

(2018) 01 SHI CK 0064

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 628 Of 2017

Surjan Lal and another

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 02-01-2018

Acts Referred:

Narcotic Drugs & Psychotropic Substances Act, 1985 — Section 15, 52A, 57
Code Of Criminal Procedure, 1973 — Section 161, 313

Citation : (2018) 2 RCR (Cri) 200 : (2018) 1 Shim LC 280 : (2018) 2 JCC 57

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : Ramakant Sharma, Devyani Sharma, R.S. Thakur

Judgement

Sureshwar Thakur, J

1. The instant appeal is directed against the judgment rendered on 17.11.2017, by the learned Special Judge, Solan, Himachal Pradesh, Camp at Nalagarh, upon, Sessions Trial No. 5-NL/7 of 2012, whereby the appellants stand convicted AND are consequently sentenced to undergo rigorous imprisonment, for five years each AND to pay a fine of Rs. 50,000 /- each, for commission of an offence punishable under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act') AND in default of payment of fine, they are sentenced to suffer simple imprisonment for six months each.

2. Brief facts of the case are that on 10.1.2012, a police party from Police Station, Nalagarh headed by ASI Ram Lal along with HHC Roop Singh No. 455 and HHG Joga Singh No. 11-4/48 were on routine night patrol duty and traffic checking near Chaukiwala. At about 6:15 PM, they intercepted motorcycle No. HP-12T-0293 coming from Rajpura side. Two persons were traveling on the vehicle which was stopped for routine checking. The driver of the motorcycle on seeing the police party got frightened and tried to flee. On suspicion, the motorcycle was apprehended and after ascertaining the names and identity of the persons traveling therein, it was found that accused Rustam Khan was

driving the vehicle, whereas accused Surjan Lal was traveling as a pillion rider. At that time, HC Tejinder Singh No. 10 and HHC Rajesh Kumar No. 587 of SIU Baddi also happened to reach there. The accused Surjan Lal being pillion rider was found holding a bag in his lap. The said bag was subject to search leading to the recovery of polythene packet containing poppy straw. Narcotic substance recovered from the bag being carried by the accused persons was identified as "Churapost" i.e. poppy straw. In this regard, contraband identification memo was prepared by ASI Ram Lal. Pursuant to the recovery of poppy straw, it was weighed with the help of weighing scale and was found 1 kg and 50 gms. The said contraband was put in the same polythene packet which was put in a bag and the bag was put in a cloth parcel and the said parcel was sealed with seven seals bearing impression 'A'. The sample seal 'A' was taken on a separate piece of cloth for the purpose of record. ASI Ram Lal thereafter filled in NCB-1 form in triplicate by updating the relevant columns. Facsimile seal impression 'A' was taken at serial No. 8 of the NCB-1 form in triplicate and thereafter, the seal was handed over to HHG Joga Singh No. 11/4/48 for safe custody. The sealed parcel containing contraband alongwith motorcycle No. HP-12T-0293 was taken into possession vide search, recovery and seizure memo in the presence of official witnesses, i.e. HC Tejinder Singh No. 10 and HHC Roop Singh No. 455. Thereafter, ASI Ram Lal scribed Rukka and sent the same through HHC Rajesh Kumar No. 587 to Police Station Nalagarh for registration of the FIR against the accused persons. One copy of Rukka was also sent to Dy. S.P. Nalagarh through HHC Roop Singh No. 455. On the basis of the contents of the Rukka, case FIR No. 3/2012, dated 10.1.2012, under Sections 15 of NDPS Act was registered at Police Station, Nalagarh. ASI Ram Lal after completing aforesaid formalities prepared the spot map and also recorded the statements of the witnesses under Section 161 Cr.PC. and thereafter arrested both the accused at 10:35 PM vide separate arrest memos. ASI Ram Lal after completing investigation on the spot returned to Police Station Nalagarh and presented duly sealed case property before Inspector Kamla Devi, SHO Police Station, Nalagarh for the purpose of resealing. Inspector Kamla Devi conducted resealing of the sealed parcel by affixing 7 seals of impression 'M'. Sample seal impression 'M' was taken on a separate piece of cloth for the purpose of record. Thereafter, relevant columns of NCB-I form in triplicate were updated by her and facsimile seal impression 'M' was also affixed on NCB-I form in triplicate. Pursuant to the resealing of the parcel containing contraband, resealing certificate was issued and the case property was handed over and deposited with HC Harvinder Kumar No. 79, MHC, Police Station, Nalagarh. The necessary entries regarding the deposit of the case property was made in Malkahan Register No. 19. On 11.1.2012, the parcel containing contraband was produced before the learned Judicial Magistrate, 1st Class, Court No. II, Nalagarh to obtain inventory under Section 52-A of the ND & PS Act. On 12.1.2012, sealed parcel containing contraband alongwith documents were handed over to constable Satpal No. 798 for depositing at State Forensic Science Laboratory, Junga vide RC No. 230/11-12 dated 12.1.2012. On 12.1.2012, special report under Section 57 of the ND & PS Act was sent to SP,

