

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 60 OF 2005

AMRIK SINGH

Appellant (s)

VERSUS

STATE OF HARYANA

Respondent(s)

(With appln(s) for bail and office report )

Date: 04/08/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.G. BALAKRISHNAN  
HON'BLE MR. JUSTICE B.P. SINGH

For Appellant(s)

Dr. Krishan Singh Chauhan,Adv.  
Dr. Indra Pratap Singh, Adv.

For Respondent(s)

Mr. Manjeet Singh, Adv.  
Mr. Harikishan Kataria, Adv.  
Mr. Hariksh Singh, Adv.  
Mr.T.V.George,Adv.

UPON hearing counsel the Court made the following  
O R D E R

Heard learned counsel for the parties.

The appeal is without any merit and the same is

dismissed in terms of the signed order.

(R.K. DHAWAN)

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(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO.60 OF 2005

Amrik Singh . . . . Appellant.

Versus

State of Haryana . . . . Respondent

O R D E R

The appellant Amrik Singh, along with three others, was tried for the offence punishable under Section 15 of the NDPS Act, 1985 by the Trial Court. Three of them were found guilty and one of the accused died during the pendency of the trial. The appellant was sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rupees one lakh in default to undergo further rigorous imprisonment for three years. He challenges his conviction and sentence before the High Court and the High Court by the impugned judgment confirmed his conviction and sentence. The present appeal has been filed by the appellant against the same.

The prosecution case is that on 11.7.1989, PW-2- police constable

and PW-4 - Assistant sub-Inspector, along- with two other police person-  
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were doing patrol duty in

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the night and at about 1 O'clock they saw a tractor coming from the side of village

Phusgarh. The tractor was having a trolley attached with it and the  
police

personnel signaled the tractor to be stopped and the tractor was being driven by

one of the accused namely, Swaran Singh @ Sarna. Appellant herein was found

sitting on the trolley. The trolley contained fodder and on search being made it

was found that there were 27 gunny bags underneath the fodder in a concealed

position and these 27 gunny bags contained poppy straw and on weighing it was

found that each gunny bag had about 40 kilos of poppy straw. Samples were

taken from the poppy straw and the rest were seized by the police and the case

was registered and investigation conducted.

On the side of the prosecution four witnesses were examined. The

Panch witness PW-3 turned hostile whereas other supported the prosecution

case. The appellant set up a defence that he was not present at all and that a

case was falsely foisted on him. The Additional Sessions Judge believed the

prosecution case and found the accused guilty.

We have heard learned counsel for the appellant and counsel for

the State.

The counsel for the appellant contended before us that the appellant was an innocent passenger in the trolley and he was not in possession of the poppy husk and therefore

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in the absence of conscious possession his conviction is not sustainable. It may be noticed that the appellant had no case before the trial judge that he was travelling on a tractor as an innocent passenger. The facts and circumstances of the case also do not probabalise the appellant's version that he was travelling in a trolley, as the driver had been giving him a lift to reach his place of destination during night. As regards the possession, the appellant brought our attention to the decision of this Court in Avtar Singh and others vs. State of Punjab 2002 (7) SCC 419, wherein this Court held that the prosecution has to prove the conscious possession. The offence under Section 18 of the NDPS Act could be made out only on proof of possession of the Narcotic drug. In the case quoted above, the facts are different. It is true that in that case also the bags containing poppy husk were recovered by the police during night but at the time of seizure two of the persons who were present in the vehicle ran away and the appellant was in the vehicle and the prosecution could not prove the case that he was in conscious possession of poppy husk which was recovered from the vehicle and during the examination under Section 313 Cr.PC the appellant therein was not

specifically asked as to whether he was in possession of poppy husk recovered by the police.

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In the instant case the appellant was found travelling in the trolley and he had no explanation during the trial as to how he happened to be there in the vehicle on that day. It was satisfactorily proved that the appellant was arrested on that day and he was found sitting on the trolley wherein the 27 bags of poppy husk were found concealed. All the four accused, including the driver, could be attributed knowledge and mental state regarding possession in view of the circumstances of the case that the drugs and the trolley were recovered during night and that the contraband was found in the concealed possession. Under Section 35 of the Narcotic Drugs and Psychotropic Substances Act, 1985, the court is competent to draw a presumption regarding the culpability of the mental state of the accused including the intention, motive and knowledge of the fact and such presumption could be drawn having regard to the facts and circumstances of this case, and it is for the accused to rebut that presumption and to show that no such mental state could be attributed to him. In the facts and circumstances of the case, it can be held that the prosecution proved successfully that the appellant was found in the trolley in a suspicious circumstance, and therefore had the knowledge that there was poppy husk in the trolley and that he was in possession of the same and in the absence of

satisfactory

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explanation on the side of the appellant, the trial court as well as the High Court were justified in holding that the appellant was in possession of the article.

We do not find any infirmity in the impugned judgment entered against the appellant and he has been rightly convicted. We do not find any reason to interfere with the same. This appeal is without any merit and the same is dismissed.

.....J  
(K.G. BALAKRISHNAN)

.....J  
(B.P. SINGH)

NEW DELHI;

AUGUST 4, 2005.