

Dinebari Dbari @ Daniel vs.state

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Court : Delhi

Decided On : Apr-22-2019

Appellant : Dinebari Dbari @ Daniel

Respondent : State

Judgement :

* % + IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on:

13. h February 2019 Judgment Delivered on:

22. d April, 2019 CRL.A. 770/2016 SANJEEV KUMAR Represented by: Mr.Vikas Gautam, Advocate with Appellant in person Appellant versus STATE Respondent Represented by: Ms.Rajni Gupta, APP for the State CRL.A. 855/2016 & Crl.M.B.No.1618/2017 with SI Alok Bajpai, Special Cell/SR Appellant DINEBARI DBARI @ DANIEL Represented by: Mr.Aditya Vikram, Advocate (DHCLSC) and Mr. Avinash, Advocate versus STATE Respondent Represented by: Ms.Rajni Gupta, APP for the State with SI Alok Bajpai, Special Cell/SR CORAM: HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J.

1. The present appeals are directed against the judgment dated 13th May 2016 passed by the learned Special Judge, NDPS whereby the appellants Sanjeev Kumar and Dinebari Debari @ Daniel were convicted for the offence punishable under Section 21(c) of Narcotics Drugs and Psychotropic CRL.A.770/2016 & 855/2016 Page 1 of 16 Substances Act, 1985 (in short 'NDPS Act'). Vide order on

sentence dated 17th May, 2015, they were sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,00,000/- and in default of payment of fine, to further undergo simple imprisonment for six months for offence punishable under Section 21(c) of NDPS Act.

2. Briefly the prosecution case is that on 3rd November, 2010 at about 2:50 P.M., a secret informer came to the office of Special cell and informed that one person namely Sanjeev, resident of Punjab would come near Akshardham Mandir at about 5:00 P.M. to supply narcotic drugs to a Nigerian national. Aforesaid information was recorded vide DD No.11 (Ex.PW-11/A). Pursuant to this a raiding team was constituted vide DD No.12 (Ex.PW-11/B) by Inspector Satender Sangwan consisting of ASI Mahipal, HC Balraj, HC Anil Tyagi, HC Vijay Pratap, Ct. Rajesh and Ct. Satish. He requested nearby persons standing at Maharani Bagh bus stand to join the raiding team but they refused to do so. They reached near Akshardham Temple at about 4:15 P.M. and parked the government vehicle and a private car towards Akshardham Temple side opposite Pandav Nagar. He along with the secret informer and HC Balraj took position near Foot Over Bridge on the main road opposite Akshardham Temple. At 4:50 P.M., they noticed one person coming from Pandav Nagar side who was carrying black colour bag on his right shoulder who the informer identified as Sanjeev Kumar. He stood near the Foot Over Bridge and started waiting for someone and after some time started walking towards Railway Line, Ganesh Nagar. Inspector Satender Sangwan with the help of other police officials apprehended the person. On interrogation, that person revealed his name as Sanjeev Kumar, resident of Amritsar, Punjab. He was informed about his CRL.A.770/2016 & 855/2016 Page 2 of 16 legal rights and thereafter, Insp. Satender Sangwan prepared and served notice under Section 50 NDPS Act vide Ex.PW-1/A which was signed by Sanjeev Kumar. He conducted the search of Sanjeev Kumar and recovered four packets wrapped with brown colour tape from one cavity found at the bottom of his bag and some clothes. All four packets were cut open from one corner and they were found containing cream colour powder. On testing the powder it was found to be heroin. On weighing the four packets A, B, C and D they were found to be 1.12 kilograms, 1.11 kilograms, 1.12 kilograms and 1.14 kilograms respectively. One sample of 20 grams each was taken from all four packets and put into small transparent pouches. They were

given the mark S-1 to S-4. The cut marks on the four packets was covered with tape. He prepared the FSL form and affixed his seal SS on it. He took the case property into possession vide seizure memo Ex.PW-1/B. Thereafter, rukka was prepared vide Ex.PW-1/DA. On the basis of the rukka, FIR No.45/2010 (Ex.PW-5/A) was registered at PS Special Cell under Section 21 NDPS Act.

