IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 27 of 2020
Reserved on 21.11.2025
Date of Decision: 31.12.2025

Bhoop Singh ...Appellant.

Versus

State of H.P. ...Respondent**.**

Coram
Hon'ble Mr. Justice Vivek Singh Thakur, Judge.
Hon'ble Mr. Justice Romesh Verma, Judge.
Whether approved for reporting?[1]

For the appellant: Mr. Vikram Thakur, Advocate legal aid counsel.

For the respondent: Mr.Yashwardhan Chauhan, Senior Additional Advocate General

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Romesh Verma, Judge

The present appeal arises out of the judgment of conviction as passed by the learned Special Judge-II, Kullu, Himachal Pradesh, on 15.11.2019, whereby, the present appellant has been convicted and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1,00,000/- for the offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act (for short 'NDPS' Act), and in default of payment of fine, the

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[1] Whether reporters of Local Papers may be allowed to see the judgment?

convict shall further undergo simple imprisonment for one year.

2. The case of the prosecution is that on 17.09.2016 Head Constable Raj Pal, alongwith HHC Krishan Lal and HHG Reena Thakur was on patrolling and traffic checking duty. When at about 2:15 p.m., they were checking the vehicles coming from Manikaran and Bhuntar side, at Jachhani, one person was coming on foot from Manikaran side and on seeing the police party on the spot, he got perplexed and immediately he turned back. He threw bag, which he was carrying in his hand, towards upper side of the road. On this, suspicion arose and the Investigating Officer H.C. Raj Pal with the help of other officials nabbed the said person when he tried to flee away at a distance of about 15 to 20 steps. The said person was scared and when the name of the said person was inquired, he told his name to be Bhoop Singh son of Dhani Ram r/o Village Balon, Post Office Bahu, Tehsil Banjar, District Kullu, H.P., aged about 22 years old. At the same time, one vehicle came from Manikaran to Bhuntar side. The driver was signalled by Head Constable Raj Pal to stop the vehicle and after

receiving signal he stopped the vehicle on the side of the road. The number of the vehicle was found HP43-A 5050 and on asking the driver disclosed his name to be Ajay Kishore son of Chand Kishore r/o Ward No.4 Bhuntar, District Kullu, H.P.

3. The said Sh. Ajay Kishore was informed about the entire facts. In front of Ajay Kishore and HHC Krishan Lal, Bhoop Singh was inquired about the throwing of bag qua which no satisfactory answer could be given by him. Ajay Kishore (driver) and HHC Krishan Lal were made spot witnesses. The bag which was thrown by Bhoop Singh (appellant) was having two strips with a zip on the top of the bag. Outside the bag, English word 'BONKHOSH Sella Basmati Rice No.1121' was written. In the presence of the witnesses, the said bag was opened and on opening the same, another green/bluish coloured knotted carry bag was found. After opening the same, black coloured substance was found which was in the shape of sticks wrapped in transparent wrappers. On the basis of the experience and smelling, it was found to be cannabis/charas. When the appellant was inquired, no satisfactory answer could be

given by him. When the recovered substance was weighed with electronic weighing machine, it was found to be 1.300 kgs. cannabis. The carry bag was wrapped and was put inside the bag as it is, and the zip of the same was also closed. It was wrapped in a cloth parcel which was appended with nine ‘M’ seals. The NCB -1 form in triplicate was filled up and the specimens of sample seal were taken at four different places on a piece of cloth. The appellant was found to be in conscious possession of 1.300 Kgs cannabis ,therefore, case under Section 20 of ND&PS Act was registered against him.

4. On completion of investigation and all codal formalities, the police presented the challan against the accused person in the Court for the offence punishable under Section 20 of NDPS Act.

5. During the trial before the learned court below, appellant was charged for offence punishable under Section 20 of NDPS Act., to which he pleaded not guilty and claimed Trial.

6. In order to substantiate its case, the prosecution has examined eleven witnesses in all. Thereafter, appellant

was examined under Section 313 of Cr.P.C. He denied all the incriminating material and took the defence that he is innocent and has been falsely implicated in the case. However, appellant did not examine any witness in his defence.

7. The learned court below after evaluating the oral as well as documentary evidence, convicted the appellant(accused) as aforesaid, constraining him to file the instant appeal.

