given so much credence so as to disbelieve the version of the prosecution, however, we are afraid that the above mentioned contradictions when read in conjunction with other contradictions cannot be termed to be minor. The end result of this is that the story of the prosecution cannot be believed to be true because due to the inconsistencies in the statements of PW 1, PW 2 and PW 4 it cannot be said that these witnesses are trustworthy and defence has not been able to impinge the truthfulness of these witnesses. As far as this proposition of law is concerned, that conviction can be based solely on the testimony of police witnesses, there is no dispute qua the same. However, the fact of the matter still remains that conviction can be based on the sole testimony of police witnesses provided the said testimonies are found to be cogent, truthful and trustworthy.

31. Another important aspect of the matter is the specific defence taken by the accused persons to the effect that on 20.11.2007 they had visited Manikaran Gurudwara where one Mr. Ronik met them who arranged their stay in the said Gurudwara. According to the accused, said Mr. Ronik asked them to take him to Delhi the next morning and he was to pay them Rs. 2000/- for the said purpose. Mr. Ronik had given them his mobile number and when they contacted him in the morning and asked him to come to Gurudwara immediately, he came along with some other person in the parking complex of the Gurudwara along with one attache case, briefcase and bag. Two police personnel came from bridge side and when Mr. Ronik saw police personnel, he left the aforesaid articles on the spot and fled away. Accused told the police that the attache case, briefcase and bag belong to Mr. Ronik. The attache case was locked. The same was broken by the police and accused persons were taken to P.P. Manikaran for questioning on the basis of suspicion and thereafter they have been falsely implicated in the case.

32. PW 12, Pratap Singh, In-charge of PS Kullu at the relevant time, has admitted in his cross examination that SI Ramesh was directed by him to investigate qua the involvement of Ronik in the present case. The fact that involvement of Ronik was investigated in the matter raises doubt with regard to the story of the prosecution, as has been propounded and gives some credence to the theory which has been put forth by the accused.

33. All these facts when taken together, coupled with non involvement of any independent witness at P.P. Manikaran raises serious doubt about the truthfulness of the story of the prosecution.

34. Similarly, according to the prosecution accused Jugal Kishore and Tarun Kumar had purchased charas from co-accused Naresh Kumar holder of mobile No. 93187-47963. H.C. Moti Ram has stated on oath that during the course of investigation it was revealed that charas was purchased from the holder of above

mobile phone number. Naresh Kumar was arrested during the course of investigation and his disclosure statement is Ext. PC in which he has stated that the mobile set in issue was thrown by him at Manikaran in Parbati River and he could get the place identified. Incidentally, this mobile set was not recovered. Cross-examination of PW 4 Moti Ram reveals that he has admitted that the said mobile set was in the name of one Dalip Kumar. Said Dalip Kumar has not been examined on oath by the prosecution and it stands established on record that Naresh Kumar was not the holder of mobile phone.

35. Further PW 4, H.C. Moti Ram has testified on oath that on 22.11.2007 he came to PS Kullu along with the accused persons and case property and case property was produced before SHO Partap Singh. PW 12 SHO Partap Singh has stated that H.C. Moti had produced three parcels, NCB-I in triplicate and the accused persons before him. The case property was produced for the purpose of resealing and he resealed the bulk parcel by affixing nine seal impressions of H. Each sample parcel was sealed by affixing three seal impression of H and bulk parcel had already been sealed with nine seal impression of "T". He deposited the said articles with MHC Manoj Kumari. Manoj Kumari has entered the witness box as PW 7 and has stated that on 22.11.2007 SHO Partap Singh deposited three sealed parcels, NCB-I in triplicate, samples of seal impression T and H and other concerned documents with her and that bulk sealed parcel was bearing 9 seal impressions of T and sample parcels were also bearing three seal impressions of T on each parcel. Surprisingly, Ext. PB seizure memo shows that the bulk parcel was bearing only three seal impression of T. It is categorically mentioned in this documents that H.C. Moti Ram had sealed bulk parcel by affixing three seal impression of seal T. If that is the case, then that bulk parcel which was bearing three seal impression of T has not been deposited with the Malkhana and it is some other parcel which bears nine seal impressions of T which has been deposited in the Malkhana. Further PW 10 Constable Sukhdev who has deposited the same at FSL, Junga has mentioned in his cross-examination that two sealed sample parcels were handed over to him by MHC Manoj Kumari for depositing the same at FSL, Junga. Thereafter, when he was declared as a hostile witness and was subjected to cross-examination, he changed his version and stated that one sample was taken by him to FSL, Junga which was handed over to him by MHC Manoj Kumari. However, in the statement recorded under Section 161 Cr.P.C. he states that he had taken two samples for the purpose of examination to FSL Junga. MHC Manoj Kumari has deposed that only one parcel had been sent to the laboratory. This also demonstrates that again there are major contradictions in the statements of PW 7 MHC Manoj Kumari and PW 10, Constable Sukh Dev. If the report of FSL Junga is read, it is mentioned in column No. 4 of the said report Ex. P.P. that sample was received in the laboratory on 22.11.2007 whereas PW 10, Constable Sukh Dev, has deposed that he has deposited the sample on 23.11.2007. Further SHO Partap Singh has deposed that he resealed the sample on 22.11.2007.

36. The learned Trial Court has also dealt with these aspects of the matter in a

threadbare manner and thereafter it has come to the conclusion that the prosecution has not been able to bring home the guilt of the accused beyond reasonable doubt.

37. According to us, the conclusions so arrived at by the learned Trial Court cannot be faulted. It is apparent and evident from the discussion made herein above that the case of the prosecution is full of loopholes. There are major contractions and inconsistencies in the story put forth by the prosecution through its star witnesses PW 1, PW 2 and PW 4. No plausible explanation has been given by the prosecution as to why no independent witness was associated at P.P. Manikaran. The prosecution has miserably failed to link co-accused Naresh Kumar with the happening of the alleged incident on the morning of 22.11.2007. Therefore, in our considered view it cannot be said beyond reasonable doubt that the prosecution on the basis of material produced on record has been able to prove its case against the accused. In these circumstances, the judgment passed by the learned Trial Court whereby the accused have been acquitted of the charges alleged against them cannot be faulted with. Therefore, we do not find any reason to interfere with the well reasoned judgment passed by the learned Trial Court and accordingly the present appeal is dismissed. Bail bonds, if any, furnished by the accused are discharged.