SUPREME COURT OF INDIA

Khekh Ram

Vs.

State of H.P.

Crl.A.No.1110 of 2016

(N.V.Ramana and Amitava Roy,JJ.,)

10.11.2017

JUDGMENT

Amitava Roy,J.,

1. The instant appeal mounts a challenge to the judgment and orders dated 19.09.2016 and 22.09.2016 of the High Court of Himachal Pradesh at Shimla rendered in Criminal Appeal No. 218 of 2011 thereby reversing the verdict dated 29.12.2010 of acquittal of the appellant by the Trial Court from the charge under Sections 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for Signature-Net Verified short, hereafter referred to as the "Act"). By the impugned decision, the appellant thus stand convicted under the above provisions of the Act and has been sentenced to undergo rigorous imprisonment for 20 years and to pay a fine of Rs. 2 lakhs, in default to suffer rigorous imprisonment for a period of one year.

2. We have heard Mr. Ajay Marwah, learned counsel for the appellant and Mr. Varinder Kumar Sharma, learned counsel for the respondent/State.

3. The skeletal facts portraying the prosecution case originate from the wee hours of 20.10.2009, precisely 4 a.m when the police patrol party led by Inspector/SHO Sanjeev Chauhan (PW-8), while located at a place known as Kelti Dhar noticed an Alto vehicle bearing registration No.HP-01K-0805 moving towards them from Shallang onward to Kullu. On seeing the patrol party, the driver of the vehicle stopped it, alighted therefrom and made good his escape in the adjacent apple orchard so much so that in spite of vigorous search operations by using the search lights, he could not be apprehended. As the place was secluded, the investigating officer, PW-8 directed HHC-Hira Singh, a member of the team to scout for independent witnesses to participate in the imminent search operations. The said constable however returned after 15-20 minutes to disclose that neither any independent witness was available at that hour nor any passerby was noticeable. At this, the investigating officer associated HHC-Kashmi Ram and HHC-Hira Singh as witnesses and initiated a search of the vehicle in their presence. In course of the search, a black and red bag was found

by the side of the seat of the driver and when opened the search party found black substance which prima facie by its smell appeared to be charas. The search team also retrieved the registration certificate of the vehicle which was in the name of Ses Ram son of Shri Devi Singh as well as a bank passbook of Himachal Gramin Bank issued in the name of Khekh Ram son of Chuhru Ram, R/o village Gramang, PO - Shallang showing a deposit of Rs.1,79,029/- as on 03.10.2009. The contraband on being weighed was found to be of 14.750 kgs. The bag containing the contraband was put in a cloth parcel and sealed with seal of impression "T".

4. In the report under Section 173 Cr.P.C. the driver of the vehicle who fled was described to be stoutly built with height of 5'5" and aged about 30-35 years and was referred to as Khekh Ram. After the completion of seizure, ruqqa was sent to the police station through HHC-Hira Singh for the registration thereof. In course of the investigation on 20.10.2009, the owner of the vehicle Ses Ram was summoned who disclosed that he had sold the vehicle to one Govind Singh on 03.08.2009. Govind Singh was intercepted on 20.10.2009 who in turn disclosed that on 19.10.2009 the vehicle was taken by Khekh Ram for some personal work. Subsequent thereto, the appellant, Khekh Ram was arrested on 21.10.2009 while he was driving another vehicle. Govind Singh was later on arrested on 06.03.2010 and on completion of the investigation following the receipt of the report of the chemical analysis, proceedings under Sections 20 and 29 of the Act was instituted against the appellant and Govind Singh. The accused persons having denied the charge, they were put to trial.

5. The prosecution examined in all eight witnesses including the investigating officer. In course of their statements recorded under Section 313 Cr.P.C., the appellant and the co-accused stood by the denial of the charge and alleged false implication. No defence evidence was however adduced.

6. The Trial Court on an analysis of the evidence on record acquitted both the accused persons. On appeal being filed by the State, as stated hereinabove, the High Court reversed the acquittal qua the appellant only while maintaining the exoneration of the co-accused Govind Singh.