8. In order to prove its case, the prosecution has examined 11 witnesses.

9. H.C Raj Pal, No. 59 Investigating Officer, Police Post Sainj, District Kullu, H.P. appeared in the witness box as PW-9. In his statement, PW-9 stated that he was posted as Investigating Officer in Police Station Bhuntar in the year 2017. On 17.09.2016, he along with HHC Krishan Lal, Constable Nikhil Kaundal and HHG Reena Devi was on traffic checking and patrolling duty and had gone towards Jachhani a secluded place vide rapat Ext. PW4/D. They were present at place Jachhani at 2.15 p.m. and were checking the vehicles coming from Manikaran and Bhuntar

side. He stated that in the meantime, a person was noticed coming from Manikaran side, who on seeing the police party, immediately turned back and threw his carry bag, which was being carried by him in his right hand, towards the upper side of the road. A suspicion arose and he along with other police officials apprehended that person at a distance of about 15-20 foot steps. On inquiry, the said person disclosed his name to be Bhoop Singh. He stated that in the meantime, a person came from Manikaran side in a vehicle and he was stopped by him. The person was sitting alone in the vehicle and the number of his vehicle was found HP-43-A-5050. . As per the witness the driver of the said vehicle disclosed his name as Ajay Kishore, who was apprised about the spot position and in his presence Bhoop Singh (appellant) was also inquired about the throwing of bag, but he could not give any satisfactory answer. Thereafter, Ajay Kishore and HHC Krishan Lal No.303 were associated as witnesses and in their presence, the carry bag which was thrown was checked and on opening the same, a black coloured substance of stick shapes wrapped with poly wrappers was recovered and it

was found to be charas. Thereafter recovered substance was weighed with electronic scale, which was found to be 1.300 kgs cannabis and thereafter recovered carry bag was tied with a knot and the same was put inside the bag. The bag was put inside a parcel and parcel was sealed with nine seal impressions of 'M'. It is stated that he also filled relevant columns i. e No.1 to 8 of NCB-I in triplicate Ext. PW 4/C. Thereafter sample seal was taken on separate piece of cloth, which is Ext. PW.9/A, which also bears the signatures of HHC Krishan Lal, Ajay Kishore and the accused. Sample seal after its use was handed over to HHC Krishan Lal No.306. The recovered substance i.e 1.300 Kgs charas alongwith sample seal was taken into possession vide memo Ext. PW.9/B, which bears the signatures of witnesses HHC Krishan Lal, Ajay Kishore and the accused. As per him, thereafter rukka Ext. PW.8/A was prepared and sent to PS, Bhuntar through HHC Krishan Lal for registration of FIR. After registration of FIR, HHC Krishan Lal handed over the case file to him on the spot.

10. In the cross examination, PW-9 stated that Constable Nikhil Kaundal was member of the raiding party.

He admitted that as per rukka and recovery memo, there is no mention that Constable Nikhil Kaundal was member of the raiding party. Self stated that he was not associated as witness in the proceedings. As per his deposition in the cross examination the recovery memo Ext PW.9/B was scribed by him and rukka was sent at 3.30 p.m. from the spot, which was scribed by HHC Krishan Lal on his dictation. He stated that it took about five hours to complete the entire proceedings on the spot. The alleged contraband was recovered after 15-20 minutes after apprehending the accused. He denied that the accused was not apprehended on the spot while throwing the alleged bag. He denied that no charas was recovered from the accused. He denied that all the documents were fabricated one.

11. The prosecution has examined Constable Nikhil No. 160 of P.S Bhuntar as PW-1. He stated that he was posted as Constable in Police Station Bhuntar since 2016 On 19.09.2016, case property of this case was handed over to him which was in a sealed parcel sealed with nine seal impression of ‘M’ and three seal impression ‘V’ containing 1 kg 300 grams charas by MHC Mukesh for taking the same

to SFSL, Junga alongwith other documents NCB-1 form in triplicate, copy of memo and copy of FIR. He stated that he deposited the same in SFSL Junga on the same day and after obtaining receipt same was handed over to MHC Police Station Bhuntar.

12. In the cross-examination, he denied that he had not taken the case property to SFL. He further denied that he had tampered with the case property. He admitted that proceedings of this case were not conducted in his presence.

13. Head Constable Manoj Negi No. 67 of 3rd IRBN Pandoh, District Mandi, H.P. has been examined as PW-2. He stated that in the year 2016, he proceeded for SFSL Junga to deposit the case property of case No. 143/16 and the same was deposited by him in SFSL and on his return, he brought back the case property of case No. 128 of 2016 i.e. sealed parcel sealed with nine seal impressions of 'M', and three seals of V and five seals of SFSL-II . He stated that on 12.10.2016, the same was deposited by him with MHC Ram Krishan.

14. The prosecution has examined PW-3 H.C Nirat Singh, Reader to Addl. SP Kullu. He stated that he was posted as Reader to Additional SP since October, 2015. On 18.09.2016, special report Ext. PW.3/A was received by Additional. S.P.Kullu at his residence at about 3.00 pm, who after making endorsement on the same in red circle 'A', handed over the same to him. As per this witness, he made an entry in special report register at Sr. No..74, the abstract of which is Ext. PW.3/B and endorsement of Additional SP in red circle 'A' is Ext. PW.3/C.

