
(2002) 12 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 258-DB of 2002

Tarlochan Singh

APPELLANT

Vs

The Assistant commissioner, Customs

RESPONDENT

Date of Decision : 03-12-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 132
Criminal Procedure Code, 1973 (CrPC) — Section 313
Customs Act, 1962 — Section 108
Evidence Act, 1872 — Section 3, 30
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 17, 18, 21, 22, 23
Penal Code, 1860 (IPC) — Section 120B, 193, 228

Citation : (2002) 4 CriminalCC 209 : (2003) 1 RCR(Criminal) 47

Hon'ble Judges : R.L. Anand, J;K.S. Garewal, J

Bench : Division Bench

Advocate : R.S. Ghai, With Mr. Vinod Ghai, of Behalf of Mr. Tarlochan, Mr. A.S. Kalra, on Behalf of Mr. Balwinder Singh and Mr. T.P.S. Mann, on behalf of Mr. Devinder Singh and Mr. Tarlochan Singh, for the Appellant; Ranjna Sahi, for the Respondent

Judgement

R.L. Anand, J.—By this judgment, we dispose of four Criminal Appeals i.e. Crl. A.No.258-DB of 2002 Tarlochan Singh v. Assistant Commissioner, Custom, Crl.A. No.283-DB of 2002 Balwinder Singh v. The Assistant Commissioner Custom, Crl. Appeal No.311-DB of 2002, Devinder Singh v. The Assistant Commissioner, Custom and Crl.Appeal No.323-DB of 2002 Tarlochan Singh v. The Assistant Commissioner Custom as these four appeals have arisen from a common judgment and order dated 13.3.2002, passed by the Judge, Special Court, Ludhiana, who convicted Balwinder Singh and Devinder Singh aforesaid appellants, under Sections 23,25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, and sentenced each one of them to undergo imprisonment for 14 years and to pay a fine of Rs. 1,00,000/- each. In default of payment of fine each one of them was directed to undergo simple imprisonment for a term of two

years. They were also convicted u/s 120-B of the Indian Penal Code and sentenced to undergo R.I. for a period of ten years each and to pay a fine of Rs. 1,00,000/- each. In default of payment of fine each one of them was directed to undergo simple imprisonment for two years.

2. Tarlochan Singh son of Darshan Singh and Tarlochan Singh son of Chet Singh aforesaid were convicted under Sections 18, 22, 23, 25, 28, 29 and 30 of the Narcotic Drugs and Psychotropic Substances Act and each one of them was sentenced to undergo R.I. for 14 years each and to pay a fine of Rs. 1,00,000/- each and in default of payment of fine each one of them was directed to undergo simple imprisonment for a term of two years each. They were also convicted u/s 120-B of the Indian Penal Code and each one of them was sentenced to undergo R.I. for a period of ten years and to pay a fine of Rs. 1,00,000/- each. In default of payment of fine each one of them was directed to undergo simple imprisonment for a term of two years.

3. The learned Special Court also ordered that all the sentences awarded to the appellants shall run concurrently.

4. The aforesaid four appellants were charge-sheeted as follows:-

Balwinder Singh was charge-sheeted under Sections 23, 25 and 29 of the NDPS Act and Section 120-B of the Indian Penal Code on the allegations that he is the owner of Truck No.PJA 8677 and he knowingly permitted its use for illegal transportation, keeping Heroin and opium by Tarlochan Singh who transported 175 Kgs. of Heroin and 39 kgs. of Opium on 6.1.1988 and that he abetted and conspired with Tarlochan Singh son of Darshan Singh and Tarlochan Singh son of Chet Singh, Bachan Singh, Sucha Singh, Surmukh Singh, Pargat Singh, Devinder Singh, Guriqbal Singh, Kundan Singh and Baz Singh for illegal import of Heroin and opium into India and thus, he allegedly committed the offences as mentioned above.

5. Tarlochan Singh son of Darshan Singh, appellant of appeal No.323-DB of 2002, was charge-sheeted under Sections 18,22,23,25,28,29 and 30 of the Narcotic Drugs and Psychotropic Substances Act and Section 120-B of the Indian Penal Code on the allegations that on the night of 5/6.1.1988 at Ludhiana, Heroin 175 kilograms of foreign origin and opium weighing 30 kgs (39 kgs.?) was found concealed in Truck No.PJA-8677 and that this man was in actual possession of Truck No.DIL-3372 along with the keys. It is also alleged against this man that he attempted, abetted and conspired with Tarlochan Singh son of Chet Singh, Bachan Singh, Sucha Singh, Surmukh Singh, Pargat Singh, Devinder Singh, Guriqbal Singh, Kundan Singh and Baz Singh for the illegal import of the heroin and opium from Amritsar to Bombay.

