

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. Appeal Nos. 210 and 212 of 2009****Reserved on: 2.4.2026****Date of decision: 17.4.2026**

1. Cr. Appeal No. 210 of 2009**Dula Ram** **...Appellant.****Versus****State of H.P.** **...Respondent.****2. Cr. Appeal No. 212 of 2009****Angrego Devi** **...Appellant.****Versus****State of H.P.** **...Respondent.**

Corum***Hon'ble Mr. Justice Vivek Singh Thakur, Judge.******Hon'ble Mr. Justice Ranjan Sharma, Judge.******Whether approved for reporting?¹ Yes******For the Appellant(s). Mr.Manoj Pathak and Mr.Parth Sagar, Advocates, for the appellant in Cr. Appeal No. 210 of 2009.******Mr.Ayush Chauhan, Advocate (Legal Aid Counsel) for the appellant in Cr. Appeal No. 212 of 2009******For the Respondent: Mr.J.S. Guleria, Deputy Advocate General.***

Vivek Singh Thakur, Judge

Appellants, in both these appeals, have preferred these appeals against common judgment dated 27.5.2009 passed by Special

¹***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

Cr. Appeal Nos. 210 & 212 of 2009

Judge-II, Sirmaur, District at Nahan in Sessions Trial No. 2-N/7 of 2008, titled as State of Himachal Pradesh Vs. Dula Ram and Another, in case FIR No. 365/2007, dated 30.10.2007, registered in Police Station Paonta Sahib, District Sirmour, H.P. under Section 15 of the Narcotic Drugs and Psychotropics Substances Act (for short "NDPS Act"), whereby appellants, who are co-convict have been convicted for commission of offence punishable under Section 15 of the NDPS Act and have been sentenced to undergo rigorous imprisonment for a period of 10 years and to pay fine of ₹1,00,000/- and in default of payment of fine to further undergo simple imprisonment for a period of 1 year.

2. Both these appeals preferred by the appellants were allowed by co-ordinate Division Bench of this High Court vide judgment dated 15th December, 2009, mainly on the ground that report Ex. PW-17/E of chemical examiner, in view of judgment passed by this High Court in ***Rajiv Kumar alias Guglu Vs. State of H.P., HLJ 2008 (HP) 247***, was not considered to be a conclusive report to prove that contraband alleged to be recovered from the appellants was poppy straw/opium poppy. It is apt to record that on similar lines in another judgment dated 20.12.2022 passed in ***Nirmal Kaur @ Nimmo and others Vs. State of H.P.*** for similar grounds, accused Nirmal Kaur and others were acquitted by the Trial Court by referring the reasons in consonance with *Rajiv Kumar's case*.

3. The aforesaid judgment in *Nirmal Kaur's* case was assailed by the State of Himachal Pradesh by filing Cr. Appeal No. 956 of 2012, which was decided on 20.10.2022 and judgment of acquittal passed by this High court was set aside and matter was remanded for deciding afresh in accordance with law laid down by the Apex Court in ***State of Himachal Pradesh Vs. Nirmal Kaur @ Nimmo and others, 2022 (15) Scale 347.***

4. In present appeals, respondent-State preferred Cr. Appeal No. 958 of 2012, titled as State of Himachal Pradesh Vs. Dula Ram and Cr. Appeal No. 959 of 2012, titled as State of Himachal Pradesh Vs. Angrejo Devi, before the Supreme Court, against acquittal of appellants vide judgment dated 15th December, 2009 passed by co-ordinate Division Bench of this Court, which was heard and decided by the Apex Court vide order dated 23.11.2022, in the following terms:-

“1. Leave granted in SLP (Crl) No. 761/2014.

2. The High Court basically allowed the appeals on the ground that the prosecution has failed to establish that the seized material is not the genesis of a plant of *Papaver somniferum* L or any other plant, which is notified by the Central Government under Section 2(xvii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act').

3. On a reference, this Court in State of Himachal Pradesh v. Nirmal Kaur alias Nimmo and Others, reported in 2022 SCC Online SC 1462, has decided the issue and it has been held that once it is found that the seized material contain '*morphine*' and '*meconic acid*' it is sufficient to establish that the seized material comes within the definition of Section 2(xvii) of the NDPS Act.

4. In that view of the matter, the impugned judgments and orders are quashed and set aside and the cases are remitted back to the High

Cr. Appeal Nos. 210 & 212 of 2009

Court to consider the same afresh, in accordance with the judgment of this Court rendered in *Nirmal Kaur alias Nimmo and Others* (supra).