15. Head Constable Mukesh Kumar No. 45, Police Station Bhuntar, H.P has appeared in the witness box as PW-4. He stated that he was posted as Head Constable in Police Station, Bhuntar since 2016. On 17.09.2016, MHC of Police Station Bhuntar was on leave and he was working as MHC. He stated that on 17.09 2016, Investigating Officer had handed over a sealed parcel stated to be containing 1300 grams charas in carry bag which was sealed with nine seal impression of 'M' and three seal impression of 'V' along with copy of memo, sample seals 'M' and 'V'. form NCB-I in triplicate for depositing the same in

Malkhana at about 7.20 p.m. As per this witness, he made entry in register No. 19 at Sr. No. 175, the abstract of which Ext. PW.4/A. On 19.09.2016, vide RC No. 180 of 2016 Ext PW.4/B, he sent the case property to SFSL Junga through Constable Nikhil Kaundal, who after depositing the case property, had handed over the receipt to him. He further stated that he filled up column No. 12 of NCB-I in triplicate Ext. PW.4/C, which bears his signature. As per this witness he had also entered rapat No.11 Ext. PW.4/D, rapat No. 26 Ext PW.4/E, rapat No.27 Ext. PW.4/F.rapat No.4 Ext. PW.4/G and rapat No.24 Ext. PW.4/H, which are correct as per the original record.

16. In his cross examination he admitted that there was overwriting on dates mentioned on Ext. PW.4/B. He further admitted that there was overwriting over register No.19 Ext. PW.4/A in the column of date. He admitted that there was cutting on Ext. PW.4/C on column of date.

17. Constable Vijay Kumar was examined as PW-5. In his statement he stated that he was posted as MC in Police Station Bhuntar since March, 2016. DDR No 11 Ext. PW 4/D, DDR No 26 Ext. PW.4/E, DDR No.27 Ext. PW.4/F,

DDR No.4 Ext. PW.4/G and DDR No.24 Ext PW.4/H were entered by him in the computer and DDR No.20 dated 16.11.2016 Ext. PW.5/A was entered by HC Saroj No.335. He stated that all the above rapats except rapat Ext.PW.5/A were entered in Police Station Bhuntar in the official computer, which was working properly and was under his control as well as under the control of MHC.

18. In the cross examination he has stated that as per DDRs Ext. PW.4/D and Ext. PW.4/E, Constable Nikhil Kaundal No. 160 was member of the raiding party.

19. Head Constable. Ram Krishan was examined as PW-6. He stated that in the year 2016, he was posted as MHC at Police Station, Bhuntar. On 12.10.2016, LHC Manoj Negi No.393 brought back one parcel sealed with nine seals of seal ‘M’, three seals of seal ‘V’ and five seals of FSL. He stated that one seal of FSL was found broken and the parcel was stated to be containing cannabis/charas alongwith result of chemical test. As per this witness, he entered the above articles in the relevant column of Malkhana register No. 19 against the entry No. 175. He stated that he has brought the original malkhana register,

copy of which is Ext PW.4/A. He stated that till the time, case property remained with him, it remained safe. He also stated that he issued certificate under Section 65-B of the Indian Evidence Act Ext. PW.6/A. which bears his signature in red circle ‘A’

20. In the cross examination PW-6 stated that overwriting qua dates in red circle ‘A’ and ‘B’ in copy of Malkhana register is not in his hand.

21. ASI Narayan Lal, Police Station Bhuntar, Disrict Kullu, entered in the witness box as PW-7. He stated that he was posted as ASI at Police Station, Bhuntar since April, 2015. On 18.09.2016, since Investigating Officer of this case, Head Constable Raj Pal No.59 was on casual leave, therefore, SHO gave the case file to him for further Investigation. He stated that he prepared special report Ext. PW.3/A and took it to the residence of Addl. SP. Sh. Nischint Negi, who received it on the same day at 3.00 p.m. at his residence. In that regard, his endorsement is Ext.PW.3/C.