Baddi through HHG Gurdyala Singh No. 11/4/56. The contraband recovered from actual and conscious possession of accused persons on being subjected to chemical examination was confirmed as 'poppy husk' being sample of 'poppy straw'.

2 The accused were charged for committing an offence punishable under Section 15 of the ND & PS Act. In proof of the prosecution case, the prosecution examined thirteen witnesses. On conclusion of recording of prosecution evidence, the statement(s) of the accused, under Section 313 Cr.P.C. were recorded by the trial Court, wherein they made disclosures qua their false implication. They also examined two witnesses in their defence.

4. On an appraisal of evidence on record, the learned trial Court, recorded findings of conviction against the accused/appellants herein.

5. The accused/appellants, are, aggrieved by the judgment of conviction recorded by the learned trial Court. The learned Counsel appearing, for the accused/appellant has concertedly and vigorously contended qua the findings of conviction recorded by the learned trial Court, standing not based, on a proper appreciation, by it, of the evidence on record, rather, theirs standing sequelled by gross mis-appreciation, by it, of the material on record. Hence, he contends qua the findings of conviction being reversed by this Court, in the exercise of its appellate jurisdiction and theirs being replaced by findings of acquittal.

6. On the other hand, the learned Additional Advocate General has with compatible force and vigor, contended that the findings of conviction recorded by the learned Court below, standing, based on a mature and balanced appreciation of evidence on record and theirs not necessitating interference, rather theirs meriting vindication.

7. This Court with the able assistance of the learned counsel on either side, has, with studied care and incision, evaluated the entire evidence on record.

8 The Investigating Officer concerned, through, recovery memo borne in Ext. PW3/C, effectuated from the conscious and exclusive possession of the convicts, recovery, of, poppy husk weighing 1 kg 50 gms. In sequel to recovery(s) of the aforesaid quantum of contraband, standing effectuated, from the purported conscious and exclusive possession, of, the accused persons, the Investigating Officer concerned, prepared NCB form, form whereof stands comprised in Ext. PW12/E "wherein" revelations occur, of, his "embossing upon" the bulk parcel(s) comprised in Ext. P-2 , seven seals of English Alphabet "A" (ii) also echoings occur in Ext. PW12/E, of, thereafter Ext. P-2 standing re-sealed, by the SHO concerned, at the Police Station concerned, with seven seals, carrying English Alphabet "M". The aforesaid exhibit containing therein "the" bulk of poppy husk, exhibit whereof stood seized under Ext. PW 3/C (iii) "from the" purported conscious and exclusive possession, of, the accused "stood" under a road certificate comprised, in Ext. PW-9/B, hence sent for analysis to the FSL concerned. The FSL Junga purveyed its report thereon, report whereof is

comprised in Ext.PW13/C, wherein it recorded a firm opinion, of, the contents enclosed in the aforesaid bulk parcel "sent to it" for analysis, holding ingredients of poppy husk. Apart therefrom, the prosecution for establishing the charge, to which the accused stood subjected to, relied upon the depositions' of, official witnesses.

