

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Crl. Appeal No.D-152-DB of 2003 (O&M)

Date of Decision: April 19, 2018

Sukhvinder Singh

...Appellant

VERSUS

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE A.B.CHAUDHARI
HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr.B.S.Saroha, Advocate
for the appellant.

Mr.Kuldeep Tiwari, Addl. Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant challenging the judgment of conviction dated 28.11.2002 and order of sentence dated 30.11.2002 passed by learned Addl. Sessions Judge, Fatehabad, whereby he was convicted and sentenced to undergo rigorous imprisonment for a period of 12 years and to pay a fine of ₹1 lakh and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months under Section 15 of the NDPS Act. However, co-accused Gurmit Singh was acquitted of the charge.

The brief facts of the case as noted down in the judgment passed by learned Addl. Sessions Judge, Fatehabad, are as under:-

2. *Brief facts of the case giving rise to this prosecution are*

that on 29.3.1997 ASI Dharambir Singh alongwith other police employees was present at the bridge of Canal Roopana minor in the area of village Pillimandarb in connection with nakabandi. Constable Ravinder Kumar No.1371 met him. They were talking. In the meantime, a Maruti Car bearing registration No.DDU-7320 came from the side of village Roppna. Investigating Officer gave a signal to stop the Maruti Car, but the driver of the car did not stop it. Maruti Car was being driven by present accused Sukhvinder Singh alias Satta and one another person was sitting by his side. Accused Sukhwinder Singh driver was earlier known to the Investigating Officer. Investigating Officer chased the Maruti Car in the police vehicle, but could not intercept the Maruti Car. Ultimately accused Sukhvinder Singh and his companion left the car in village Pillimandori and fled away. Investigating Officer carried out the search of Car No.DDU-7320 and found that eight gunny bags containing poppy husk were loaded in the car. Investigating Officer took out 100 grams poppy husk as sample from each gunny bag and remaining poppy husk came to 39 kilograms 900 grams in each bag. Investigating Officer prepared the sealed parcels of the sample and the gunny bags containing remaining poppy husk. All the parcels were sealed with the seal bearing impression AS and seal after use was handed over to Devender Kumar ASI. Entire case property including Car No.DDU-7320 was taken into possession vide recovery memo Ex.P4. Investigating Officer sent ruqa Ex.P5 to the police station on the basis of which formal FIR Ex.P6 was registered. Investigating Officer also prepared the site plan of recovery Ex.P7. On return to the police station, the case property was produced before SI Karan Singh SHO, Police Station Bhattu Kalan on 16.6.97. He was produced before him by Dharam Chand and Satnam Singh witnesses and on completion of the investigation, initially report under Section 173 Cr.P.C. was filed against accused Sukhvinder Singh as accused. Gurmit Singh could not be arrested. Later on Gurmit Singh was also arrested on 11.6.98 and a supplementary challan was filed against accused Gurmit Singh.”

On presentation of challan, copies of challan and other documents were supplied to the accused-appellant and co-accused under Section 207 Cr.P.C. Finding prima facie case, the appellant and co-accused were charge-sheeted under Section 15 of the NDPS Act, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 ASI

Gulshan Kumar and PW-2 ASI Suraj Bhan, who deposed regarding arrest of the accused; PW-3 Head Constable Ram Kishan, formal witness, who tendered into evidence, his affidavit Ex.P3; PW-4 ASI Devender Kumar, who deposed same facts as given above while giving brief facts of the case. PW-5 ASI Dharambir Singh, Investigating Officer, deposed regarding investigation conducted by him in the present case and also deposed same facts as given above. PW-6 Constable Suresh Kumar, is also formal witness, who tendered into evidence his affidavit Ex.P16. PW-7 Inspector Karan Singh, deposed that after verifying the facts of the case from the witnesses, he sealed the sample parcels with his seal bearing impression 'KS'.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. He was confronted with the evidence of the prosecution and he denied the correctness of the evidence and pleaded himself as innocent. He further pleaded that he refused to lend his vehicle without any remuneration to the police.

No witness was examined in defence.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant as stated above. However, co-accused Gurmit Singh was acquitted.