22. The prosecution has examined PW-8 ASI Ram Lal I.O. Police Station Bhuntar, District Kullu, H.P. . In his

statement he has stated that he was posted as Investigating Officer/ASI in PS. Bhuntar since November 2015. On 17.09.2016, he was officiating as SHO and on the same day, HC Raj Pal sent one rukka through HHC Krishan Lal NO.306 which is Ext. PW.8/A, on the basis of which FIR Ext. PW.8/B was registered by him, which bears his signatures in red circle ‘A’ and endorsement Ext. PW.8/C also bears his signature in red circle ‘A’. He also stated that on the same day at about 7.20 p.m., Investigating Officer Raj Pal vide rapat No.26 Ext. PW.4/E produced one sealed parcel stated to be containing 1.300 kgs cannabis before him and he resealed the same vide rapat No 27 Ext. PW.4/F with three seal impressions of "V" and sample seal was taken on separate piece of cloth which is Ext. PW.8/D. He had also filled up columns No.9 to 11 of NCB-1 in triplicate, which is Ext. PW.4/C, which bears his signature in red circle ‘A’.

23. In the cross examination he has stated that rukka was received in Police Station, Bhuntar at 3.46 p.m. and after preparing the case file and registration of FIR, the case file was handed over to HHC Krishan Lal. He admitted that

as per rapat No.26, Ext. PW4/E, Constable Nikhil Kumar also came with police party as member of police party

24. HHC Krishan Lal No. 306 PS, Banjar , District Kullu, was examined as PW-10. He stated that he was posted as HHC in PS. Bhuntar in the year 2016. On 17.09.2016, he alongwith HC Raj Pal, Constable Nikhil Kaundal, HHG Reena Devi was on traffic checking duty and patrolling and had gone towards Jachhani a secluded place vide rapat Ext PW4/D. He stated that they were present at place Jachhani at 2.15 p.m. and were checking the vehicles coming from Manikaran and Bhuntar side. He stated that in the meantime, a person was noticed coming from Manikaran side, who on seeing the police party, immediately turned back and threw his carry bag, which was being carried by him in his right hand towards the upper side of the road, on which suspicion arose and Investigating Officer alongwith other police officials apprehended that person at a distance of 15-20 foot steps. As per this witness on inquiry the said person disclosed his name as Bhoop Singh and in the meantime, a person came from Manikaran side in a vehicle and he was stopped by the Investigating Officer. It is stated

that at that time he was alone in his vehicle and number of vehicle was found HP-43-A-5050. As per this witness the driver of the said vehicle disclosed his name as Ajay Kishore, who was apprised about the spot position and in his presence appellant was also inquired about the throwing of bag, but he could not give any satisfactory answer. Thereafter, this witness and Ajay Kishore were associated as witnesses and in their presence, the carry bag which was thrown, was checked and on opening the same, a black coloured substance of stick shape wrapped in a poly wrapper was recovered and it was found to be charas. Thereafter. recovered substance was weighed with electronic scale, and it was found to be 1.300 kgs. Cannabis. Thereafter recovered carry bag tied with knot was put inside the bag and the bag was wrapped in a parcel. The parcel was sealed with nine seal impression of "M". This witness stated that the I.O. filled relevant columns ie. No.1 to 8 of NCB-1 in triplicate Ext PW.4/C. He stated that rukka Ext. PW.8/A was prepared by the Investigating Officer and was taken by him to Police Station, Bhuntar for registration of FIR Ext. PW.8/B.

25. In the cross examination, PW-10 stated that they started from Police Station at 12:35 pm. He stated that Constable Nikhil Kaundal No.160 was one of the members of the raiding party. As per the witness, they took lift in a private Car up to Hathithan and thereafter they went on foot. He stated that he does not remember the number of the vehicle and the name of the driver of the said vehicle. He stated that they reached at Jachhani Mod at 1.30 p.m. They had checked 15-20 vehicles till 1.30 p.m. on the way. He stated that they had searched the persons sitting in the vehicles and the accused was spotted coming on the spot at about 2.15 p.m. He stated that as the accused saw the police party, he threw the bag and further stated that Constable Nikhil Kaundal was also present with them at the relevant time. He denied that there were shops, hotels and residential houses at Jachhani Mod. He does not know as to which document was prepared first. It is further stated that Ajay Kishore (PW-11) came to the spot after 15-20 minutes of nabbing the accused and the alleged bag which was thrown, was lying on the spot. He further stated that recovery memo Ext PW.9/B was scribed by Investigating

Officer and rukka was scribed by him. He stated that he took lift in a private vehicle up to Subji Mandi Bhuntar while carrying rukka to Police Station, Bhuntar and reached there at 3.45 p.m. As per this witness, the case file was handed over to him by SHO at 4.30 p.m. He reached on the spot at 5.30 p.m and Constable Nikhil Kaundal No.160 remained with the Investigating Officer at the spot throughout the entire proceedings. He stated that he does not remember whether any overwriting was done in arrest memo Ext. PW.9/D in his presence. He denied that they had some altercation with the accused at Bus Stand Bhuntar, due to which a false case has been registered against him.