3. Further investigation of the case was handed over to SI Anand Swaroop. He prepared the site plan (Ex.PW-1/DA) at the instance of Inspector Satender Sangwan. He arrested Sanjeev Kumar vide arrest memo Ex.PW-1/D. His personal search was done vide memo Ex.PW-1/E and disclosure statement was recorded vide Ex.PW-1/C. The black bag from which the heroin was recovered was seized vide seizure memo Ex.PW-1/F. On 4th November 2010, three days PC remand of Sanjeev Kumar was sought.

4. On 6th November, 2010 HC Balraj and Ct. Rajesh were searching for the co-accused near Laxmi Nagar area. At 2:30 P.M., they received CRL.A.770/2016 & 855/2016 Page 3 of 16 information from a secret informer that the co-accused namely Daniel would come at Vikas Marg near Shakkarpur Chungi at about 4:00 P.M. for supplying heroin to someone. Thereafter, SI Anand Swaroop reached the spot and took position on the road side at about 3:45 P.M. At about 4:00 P.M., they noticed an African coming from Laxmi Nagar side towards Shakkarpur Chungi who the secret informer identified as Daniel. On interrogation, he disclosed his name as Dinebari Debari @ Daniel. He was informed about his legal rights and thereafter, SI Anand Swaroop prepared and served the notice under Section 50 NDPS Act vide Ex.PW-1/G which was signed by Dinebari Debari @ Daniel. His search was conducted wherein one transparent polythene containing cream colour powder was recovered from his underwear. On testing the powder it was found to be heroin. Thereafter, he checked the weight of the polythene which weighed 1.011 kilograms. One sample of 20 grams was taken out from the recovered heroin and put into a small transparent polythene. Thereafter, the cut on the polythene containing the remaining heroin was covered with the help of brown colour tape and the sample polythene and the polythene containing the heroin were given mark S5 and E respectively. He prepared the FSL form and affixed his seal AS on it. The case property alongwith form FSL were seized vide seizure

memo Ex.PW-1/H. Dinebari Debari @ Daniel was arrested vide arrest memo Ex.PW-1/K. His personal search was done vide personal search memo Ex.PW-1/L and disclosure statement was recorded vide Ex.PW-1/J.

Thereafter, SI Anand Swaroop prepared the site plan vide Ex.PW-10/A. After completion of investigation, he along with Dinebari Debari @ Daniel and other team members went to PS Special Cell, Lodhi Colony, produced Dinebari Debari @ Daniel before SHO Inspector R.S. CRL.A.770/2016 & 855/2016 Page 4 of 16 Sehrawat and also handed over the case property to him. Inspector R.S. Sehrawat counter sealed both the pullandas with the seal of RSS and thereafter deposited the case property with MHCM. On 7th November 2010, he prepared a report under Section 57 NDPS Act (Ex.PW-2/C) regarding arrest of Dinebari Debari @ Daniel and the recovery affected from his possession. The exhibits were sent to FSL. After completion of investigation, chargesheet was filed for offence punishable under Section 21 NDPS Act. Vide order dated 12th May 2011, charge was framed against the appellants for offence punishable under Section 21(c) NDPS Act.

5. Assailing the conviction, Learned Counsel for Sanjeev Kumar states that Sections 41(2) and 42(2) NDPS Act have been violated in the present case. It has specifically been recorded in Ex.PW-11/A that the copy of DD No.11 wherein information received from the secret informer was recorded was submitted to a Senior Officer. However, HC Uma Shankar working as SO to ACP authorized to receive dak in the office of ACP specifically denied and stated that apart from the two reports exhibited vide Ex.PW-2/A and Ex.PW-2/B, no other document was received in this case. ACP L.N. Rao in his cross-examination admitted that a register is maintained in the office of ACP regarding inward and outward dak. In case any official/non- official communication is received from outside or sent outside, the same is recorded in the dak register. Furthermore, he admitted in his cross- examination that he verbally directed Inspector Satendar Sangwan to do the needful and the same was not in writing.