9. The learned Additional Advocate General, has contended, that, with the FSL concerned receiving "in an untampered condition" the bulk parcel, comprised in Ext. P-2, recovery whereof stood effectuated, "through" memo comprised in Ext.PW3/C "from the" purported conscious and exclusive possession of the accused, (i) also with the FSL concerned in its report rendered in respect of, contents enclosed therein, report whereof is comprised in Ext. PW13/C "unveiling" the trite factum of "its" containing poppy husk, hence "ought to" constrain this Court, to affirm the findings of conviction recorded upon the accused. He contends that with the apposite NCB form, comprised in Ext. PW12/E (ii) holding complete connectivity "with" the road certificate besides with the seizure memo, comprised in Ext. PW3/C AND also with the report of the FSL concerned, comprised in Ext. PW13/C (iii) importantly "in respect" of all the relevant descriptions vis-à-vis all seal impression(s) initially embossed thereon "at" the relevant site of occurrence, by the Investigating Officer (iv) also in respect "of" description(s) of all the re-embossed/resealed "seal" impression(s) thereon, "by" the SHO concerned, (v) "ultimately", with the prosecution witness(es), to whom the case property stood shown in Court, theirs thereat categorically "voicing", of, the case property "holding absolute analogy" with respect, to, all the apt description(s), in respect thereof, respectively, held in NCB form Ext. PW12/E, road certificate Ext.PW-9/B, AND with the report of FSL, comprised in Ext.PW13/C", (vi) thereupon the judgment of conviction returned upon the accused warranting affirmation. The learned counsel appearing for the accused, has contended with much vigor, that the relevant intra se connectivity(s)/congruity(s) interse the seizure of bulk parcel "through" Ext. PW3/C, "from" the purported conscious and exclusive possession of accused/appellants, vis-à-vis all the aforesaid relevant descriptions (vii) "not" standing efficaciously proven vis-à-vis the case property "at the stage of its" production in Court. He espouses that the relevant interse lack of analogy(s) in respect of description(s), of all seal impression(s) embossed thereon, at the stage when it stood seized, under memo Ext. PW3/C (viii) and also at the stage when it stood resealed, by the SHO concerned besides in respect of all the apposite seal impression(s), displayed in the report of the FSL, comprised in Ext.PW13/C vis-à-vis the ultimate stage, of its production, in Court, whereat it stood shown to the prosecution witnesses, (ix) "is aroused" by the factum of (a) the Public Prosecutor concerned "at" the stage, of, the prosecution witness(es) concerned, standing shown, "in Court" the relevant case property "his" not adducing before the trial Court, the relevant abstract, of, the Malkhana Register, with portrayal(s) therein (x) that at the time of its standing retrieved, from, the Malkhana concerned, by its Incharge, the latter in contemporaneity thereof, recording in the