26. The prosecution has examined Sh Ajay Kishore son of Sh Chand Kishore as PW-11.He stated that he was a ward member of Nagar Panchayat, Bhuntar and he was coming from Chhorornalla side in his personal car bearing registration No.HP-43-A-5050. At about 2.00 pm. he was stopped by police near Jachhani and they told him that they had recovered cannabis. He stated that he does not know from whom the cannabis was recovered by the police. As per this witness the police had shown the person to him at

the spot, but now he did not recognize him. At this stage, the witness was declared hostile on the request of learned Public Prosecutor.

27. In the cross examination by the learned Public Prosecutor he admitted that police had told him that the cannabis was recovered from a person namely Bhoop Singh. He admitted that cannabis was weighed in his presence, which was found 1.300 kgs and the same was sealed in his presence. He denied that the accused was arrested in his presence. He denied that the personal search of the accused was conducted in his presence and memo Ext. PW.9/E was prepared. He denied that police had recorded his statement as per his version. He denied that accused told in his presence that he had brought the cannabis from one Nepali after giving him Rs. 65,000/-. He also denied that he was deposing falsely at the instance of the accused.

28. Feeling aggrieved by the judgment and conviction, the appellant has preferred the present appeal.

29. We have heard Sh. Vikram Thakur, Advocate, learned Legal Aid counsel for the appellant and Mr.

Yashwardhan Chauhan, learned Senior Additional Advocate General, for the respondent and have gone through the records of the case file in detail.

30. Learned counsel for the appellant submits that the judgment and conviction as passed against appellant is not sustainable in the eyes of law. He submits that the learned Special Judge has not appreciated the real point of controversy and has passed the judgment of conviction solely on the testimonies of the official witnesses which are full of contradictions and inconsistencies. Learned counsel further submits that his client(the present appellant) has been falsely roped in the present case and he is not involved in it in any manner.

31. On the other hand, learned Senior Additional Advocate General for the State has supported the judgment passed by the learned Special Judge(II), Kullu, HP. He submits that the learned Special Judge has rightly convicted the present appellant, who is involved in the offence.

32. We shall be discussing the factual matrix of the case in order to decide the case in hand. In the present

case, perusal of Ext. PW4/D, G.D. No.11, shows that on 17.09.2016 at about 12.35 p.m. Head Constable Raj Pal, HHC Krishan Lal, Constable Nikhil Kaundal, HHG Reena Devi left from the police station for the purpose of patrolling and traffic checking. The perusal of Ext.PW4/D demonstrates that H.C Raj Pal, Constable Krishan Lal, Constable Nikhil Kaundal, and HHG Reena Devi went towards Hathithan, Syund and Jhachaani for patrolling and traffic checking. This document is totally contrary to the statement of PW-1 i.e Constable Nikhil Kaundal. In his testimony, he has stated that he deposited the case property in SFSL Junga on 19.9.2016 and after obtaining the receipt, the same was handed over to MHC Police Station Bhuntar, District Kullu. In his cross examination he has categorically admitted that no proceedings were carried out in his presence of this case. PW-9 H.C. Raj Pal (I.O) of this case has stated that he alongwith HHC Krishan Lal, Constable Nikhil Kaundal and HHG Reena Devi was on patrolling and traffic checking duty on 17.09.2016.

33. In the cross examination also, PW-9 has stated that Constable Nikhil Kaundal was member of the raiding

party. He admitted that as per rukka and recovery memo, there is no mention that Constable Nikhil Kaundal was member of raiding party. Testimony of PW-10 also reveals that on 17.09.2016 he alongwith Head Constable Raj Pal, Constable Nikhil Kaundal and HHG Reena Devi was on patrolling and traffic checking. The testimony of PW-1 is in conflict with the testimonies of other official witnesses which casts serious doubt on the prosecution story. PW-10 in his cross-examination has stated that Constable Nikhil Kaundal No. 160 remained with the Investigating Officer on the spot throughout the entire proceedings. The depositions of these witnesses when read in conjunction with PW-1 and Ext.PW4/D, they create shadow of doubt in the prosecution story. PW-1 has categorically stated that no proceedings were carried out in his presence, whereas the other witnesses unequivocally have stated that PW-1 was the member of the raiding party and he remained with the Investigating Officer during the entire proceedings.

34. In the list of witnesses also, Constable Nikhil Kaundal has been shown to be a witness about taking the case property. He has not been shown to be a witness of

the spot. Learned Special Judge (II), Kullu has erred in not taking this material fact into consideration while deciding the case. The statement of Constable Nikhil Kaundal vis-a-vis the statements of other witnesses, are not in conformity with the record and being a material witness, PW-1 has shattered the case of the prosecution. Surprisingly, PW-1 Nikhil Kaundal has been examined as a formal witness and not as a spot witness.