7. The impugned judgment being one of reversal altering the order of acquittal into conviction on the basis of common set of evidence, expedient it would be to briefly note the findings of the two forums before adverting to the rival assertions made in this appeal. Noticeably, in essence, whereas it was canvassed on behalf of the prosecution that the materials on record amply establish the charge against the accused persons, it was urged on behalf of the defence that there was no evidence worth the name either to identify the appellant Khekh Ram to be the driver of the offending vehicle who fled on seeing the police patrol party or that either or both the accused persons were in conscious possession of the contraband claim to be seized therefrom.

8. The Trial Court in assessing the evidence adduced by the prosecution was cognizant of the legal proposition that graver the offence and severer the punishment, greater ought to be the

care taken to ensure that all statutory safeguards have been scrupulously adhered to and that a heightened scrutiny of such compliance thereof is warranted. On the aspect of identification, it dealt in particular with the testimony of HHC-Hira Singh, PW-1 who though in his examination-in-chief stated that he could recognize the person fleeing from the vehicle, in the search light as Khekh Ram, he admitted in his cross-examination that prior to the incident, the appellant was not personally known to him and that he had seen him on that occasion from a distance of 40 to 50 yards. It also recorded that the investigating officer, PW-8 had not stated in his deposition that the absconding person was Khekh Ram and that he had been identified to be so by PW-1, HHC-Hira Singh and another member of the raiding party, namely, HHC-Kashmi Ram. The investigating officer deposed that the co-accused Govind Singh had disclosed on interrogation, that Khekh Ram had taken his vehicle for bringing his wife from Anni. The admission of the investigating officer, PW-8 that he did not record in the ruqqa the fact that the driver of the vehicle carrying the contraband was facing him and that he accordingly could recognize him was noted. The Trial Court thus discarded the evidence of these two witnesses to connect the appellant with the offence. It was also mentioned by the Trial Court that if the seizure memo, Ext.PW1/A in fact had been prepared by the investigating officer at the spot, the same ought to have contained the above facts bearing on the identification of the appellant and that absence thereof and the omission to refer the name of the appellant in the ruqqa Ext.PW8/A and the special report Ext.PW3/A did bely as well the claim of his identification by the police party. It was of the view that as evident from the ruqqa Ext.PW8/A, the name of the appellant got mentioned therein on the basis of his passbook recovered from the vehicle. In the face of these anomalies, the Trial Court also concluded that the recovery memo Ext.PW1/A had not been prepared at the spot as claimed by the investigating officer. It also observed in this regard that in the special report Ext.PW3/A, the facts mentioned in the recovery memo Ext.PW1/A were not referred to and held that either the identification of the appellant was not available to the investigating agency or was subsequently introduced by the investigating officer in order to connect him with the commission of the offence. The Trial Court recorded as well that no test identification parade had been conducted qua the appellant and also marked the absence of any claim by PW-1, HHC-Hira Singh that on the arrest of the appellant on 21.10.2009, he had identified him as the person who had fled from the spot. It discarded as well the NCB Form, Ext.PW4/E (in which the name of the appellant was mentioned), on the ground that as this document was supposed to be prepared prior in point of time to ruqqa, it was inexplicable as to why then the name of the appellant was not mentioned in the ruqqa which was sent to the police for registration of the case. According to the Trial Court, there was also no endorsement with regard to registration of the FIR on the ruqqa Ext.PW8/A. The Trial Court viewed with disapproval as well, the photographs Ex. PW-8/B-1 to Ex. PW-8/B-8 claimed to have been taken by the investigating officer with his digital camera, of the car and the seized article, as some of those did not bear any date and the rest were of 05.01.2008 at 7.06 a.m., different from the date of seizure of the contraband i.e. 20.10.2009. In the estimate of the Trial Court, these photographs thus could not be related to the seizure claimed. Vis-a-vis the co-accused Govind Singh, the Trial Court noticed that there was no incriminating material to prove his involvement in the commission of the offence. Consequently, it acquitted the appellant and the co-accused of the charge.

9. The High Court however on a reappraisal of the evidence on record laid emphasis on the testimony of PW-1, HHC-Hira Singh in the matter of identification of the appellant as the person who fled from the scene on seeing the patrol party. Decisive weight was also extended to the recovery of the passbook of the appellant from the chamber of the dashboard of the vehicle. It recorded that the name of the appellant was mentioned both in the ruqqa Ex. PW-8/A and the NCB form which according to it had been missed by the Trial Court. The High Court noted that the appellant had failed to offer any explanation about the presence of his passbook in the offending vehicle and by observing that there was no reason for the prosecution to falsely implicate him, returned a finding that the charge against him had been proved beyond all reasonable doubt. It however reiterated that the prosecution had failed to prove the case against the co-accused Govind Singh and affirmed his acquittal. The appeal of the State was partly allowed and the appellant was convicted under Section 20 of the Act and was sentenced as mentioned hereinabove.