6. Learned counsel further submits that Section 55 of the NDPS Act has been violated as the FSL Form was not deposited with the Malkhana Incharge. ASI

Mathias Baxla in his cross-examination stated that there is no CRL.A.770/2016 & 855/2016 Page 5 of 16 mention in Ex.PW-4/A regarding the fact that FSL form was deposited in the Malkhana. He submitted that there are significant deficiencies in the FSL form. HC Balraj Singh in cross-examination stated that he did not sign the FSL Form. The FSL Form was of one page printed on both sides and was signed by Inspector Satender Sangwan. He identified FSL Form Mark X and stated that it was the same FSL form that was signed by Inspector Satender Sangwan. On being shown the FSL Form he stated that it was running into two pages and Mark X also does not bear any seal or the signature of Inspector Satender Sangwan. HC Anil Tyagi in his cross-examination deposed that the FSL Form was printed on both sides and Inspector Satender Sangwan had put his seal on it and signed it. On being shown the FSL Form he stated that Mark Y was not the FSL Form he had taken to the SHO. SI Satender Sangwan deposed in his cross-examination that he did not sign the FSL Form but it was filled by him and the specimen seal was also put by him.

7. Learned counsel further submits that the case property had been manipulated when it was submitted in court. At the time of seizure of the black bag recovered from Sanjeev Kumar, there were clothes in it but when the same bag was produced and opened in court the same did not contain any clothes. Furthermore, no log book was produced during trial in order to prove that Government Vehicle No.DL-1-CJ-4857 was used during the raid on 3rd November 2010. In the departure entry dated 3rd November 2010 there is no disclosure about the registration number of private vehicles used in the raid. Furthermore, he submits that even though Akshardham Temple is a crowded area, no public witnesses were requested to join the raiding team. There are material contradictions in the testimony of the various CRL.A.770/2016 & 855/2016 Page 6 of 16 police witnesses with respect to the transfer of investigation to SI Anand Swaroop. In view of non-compliance of mandatory provisions of NDPS Act requirements and contradictions in the statements of the witnesses, appellants be acquitted.

8. Learned Counsel for Dinebari Debari @ Daniel states that the raiding team left for the spot even before having the secret information about the whereabouts of Dinebari Dibari @ Daniel. The disclosure statement of Sanjeev Kumar also does

not mention anything as to when and where Dinebari Dibari @ Daniel would surface. As per the testimony of SI Anand Swaroop, Sanjeev Kumar had pointed out towards Dinebari Dibari @ Daniel pursuant to which he was arrested. No pointing out memo has been prepared in this regard. Moreover, there is no explanation as to why Dinebari Dibari @ Daniel was not arrested on the pointing out of the secret informer even though he had accompanied them to the spot. Admittedly, the search of Dinebari Dibari @ Daniel was conducted in the absence of any gazetted officer or Magistrate. He had given his refusal to notice issued under Section 50 on its carbon copy. Since the original of the notice does not bear the refusal or his signatures there is a possibility of tampering with the notice. Reliance is placed upon the decision of the Supreme Court reported as 2018 SCC Online SC459 Arif Khan @ Agha Khan v. State of Uttarakhand. He further submits that no document with regard to the test carried out by the Field Testing Kit was prepared. The site plan is vague and inconsequential as it does not depict the exact position of the raiding team at the time when they were waiting for Dinebari Dibari @ Daniel. As per the case of the prosecution, the pullandas were sealed with the seal of AS and later with the seal of RSS before depositing the same with the malkhana but it is clear CRL.A.770/2016 & 855/2016 Page 7 of 16 from the cross-examination of ASI Mathias Baxla that the pullandas and FSL Form did not bear the seal of RSS.