relevant register, apposite entries in respect thereof (xi) the Public Prosecutor concerned at the time of production of the case property in Court, for its hence being shown to the prosecution witnesses concerned "their not" making any communication(s) theretofore that "it" stood delivered to him, by an authorized official. (xii) However, the aforesaid submission, does not obtain any strength. (xiii) "Significantly" when a close discernment, of, the depositions', of, the material prosecution witnesses' "unveil", that the learned defence counsel "during" the course of holding them to cross-examination, (xiv) his thereat "omitting to" put apposite suggestion to them, in respect of the apposite bulk parcel borne in Ext.P-2, seizure whereof occurred, through, memo comprised, in Ext. PW3/C "not" standing related, to the apposite subsequently therewith prepared NCB Form, comprised in Ext.PW-12/E, (xv) AND vis-à-vis road certificate comprised in Ext.PW-9/B, AND vis-a-vis the report, of the FSL comprised in Ext.PW13/C"(xvi) "intra se un-relatability whereof", arising from their occurring apparent intra se incongruity(s), with respect to all the apposite description(s), of all seal impression(s), drawn thereon vis-à-vis the ones embossed, on, Ext.P-2 AND vis-à-vis all the apposite display(s) borne in NCB form, embodied in Ext. PW12/E. (xvii) Even though, the learned defence counsel "at" the stage, of production of Ext.P-2 in Court "had" an opportunity to decipher, from, the case property "occurrence of" any apparent mis-descriptions AND also want of any intra se congruity(s) inter se, all the aforesaid exhibits vis-à-vis bulk parcel Ext.P-2 also when the learned defence counsel thereat, held the best opportune moment, to hence make/the relevant unearthings, with respect, to, lack of all purported intra se incongruities inter se the aforesaid exhibits vis-à-vis Ext.P-2 (bulk parcel) (xviii) "yet/his" failing to thereat put apposite suggestion(s) to the prosecution witness "in respect of" any lack of intra se analogy(s) erupting inter se the relevant echoings, made in bulk parcel borne in Ext.P-2, seizure whereof occurred "through" memo Ext.PW-3/C, AND respectively vis-à-vis NCB Form borne in PW12/E, road certificate Ext.PW-9/B AND the report of the FSL comprised in Ext. PW13/C" (xix) "significantly" with respect to all seal impression(s) embossed upon Ext. P-2 hence standing displayed or not displayed, in all the aforesaid memos. Consequently, his omitting to hence make any apposite unearthings, from PWs', at the relevant stage, especially with respect to lack of any intra se inter se analogy(s), with, respect to all relevant description(s) borne thereon, (xx) conspicuously with respect to all seal impression(s) borne thereon vis-à-vis all seal impression(s) borne, on all memos, prepared subsequently thereto, (xxi) hence begets an inference, of, the defence acquiescing, to recovery of poppy husk occurring "through" Ext.PW3/C, also its conceding, of, recovery of the relevant contraband, hence occurring, from, the conscious and exclusive possession of the accused, also thereupon an inference is galvanized, of, bulk parcel Ext.P-2 at the imperative stage of its production in Court, hence standing efficaciously proven, to stand recovered from the site of occurrence, from, the conscious and exclusive possession of the accused.

10. The learned counsel appearing for the convicts/appellants, has, drawn the

attention of this Court to the deposition existing in the cross-examination of PW-12, wherein she has been unable to name the person, (i) who, carried the apposite parcel, holding, therewithin the seized poppy husk, from, the Police Station concerned upto the Court, for hence enabling its production thereat. He has also drawn the attention of this Court, to deposition existing in the cross-examination of PW-9, the Incharge of Mallkhana concerned, (ii) wherein, he makes echoings', of, his making "apposite entries" in respect of its retrieval, from, the mallkhana concerned, "only on 15.6.2016," whereat he testified in Court. (iii) On anvil of the aforesaid echoings borne in the respective cross-examinations, of, PW-9 and, of, PW-12, the learned counsel appearing for the convicts/appellants, contended with immense vigor, before this Court (iv) that thereupon all the imperative linkage(s) interse the seizure memo borne in Ext. PW3/C, vis-à-vis the production of case property in Court, by the Public Prosecutor concerned, (v) whereat it stood shown respectively to PWs 3, 4, 5 and 13, hence being grossly amiss, besides standing snapped (vi) besides an inference is galvanized, of, the case property, being, not kept in a safe untampered condition, in, the Mallkhana concerned, by its Incharge, AND, rather it being subjected to tampering(s) thereat. The innate nuance, of, the aforesaid submission(s) is grooved in the trite factum, of, at the relevant stage, of, production of Ext. P1 in Court by the Public Prosecutor concerned, (vii) whereat, it stood shown to the aforesaid prosecution witnesses, it rather being un-related to, besides remaining un-connected with its seizure occurring under memo Ext. PW3/C. (viii) For succoring the aforesaid contention, the learned counsel for the convicts/appellants, has relied, upon a judgment pronounced by this Court, reported in HLR 2016 (Vol. 3), rendered in a case, titled as Nand Lal versus State of Himachal Pradesh, relevant paragraph whereof stand extracted hereinafter:

"18. It is necessary that as and when case property is taken out from Malkhana, necessary entry is required to be made in the Malkhana Register and also at the time when case property is re - deposited in the Malkhana. Case property in NDPS cases is required to be kept in safe custody from the date of seizure till its production in the Court. It is also necessary that when case property is taken out from Malkhana, DDR is made and also at the time when case property is redeposited in the Mallkhana. Thus, it casts doubt whether it is the same case property which was recovered from the accused and sent to FSL or it was case property of some other case. The prosecution has failed to prove case against the accused."