10. Before we move on to the analysis of the facts and the evidence on records apt it would be to deal with the rival contentions.

11. Mr. Ajay Marwah, learned counsel for the appellant has insistently argued that the prosecution having utterly failed to establish the identity of the appellant with the driver of the vehicle from which the contraband had been allegedly seized, the view taken by the Trial Court on the basis of the evidence both oral and documentary being flawless and reasonable, the High Court had erred in law and on facts in reversing the same on grounds patently untenable. According to the learned counsel, as neither the evidence of PW-1 and/or PW-8 nor any of the contemporaneous documents claimed to have been prepared in connection with the search and seizure does establish in any manner the complicity of the appellant in the offence, the conviction as recorded by the High Court if allowed to stand would be a travesty of justice. Mr. Marwah urged that in absence of any clinching evidence with regard to the identification of the appellant as the driver of the vehicle who had fled on seeing the patrol party, the recovery of his passbook from the car per se cannot prove beyond reasonable doubt his culpability. The learned counsel maintained that an overall consideration of the oral and documentary evidence adduced by the prosecution would unerringly indicate that the documents with regard to search and seizure had not been prepared at the spot but subsequently, to falsely foist the prosecution on the appellant only on the basis of his passbook and no other evidence whatsoever. Mr. Marwah argued that the photographs relied upon by the prosecution as contemporaneous documents in support of the search and seizure also bely the prosecution case as none of those, though clicked with a digital camera, depict the date thereof i.e. 20.10.2009 and therefore cannot by any stretch of imagination be related thereto. The learned counsel argued that as conscious possession of the contraband is an indispensable prerequisite for conviction of the appellant on the charge framed against him, absence of his identification is destructive of the substratum of the prosecution case. According to him, as the view taken by the Trial Court is not only formidably plausible but also irrefutably reasonable, the High Court had grossly erred in reversing the same by merely substituting its view, unsupported by the material available. In buttressal of his pleas, the learned counsel has placed reliance on the decisions of this Court

in *Prem Singh vs. State of Haryana*[1], *Krishan Chand vs. State of H.P*[2]. *and Mahinder Singh vs. State of Himachal Pradesh*[3].

12. Per contra, it has been assiduously argued on behalf of the respondent/State that the identification of the appellant as the driver of the vehicle carrying the contraband having been established beyond doubt and the search and seizure of the commodity having been undertaken strictly in accordance with the prescriptions of law, his conviction is unassailable and ought to be affirmed. According to the learned counsel, the inferences drawn by the Trial Court are not borne out by the materials on record and therefore have been rightly repudiated in the impugned judgment and order.

13. It would next be expedient to briefly deal with the authorities cited at the Bar to recapitulate the judicial enunciation of the scope of an Appellate Court to reverse an order of acquittal in a criminal trial. In Prem Singh}, the challenge was to the judgment of reversal of the jurisdictional High Court whereby the appellant was convicted along with the co-accused Vishwa Bandhu under Section 302 read with Section 34 of the Indian Penal Code (for short hereafter referred to as the "IPC") and sentenced to undergo rigorous imprisonment for life. The appellant and the aforenamed co-accused had been acquitted by the Trial Court. All the seven accused persons were acquitted of the charge of murder of Siri Krishan who as per the prosecution case was on 26.11.1993 at about 6.30/6.45 a.m. gunned down by some persons while he was on his morning walk. The incident was reported to the brother of the deceased PW-16, Sohan La! by one Vijay Kumar, a neighbour. On receipt of the information, PW-16 along with his nephew Navneet Kumar and Vijay Kumar went to the spot and found the deceased lying in a pool of blood. He was removed in injured condition to the Government Hospital where he was declared to have been brought dead. The FIR was registered and on the completion of the investigation, charge-sheet was laid against the appellant and others under Sections 120-B, 148, 302 read with Section 149 IPC and Section 25 of the Arms Act, 1959. The investigation amongst others led to the recovery of firearms on the disclosure of the appellant and co-accused Ballu. Further, several empty cartridges and lead bullets were also recovered from the place of occurrence. In the postmortem, three bullets were extricated from the dead body. The investigating agency forwarded the firearms recovered along with the bullets retrieved from the dead body for forensic examination. Charge was framed against the accused persons on the provisions of law under which charge-sheet had been submitted. At the end of the trial however, all the accused persons were acquitted. In the appeal by the State, the High Court, as noted hereinabove, reversed the acquittal qua the appellant and the co-accused Vishwa Bandhu. This Court while reflecting on the scope of the power of the High Court under Section 378 of the Code of Criminal Procedure, 1973 (for short hereafter referred to as the "Code") in dealing with an order of acquittal referred amongst others to an extract from its earlier verdict in Murugesan and others vs. State . The legal proposition as enunciated in paragraph 21 of the said ruling, as quoted hereunder, was noted:

> "21. A concise statement of the law on the issue that had emerged after over half a century of evolution since Sheo Swarup is to be found in para 42 of the Report in

Chandrappa v. State of Karnataka[4]. The same may, therefore, be usefully no¬ticed below: (SCC p.432)

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, re-appreciate and recon¬sider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

(Emphasis supplied)

In the above jurisprudential backdrop, this Court next analyzed the evidence adduced by the prosecution and the scrutiny thereof by the Trial Court in recording acquittal of the appellant and the co-accused. The fatal anomalies and deficiencies in the prosecution case, as noticed, by the Trial Court were enumerated thus:

"(a) Vijay Kumar who had reported about the incident to PW-16, Sohan Lal had not been examined by the prosecution, though it was its case that Vijay Kumar had witnessed the occurrence.

(b) Though the prosecution tried to justify the non-examination of Vijay Kumar by contending that it was his daughter who had witnessed the occurrence, even she was not adduced as a witness.

(c) The testimony of PW-11, Sohan Lal and PW-12, Bharat Lal were not worthy of any credence as they conceded that they had not received any summons to appear as witness and in fact had appeared at the request of the son of the deceased.

(d) PW-11, Sohan Lal was an employee of the brother of PW-13, Smt. Pushpa Devi, who was the wife of the deceased.

(e) Though PW-11 and PW-12 claimed that they knew the deceased from before and that the house of the deceased was very near to the place of occurrence, they did neither visit the house of the deceased nor inform the family members of the deceased nor did they report the incident to the police.

(f) They instead roamed about aimlessly in the streets of Karnal until they came to the place of occurrence when their statements were recorded by the police.

(g) The recovery of weapons at the instance of the appellant and the co-accused Ballu was highly doubtful.

(h) As per the report of the Forensic Science Laboratory, Madhuban, no nexus could be established between the bullets recovered from the dead body and the firearms allegedly recovered.

(i) PW-11 and PW-12 had identified the accused including the appellant for the first time in Court.

(j) The evidence of PW-11 and PW-12 was full of significant discrepancies with regard to the identity of the accused and the roles attributed to them in the perpetration of the crime. In the above overwhelming factual premise, this Court concluded that the finding of innocence recorded by Trial Court was a reasonably possible view taken on the basis of the evidence and materials on record and thus the High Court ought not to have disturbed the same even if, on a re-appreciation of the evidence it was inclined to take a different view. This Court reiterated the oft quoted fundamental proposition that so long the view taken by the Trial Court in awarding acquittal on a criminal charge was a possible one, the exercise of the appellate power of the High Court under Section 378 of the Code would remain circumscribed by the well-settled parameters noticed hereinabove. The conviction of the appellant was set aside in the attendant facts and circumstances and his acquittal was restored."