6. The trial Court framed the charge against Shri Devinder Singh son of Naranjan Singh under Sections 23,25 and 29 of the Narcotic Drugs and Psychotropic Substance Act on the allegations that he knowingly permitted the use of Truck No.DIL-3372 of which he was the owner for transporting the heroin and opium by

Shri Tarlochan Singh son of Chet Singh on the night of 5/6.1.1996 and he along with others referred to above, abetted/conspired for the import of the heroin and opium into India from foreign origin.

7. Against Tarlochan Singh son of Chet Singh, the charges were made under Sections 18, 22, 23, 25 and 29 of the Narcotic Drugs and Psychotropic Substance Act and u/s 120-B of the Indian Penal Code and it was alleged that he illegally imported 175 kgs of heroin and 39 kgs opium of foreign origin into India and abetted and conspired in its transportation from Amritsar to Bombay which was seized on the night of 5/6.1.1988 at Ludhiana from the possession of Tarlochan Singh son of Darshan Singh and that he connived in the illegal transportation of the heroin and opium with aforesaid persons and thereby he allegedly committed the offence.

8. It may also be mentioned here that charge against one Guriqbal Singh was also framed by the learned trial Court under Sections 18, 22, 23, 25 and 29 of the NDPS Act and Section 12-B of the Indian Penal Code but this accused ultimately became a proclaimed offender and he was not convicted by the learned trial Court.

9. Facts of the case can be summarised in the following manner : Assistant Collector of Central Excise and Customs Central Revenue Building, Ludhiana filed a complaint under Sections 17, 21, 22, 23, 25, 28, 29, 30 and 32 of the Narcotic Drugs and Psychotropic Substance Act, 1989 and Section 120-B of the Indian Penal Code against the four appellants and 9 others and it was alleged that on receipt of secret information furnished by Deputy Collector of Customs, Amritsar and after verification of the same a contingent of Customs and Central Excise officials consisting of Shri B.R.Sharma, (P W-14) Superintendent, V.M.Verma (PW-13), S.K.Mehta (PW-12/A), R.K.Sharma(PW-10), I.C.Mehta (PW-2), P.K.Bhatnagar and others searched for, located and intercepted two trucks Nos. PJA-8677 and DIL-3372 parked in open space known by the name of "Cheema Garage" in the area of Moti Nagar, near Transport Nagar, Ludhiana and this raiding party apprehended Tarlochan Singh son of Shri Darshan Singh (appellant of Appeal No.323-DB of 2002) and one Gurnam Singh son of Tarlok Singh (Gurnam Singh was not prosecuted) on the night intervening 5/6.1.1988. Both the trucks and Shri Tarlochan Singh son of Shri Darshan Singh along with aforesaid Gurnam Singh was brought to Central Revenue Building, Dandi Swami Chowk, Ludhiana and trucks were thoroughly searched in the presence of independent witnesses S/Shri Jagiri Lal son of Shri Mathura Dass and Kalu Ram son of Shri Kundan Lal and Driver Tarlochan Singh son of Shri Darshan Singh and Gurnam Singh, by the custom officers in accordance with the provisions of Criminal Procedure and the NDPS Act and on search it was discovered that two trucks had similar hidden secret chambers in their floors and on breaking of the said chambers/cavity 175 packets of brownish powder suspected to be heroin and 8 packets of opium Were recovered from the truck bearing Registration No.PJA-8677. The keys of both the trucks were recovered from the possession of