9. Learned counsel further submits that the prosecution did not establish any connection between the two appellants yet the samples recovered from both were sent to the FSL collectively. The prosecution has also failed to show as to why the raiding team arrested Sanjeev Kumar without waiting for the consignment receiver who as per the prosecution was Dinebari Dibari @ Daniel. Furthermore, Dinebari Dibari @ Daniel in his statement recorded under Section 313 Cr.P.C. stated that he wanted to produce his landlord's son as a defence witness but he was not examined. As per Section 42 of the NDPS Act, the secret information is to be reduced into writing and the copy of the same has to be sent to the superiors. SI Anand Swaroop in his testimony has admitted that the secret information about Dinebari Dibari @ Daniel was not reduced into writing. The guidelines issued by the Narcotics Control Bureau clearly lay down that samples must be dispatched to the Laboratory within 72 hours. However, in the present case, the samples were

sent to FSL after 30 days. He also submitted that at the time of framing of charge, Section 29 NDPS Act which relates to criminal conspiracy was not added but still the cases have been tried together to fasten the drugs recovered from Sanjeev Kumar on Dinebari Dibari @ Daniel.

10. Per contra, Learned APP for the State submits that Section 42 of the NDPS Act has no application in the present case as the recoveries from both the appellants were made from public places and therefore the investigating agency was not required to reduce into writing the secret information under Section 42(1) and send it to superior official under Section 42(2) NDPS Act. Reliance is placed upon the decisions of the Supreme Court reported as CRL.A.770/2016 & 855/2016 Page 8 of 16 (2008) 2 SCC370 Directorate of Revenue and Anr. v. Mohd. Nisar Holia, (2004) 5 SCC188 State of Haryana v. Jarnail Singh, 2015 (6) SCC222 Mohan Lal v. State of Rajasthan, 1994 (3) SCC299 State of Punjab v. Balbir Singh, 2018 (9) SCC708 S.K.Raju @ Abdul Haque @ Jagga v. State of West Bengal. She further submits that as far as compliance under Section 50 NDPS Act is concerned, the same would not be applicable in the case of appellant Sanjeev Kumar as the recovery of contraband was from the bag carried by Sanjeev Kumar and not from his person. Section 50 NDPS Act has no application to search of a vehicle or a container or a bag or premises. Reliance is placed upon the decisions of the Supreme Court reported as JT1999(8) SC293 Kalema Tumba v. State of Maharashtra & Anr., 1999 (6) SCC172 State of Punjab v. Baldev Singh, 2001 (3) SCC28 Gurbaksh Singh v. State of Haryana. She also submitted that the case property was not tampered with and stated that Ct. Rajesh (PW-3) who took the sample to FSL deposed that on 21st September 2007 he deposited samples along with FSL Form with the FSL authorities. His testimony is supported by MHCM ASI Mathias Baxla (PW-4) who also deposed that the samples and the FSL Form were handed over to Ct. Rajesh for depositing with the FSL authorities and the same were deposited by him with the FSL. The prosecution completed the link evidence of this case by examining all the material witnesses that is SHO Inspector Rajinder Singh Sehrawat (PW-8) to whom the case property was handed over by HC Anil Tyagi (PW-7) and SI Anand Swarup (PW-10) in the police station; MHCM ASI Mathias Baxla (PW-4) to whom the case property was handed over by Inspector Rajinder Singh Sehrawat (PW-8) for depositing in the malkhana,