14. This Court in Krishan Chand2, was seized with the impugnment of the judgment of the territorial High Court convicting the appellant under Section 30 of the Narcotic Drugs and

Psychotropic Substances, Act, 1985 (for short hereafter referred to as the "NDPS Act") and sentencing him to undergo rigorous imprisonment for a period of 20 years and to pay fine of Rs. 2,00,000/- with default stipulation, by reversing the acquittal recorded by the Trial Court. The prosecution case, as noted in brief was that on 27.11.2010 at about 5 a.m. while the patrol party including the complainant-SHO Gurbachan Singh, PW-6 was on duty at the Patarna Bridge, a person was seen coming with a rucksack on his back. On seeing the police party, he tried to flee but was apprehended and he disclosed his name to be Krishan Chand. His bag was searched which revealed some black substance which appeared to be charas. The contraband on being weighed was found to be of 7 kgs. It was seized and sealed. The appellant was arrested. Ruqqa was prepared and was sent to the police station and after obtaining the report from the Forensic Science Laboratory, the appellant was sent up for trial. Prosecution examined six witnesses. In course of his statement under Section 313 Cr.P.C. the appellant denied recovery of charas from him. He further claimed to be innocent and alleged that he had been falsely implicated. He also examined two witnesses Narain Singh and Govind Singh in defence. The Trial Court acquitted the appellant holding that the prosecution had failed to prove the charge beyond reasonable doubt. In the appeal, filed by the State, the High Court convicted and sentenced the appellant as above. The principal plea of the appellant before this Court was that the High Court had failed to appreciate that in absence of any independent witness, the evidence of the police witnesses ought to have been scrutinized with greater care and as the police witnesses had contradicted themselves about the authorship of the seizure memo, the arrest memo, consent memo and the NCB, no interference with the acquittal ought to have been made. The evidence of PW-4 and PW-6 was referred to for reinforcing the above assertion. This Court noted that the Trial Court in acquitting the appellant had laid emphasis on two aspects, namely, no independent witness was examined and fatal contradictions in the testimonies of PW-4 and PW-6. This Court, analyzing the testimony of PW-4, Umesh Kumar recorded that this witness had stated that as the place of the occurrence was isolated having no habitation nearby, he was associated in the investigation by PW-6, Gurbachan (complainant) whereafter the person as well as the bag of the appellant was searched after making him aware of his right to have the said exercise undertaken before a Magistrate or a Gazetted Officer. This witness affirmed that on searching the bag of the appellant, charas weighing 7 kg. was detected which was seized, parceled and sealed whereafter NCB form was filled up, sample seal was taken in a separate piece of cloth and the seized contraband was taken in possession and the related memo was signed by him as well as Head Constable, Tain Singh. This witness disclosed further that the party was at the spot for about 1 hour 40 minutes and it was dark at the relevant point of time. Further they did neither have any search light nor the lights of the vehicle had been switched on. He expressed ignorance as to in whose handwriting the consent memo was written. He however stated that the search memo, seizure memo, arrest memo, sample seal and the NCB Form were all in the hand of SHO, Gurbachan Singh. He also stated that he was not aware as to who scribed the personal search memo of the accused. While appraising the testimony of PW-6 this Court noticed in particular that this witness did not remember the duration of the stay of the police party at the spot before the accused was apprehended. This witness however was clear in deposing that it was not night time and that the accused could be seen from a distance of 10 meters. He contradicted PW-4 by stating that the consent

memo, memo of search, seizure memo, noting on the sample seal, memo of personal search was not in his hands but was got written by him from one of the members of the police party under his dictation. This Court noticed the contradiction on the above aspects in the evidence of PW-4 and PW-6 and observed that those could not be glossed over as minor, more particularly in the background of the allegation of false implication made by the accused/appellant. It held the view, that from the evidence it appeared that the place where the accused/appellant had been apprehended was not an isolated one as one house of Govind Singh, DW-2 was located nearby. This Court thus rejected the version of the prosecution that independent witnesses could not be associated as the place was desolate. In all, in view of the above inconsistencies and the deficiencies in prosecution evidence, this Court held that the possession of the contraband by the accused/appellant and seizure thereof from him was doubtful. It noted as well that though there was a reference of recovery of knife at the time of opening of the bag allegedly carried by the accused/appellant, it did not find place in the seizure memo which further created doubt in the prosecution case. The conviction was set aside holding that the High Court had failed to take note of the contradictions in the evidence in the proper perspective and had failed thereby to appreciate that harsher is the punishment, the stricter ought to be the proof of the charge.