5. The sentence imposed on the respondents herein are suspended till the High Court decides the matters on merits.

6. The appeals are allowed in the aforesaid terms.

7. Pending application(s), if any, shall stand disposed of."

5. In aforesaid facts, these appeals has to be decided once again, by keeping in view the law laid by the Supreme Court.

6. As per prosecution story on 30.10.2007, Police party headed by PW-17 Narveer Singh Rathore, consisting of PW-3 HC Partap Singh, PW-4 HC. Rattan Singh, PW-5 Constable Dhanveer Singh and PW-8 Constable Deepak Kumar was on patrolling and at that time PW-17 Narveer Singh Rathore, Investigating Officer received an secret information that respondents are involved in business of narcotic drugs. After receiving the aforesaid information PW-17 Narveer Singh Rathore prepared information in compliance of Section 42 of the NDPS Act and after joining two independent witnesses PW-1 Harpal Singh and PW-2 Gulsher, search of the house of Angrejo Devi was conducted. Angrejo Devi and Dula Ram were found in the house and in their presence 16 bags of contraband were recovered from the house. After seizure, rukka was sent by Investigating Officer PW-17 Narrveer Singh Rathore to Police Station, Panta Sahib through constable Deep Ram, who came back and handed over the case file to Investigating Officer on the spot and after finding sufficient material against the appellants, they were arrested and brought to the Police

Cr. Appeal Nos. 210 & 212 of 2009

Station. Two samples each were drawn from each plastic bag and thereafter 16 plastic bags were sealed separately and 32 samples were also sealed with seal impression 'T'. On 31.10.2007 case property was handed over to PW-6 ASI Raghuvir Singh. Vide RC No. 134/07 dated 31.10.2007 samples of contraband alongwith other relevant documents were sent to FSL through PW-7 HHC Partap Singh.

7. After completion of investigation, SHO Narveer Singh presented the challan in the Court.

8. To prove its case, prosecution has examined 17 witnesses, whereas after recording statement of accused persons under Section 313 Cr.P.C., no evidence was lead in defence. After completion of trial appellants were convicted. Both appellants preferred separate appeals i.e. present appeals bearing Cr. Appeal No. 210 of 2009 and Cr. Appeal No. 212 of 2009.

9. Learned counsel for the appellants have submitted that there are sufficient material discrepancies and contradictions in the statements of Police witnesses, warranting acquittal of both accused. Even otherwise by ignoring the judgment passed by this Court in *Rajeev Kumar's* case and considering ration of law laid down by the Apex Court in ***State of Himachal Pradesh Vs. Nirmal Kaur @ Nimmo and others***, reported in ***2022 (15) Scale 347***, appellants deserves to be acquitted. Learned counsel for the appellants have submitted that respondents-State has failed

to prove its case beyond reasonable doubt and, therefore, respondents are entitled to be acquitted.

10. PW-17 Narveer Singh Rathore is Investigating Officer, was SHO in the Police Station, Paonta Sahib at the relevant point of time. According to him at about 8:50 P.M., he received a secret information that Dula Ram resident of Shilai had kept huge quantity of poppy straw in the house of appellant Angrejo Devi. Whereupon he prepared information Ex.PW-5/A, under Section 42(2) of the NDPS Act and send the same through PW-5 Constable Dhanveer Singh to SDPO seeking authorization from the SDPO for conducting search of the house of Angrejo Devi. Constable Dhanveer Singh came back about 9:50 P.M. alongwith authorization. According to prosecution case Angrejo Devi and Dula Ram were present in the house. They were informed about intention of the Police party to search the house on the basis of secret information received by PW-17 Narveer Singh Tarhore. Both appellants consented for search of house by the Police. In this regard consent memos Ex. PW-1/B and Ex. PW-1/C were prepared. Photographer PW-16 Gulsher Ahmed was also called on the spot, who took photographs of the entire incident.

11. PW-1 Harpal Singh and PW-2 Gulsher are independent witnesses.

12. PW-3 HC Partap Singh, PW-4 HC Rattan Singh, PW-5 Constable Dhanveer Singh, PW-8 Constable Deepak Kumar and PW-17 Dy.SP Narveer Singh Rathore are spot witnesses.

13. PW-1 Harpal Singh and PW-2 Gulsher did not support the prosecution story and nothing could be extracted from them favourable to the prosecution, even after their cross-examination by learned Public Prosecutor, after taking permission from the Court.