Tarlochan Singh son of Darshan Singh. The goods recovered from Truck No.PJA 8677 were thorough scrutinised and the Seizing Officer seized the contraband goods on reasonable belief that the goods were of foreign origin and illegally transported into India in violation of the provisions of the Customs Act, 1962 and the NDPS Act, 1985. Tarlochan Singh accused was asked to show if he had any documentary evidence to show lawful importation/possession/ transportation of the recovered goods but he failed to do so. The goods were seized after preparing the recovery memo in the presence of the independent witnesses. It was alleged that on checking/examination, it was found that the contraband goods recovered from Truck No.PJA-8677 were in fact 175 kgs of brownish powder suspected to be heroin valuable (valued?) at Rs.8,75,00,000/- and had foreign markings both in English and Urdu and 39 kgs of opium was valued at Rs.78,000/- and these contraband articles were liable to be confiscated under the Customs Act and NDPS Act. It was further alleged that Tarlochan Singh aforesaid made a voluntary statement on 6.1.1988 before the Superintendent Preventive Central Excise and Customs, Ludhiana u/s 108 of the Customs Act, 1962 and 67 of the NDPS Act and he admitted the recovery of the aforesaid contraband goods from Truck No.PJA-8677 and disclosed that the contraband goods belonged to Tarlochan Singh son of Shri Chet Singh and were brought from Amritsar to Ludhiana in Truck No.PJA-8677 driven by Kundan Singh proclaimed offender on 5.1.1988 and truck was parked near Truck No.DIL-3372 on Cheema Garage Transport Nagar, Ludhiana and the Keys of Truck No.PJA-8677 were handed over the Tarlochan Singh son of Darshan Singh by Kundan Singh driver of Truck No.PJA-8677. He also disclosed that Kundan Singh had told him that he would take the said heroin and opium to Bombay in Truck No.DIL-3372 after transferring the same from Truck No.PJA-8677 to Truck No.DIL-3372 and it would be received by Shri Tarlochan Singh son of Shri Chet Singh and Major Rattan Singh who was shown as accused No. 10 in the complaint but he has now expired. It was also stated in the complaint that representative samples of 10 grams each from 175 packets of suspected heroin and from eight packets of opium were taken and sealed with the seal as per the rules and the information regarding the arrest and seizure of the contraband articles was sent to the higher authorities in compliance with the provisions of Sections 57 of the NDPS Act. The samples were sent to the office of Chemical Examiner and according to the report, the contents contained diacetylmorphine and, therefore, it was narcotic drugs. Further, it is alleged in the complaint that on further investigation, it was found that Truck No.PJA-8677 belongs to Balwinder Singh and (appellant of Appeal No.283-DB-2002) as per the registration books and the admission made before the Superintendent of Custom and Central Excise. Balwinder Singh and Kesar Singh and Devinder Singh knowingly permitted S/Shri Bachan Singh, Sucha Singh, Pargat Singh, Surmukh Singh there co-accused to use the said trucks for the commission of the offence. Further it is alleged that all the accused mentioned in the complaint had agreed to do illegal acts by illegal means in the smuggling activities and their modus operandi was to transport the contraband goods to Bombay via Ludhiana by

Truck Nos.PJA-8677 and DIL-3372. These trucks have been specially made to hide the contraband goods by making hidden chambers/cavities. All the accused mentioned in the complaint were hatching criminal conspiracy and in order to achieve the modus operandi by doing smuggling of the goods, the owner of the truck used to get Rs.33,000/- for one trip. There are some allegations with regard to the modus operandi and with regard to the recovery of some documents etc. Those allegations need not be incorporated in the present judgment but final prayer which was made by the complaint i.e. the Assistant Collector was that accused Nos. 1 to 13 mentioned in the complaint be summoned, tried and punished in accordance with law.

10. It may also be mentioned here that accused Nos. 6, 7, 8, 9, 11, 12 and 13 became proclaimed offenders while accused Balwinder Singh and Major Rattan Singh expired after the filing of the complaint and as such the proceedings against two persons stood abated.

11. The learned Chief Judicial Magistrate committed six persons to the Court of Sessions. Out of these six persons Kesar Singh died 9.9.95 and Guriqbal Singh became absconder.

12. Vide order dated 4.10.1995, the various charges as pointed out in the earlier portion of this judgment were framed against the accused. Those charges were read over and explained to them and they pleaded not guilty and claimed a trial.

13. In order to prove the charges, the prosecution examined as many as 15 witnesses but for our purposes the statement of PW1 to PW-6, PW-9, PW-11 and PW-12/A is not material. The story of the prosecution hinges upon the statement of PW-7 Shri P.K.Khera, PW-8 Shri K.S.Dhaliwal, PW-10 Shri R.K.Sharma, PW-12 Shri Jaswinder, PW-13 Shri V.M.Verma and PW-14 Shri B.R.Sharma.

14. Firstly, we would like to refer to the statement of PW-7 Shri P.K.Khaira. According to the statement of this witness, on 19.1.1988 he was present in the office of the Central Excise at New Delhi. On that day accused Devinder Singh was produced before him and he interrogated him about the facts surrounding the recovery of 175 Kgs of heroin. He was given warning that his statement could be read against him. The witness deposed that he did not give any threat, promise or inducement to Shri Devinder Singh who made voluntary statement Ex.PJ running into six pages. Again on 20.1.1988 this Devinder Singh made another statement Ex.PK.