wherein, a dire necessity has been cast, upon, the prosecution, for, tendering, besides ensuring exhibition(s), of, the apposite abstract of Mallkhana register, (ix) especially for ensuring, of, no room being left, for rendering open, any inference of their occurring any lack of connectivity interse the production, in Court, of case property, vis-à-vis its seizure, under, memo Ext. PW3/C, besides also for dispelling, any suspicion(s) qua active tampering(s) or doctorings, occurring vis-à-vis it, in the Police Station. (x) It is also contended with much vigor before this Court, that, with the aforesaid pronouncement(s), standing

rendered by a Division Bench of this Court, thereupon it being amenable, for absolute deference being meted thereto, (xi) especially with its encapsulating therein, a binding ratio decedendi, with respect to the aforesaid trite factum, (xii) AND whereas omission(s) aforesaid rather beget adversarial findings vis-à-vis the prosecution case.

11. This Court has with great circumspection dwelt, upon, the efficacy of the aforesaid submission(s), also has traversed, through, the entire evidence apposite thereto. Importantly, with the case property being produced in Court today, by Const. Bhawani Singh, No. 686, Police Station, Nalagarh (i) and its closest discernments making apparent disclosure(s) a) of it bearing the signatures of each of the accused; b) besides, of, the prosecution witnesses concerned ; c) importantly, with its bearing absolute concurrence(s) interse all the embossed seal impressions thereon, vis-à-vis, those borne in the relevant memos, d) thereupon, with, each of the prosecution witnesses' aforesaid, to whom the case property stood shown, in Court (ii) hence also in tandem therewith rendering testification(s) with absolute unanimity, of its, thereat bearing concurrence(s, on all the aforesaid fronts, vis-à-vis the apposite therewith recital(s) borne in memo comprised in Ext. PW3/C, whereunder its recovery(s) stood effectuated.(iii) Thereupon, does reinforce the abovestated conclusion, of, upon its production in Court, its evidently holding all apt concurrence(s) with the connected therewith memos.

12. Furthermore, the sample seal taken, on piece(s) of cloth, bearing Ext. P-2, holds the signatures of the accused, as also of witnesses thereto, even Exhibit PW3/C holds the signatures of the accused, as well as of all the witnesses thereto, (i) besides sample seal cloth parcel Ext. P-2 holds the signatures of the accused and of the witnesses thereto. (ii) With occurrence of all aforesaid signatures thereon, especially when the learned defence counsel, has not, made any attempt for ripping apart authenticity(s) thereof (iii) also his failing to make attempts, in respect of the signatures, of the accused being obtained under compulsion or under duress, also, boosts an inference of his conceding vis-à-vis the truth of all the recitals occurring therein. (iv) Conspicuously, therefrom, it is to be concluded of his omitting to, make endeavour(s) in respect of the relevant item(s) of contraband recovered under Ext. PW 3/C, being unrelated to bag Ext.P-2. (v) Omission(s) of aforesaid endeavour(s) also negate the submission of the learned counsel for the appellants, of, the relevant recoveries being bereft of any sanctity, theirs being sequelled by sheer contrivance, deployed by the Investigating Officer concerned, for thereupon falsely implicating the accused.

13. In aftermath, with this Court proceeding, to make an incisive reading(s), of, the cross-examination(s) conducted, of, each of the aforesaid prosecution witnesses, by the learned defence counsel (i) and with theirs, during their respective examinations-in-chief, whereat, the case property stood shown to each, hence making apposite communication(s), of "IT", on all fronts, rather bearing co-relatibility vis-a-vis its recovery effectuated under memo Ext. PW3/C