Ct. Rajesh Kumar (PW-3) who took the sample parcels with FSL forms from MHCH and got the same CRL.A.770/2016 & 855/2016 Page 9 of 16 deposited with FSL, Rohini. Reliance is placed upon the decision of the Delhi High Court reported as MANU/DE/0786/2008 Ramesh Kumar Rajput @ Khan v. The State NCT of Delhi. She further submits that the contention of the appellants that the seal after use was not handed over to the independent witnesses and the same therefore casts a doubt on the prosecution story deserves to be rejected as there is no statutory requirement nor a precedential mandate of handing over the seal used by the police officer to a third person. She also submits that both the appellants after their arrest were produced before Inspector R.S. Sehrawat, who had put the FIR number, initials and his seal of RSS on all the pullandas, samples and FSL Forms. Therefore, Section 52 and 53 NDPS Act have been complied with by the investigating agency. Procedure laid down under Section 57 NDPS Act has also been complied with as is evident from Ex.PW-2/A and Ex.PW-2/C. The delay in sending sample for examination is of no consequence. Even if there is a delay in sending the samples to FSL, it is has to be seen whether the samples were in safe custody in the Mlakhana during that period and were not tampered with. Reliance is placed upon the decisions of the Supreme Court reported as 2008 (8) SCC557Hardip Singy v. State of Punjab, 2015 (6) SCC222Mohan Lal v. State of Rajasthan and the decision of the Delhi High Court reported as 2011 IAD (Delhi) 613 Bilal Ahmed v. State She further submits that Inspector Satender Sangwan made all efforts to join independent witnesses but public witnesses are reluctant to come forward to join police investigation in order to avoid their repeated visits to the police station, hence non-joining of the public witnesses cannot be taken adverse to the prosecution case. Reliance is placed upon the decision of the Supreme Court reported as 2010 (2) SCR785Ajmer Singh v. State of CRL.A.770/2016 & 855/2016 Page 10 of 16 Haryana.

11. Inspector R.S. Sehrawat (PW-8) in his testimony stated that on 3rd November 2010 HC Anil Tyagi handed over pullandas marked A to D and four sample pullandas marked as S-1 to S-4 having seal of SS, one copy of seizure memo and FSL form. On 6th November 2010 at about 8:30 P.M., SI Anand Swaroop handed over one pullanda marked as E and one sample pullanda marked as S-5, one copy of seizure memo and FSL form.

12. ASI Mathias Baxla (PW-4) in his testimony stated that on 3rd November, 2010, Inspector R.S. Sharawat had deposited six pulandas as per the seizure memo mark A, B, C and D alongwith sample pulandas S-1 to S-4 which were sealed with the seal of SS and RSS. He had made the entry at serial No.1645 in Register no.19 copy of which is Ex.PW-4/A. SI Anand Swaroop had deposited one bag alongwith personal search articles of Sanjeev Kumar. He had made the entry at serial no.1646 in Register no.19 copy of which is Ex.PW-4/B. On 6th November, 2010, Inspector R.S. Sharawat had deposited two pullandas sealed with the seal of AS and RSS. He had made the entry at serial No.1647 in Register no.19 copy of which is Ex.PW-4/C. SI Anand Swaroop deposited personal search articles of Dinebari Debari @ Daniel. He had made the entry at serial No.1648 in Register no.19 copy of which is Ex.PW-4/D. In his cross-examination he admitted that in Ex.PW-4/A and Ex.4/C there is no reference of the seal of RSS.

13. Amar Pal Singh (PW-9), Assistant Director (Chemistry) Forensic Science Laboratory, Delhi in his testimony stated that on 7th December 2010 five sealed parcels marked S1 to S5 were received which were found sealed with the seals of SS, AS and RSS. On examination, Exhibits S1 to S5 CRL.A.770/2016 & 855/2016 Page 11 of 16 were found containing diacetylmorphine that is heroin in the following percentage 42.59%, 51.64%, 46.47%, 45.21% and 44.57% respectively. After examination, the remnants were sealed with the seal of "APS FSL DELHI" and final FSL report was made vide Ex.PW-9/A.