15. PW-8 Shri K.S.Dhaliwal deposed that on 22.1.1988 accused Devinder Singh was confined in Central Jail, Ludhiana. He has interrogated in the presence of Superintendent, Central Jail and he made a voluntary statement Ex.PL. This witness also deposed that on 13.2.1988, he summoned Tarlochan Singh son of Darshan Singh (appellant of appeal No.323-DB of 2002) u/s 108 of the Customs Act, for interrogation in this case and on interrogation which was conducted without any threat, promise or inducement, said Shri Tarlochan Singh gave statement Ex.PM.

16. PW-10 Shri R.K.Sharma deposed that on 6.1.1988 a raiding party was constituted. He was the member of that raiding party which consisted of 10/11 officials. Two trucks were found parked in Cheema Garage in Moti Nagar opposite Transport Nagar, Ludhiana. Their numbers were PJA-8676 and DIL-3372. 2 or 3 persons were sleeping in each truck. At about 1.00 A.M. about two persons from both the trucks ran away. Those trucks were seized and were brought to the office which was situated in the Dandi Swami Chowk, Ludhiana. Those trucks were checked by the Inspector. Shri B.M. Verma, the Seizing Officer produced before him in the capacity of as Incharge of the Malkhana 175 kgs of heroin contained in 175 packet bearing certain writing in English and Urdu.

PW-12 is Jaswinder Singh. He deposed that on 13.2.1998 he visited Central Jail, Ludhiana where Tarlochan Singh son of Shri Darshan Singh was confined and he recorded his statement Ex.PM and no threat etc. was given to said Shri Tarlochan Singh at the time of recording his statement.

17. PW-13 Shri V.M.Verma, deposed that he was one of the members of the raiding party and on the night of 5/6.1.1998 two trucks were taken into possession where Tarlochan Singh son of Darshan Singh was present along with one Gurnam Singh a small boy who was sleeping in the truck and it is stated that said Shri Gurnam Singh was a Cleaner. Tarlochan Singh disclosed that he was the driver of Truck No.DIL-3372. The driver of the other Truck No.PJA-8677 was not present but the case (keys?) of the other truck were found from the possession of Tarlochan Singh son of Darshan Singh who was arrested. The members of the raiding party searched for the driver of the other truck. The trucks were not searched at the site on account of security reasons but were brought to the Central Excise Office, Ludhiana where two independent witnesses were associated namely Jagiri Lal beetle seller and one Kalu Ram tea stall holder. The floors of the trucks were dismantled. There were secret cavities in the floor of the trucks and from the secret cavities of truck No.PJA-8677, 175 packets of heroin were recovered but nothing was recovered from the secret cavity of Truck No.DIL-3372. The packets contained foreign marking written in Urdu from which reasonable inference could be drawn that this heroin was of foreign origin like Pakistan. It was also stated by this witness that 39 kgs of opium was recovered from truck No.PJA-8677 and these articles were taken into possession vide recovery memo Ex.PO attested by the witnesses besides Kalu Ram and Jagiri Lal. A separate sample of 10 grams each was prepared of the heroin and the opium and those samples were sent to the office of Central Revenue Control Laboratory for test and the remaining bulk parcels of the heroin were examined by the Magistrate at Ludhiana Court and those were later on destroyed by burning in his presence and in the presence of Commissioner, Deputy Commissioner and some Asstt. Commissioners of Central Excise. This witness is also the attesting witness of the other documents which were prepared. The witness also stated that the keys of trucks were also taken into possession. He also testified that the Chemical Examiner submitted the report Ex.PQ. He further stated that Tarlochan Singh made a statement voluntarily on 6.1.1988 which is Ex.PR and on 9.1.1988

Tarlochan Singh again made statement Ex.PR/2. This witness also stated that he summoned the two registered owners of both the trucks namely Kesar Singh and Balwinder Singh and they were examined on 21.1.1988. There statement of Kesar Singh is Ex.PT and that of Balwinder is Ex.PU. Devinder Singh was also mentioned and he too gave the statement which is Ex.PV. He also recorded the statements of two more persons but these are not relevant for our purposes.