(ii) also, with this Court hereinbefore, for all the relevant omissions' (supra) delineated in extenso therein, of the learned defence counsel, for, his thereupon hence efficaciously belying, besides disconnecting the production, in Court, of parcel, borne in Ext. P-2 vis-à-vis, its, seizure made under memo Ext. PW3/C, rather galvanizing, a, firm formidable inference, of, their occurring absolute, besides the closest linkage(s) interse the recovery of case property, at the site of occurrence, under memo Ext. PW3/C, from, the conscious and exclusive possession of the convicts/appellants, vis-à-vis its production in Court. (iii) thereupon, the ensuing effect(s), of, the aforesaid lack of efficacious cross-examination(s), by the learned defence counsel, while holding the aforesaid prosecution witnesses' to cross-examination, wants whereof are comprised in his omitting, to put, apposite aforesaid suggestions, to each, of the prosecution witnesses, while holding them to cross-examination, "IS" (iv) thereupon the apposite wants (supra) hence markedly benumbing any espousal(s), made herebefore, by the learned counsel for the appellants, anvilled only upon the aforesaid echoings, made respectively by PW-12 and by PW-9 in their cross-examination(s). (v) Moreso, when at the imperative stage, the aforesaid apposite suggestion(s), were rather also not put to each of the prosecution witnesses, during the course of the learned defence counsel, holding them to cross-examination, (vi) thereupon any ministerial lapse(s), on, the part of the Incharge of the Mallkhana concerned, besides any lapse(s), on the part of PW-12, to name the official concerned, who carried the case property, from the Police Station concerned, upto the Court, for its being shown thereat (vii) thereupon being grossly insufficient, for, making any conclusion of hence the seizure of case property, at the site of occurrence, under memo Ext. PW3/C, being emphatically delinked vis-à-vis its production in Court. (viii) Reiteratedly, hence absence(s) of the aforesaid suggestion(s), rather lends impetus to an invincible conclusion(s), of, the defence failing to de-link the seizure of poppy husk, under memo Ext. PW3/C, at the site of occurrence, from, the conscious and exclusive possession of the accused, vis-à-vis its production in Court.

14. Be that as it may, now adverting to the submission made before this Court, by the learned counsel for the appellants/convicts (i) that with a Division Bench of this Court, making, pronouncement(s) in the judgment (supra), wherein a dire necessity has been cast upon the prosecution, to produce in Court, the abstract of the Mallkhana Register, for ensuring, dispelling, of, any aura of skepticism seeping into the prosecution case, especially vis-à-vis the case property, "being," at the Police Station concerned, hence subjected to active tampering(s), besides doctorings, (i) thereupon with the aforesaid verdict (supra), pronounced, by a Division Bench of this Court, expostulating therein, the aforesaid fact, to be constituting a binding ratio decidendi, (ii) whereas the apposite abstract of Mallkhana Register, remaining untendered besides unexhibited by the Public Prosecutor concerned, before the learned trial Court, (iii) rather hence capitalizing an inference, of the prosecution hence miserably failing to prove the charge against the accused/convicts.