14. PW-1 Harpal Singh has stated that on 30.10.2007, he was sleeping in his house near to his flour mill and Police asked him to weigh some material and accordingly Police weighed 16 plastic bags in his shop. He has admitted signatures on recovery memo and other documents, with explanation that he and PW-2 Gulsher were taken to the Police Station and thereafter were brought to the spot of alleged recovery. This witness has denied the prosecution case in toto, except admitting his signatures on various memos. He has expressed his ignorance about the fact that Dula Ram was tenant of Angrejo Devi. According to him Police took photographs in his Flour Mill when case property was being weighed. He has also stated that at the time of taking photographs, accused were present, with self explanation that Police came back from the Police Station, Paonta Sahib alongwith photographer and thereafter by placing the material in the room and in his Flour Mill, photographs were taken. He has denied that photographer was taken in the room of Dula Ram at the time of

recovery. He has admitted his signatures on the samples as well as bag containing the contraband. In cross-examination, he has admitted that house of Chhota Ram, husband of Angrejo Devi is also at a distance of 20-30 meters from his flour mill and he was sleeping, when Police called him from his house, and when he came he found number of Police personnel were present with a vehicle, which had some material and after weighing the material, Police took him to Police Station Paonta Sahib and at that time none of accused was present on the spot, and after 30-40 minutes Police brought them again to the village. This witness has stated that he did not know that by that time Police had called Dula Ram from his house and there was one person who also accompanied the Police to village. Police after reaching the village stopped in front of house of Chhota Ram and called him. Chhota Ram was not found in the house, but his wife was there and Police took photographs by reloading the bags in the house as well as in the Aata Chaki and when Police left the village they directed him and Gulsher to reach the Police Station during the day time and at that time their signatures were obtained in the Police Station at about 2-3 P.M. on 31.10.2007. Village Taruwala is a distance of 3 kilometers. Accused Angrejo was also taken to Police Station when photographs were taken.

15. PW-2 Gulsher has also deposed on similar lines, with statement that he was associated by the Police in search of house of Angrejo Devi, but nothing was recovered. In his cross-examination he has

narrated a similar story, as has been told by PW-1 Harpal Singh with statement that he was called by the Police personnel during night. On reaching the spot, he found that a loaded vehicle was parked near the flour mill of Harpal Singh and Police weighed the material and took them to Police Station Paonta Sahib and they remained there for about one hour and then again were brought back to village. Vehicle was taken to the Police Station. There was one person in the vehicle, but he did not talk with him. After coming back to village Police placed the bags in flour mill and thereafter photographs of the room as well as flour mill were taken by placing the bags there. Police had asked Harpal Singh and him to come to the Police Station next date at 11:00 A.M. in the morning and on that date they signed papers in the Police Station.

16. The entire story of the prosecution is based upon secret information received by PW-17 Narveer Singh Rathore. According to him he received the secret information at 8:50 P.M. In cross-examination PW-17 Narveer Singh has stated that he received secret information from a person who approached him at Bhugrani Chowk and at that time they were patrolling at Bhugrani Chowk and were not sitting in the vehicle and all Police officials were with him when he received the secret information. The informer was only one person, who came from the field. He was neither police informer nor known to him. 3-4 minutes were taken by the informer to talk with him.

17. According to PW-3 H.C. Partap Singh, PW-17 Narveer Singh Rathore received information on his personal mobile phone, when all of them were standing at a road diversion from Bhugrani to Nihalgarh for the last one hour. He could not tell the time consumed by the SHO for recording the said information.

18. According to PW-4 HC Rattan Singh, SHO received information at Bhugrani Nihalgarh diversion on his mobile phone. The information was received when vehicle was moving towards Nihalgarh.

19. PW-5 constable Dhanveer Singh has stated that they stopped for 5 to 7 minutes at Bhugrani Chowk and all of them alighted from the vehicle, then SHO received information on his mobile at 8:50 P.M and conversation of SHO took about 5 minutes. He did not hear conversation between SHO and information on the mobile.

20. PW-8 Constable Deepak Kumar, who was also member of Police party is completely silent, not only with regard to secret information, but also further story of the prosecution, as he had stated that after completion of search Investigating Officer handed over him one rukka Ex. PW-8/A for registration of FIR and he took it to the Police Station and after registration of FIR and making endorsement on rukka, handed over the case file to SHO at Nihalgarh road. In cross-examination he has denied that he was not with the Police party nor took rukka from Nihalgarh road to

Police Station. Other Police officials of the raiding party have not been examined.

21. There is material contradictions with regard to mode and manner of receiving secret information by PW-17 Narveer Singh Rathore. The Police officials who were traveling in the same vehicle, patrolling together and sitting together, have given entirely different version about the mode of receiving the secret information, which is irreconcilable.