15. The elaboration of the facts in the decisions cited at the Bar has been to underline the factual setting in which reversal of the orders of acquittal had been interfered with by this Court. Though it is no longer res Integra that an order of acquittal, if appealed against, ought not to be lightly interfered with, it is trite as well that the Appellate Court is fully empowered to review, re-appreciate and reconsider the evidence on record and to reach its own conclusions both on questions of fact and on law. As a corollary, the Appellate Court would be within its jurisdiction and authority to dislodge an acquittal on sound, cogent and persuasive reasons based on the recorded facts and the law applicable. If only when the view taken by the Trial Court in ordering acquittal is an equally plausible and reasonable one that the Appellate Court would not readily substitute the same by another view available to it, on its independent appraisal of the materials on record. This legally acknowledged restraint on the power of the Appellate Court would get attracted only if the two views are equally plausible and reasonable and not otherwise. If the view taken by the Trial Court is a possible but not a reasonable one when tested on the evidence on record and the legal principles applied, unquestionably it can and ought to be displaced by a plausible and reasonable view by the Appellate Court in furtherance of the ultimate cause of justice. Though no innocent ought to be punished, it is equally imperative that a guilty ought not to be let of casually lest justice is a casualty.

16. Having regard to the two irreconcilable views adopted by the Courts below, it is felt expedient to revisit the essential aspects of the evidence bearing in particular on the identification of the appellant as the possessor and carrier of the contraband. The FIR registered on 20.10.2009 discloses PW-8, Inspector Sanjeev Chauhan to be the complainant/informant. It sets out that on 20.10.2009 at about 4 a.m. the vehicle HP-01K-0805 which was coming from Shallang was signalled to stop by the patrol party, whereupon the driver thereof stopped the car, alighted therefrom and disappeared in the adjoining apple orchard and could not be apprehended in spite of being chased with search lights. The FIR

discloses that in spite of an endeavour made no independent witness could be secured and that on the search of the vehicle a bag of red and black colour was recovered containing 14 kg. 750 grams of charas which was seized and sealed in presence of the members of the patrol team, namely, HHC-Kashmi Ram and HHC-Hira Singh (PW-1). That in course of the search a registration certificate in the name of Ses Ram s/o Devi Ram and a passbook of Himachal Gramin Bank, Kullu in the name of the appellant was recovered was stated as well. It was mentioned that the driver of the vehicle, who had run away after stopping the same, was well built with a height of 5' 5" and aged about 30-35 years and the person was named as Khekh Ram.

17. PW-1, HHC-Hira Singh, who was a member of the patrol as well as search team substantially reiterated the facts leading to the spotting of the vehicle, the escape of the driver, recovery of the contraband and the seizure thereof. Qua the aspect of identification, this witness stated that at the time of his fleeing from the spot, he could recognize him in the search light as Khekh Ram and also located him in the Court. In cross-examination however this witness stated that when the search light was focused on the person, the police party noticed the back portion of his and he claimed further to have seen his side face from a distance of 40 to 50 yards. He admitted as well that Khekh Ram was not personally known to him before the incident. This witness testified that photographs of the bag lying on the seat of the vehicle were taken at the spot. He denied the suggestion that Khekh Ram was lifted from his house in the night of 20.10.2009 merely on the basis of suspicion and that he was falsely implicated in the case.

18. PW-2, Ses Ram deposed that he was the owner of the Alto car and had on 13.08.2009 sold the same to Govind Singh. He clarified that though the sale transaction had occurred, as the vehicle had been privately financed and the loan was not repaid, the same could not be transferred in the name of Govind Singh. This witness in his cross-examination stated that after the purchase of the vehicle by Govind Singh, he had employed a Nepali, as a driver thereof.

19. PW-8, Inspector Sanjeev Chauhan, the Investigating Officer, on oath reiterated his version in the FIR and stated in particular that after packing the bag containing the contraband with a cloth, he sealed the same with nine seals of "T" and thereafter filled the NCB forms, amongst others Ext.PW4/E. He drew up also the seizure memo of the car, the keys, the registration certificate, the passbook and the charas vide Ext.PW1/A. He stated to have prepared the ruqqa Ext.PW8/A and handed over the same to HHC-Hira Singh, PW-1 to take it to the police station, Kullu for registration of the FIR. He claimed that photographs were also taken by him of the seized commodity in the form of Ext.PW8/B-1 to Ext.PW8/B-10 with his digital camera. He stated to have completed the proceedings at the spot with the help of search lights and the headlights of the vehicles whereafter he directed ASI Ratan Lal to locate Ses Ram and to arrest Khekh Ram. He deposed to have summoned Ses Ram and Govind Singh to the police station and after the disclosures made by them about the sale of the vehicle and the temporary entrustment by Govind Singh of the vehicle to Khekh Ram, he arrested the appellant on 21.10.2009 at 4 p.m. He stated that after the arrest of the appellant,