14. L.N. Rao (PW-12), Retired DCP stated that on 3rd November, 2010 he directed Inspector Satendar Sangwan to constitute a raiding party on showing information vide DD No.11 (Ex.PW-11/A). He deputed SI Anand Swaroop for further investigation of the case. On 4th November 2010 and 7th November 2010 report under Section 57 NDPS Act were submitted to him by SI Anand Swaroop vide Ex.PW-12/A and Ex.PW-12/B respectively.

15. Sanjeev Kumar in his statement recorded under Section 313 Cr.P.C. stated that he was forcibly picked up by the police officials on 3rd November 2010 at about 5:30 A.M. from ISBT, Delhi. He had been acquitted in a murder case in Punjab in February 2010 and had come to offer his prayers at all the Gurudwaras

in Delhi. Soon after he got down from the bus and was looking for an auto, 8-10 persons in civil clothes approached him and told him that he must meet their superior who was sitting in the car. When he tried to enquire about the matter, Inspector Satender Sangwan told him to put his head down or else he would shoot him. Thereafter, they tied his hands with a cloth and took him to some office. He further stated that no notice was issued to him by the police officials and he signed on document Ex.PW-1/A out of fear as the police officials were threatening to kill him. He also stated that he did not know Dinebari Dibari @ Daniel who was apprehended in this case. He further stated that on 6th November 2010 in the evening the police officials brought one Nigerian to the same office where he was kept and told him to accept that he had supplied heroin to this CRL.A.770/2016 & 855/2016 Page 12 of 16 Nigerian. He sent his retraction statement which is marked as R1.

16. Dinebari Dbari @ Daniel in his statement recorded under Section 313 Cr.P.C. stated that six to seven police officials came to his tenanted premises at A-57, Ganesh Nagar, New Delhi at about 12:30 P.M. in the afternoon and told him that they were looking for some Nigerians. He told the police officials that 2-3 Nigerians were residing there but he did not know their name. They searched the premises but did not find anything and asked him to go along with them without giving any reason. They first took him to some head office and thereafter some office at New Friends Colony. He further stated that no notice was issued to him by the police officials and he signed on document Ex.PW-1/A out of fear as the police officials threatened to torture him. He further stated that he was beaten up by HC Balraj Singh and was even given electric shocks. He also stated that he did not know Sanjeev Kumar before he was apprehended in this case. He further stated that he had come to India in 2004 for pursuing studies and had remained in India till 2007. He returned back to India again in 2007 for a research programme sponsored by Common Wealth at Roizeras State, Nigeria. He had a valid visa on the date of apprehension. He further stated that the police officials demanded a bribe of \$50,000 from him. They even called his wife who resides in USA. When he refused to give them any money they made him sign documents and Inspector Sangwan told him to write that he does not wish to be searched before any Magistrate or Gazetted Officer. He sent his retraction statement which is marked

as R2.

17. As regards Dinebari Dbari @ Daniel is concerned, a perusal of the notice exhibited as Ex.P-13 under Section 50 NDPS Act issued to Dinebari Dbari @ Daniel reveals that the same is neither signed by him nor thumb CRL.A.770/2016 & 855/2016 Page 13 of 16 marked nor any endorsement made noting that Daniel refused to accept the notice. Even as per the case of prosecution, alleged recovery from Dinebari Dbari @ Daniel was from his person and hence Section 50 NDPS Act was required to be complied with mandatorily. Failure to comply with Section 50 NDPS Act qua Dinebari Dbari @ Daniel vitiates the trial and he is entitled to acquittal only on this count.