22. According to PW-5 Constable Dhanveer Singh, secret information was recorded under Section 42 of the NDPS Act and he was handed over one envelop at Nihalgarh by SHO Narveer Singh Rathore and he handed over the same to SDPO. Though, he has been claimed to be member of raiding party, who witness the receipt of secret information by PW-17, but he expressed his inability to tell that who was scribe of secret information Ex. PW-5/A. According to him SDPO PW-11 Shubhra Tiwari handed over a letter of authorization, which was delivered by him to PW-17 Narveer Singh Rathore on the spot whereas according to PW-17 Narveer Singh Rathore, the authorization letter was a loose letter and was not in envelop. According to PW-11, she had handed over the authorization letter in an envelop to PW-5 Constable Dhanveer Singh. This is also a material contradiction, because it is categorical stand of PW-5 Constable Dhanveer Singh and PW-17 Narveer Singh Rathore that authorization letter was

loose, but not in envelop, whereas according to PW-11, it was given in an envelop.

23. PW-17 Narveer Singh Rathore is SHO and PW-11 at that time was SDPO (Dy.SP) and they are well aware about the protocol of handing over the authorization letter, but discrepancy in this regard is irreconcilable.

24. It has also been rightly pointed out by learned counsel appearing for the appellants that at the time of leading entire evidence during trial, at the time of examination of witnesses, including Investigating Officer, the bags Ex. P-33 to P-48 and samples Ex. P-1 to P-32, were never opened and nothing has been recorded by the Trial Court at the time of recording statements of witnesses that samples are Ex. P-1 to P-32 and bags are Ex. P-33 to P-48, about the seals put thereon at the time of recovery of contraband as well as on the samples which were submitted to the chemical analysis about the seal put by the chemical laboratory. During examination of prosecution witnesses these bags and samples were never opened or nor their seals were checked. It has been submitted that when the seals were not checked by the Court, there was no reason for the accused persons to dispute that these bags cannot be linked with the appellants, because it was for the prosecution to link and prove the connection of the bags and samples drawn with the appellants.

25. It has also been stated by PW-17 Narveer Singh Rathore that both the accused were uneducated and they were not in a position to read

the contents of authorization letter and, therefore, he had narrated the substance of authorization letter to them. Consent memos Ex. PW-1.B and Ex. PW-1/C, alleged to be obtained by the Investigating Officer PW-17, prior to searching the house of accused, is also creating doubt about the veracity of the prosecution case. In these consent memos, it has been recorded that (Dula Ram) in Ex. PW-1/B and Angrejo in Ex. PW-1/C, were ready for search of the house. It is also noticeable that in both consent memos, Investigating Officer asked for consent by giving option that search can be conducted through some Magistrate or Gazetted Officer.

26. In Ex. PW-1/B, PW-17 Investigating Officer had put his signatures, which appears that it had been inserted later on. But in Ex. PW-1/C, he missed to do the same and there are no signatures of SHO giving to appellant Angrejo Devi. Consent memo also gives impression that Dula Ram and Angrejo Devi wrote these words and in case they were uneducated and not known to write and read anything, then consent would have been recorded as that 'he' or 'she' consented not as I consented. It is also apt to record that in Dula Ram's consent memo, instead of 'He' it has been stated that consent has been recorded as 'She' by writing that "khana talashi apko dana chahati hu".

27. In Ex. PW-1/C even signatures of Angrejo are not below the consent, but below the signatures of PW-1 Harpal and PW-2 Gulsher, which also indicates that these documents were prepared later and

signatures thereon were taken at even thereafter at a later point of time, but these documents were not prepared on the spot as claimed by the prosecution.

28. PW-10 Ramesh Chand, who was owner of Pickup vehicle, which was allegedly hired by accused Dula Ram for transporting material from Tiuni to the house of Angrejo Devi. This witness has completely denied the prosecution case by stating that Dula Ram did not hire his vehicle to bring contraband from Tuni. He has admitted that his vehicle was taken in possession by the Police vide seizure memo Ex. PW-10/A, but he has denied his statement recorded under Section 161 Cr.P.C. and he has not been cross-examined in this regard, except putting him statement recorded under Section 161 Cr.P.C.

29. PW-9 Ram Swaroop has been examined to prove the possession of house of Angrejo Devi and renting one room by her to Dula Ram at the rate of ₹1,000/- per month. This witness also did not support the prosecution case and in cross-examination he denied the claim of the prosecution. He has also denied recovery of contraband in presence of Dula Ram and Angrejo Devi on 30.10.2007. According to him he had never given any statement to the Police. In cross-examination on behalf of appellants, this witness has stated that the house in which Angrejo Devi reside is also shared by family of brother of husband of Angrejo Devi.