18. PW-14 Shri B.R.Sharma deposed that in the month of January, 1988 he was Superintendent Preventive Central Excise and Customs and in pursuance of the directions of the Assistant Commissioner Shri S.S.Dhaliwal, a raiding party was constituted on the basis of some secret information. He was the Incharge of the raiding party. The secret information pertained to two trucks No.3372 and 8677 and it was stated that they have concealed in Transport Nagar Ludhiana. It was also informed that trucks might contain contraband goods. The date of secret information was 5.1.1988. Those trucks were traced in Cheema Garage opposite Transport Nagar, Ludhiana. The raiding party consisted of 8 or 10 members. Tarlochan Singh driver of one of the trucks was apprehended and one cleaner who was a boy was also present but he was not apprehended. The driver of the other truck had escaped. The trucks and the accused Tarlochan Singh were brought to the office and one Jagiri and Kalu were joined and in their presence the trucks were seized (searched?). Nothing was recovered from Truck No.3372. The floor of the other truck was uprooted and from the cavities built under the same, 175 bags of heroin each containing 1 kg of foreign origin and 8 packets containing opium were recovered. The total weight of opium was 39 kgs. Samples from the packets of heroin were drawn and the incriminating articles were taken into possession vide memo Ex.PO. Tarlochan Singh gave a statement Ex PR on 6.1.1988 and PR/1 on 8.1.1988 and PR/2 on 9.1.1988 and these statements were made by the deponent voluntarily without any threat, promise or inducement. These statements were signed by Tarlochan Singh son of Darshan Singh and were attested by him. The witness also deposed that on 22.1.1988, Devinder Singh made statement Ex.PB in his presence voluntarily without any threat, promise or inducement.

After the closure of the evidence, the statements of the accused were recorded u/s 313 Cr.P.C. and all incriminating circumstances appearing in the prosecution evidence were put to the accused. The accused denied those circumstances and they stated that they have been falsely implicated in this case.

When called upon to enter into their defence, the accused did not lead any evidence and closed the case.

The learned Special Judge for the reasons contained in the impugned judgment and order dated 13.3.2002 convicted and sentenced all the four appellants in the manners as stated above and aggrieved by their conviction and sentence the present appeals.

We have heard Shri R.S.Ghai, Sr. Advocate, who argued the matter on behalf of

Tarlochan Singh son of Chet Singh (appellant of appeal No.258-DB of 2002), Shri A.S.Kalra, advocate, who appeared on behalf of Balwinder Singh (appellant of appeal No.283-DB of 2002) and Shri T.P.S. Mann, who appeared on behalf of Devinder Singh and Tarlochan Singh son of Darshan Singh (appellants of appeal Nos.311 and 323-DB of 2002) and Ms.Ranjna Sahi, learned counsel appearing on behalf of the respondent and with their assistance have gone through the record of this case.

19. The first submission which was raised by the learned counsel for the appellants was that admittedly a secret information was received by the Assistant Commissioner of Central Excise and Customs and that secret information was conveyed to Shri B.R.Sharma PW-14 and in pursuance of the secret information, the raid was conducted and this seizure according to Mr.R.S.Ghai, learned senior counsel appearing on behalf of the remaining appellants is covered u/s 42 of the N.D.P.S. Act. The secret information in these circumstances, ought to have been reduced into writing but there is no evidence to that effect that therefore, the entire seizure is bad.

20. We are not convinced with this submission as in our opinion this is a seizure u/s 43 and not u/s 42 of the N.D.P.S. Act. The present seizure is not a seizure from any building, conveyance of enclosed place which is the intention of Section 42 but is a seizure from a public place and, therefore, it was not obligatory on the part of the Investigating Officer or the persons who received the secret information to reduce the information into writing. This point came up for consideration before this High Court recently as to whether the provisions of Sections 42 and 43 will be applicable and it has been answered in 2002(4) RCR(Cri) 278, Dharminder Kumar v. State of Punjab, and it was held that if a recovery of contraband has been effected from a conveyance (truck) intercepted at the public place on receipt of secret information, Section 42 will not apply but Section 43 would apply. It was also held that the word conveyance used in Section 42 will mean a conveyance which is not at public place. This point has also been determined by the Supreme Court in 2002(4) RCR(Cri) 470, Narayanaswamy Ravishankar v. Asstt. Director, wherein it was held that seizure of contraband was made from the accused at Airport which was a public place, and therefore, the provisions of Section 43 will apply and not Section 42. Here the trucks were lying parked in front of the garage. Assuming for the sake of argument that Section 42 is applicable, as submitted by the learned counsel for the appellants, even then till it is shown to us that a prejudice has been caused to the appellants in not reducing the information into writing, the appellants cannot take the benefits.