35. From the perusal of the record, it reveals that in Ext.PW4/D, GD No.11 dated 17.09.2016 at 12:35,the name of HHG Reena Devi is also mentioned. PW-9 H.C Raj Pal and PW-10 HHC Krishan Lal have stated in their testimonies that they alongwith Constable Nikhil Kaundal, HHG Reena Devi were on traffic checking duty and patrolling at a place known as Jachhani situated at a secluded place. However, said HHG Reena Devi has neither been cited as a prosecution witness in order to prove its case nor she has been examined in order to substantiate the case of the prosecution. The non examination of HHG Reena Devi is fatal to the prosecution case. With-holding a material witness casts a serious doubt on the veracity of the story as

projected by the prosecution. Her non examination draws adverse inference against the prosecution story.

36. PW-11 Ajay Kishore an independent witness was examined by the prosecution in order to prove its case. He has stated that he was stopped by the police near Jachhani and the police officials told him that they have recovered cannabis. He has stated that he does not know from whom cannabis was recovered by the police. As per this witness, police had shown accused to him at the spot but now he does not recognize him. Learned Public Prosecutor had requested the learned Special Judge to declare the said witness as hostile and he was cross examined by the State. In his cross examination he has stated that it is correct that police told him that the cannabis was recovered from a person namely Bhoop Singh. He stated that accused was present in the Court but he does not know that his name was Bhoop Singh and cannabis was recovered from him. He further denied that accused was arrested in his presence though he admitted his signatures in red encircle area 'B' in memo Ext. PW9/D. He has deposed against the prosecution

and being an independent witness he has demolished the case of the prosecution.

37. PW-11 Ajay Kishore the only independent witness, has resiled from the story of the prosecution as a result of which the story of the prosecution seems to be improbable. The testimonies of PW-9 and PW-10 reveal that the contraband was found in the presence of PW-11. The prosecution has failed to confront PW-11 Ajay Kishore, member of Nagar Panchayat, an independent witness, with his previous statement recorded under Section 161 Cr.P.C in which he has deposed differently as a result of which adverse inference has to be drawn against the story of the prosecution.

38. PW-10 H.H.C Krishan Lal in his examination in chief has stated that rukka Ext.PW8/A was prepared by the Investigating Officer and was taken by him to Police Station Bhuntar for registration of FIR Ext.PW8/B. After registration of FIR, he handed over the case file to Investigating Officer on the spot. The said statement of PW-10 is in conflict with the statement of PW-9 H.C Raj Pal (I.O) who has stated in his cross examination that rukka was sent at 3:30 p.m. from

the spot which was scribed by HHC Krishan Lal on his dictation. This is a material contradiction and inconsistency in the statements of PW-9 and PW-10 and when confronted, the learned Senior Additional Advocate General has failed to explain the same. This material contradiction is fatal to the prosecution story and it goes to the root of the case.

39. The material inconsistencies in the case of the prosecution are revealed from NCB form Ext.PW4/C. In the said form at serial No.7, the time and date of dispatching the Officer to Police Station is mentioned 7:20 p.m. on 17.09.2016 whereas as per rapat/GD No.26 Ext.PW4/E, the police team had reached the Police Station Bhuntar at 7:20 p.m. on 17.09.2016 and the accused had been produced before ASI/SHO Bhuntar. The distance from Police Station Bhuntar to the spot is 4 k.m as per rukka. Therefore, this variation remains unexplained by the prosecution as a result of which it casts doubt in the prosecution story.

40. The material contradiction in the present case is gathered from the statement of PW-5 who in his examination in chief has stated that GD No.4 Ext.PW4/G was entered by him, whereas it has been entered by

Constable Vinay No. 186. He further stated that DDR Ext.PW4/D, PW4/E, Ext.PW4/F, Ext.PW4/G and Ext.PW4/H have been entered by him. However, his statement is in conflict to the statement of PW-4 where he states in his examination in chief that he also entered rapats Ext.PW4/D Ext.PW4/E, Ext.PW4/F, Ext.PW4/G and Ext.PW4/H. It is a material contradiction and inconsistency in the story of the prosecution.

41. Learned counsel for the appellant has relied upon the statement of PW-9, H.C. Raj Pal (I.O) who in his deposition in the cross examination has stated that contraband was recovered after 15 to 20 minutes after apprehending the accused. On the contrary, PW-10 H.H.C. Krishan Lal has stated in his cross examination that Ajay Kishore came on the spot after 15 to 20 minutes after nabbing the accused and bag which was thrown was lying on the spot. He further stated that the alleged bag was picked up after Ajay Kishore reached on the spot. The personal search of the appellant was carried out at the spot. There is variation in the statements of PW-9 and PW-10, whereby PW-9 has stated that independent witness Ajay

Kishore came immediately after about 25 seconds after nabbing the accused on the spot.