30. PW-16 Gulsher Ahmed is photographer, who was called by the Police on the spot. In cross-examination he has stated that PW-17 Narveer Singh Rathore called him from his residence and took him to village Nilahgarh and there were two Police vehicles on the spot. Dy.SP Panta Sahib, who was lady Officer was also present on the spot. Dy.SP Paonta Sahib, has been examined as PW-11. He has further stated that Police placed the persons in the photographs at the points where they were standing in the Atta Chaki and after one hour he went away, whereas Dy.SP and Police people remained on the spot.

31. PW-16 Gulsher Ahmed has also corroborated PW-1 Harpal Singh and PW-2 Gulsher that photographs on the spot were taken after placing the bags and the persons after coming back from the Police Station. This witness has also stated about presence of Dy.SP on the spot, but Public Prosecutor has not re-examined this witness to disprove or question this version of the witnesses. Originally it is not case of the prosecution that Dy.SP came on the spot, rather in the entire story put forth by the prosecution, PW-5 Constable Dhanveer Singh went to Dy.SP, who handed over authorization letter in the envelop and Constable Dhanveer Singh came back to Nihalgarh. There is no reference of coming of Dy.SP on the spot, but the prosecution witness categorically stated so, which has not been disputed by the prosecution.

32. PW-17 Narveer Singh Rathore has stated that he did not remember that brother of husband of Angrejo Devi was residing in the said house with his family and he did not tried to find out that who was owner of the house from which recovery of poppy husk was alleged.

33. PW-3 HC Partap Singh had stated that Dula Ram was wearing only under garments and was sitting on a carpet in the house of Angrejo Devi. Defence taken by the prosecution is that Dula Ram was residing somewhere else near a school alongwith his family and he was called to the Police Station when he was sleeping and he was not even wearing the cloths and he was taken to the Police Station in under garments, in which he was sleeping. PW-3 HC Partap Singh has admitted about presence of Dula Ram, but with clarification that he was sitting in under garments on a carpet in the house of Angrejo Devi. According to PW-17 Narveer Singh Rathore, Dula Ram and Angrejo Devi were found standing in the house of Angrejo Devi in the verandah. According to PW-3 H.C. Pratap Singh, they were sitting on the carpet in the house whereas according to PW-17 Narveer Singh Rathore, they were standing in the verandah. According to PW-3 HC Partap Singh Dula Ram was waring under garments and according to PW-17 Narveer Singh Rathore, he was wearing full dress and not in undergarments. The statement of these two witnesses are also irreconcilable.

34. It is also apt to record that PW-17 Narveer Singh Rathore has stated that they checked only one room of the house of Angrejo Devi and they did not check other rooms. Reasons given by him that other rooms were open and were not bolted and one room was bolted and, therefore, they searched the said room only, but did not search other rooms of the house. According to him PW-16 Gulsher Ahmed photographer was called on the spot, whereas according to PW-16 Gulsher Ahmed he was called in the Police Station.

35. Though, it is a settled law that accused persons can be convicted even if independent witnesses turn hostile and conviction can also be based on the sole testimony of official witnesses, however, when independent witnesses were associated and in the Court they put forth a parallel story, which is corroborated by other prosecution witnesses, a doubt about the veracity of prosecution story arises. In present case, there are material discrepancies and contradictions in the statements of witnesses which goes against the genesis of the prosecution story, rather demolishes the prosecution case on material particulars. The parallel story narrated by the independent witnesses PW-1 Harpal Singh and PW-2 Gulsher found corroboration from other prosecution witnesses, especially PW-9 Ram Swrop and PW-16 Gulsher Ahmed.

36. It is also admitted case of the prosecution that samples were drawn on the spot and out of them 16 samples were sent to FSL, but at the

Cr. Appeal Nos. 210 & 212 of 2009

time of exhibiting and recording statements of witnesses, these parcels of sample as well as remaining contraband were never physically checked and, therefore, link to connect these exhibits with the appellants is missing and, therefore, report of Chemical Examiner, even if considered to be correct, is of no help to the prosecution.

37. In view of above discussion, we are of the considered opinion that prosecution has failed to prove its case beyond reasonable doubt to rebut the innocence of appellants by establishing prosecution case through cogent, reliable and convincing evidence on record.

38. Accordingly, these appeals are allowed and impugned judgment of Trial Court convicting and sentencing the appellants for commission of offense under Section 15 of the NDPS Act is set aside. Bail bonds, if any, furnished by them shall stand discharged.

The appeals stand disposed of in aforesaid terms, so also pending applications, if any.

**(Vivek Singh Thakur),
Judge.**

**(Ranjan Sharma),
Judge.**

17th April, 2026
(Keshav)