he prepared a special report, Ext.PW-3/A. In his examination-in-chief though this witness had reiterated his narration in the FIR that the driver of the Alto car on being stopped, jumped therefrom and fled, he did not claim to have identified him to be the appellant. In his cross-examination he however testified that when he came down from the vehicle, the driver of the Alto vehicle was facing him and he could thus recognize him. He denied the suggestion that he had not mentioned in the ruqqa that he could see the face of Khekh Ram. As the identification of the appellant is of determinative significance, the instant scrutiny of the evidence has been, for obvious reasons, confined chiefly to this aspect.

20. Section 20 of the Act under which the appellant had been charged prescribes for punishment for contravention in relation to cannabis plant and cannabis. Section 29 of the Act ordains the punishment for abetment of and criminal conspiracy for commission of an offence punishable under Chapter IV. The gravamen of the charge against the appellant is possession and transportation of charas as punishable under the above provisions. It cannot be gainsaid thus, that the appellant to be guilty of the offence with which he had been charged, he must be proved to be in conscious possession of the contraband seized. This assumes great significance as admittedly the procedure of search of the Alto vehicle which allegedly he had been driving and the seizure of charas, the registration certificate of the vehicle and the passbook in the name of the appellant in particular had been in his absence as well as without the participation of any independent witness. The identification of the appellant to be the driver who had absconded on seeing the patrol party therefore is the sine qua non for the proof of the charge leveled against him. The materials on record propel three pieces of evidence in this regard, firstly the testimony of PW-1 and PW-8, secondly the evidence of Govind Singh according to whom the vehicle had been taken by the appellant for bringing his wife from Anni and most importantly the recovery of the bank passbook in his name from the vehicle. To recall, though PW-1 claimed to have identified the absconding driver of the vehicle to be the appellant Khekh Ram in the search light, in cross-examination he stated to have seen along with the other members of the patrol party, his back portion. He endeavoured to improve his observation, by mentioning that he had seen also his side face from a distance of 40 to 50 yards, but admitted that Khekh Ram was not personally known to him before that incident.

21. PW-8 though was silent with regard to the identification of the fleeing driver, in cross-examination he mentioned that at the point of time when the two vehicles were face to face, the driver of the Alto car was facing towards the police vehicle and he could recognize him. This witness however did not claim to have identified the driver to be the appellant, Khekh Ram at that point of time. The testimony of PW-1 and PW-8 taken together by itself is not adequately persuasive to unimpeachably establish the identity of the driver of the Alto vehicle to be Khekh Ram, the appellant. In absence of any test identification parade, implication of the appellant on the basis, this piece of evidence, where the appellant Khekh Ram was not known to either of these two witnesses or had been seen by them before would be clearly hazardous. Whereas the disclosure made by the co-accused Govind Singh that he had lent the vehicle to the appellant to carry his wife on 19.10.2009 would not ipso facto be a conclusive proof of his identity as the driver of the vehicle at the time of its interception by the police party, the recovery of his passbook therefrom, albeit a factor weighing against

him, cannot as well clinch by itself the issue of his identification in favour of the prosecution. With the evidence forthcoming that the registered owner of the vehicle was Ses Ram (PW-2) who deposed to have sold it to Govind Singh but the registration thereof had not been transferred and further that the vehicle had been temporarily lent to the appellant for his personal work, does not irrefutably rule out the possibility of use thereof by anyone of them at the relevant time. In the overall state of evidence with regard to identification, in our comprehension, the view taken by the Trial Court is overwhelmingly reasonable. To the contrary, the conclusion of the High Court on this issue seems to be dominantly guided by the recovery of the bank passbook in the name of the appellant from the vehicle and the reference of his name in the ruqqa Ext.PW8/A and the NCB form. The failure of the appellant to explain the presence of his bank passbook in the car also weighed considerably with the High Court against him.