42. The above mentioned contradictions and inconsistencies which go to the root of the case have remained unexplained by the prosecution and thereby they create a doubt on the prosecution story.

43. The Hon'ble Apex Court in its various decisions has held that when two views are possible in that event the benefit of doubt has to be given to the accused. In the present case also on account of material contradictions, the benefit of doubt has to be given to the accused.

44. In **Krishnegowda and others vs. State of Karnataka(2017) 13 SCC 98,** the Hon'ble Supreme Court held as under:

> "32. It is to be noted that all the eyewitnesses were relatives and the prosecution failed to adduce reliable evidence of independent witnesses for the incident which took place on a public road in the broad day light. Although there is no absolute rule that the evidence of related witnesses has to be corroborated by the evidence of independent witnesses, it would be trite in law to have independent witnesses when the evidence of related eyewitnesses is found to be incredible and not trustworthy. The minor variations and contradictions in the evidence of eyewitnesses will not tilt the benefit of doubt in favour of the accused but when the contradictions in the evidence of prosecution witnesses proves to be fatal to the prosecution case then those

> contradictions go to the root of the matter and in such cases accused gets the benefit of doubt.

45. The Hon'ble Apex Court in its decision in **Special Leave Petition No.6066 of 2024**,titled as **Paritala Sudhakar vs. State of Telangana** has held that in case there are material contradictions and inconsistencies, in that event, the benefit of doubt has to be given to the accused . The relevant para reads as under:

> "17. Having heard learned counsel for the parties, perused the Judgment(s)/Orders(s) of the Courts below and the material on record, it transpires that there are material contradictions in the evidence of the witnesses. In this connection, it would not be out of place to take note of the observations in Yogesh Singh v Mahabeer Singh, (2017) 11 SCC 195 to the following effect:
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> '29. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the 10 prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions

which materially affect the case of the prosecution but not every contradiction or omission. (See Rammi v. State of M.P. [Rammi v. State of M.P., (1999) 8 SCC 649: 2000 SCC (Cri) 26], Leela Ram v. State of Haryana [Leela Ram v. State of Haryana, (1999) 9 SCC 525: 2000 SCC (Cri) 222], Bihari Nath Goswami v. Shiv Kumar Singh [Bihari Nath Goswami v. Shiv Kumar Singh, (2004) 9 SCC 186: 2004 SCC (Cri) 1435], Vijay v. State of M.P. [Vijay v. State of M.P., (2010) 8 SCC 191: (2010) 3 SCC (Cri) 639], Sampath Kumar v. Inspector of Police [Sampath Kumar v. Inspector of Police, (2012) 4 SCC 124: (2012) 2 SCC (Cri) 42], Shyamal Ghosh v. State of W.B. [Shyamal Ghosh v. State of W.B., (2012) 7 SCC 646: (2012) 3 SCC (Cri) 685] and Mritunjoy Biswas v. Pranab [Mritunjoy Biswas v. Pranab, (2013) 12 SCC 796: (2014) 4 SCC (Cri) 564].)'

46. In ***Union of India vs. Leen Martin and another, (2018) 4 SCC 490,*** the Hon'ble Supreme Court has held as under:-

"12. It is to be noted that the entire case of the prosecution hinges on the alleged recovery of the narcotic substance from respondent no. 1 but, this very fact is not proved beyond reasonable doubt as independent witnesses PW-8 and PW-9 have portrayed a different story as to the recovery and seizure. In the facts and circumstances of this case exclusive reliance on the statement made by respondent no. 1 would neither be prudent nor safe; especially considering the fact that, the statement of respondent no. 1 procured under Section 67 of the NDPS Act was retracted on 29.06.2004.

13. After analysis of the above circumstances and evidences; prudence dictates that the statement of the official witness PW-1 cannot be the sole basis for convicting the respondent no. 1. It may be noted that when the statement of official witness is impaired due to infirmities, it is not safe to place reliance upon the same and pass conviction order against the accused. In the present case, as already stated above, the statements of the

> independent panch witnesses depict a different picture than the one portrayed by the official witness PW-1."