21. Also it was contended that the raiding party did not join any independent witness at the time of the raid and the seizure of the trucks and, therefore, the recovery of the heroin and opium is bad and illegal. This argument also cannot be accepted keeping in view the fact that secret information was received on 5.1.1988. The raid was conducted in the mid of the night in the month of January

and in this part of the country January is the coldest month of the year. To find an independent witness during the night of winter season may be a very difficult task for the Investigating Officer. Even otherwise general apathy of the public at large is well known. The independent witness always feel shy and does not come forward to join the investigation for the various reasons. One cannot lose sight of the fact that it is a huge recovery of 175 kgs of heroin and 39 kgs of opium. The price of this contraband in the market runs into Rs.8,75,78,000/-. This narcotic contraband drugs could not be planted by the raiding party from its personal resources. In the present case, the Investigating Agency immediately brought the trucks and the accused Shri Tarlochan Singh son of Shri Darshan Singh to the office and in the presence of two witnesses Jagiri Lal and Kalu search of both the trucks was conducted. It is the case of the prosecution that from truck No.DIL 3372, nothing was recovered and this truck was being driven by Shri Tarlochan Singh son of Shri Darshan Singh. From Truck No.PJA-8677, 175 kgs of heroin and 39 kgs of opium was recovered when it was concealed in the cavities underneath the floor of this truck. The floor had to be uprooted and dismantled. If the members of the raiding party were to fabricate a case they could very easily bifurcate the recovery into both the trucks and from Truck No. DIL-3372 also some incriminating narcotic drugs could be shown to have been recovered. Admittedly, Tarlochan Singh son of Darshan Singh was the driver of Truck No.DIL-3372. Therefore, we are inclined to hold that the recovery in this case is genuine.

22. An argument was also raised by the learned counsel for the appellants that in this case the case property has not been produced at the time of trial and the link evidence is missing. This submission made by the learned counsel for the appellants is also devoid of any merit. Firstly, it is the direct statement of the members of the raiding party that 175 packets contained brownish powder and it was heroin. Also it was the testimony of the witnesses that sample of 10 grams each was drawn -from the packets of heroin and opium and those samples were sent to the office of the Chemical Examiner at Delhi who gave the report and declared the contents as heroin and opium. Also it has come in the statement of PW-13 that he submitted an application to the Magistrate for inspection of the case property and in pursuance of the same the Magistrate came to his office and inspected the case property. The Magistrate himself took one sample of the case property which was sealed with the seal of the Magistrate. Further it has come in the statement of PW-13 that the bulk parcels of the heroin were examined by the Magistrate of Ludhiana and, thereafter, the same were destroyed by the police in his presence and in the presence of Commissioner, Deputy Commissioner and other officials of the Excise Department and in these circumstances the non-production of the case property in the trial Court will not give a rise to the adverse inference against the prosecution.

23. A legal argument was build up by the learned counsel appearing on behalf of the appellants that in this case only Tarlochan Singh son of Darshan Singh was apprehended at the spot. The incriminating articles were recovered from Truck

No.PJA 8677. He was not the driver of this truck. The proclaimed offender Kundan was the driver of truck No.PJA-8677. It was contended that as per the allegations of the prosecution Tarlochan Singh son of Chet Singh appellant of appeal No.258-DB of 2002 is the financier but there is no evidence against him to the effect that he invested the amount in the purchase of these incriminating articles. So far as Balwinder Singh appellant is concerned it is alleged that he is the owner of Truck No.PJA-8677. Devinder Singh appellant is stated to be the owner of truck No.3372 while Tarlochan Singh son of Darshan Singh is stated to be the driver of Truck No.DIL-3372. The counsel submitted that the conviction of S/Shri Tarlochan Singh son of Shri Chet Singh, Balwinder Singh and Devinder Singh cannot be based on the statement of Tarlochan Singh son of Darshan Singh who was interrogated by the custom authorities u/s 108 of the Customs Act. He submitted that any statement made by the co-accused is not a substantive piece of evidence u/s 30 of the Indian Evidence Act within the meaning of Section 3 of the said Act and in support of his contention the counsel for the appellants relied upon the judgment of the Hon''ble Supreme Court reported as AIR 1964 S.C. 118, Haricharan Kurmi v. State of Bihar where the five Hon''ble Judges of the Supreme Court examined the probative value of the confession of a co-accused in the light of the provisions of Section 30 and 3 of the Indian Evidence Act and it was observed as follows:-

As a result of the provisions contained in Section 30, Evidence Act the confession of a co-accused has to be regarded as amounting to evidence in a general way, because whatever is considered by the Court is evidence; circumstances which are considered by the Court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of Section 30, the fact remains that it is not evidence as defined by Section 3 of the Act. The result, therefore, is that in dealing with a case against an accused person the Court cannot start with the confession of a co-accused persons; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence.