22. The photographs, claimed by the prosecution to have been taken by the Investigating Officer, PW-8 with his digital camera to correlate the seized article with the one captured therein, to state the least, wholly lack in credence and persuasion. Not only, as expected, the photographs with the kind of camera used, do not record the date of the procedure i.e. 20.10.2009, some of those do not bear any date whereas the rest are dated 05.01.2008, 7.06 a.m. The prosecution has failed to offer any explanation whatsoever for this anomaly. It is thus more than apparent that the appellant has been implicated in the offence wholly due to the recovery of his bank passbook from the vehicle for which as a consequence his name was recorded in all the documents prepared in connection with the exercise undertaken. In absence of any other cogent, coherent and clinching evidence of his identification as the driver of the Alto car carrying the contraband, this document to reiterate, cannot be acted in isolation to base his conviction. Having regard to the materials on record, it is clear that his arrest in connection with this case was due to the recovery of his bank passbook from the car and not on the basis of his spot identification. The prosecution, in our view, has failed to adduce conclusive and consistent evidence to bring home the charge against the appellant.

23. It is a common place proposition that in a criminal trial suspicion however grave cannot take the place of proof and the prosecution to succeed has to prove its case and establish the charge by adducing convincing evidence to ward off any reasonable doubt about the complicity of the accused. For this, the prosecution case has to be in the category of "must be true" and not "may be true". This Court while dwelling on this postulation, in Rajiv Singh vs. State of Bihar and another dilated thereon as hereunder:

> "66. It is well entrenched principle of criminal jurisprudence that a charge can be said to be proved only when there is certain and explicit evidence to warrant legal conviction and that no person can be held guilty on pure moral conviction.
> Howsoever grave the alleged offence may be, otherwise stirring the conscience of any court, suspicion alone cannot take the place of legal proof. The well established cannon of criminal justice is "fouler the

crime higher the proof". In unmistakable terms, it is the mandate of law that the prosecution in order to succeed in a criminal trial, has to prove the charge(s) beyond all reasonable doubt.

67. The above enunciations resonated umpteen times to be reiterated in Raj Kumar Singh v. State of Rajasthan as succinctly summarized in paragraph 21 as hereunder:
21 . Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved and "will be proved". In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between "may be" and "must be" is quite large and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between "may be" true and "must be" true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between "may be" true and "must be" true, the court must maintain the vital distance between conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure that miscarriage of justice is avoided and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense.

[Emphasis laid by the Court]

68. In supplementation, it was held in affirmation of the view taken in *Kali Ram v. State of H.P.* that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted.

69. In terms of this judgment, suspicion, howsoever grave cannot take the place of proof and the prosecution case to succeed has to be in the category of "must be" and not "may be" a distance to be covered by way of clear, cogent and unimpeachable evidence to rule out any possibility of wrongful conviction of the accused and resultant miscarriage of justice. For this, the Court has to essentially undertake an exhaustive and analytical appraisal of the evidence on record and register findings as warranted by the same. The above proposition is so well-established that it does not call for multiple citations to further consolidate the same."

24. In our estimate, having regard to the quality of evidence on record as a whole and in particular on the aspect of identification, the view taken by the Trial Court being convincingly reasonable is acceptable in comparison to one adopted by the High Court.

25. The High Court in the attendant facts and circumstances, in our determination, erred in upturning the findings recorded by the Trial Court. The impugned judgment and order is thus set aside and the acquittal of the appellant is restored. This Court shares the concern expressed by the Trial Court on the shoddy investigation conducted in the case, having regard in particular to the seriousness of the offence involved and reiterate the direction issued by it to the Superintendent of Police, Kullu to enquire into the matter to ascertain the reason for the omission/lapses in the investigation, identify the person(s) responsible therefor and the action taken in connection therewith so as to ensure against repetition of such shortcomings in future. The Superintendent of Police, Kullu would complete the inquiry and submit a report to this Court within a period of three months herefrom. The appeal is allowed. The appellant be released from custody if not required in connection with any other case.

Judgment Referred.

[1]*(2013) 14 SCC 0088*
[2]*(2017) 6 SCALE 0468*
[3]*Crl.A.No.1286 of 2017*
[4]*(2012) 10 SCC 0383*