47. The Hon'ble Supreme Court in ***State of Himachal Pradesh vs. Trilok Chand and another (2018) 2 SCC 342*** has held as follows:

> "12. Going by the number of discrepancies in the prosecution case coupled with the contradictory statements by prosecution witnesses, the entire prosecution story vitiates and leads for discrediting its version. Contradictions in the statement of the witnesses are fatal for the case, though minor discrepancies or variance in their evidence will not disfavour [See: State of H.P. Vs. Lekh Raj (2000) 1 SCC 247]. Considering the circumstances of the case on hand, it can be said that the discrepancies are comparatively of a major character and go to the root of the prosecution story. We cannot therefore ignore them to give undue importance to the prosecution case. It is well settled that the Court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. The evidence is to be considered from the point of view of trustworthiness and once the same stands satisfied, it ought to inspire confidence in the mind of the Court to accept the stated evidence [See: Sukhdev Yadav v. State of Bihar, (2001) 8 SCC 86].
>
> 13. In the light of the above discussion, in our considered opinion, the prosecution has failed to establish the commission of alleged offence by the accused respondents beyond reasonable doubt. The evidence is scanty and lacking support to establish that the contraband was really recovered from the possession of the respondents in the manner alleged by the prosecution on the said date and time. It is imperative that the law the Court should follow for awarding conviction under the provisions of N.D.P.S. Act is "stringent the

punishment stricter the proof." In such cases, the prosecution evidence has to be examined very zealously so as to exclude every chance of false implication. But, in the case on hand, under the above explained circumstances, the prosecution story cannot be believed to award conviction to the accused— respondents. They deserve benefit of doubt. We are, therefore, in complete agreement with the view taken by the High Court and see no reason to interfere with the order impugned herein."

48. **In Kannaiya vs. State of Madhya Pradesh, Criminal Appeal No (s). 116 of 2012**, decided on 17.10.2025, the Hon'ble Apex Court held as under:

58. In this regard, reference may be made to the decision of this Court in **Pankaj v. State of Rajasthan**[9], wherein it was emphasised that when the genesis and manner of the incident itself are doubtful, conviction cannot be sustained. The Court held as under: -

"25. It is a well-settled principle of law that when the genesis and the manner of the incident is doubtful, the accused cannot be convicted. Inasmuch as the prosecution has failed to establish the circumstances in which the appellant was alleged to have fired at the deceased, the entire story deserves to be rejected. When the evidence produced by the prosecution has neither quality nor credibility, it would be unsafe to rest conviction upon such evidence. After having considered the matter thoughtfully, we find that the evidence on record in the case is not sufficient to bring home the guilt of the appellant. In such circumstances, the appellant is entitled to the benefit of doubt."

(Emphasis Supplied)

60. In the present case, the prosecution has failed to establish the genesis of the occurrence and the place of incident with any degree of certainty. The FIR speaks of the demolition of a hut by the accused persons near the residence

> of Jagya (PW-3). However, Madho Singh (PW-5) shifted the crime scene to nearby his own house and denied any demolition. Puniya (PW-12) claimed that the assault occurred in the field of Gopya. Both of these witnesses (PW-5 and PW-12) have contradicted each other as well as the documentary evidence, viz. the site inspection plan (Exh. P-6). They do not acknowledge each other's presence at the crime scene. Such conflicting versions cannot co-exist within a credible narrative. The suppression of the genesis of occurrence and the shifting of the place of incident demolish the very substratum of the prosecution case.
>
> 61. In this background, we are of the firm opinion that it would not be safe to uphold the conviction of the accused-appellant and the three co-accused namely, Govardhan, Raja Ram and Bhima, as the testimony of the so-called eyewitnesses Madho Singh (PW-5) and Puniya (PW-12) is full of contradictions and inherent improbabilities."

49. The above exposition of law clearly holds that the discrepancies and contradictions in the prosecution story coupled with the contradictory statements vitiates the entire prosecution case and leads for discrediting its version.

50. As a result, the present appeal succeeds and is accordingly allowed and the present appellant is acquitted of the charge as framed against him under Section 20 of NDPS Act in case FIR No. 128 of 2016, dated 17.09.2016, registered at Police Station Bhuntar, District Kullu, H.P. The accused is ordered to be released henceforth, if not

required in any other case. The Registry is directed to prepare the release warrants of the appellant.

51. The appellant is directed to furnish personal bond in the sum of Rs.25,000/- with one surety bond in the like amount to the satisfaction of the learned Court below strictly in terms of provisions of Section 481 of BNSS (437-A of Cr.P.C).

52. In view of above, the appeal is disposed of, so also pending application(s), if any.

Records be sent down.

(Vivek Singh Thakur)
Judge

(Romesh Verma)
Judge

31st December, 2025(veena)

VEENA SHARMA

Digitally signed by VEENA SHARMA
Date: 2025.12.31 16:38:14 +0530