Thus, the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence. In criminal trials, there is no scope for applying the principle of moral conviction or grave suspicion. In criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the Court to render the verdict that the charge is not proved against him and so he is entitled to the benefit of doubt.

24. The counsel submitted that since the confession of co-accused could not be treated as a substantive evidence but it can only be pressed into service when the Court is inclined to accept the other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence. The counsel wanted to say that S/Shri Tarlochan Singh son of Chet Singh, Balwinder Singh and Devinder Singh were never apprehended at the spot and, therefore, on the statement of Tarlochan Singh son of Darshan Singh, they cannot be convicted and sentenced.

25. On the contrary, the learned counsel for the respondents submitted that it is a case of gang which indulges in the transportation of narcotic drugs. Tarlochan Singh son of Chet Singh is the financier and is the king-pin of the entire show. S/Shri Balwinder Singh and Devinder Singh are the owners of Truck No.8677 and 3372 respectively and Tarlochan Singh son of Darshan Singh is the driver of Truck No.3372. Kundan Singh was the driver of truck No.8677. It was their conscious knowledge that incriminating articles are being carried in Truck No.8677 and in order to give dodge to the police it was to be transported and transferred in Truck No.DIL-3372. From the possession of Shri Tarlochan Singh son of Darshan Singh, the keys of both the trucks were recovered. In fact Truck No.3372 was to go to Bombay after transferring the incriminating articles from Truck No.8677. All the persons mentioned in the complaint were conspirators. They were indulging in illicit trade. It was known to each one of them that incriminating articles in the shape of heroin and opium have brought into India from Pakistan. The Truck No.8677 started from Amritsar to Ludhiana from where its contraband goods were to be again re-loaded in truck No.3372 and therefore, all the appellants have been rightly convicted and sentenced for the offences referred to by us in the second para of this judgment.

26. We have considered the rival contentions of the parties. Immediately after the apprehension of Tarlochan Singh son of Shri Darshan Singh he was taken to the custom office. Section 108 of the Customs Act gives powers to summon persons to give evidence and produce documents. Section 108 of the Customs Act 1962 lays down as follows:-

108. Power to summon persons to give evidence and produce documents.-(1) Any gazetted officer of custom shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making in connection with the smuggling of any goods.

(2) A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under control of the person summoned.

(3) All persons so summoned shall be bound to attend either in person or by an authorised agent as such officer may direct; and all persons so summoned shall

be bound to state the truth upon any subject, respecting which they are examined or make statements and produce such documents and other things as may be required.

Provided that the exemption u/s 132 of the Code of Civil Procedure, 1908 (5 of 1908) shall be applicable to any requisition for attendance under this Section.

(4) Every such inquiry as aforesaid shall be deemed to be a judicial proceeding with the meaning of Section 193 and Section 228 of the Indian Penal Code.

27. The reading of the above provision would show that all the statements recorded u/s 108 of the Customs Act, 1962, are admissible in evidence but by virtue of Section 30 of the Evidence Act it is not substantive piece of evidence. A reading of the statement Ex.PR made by Shri Tarlochan Singh son of Shri Darshan Singh would show that he admits that he is the driver of Truck No.3372. According to him, this truck belongs to Malli Financiers, Ghee Mandi, Amritsar. He further states that earlier to this recovery, on 5.11.1987 Tarlochan Singh son of Chet Singh had handed over to him 80 bags of heroin and those were transported secretly to Bombay. He further admits that on 5.1.1988 he parked Truck No.3372 near Transport Nagar Ludhiana and as per planning Shri Kundan Singh driver of Truck No.8677 of which Shri Balwinder Singh was the owner came there and that truck contained 175 bags of heroin and 39 kgs of opium. Thereafter, Kundan Singh Driver took him to a rented room and handed over to him the keys of Truck No.8677 and told him that heroin and the opium were to be taken to Bombay. Thereafter, said Kundan Singh left the room. He also admits that the keys of Truck No.8677 were also recovered from his possession. Thus, from the statement of Shri Tarlochan Singh son of Shri Darshan Singh, Ex.PR which is admissible piece of evidence u/s 108 of the Customs Act, an irresistible conclusion can be drawn that this man was in hands and gloves with the driver of Truck No.8677, Shri Kundan Singh.