18. Contention of learned counsel for the appellants that the secret information regarding Dinebari was not reduced into writing nor conveyed to the senior officers is clearly born out from the record as no document in relation thereto has been placed nor any of the witnesses has deposed that the secret information qua Dinebari @ Daniel was reduced into writing and/or conveyed to the senior officers. As per the case of the prosecution noted above Sanjeev was apprehended on 3rd November, 2010 after 4:50 PM pursuant to secret information received at 2:30 PM. Disclosure statement of Sanjeev was recorded on the same day on 13th November, 2010 itself wherein he disclosed that on that day also on the asking of Mahender Singh, he had come to supply the drugs to a person named Daniel whose mobile number also he gave and he was caught before the delivery could be handed over. He stated that he recognized Daniel and he could help them in arresting Daniel but he did not know the house of Mahender Singh. As per the case of the prosecution Dinebari @ Daniel had not been arrested at the instance of Sanjeev Kumar but at the instance of a secret informer allegedly with a polythene weighing 1.011 kgm which contained heroine.

19. This information from the secret informer has not been reduced into writing and sent to the senior officers on 6th November, 2010 when at 2:30 PM purported information was received. Though compliance of Section 42 CRL.A.770/2016 & 855/2016 Page 14 of 16 NDPS Act in the present case was not a requisite as Daniel was arrested from public place but case of the prosecution being that

Sanjeev Kumar disclosed the name of Dinebari Dbari @ Daniel which fact is not mentioned in Sanjeevs disclosure statement and arrest made pursuant to secret information which secret information is not reduced into writing makes the case of the prosecution suspect.

20. As per the statement of HC Balraj Singh (PW-1), the red colour embroidery bag recovered from Sanjeev Kumar whose search was taken by raiding team contained many clothes and below the clothes were concealed four transparent polythene bags wrapped with khaki coloured tape which contained the cream coloured powder. The said clothes neither form part of the seizure memo nor the personal search memo. There is no mention in the prosecution case about the manner of disposal of the clothes found.

21. Incharge Malkhana ASI Mathia Baxla PW-4 in his testimony admitted that when he made the entry Ex.PW-4/A in the malkhana register No.19 he did not state that the pullandas and FSL form were sealed with the seal of RSS. He also admitted that even in the entries Ex.PW-4/A and Ex.PW-4/C there is no reference to the seal of RSS. Further Insp. R.S.Sehrawat SHO PS Special Cell in his examination admits that when he was handed over the pullandas, it only bore the seal of investigating officer. It did not bear the signature of the accused or any other witness except SI Anand Swaroop on which the Inspector affixed his own signatures as well and deposited the same with the incharge malkhana. He admitted that the form FSL was in open condition but was having the seal of AS. At no point of time the accused was produced before him and that he had not given to the malkhana to check the relevant entry made in the register with regard to CRL.A.770/2016 & 855/2016 Page 15 of 16 the pullandas deposited on 6th November, 2010. Inspector Satender Sangwan in his cross examination admitted that he did not remember if any specific information was received with regard to Sanjeev Kumar who was supposed to come in the morning to deal with contraband on 3rd November, 2010. He admitted that no handing over memo was prepared when he handed over the seal to HC Balram Singh who took back the seal after 2-3 days. Admittedly further recovery was made from Daniel within 2-3 days i.e. on 6th November, 2010. This witness even did not remember whether the tehrir was sent to the ACP concerned.

22. Considering the version of the various prosecution witnesses on different counts, it is evident that the link evidence has not been proved by the prosecution beyond reasonable doubt particularly when the two recoveries were in 3 days and the seal of the SHO was returned back before the next recovery. The deposition of the prosecution witnesses points out that the case property was not preserved properly, thus the appellants are entitled to the benefit of doubt.

23. Consequently, the impugned judgment of conviction and order on sentence are set aside.

24. Crl.A.No.770/20116, Crl.A.No.855/2016 & Crl.M.B.No.1618/2017 are disposed of. Appellants are directed to be released forthwith if not required in any other case.

25. Copy of this order be sent to Superintendent Central Jail Mandoli for updation of the Jail record.

26. TCR be returned. APRIL22 2019 vj/mamta CRL.A.770/2016 & 855/2016 (MUKTA GUPTA) JUDGE Page 16 of 16

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