15. The aforesaid submission carries immense weight, given its being rooted in the trite principle of propriety, qua verdicts rendered by Division Bench(es) being amenable, to, deference being meted thereto, by Single Bench(es) of the same Court. (i) However, for making any entrenched conclusion, of, the aforesaid imperative necessity of production, in Court, of abstract of the apposite Mallkhana Register, by its Incharge, hence being absolutely necessary, for, the prosecution case, hence achieving success, (ii) also absence(s) thereof rather making the prosecution case, to thereupon hence stagger, enjoined the Judgment (supra) rendered by this Court, to also, carry therein graphic allusion(s), vis-à-vis, at the time of production, in Court, "of therein case property," (iii) whereat, it stood shown to the prosecution witnesses concerned, the latter, though, in their respective examinations'-in-chief(s), making, vivid display(s), of, absolute concurrence(s), on all fronts, occurring interse all the descriptions, borne in the relevant parcel, holding therewithin the case property concerned, vis-à-vis the co-related therewith discriptions' borne in the apposite memo(s), (iv) yet upon theirs' being subjected to an ordeal, of a rigorous cross-examination, by the learned defence counsel, theirs making open echoing(s), for, begetting a firm conclusion, of, hence the apposite linkage(s) interse the recovery of case property, at the site of occurrence, from, the conscious and exclusive possession of the accused therein, vis-à-vis its production in Court, hence apparently rather standing visibly snapped. (v) However, the closest circumspect reading(s) in extenso, of, the judgment (supra) rendered by a Division Bench of this Court, makes apparent disclosure(s) (vi) of the aforesaid relevant trite factum being neither dwelt upon nor alluded to therein. Since the aforesaid trite factum has rather been borne in mind by this Court, while its reaching a conclusion, of, the extant prosecution case, hence achieving success, especially given the prosecution, evidently proving all relevant connectivity(s) interse seizure, of, the case property, at the site of occurrence, under memo Ext. PW3/C, by the Investigating Officer concerned, vis-à-vis its production in Court, (vii) also when it has proceeded, to benumb the purported disabling effects, upon, the prosecution case, sparked by the afore-referred testification(s) rendered respectively by PW-12 and PW-9, (viii) thereupon reiteratedly with absence of all the aforesaid imperative discussion(s) in the judgment (supra), rendered by a Division Bench of this Court, for its, therein for, the absence of production of abstract of Mallkhana Register, hence proceeding, to, delink or snap the apt apposite linkages interse the seizure of case property thereat, vis-à-vis its production in Court, (ix) thereupon with the aforesaid imperative factum probandum, remaining omitted to be either alluded to or dwelt upon in judgment (supra) nor obviously being adjudicated upon, especially, vis-à-vis its compatible impact, upon, non-production of abstract of Mallkhana Register in Court, (x) whereas this Court has, while making an ad-nauseam in extenso allusion(s), to, the aforesaid factum probandum, has hence dispelled the necessity(s), of, exhibition, of, abstract of the Mallkhana Register, (xi) thereupon the expostulation(s) in judgment (supra), rendered by a Division Bench of this Court, do not enshrine therein, any binding ratio decidendi , vis-à-vis their being any

omnibus dire necessity(s), of the prosecution(s), for tendering(s) in Court, of, the abstract of Mallkhana Register nor any omission(s) of its production, in Court, being construable, to be always de-establishing the apt linkage(s) on all fronts, interse seizure of the case property, at the site of occurrence, vis-à-vis its production in Court, (xii) UNLESS the prosecution has been unable to efficaciously prove the occurrence, of all, the apt linkages interse the seizure of case property, at the site of occurrence, vis-à-vis its production in Court, (xiii) thereupon with this Court concluding, of, the prosecution evidence, rather enabling it, to firmly conclude, of, all the apt linkages or connectivity(s) occurring, on all fronts, interse seizure of case property, at the site of occurrence, upto, the stage of its production in Court, (xiv) thereupon the verdict (supra), rendered by this Court, for all the reasons aforesaid, not expostulating that upon all occasion(s), despite, existence(s) of efficacious evidence, for establishing the apposite linkages interse the seizure of the case property at the site of occurrence, upto, the stage of its production, yet, also the production of the apposite abstract of the Mallkhana Register being imperative, (xv) thereupon the verdict (supra) is confined to the facts of the aforesaid case, (xvi) hence this Court is fit to make conclusion(s) deviant therefrom, especially when, for all the aforestated reasons, the prosecution evidence efficaciously proves all the apt connectivity(s), interse seizure of the case property at the site of occurrence, vis-à-vis its production in Court, hence subsuming the effects, if any, of omissions, if any, of the prosecution to produce in Court, the abstract of the Mallkhana Register.

16. At this stage, the learned counsel appearing, for the appellant/convict, submits (i) that with PW-2, PW-3, PW-4 and PW-5 in their respective deposition(s), borne in their respective cross-examination(s), hence making vivid disclosure(s) qua availability of a thickly inhabited locality in proximity, to, the site of occurrence, (ii) besides despite their, availability in proximity at the site of occurrence, yet the Investigating Officer concerned, making no concerted efforts, for associating them in the relevant proceedings, (iii) thereupon his omission(s) being hence both deliberate and intentional, for only smothering the truth of the prosecution case.