28. The learned counsel appearing on behalf of the respondent during the course of arguments, submitted that Truck No.8677 in fact belongs to Balwinder Singh appellant and it was being driven by Shri Kundan Singh. As the incriminating articles were brought in Truck No.8677 by Shri Kundan Singh, in these circumstances, a reasonable inference can always be drawn that Balwinder Singh was aware about the activities of his driver and also he was aware for what purpose his truck was being utilised by the driver. Though Shri Tarlochan Singh son of Shri Darshan Singh was not the driver of Truck No.8677 but as per his own admission, he was made aware that the heroin and the opium was to be transported in his truck after unloading from Truck No.8677. The keys of Truck No. were also handed over to him. Therefore, he was in conscious possession of the heroin and opium irrespective of the fact that these articles were not recovered from truck No.3372.

29. So far as the liability of Tarlochan Singh son of Chet Singh is concerned, it is simply stated that he is a financier of the incriminating articles. There is no

cogent or reliable evidence that he, at any point of time, had purchased the articles. No record was recovered from his possession from which it may be suggested that he is the financier. In the presence of Tarlochan Singh son of Darshan Singh the goods were not loaded in Truck No.8677. Therefore, it may not be possible for us to draw an inference that Shri Tarlochan Singh son of Chet Singh is a financier. Also there is no evidence to show prima facie that Devinder Singh the owner of Truck No.3372 was a party to the conspiracy with Tarlochan Singh son of Chet Singh or Tarlochan Singh son of Darshan Singh. The statement of Shri Devinder Singh, Ex.PJ was also recorded by the authorities u/s 108 of the Customs Act on 19.1.1988. The reading of the same would show that this man was not aware that his truck was likely to be used for the purpose of transportation. Rather it will show that after the seizure of the Truck No.8677, he came to know that Truck No.3372 also has been taken into possession by the authorities. Devinder Singh, of course, made a statement on 13.2.1988 Ex.PL that legally he became the owner of Truck No.3372 but his knowledge that this truck is likely to be used for transportation of narcotic drugs to Bombay cannot be imported. The custom authorities also recorded the statement of Balwinder Singh Ex.PU on 21.1.1988 and he admitted that he is the owner of Truck No.PJA-8677. All these statements recorded u/s 108 of the Customs Act, in our opinion, are admissible piece of evidence but those are not enough in its individual characteristics to base a conviction as held by the Hon'ble Supreme Court in Haricharan Kurmi's case (supra).

30. The resume of the above discussion would show that though the incriminating articles were not recovered from the body of Truck No.DIL-3372 of which Shri Tarlochan Singh son of Darshan Singh was the driver yet he cannot escape from the liability on account of the conscious possession of Truck No.PJA-8677 as he was made aware that Truck No.PJA-8677 is containing 175 kgs of heroin and 39 kgs of opium. He was made aware by the driver of Truck No.PJA-8677 containing contraband articles and in order to transport the same he took the keys of Truck No.8677. Admittedly, Balwinder Singh was the owner of Truck No.PJA-8677. He too was aware that his truck is being utilised for the purpose of transporting the contraband narcotic drugs. As there is no evidence that Tarlochan Singh son of Chet Singh had financed the goods or that he handed over the goods to Kundan Singh the driver of Truck No.8677 or to its owner, therefore, said Shri Tarlochan Singh son of Chet Singh cannot be convicted or sentenced. Similarly, we are not inclined to record conviction against Shri Devinder Singh the owner of Truck No.3372 as the evidence is also lacking against him.

31. The net result is that Crl.Appeal No.258-DB of 2002 filed by Tarlochan Singh son of Chet Singh and Crl.Appeal No.311-DB of 2002 filed by Devinder Singh are allowed and their conviction and sentence are set aside and they stand acquitted of the charges. However, Crl. Appeal No.323-DB of 2002 filed by Tarlochan Singh son of Darshan Singh and Crl.Appeal No.283-DB filed by Balwinder Singh are hereby dismissed. The conviction and sentence recorded by the trial Court

against appellants Tarlochan Singh son of Darshan Singh and Balwinder Singh, are hereby maintained.

32. Tarlochan Singh son of Chet Singh and Devinder Singh son of Naranajan Singh, appellants, shall be released forthwith if they are in custody and not required or wanted in any other case. Let intimation about the passing of this judgment shall be sent to Chief Judicial Magistrate, Ludhiana who shall take necessary action for the arrest of Tarlochan Singh son of Darshan Singh and Balwinder Singh, appellants, if they are on bail so that both these accused-appellants may serve the sentences as awarded to them by the Special Judge and confirmed by us.

33. Before we part with this judgment, we may say categorically in this judgment that acquittal of Tarlochan Singh son of Chet Singh and Devinder Singh will have no bearing upon the case of those accused who are proclaimed offenders and a regular trial shall be conducted against them as and when they are apprehended.