17. The force of the aforesaid submission, is blunted, (a) by evidently no apposite suggestion(s), being put to each of them by the learned defence counsel, while holding them to cross-examination qua (b) of the Investigating Officer concerned, rearing any animosity or inimicality vis-à-vis the accused, hence his omitting to join independent witnesses in the relevant proceedings. (i) Absence of purveying of the aforesaid suggestion(s) vis-à-vis the police witnesses', by the learned defence counsel, while subjecting them, to cross-examination, (c) contrarily begets an inference, of, the mere non-association(s), in the relevant proceedings, by the Investigating Officer, of independent witnesses, though, evidently available in proximity, to, the site of occurrence, (ii) rather not emanating, from, the Investigating Officer concerned, hence concerting to smother the truth of the prosecution case, nor his omissions are

construable to be either deliberate or intentional.

18 The non-association of independent witness(es), despite, their evident availability, in proximity to the site of occurrence, would assume significance, (i) upon the defence efficaciously establishing, existences, of, deep pervasive snags, in all the link evidence(s), embodied in the NCB form, prepared at the site of occurrence, upto the FSL, concerned, purveying an affirmative opinion, upon, the apposite seizure, qua contents thereof being poppy husk, (ii) besides the defence bringing forth cogent evidence, of theirs being apparent lack of connectivity, interse, the case property, at the stage of its production in Court, vis-à-vis, the one, which stood recovered, under, seizure memo borne in Ext. PW3/C. (iii) However, with all the evident apt linkages appertaining vis-à-vis the recovery(s), of, the case property, under memo Ext. PW3/C, from, the conscious and exclusive possession of the accused, upto an affirmative opinion being recorded thereon, by the FSL, (iv) besides thereafter, upon, its production, in Court, rather hence being cogently proven, to, occur in an untampered unbroken chain AND its bearing absolute concurrence(s), with recovery(s) thereof, effectuated under memo Ext. PW3/C, (v) also with all apt linkages, in respect, of, all the evident concurrence(s) vis-à-vis all the seal impression(s) borne, on, the relevant forms prepared at the site of occurrence, vis-à-vis the ones borne on the case property, upon, its production in Court, (vi) thereupon, given evident omission(s) of the aforesaid snags, in the prosecution case, did not, at all render the prosecution case, to falter merely for the Investigating Officer concerned, failing to associate independent witnesses', in the relevant proceedings.

19. Lastly, the learned counsel for the appellants/convicts, has submitted that with HHC Joga Singh, in his cross-examination, making, an echoing of upon, Ext. P2 being shown in Court to him, its not holding the signatures of accused/convicts, whereas, each of the accused appending their signatures, thereon (i) thereupon the case property at the stage of its production in Court being delinked, from, its recovery at the site of occurrence. However, the aforesaid argument, is erected on an entirely mis-founded basis, (ii) given Ext. P-1 not carrying therewithin poppy straw, rather poppy straw being carried within Ext. P-5, whereas in respect of Ext. P-5, no apposite suggestions stood put to each of the prosecution witnesses, of, its not, at the time of its production in Court, hence carrying their signatures thereon, despite, each of them respectively initially embossing them thereon.

20. For the reasons which have been recorded hereinabove, this Court holds that the learned trial Court has appraised the entire evidence on record in a wholesome and harmonious manner, apart therefrom, the analysis of the material on record by the learned trial Court, does not, suffer from any gross perversity or absurdity of mis-appreciation and non appreciation of evidence on record. The impugned judgment is affirmed and maintained.

21. However, the learned counsel for the appellants/convicts prays, at this stage, for reducing the sentence of imprisonment imposed upon the appellants/

convicts. He submits that the aforesaid submission hence being amenable to acceptance, given the convicts, being young persons and theirs being hence enabled to reform themselves. The aforesaid submission is accepted. The sentence of imprisonment imposed, upon, the appellant/convict is reduced, from, five years' rigorous imprisonment each, to, six months rigorous imprisonment each. Sentence of fine, imposed upon the appellants/convicts is, reduced from Rs. 50,000/- each to Rs. 25,000/- each. In default of payment of fine, they shall further undergo simple imprisonment for three months each. The period of detention already undergone by them, is ordered to be set off, from the sentence of imprisonment imposed upon them.

22. Consequently, the sentence(s) of imprisonment and of fine, imposed upon the convicts, is modified to the extent above. Records be sent back forthwith.