Aggrieved from the above-said judgment of conviction and order of sentence, present appeal has been filed.

At the time of arguments, learned counsel for the appellant argued only on one point that identity of the accused has not been established beyond doubt. As per prosecution version, the driver of the car sped away the car when it was signalled to stop by the police party. The

Investigating Officer has stated that he was knowing the accused-appellant previously as he used to ply taxi at Fatehabad. Learned counsel for the appellant contended that even if it is taken as it is, even then, how the Investigating Officer came to know regarding father's name, caste and address of appellant. There is nothing on the record to show as to how Investigating Officer was knowing the accused-appellant previously. Learned counsel for the appellant next argued that no particulars regarding ownership of the car etc. have been proved nor the owner of the car was joined in the investigation or examined in the Court to prove beyond doubt that present appellant Sukhvinder Singh was driving the car on that day. He also contended the recovery witness PW-4 ASI Devender Kumar, admitted in his statement that he had no previous acquaintance with the accused previously. It is further argued that it looks improbable that Investigating Officer has identified the driver of the car because as per prosecution version, the driver sped away the car when the signal to stop was flashed and as per PWs, there was sufficient distance between the vehicles and when the police found the car, the accused had already fled away after abandoning the car and at that time, nobody has seen the accused-appellant. He next argued that no test identification parade has been got conducted to identify the accused. Learned counsel for the appellant, therefore, argued that there being merit in the present appeal, the same should be allowed and accused-appellant should be acquitted.

On the other hand, learned State counsel argued that prosecution has duly proved its case by producing cogent evidence. There are no material contradictions or improvements in the statements of the PWs. He further argued that identity of the accused has been duly

established and accused-appellant has been rightly convicted. Learned State counsel, therefore, argued that there being no merit in the present appeal, the same should be dismissed.

We have heard learned counsel for the appellant as well as learned State counsel and have gone through the record minutely and carefully.

From the perusal of the record, we find that in the present case, the identity of the accused has not been established by the prosecution beyond doubt. This case is of Police Station Bhattu Kalan, whereas the accused was plying taxi at Fatehabad i.e. in another town. Secondly, there was very short time with the Investigating Officer to identify the accused. As per the Investigating Officer, he gave signal to stop the car but the driver sped away the car. It is in the evidence that thereafter, the police chased the car and there was sufficient distance between the two vehicles. Later on, the car was found abandoned having bags containing poppy husk. The recovery witness PW-4 Devender Kumar has stated in his statement that he was not previously knowing the accused. He also stated in cross-examination that Sukhvinder Singh was not known to him previously. PW-5 ASI Dharambir Singh told him that car was driven by Sukhvinder Singh and Gurmit Singh was accompanying him in the car. This PW further stated that no resident of village Pilimandori was asked to join as witness at the time of search of the car and weighment of the poppy straw, although 15 villagers had gathered at the spot. This fact also creates doubt in the prosecution version as to why independent witness has not been joined in the investigation of this case. PW-5 ASI Dharambir Singh stated that he identified the accused as he was knowing him because he was working as

taxi driver at Fatehabad. There is no particular of any type or evidence on record that earlier ASI Dharambir Singh had ever hired the taxi or gone with the accused-appellant. There is no other cogent evidence on record to show as to how ASI Dharambir Singh was knowing accused. Even if, it is presumed that Investigating Officer was knowing this fact that accused Sukhvinder Singh used to ply a taxi, even then, how he came to know his father's name, caste, village address etc., which have been mentioned in the ruqa itself. There is no explanation qua this fact. Furthermore, the police party was of police Station Bhattu Kalan whereas the accused was plying taxi in other town i.e. Fatehabad. There is no cogent evidence on record to show as to who is the owner of the car nor owner of the car was joined in the investigation nor he was examined in the Court to connect the accused with this case by showing that accused was driver on the said car on that day. No identification test parade has taken place. There is also no other cogent evidence on record to connect the accused with crime. The Investigating Officer himself in cross-examination has stated that Sukhvinder Singh was known to him because he was working as a taxi driver at Fatehabad but he did not enquire whether he was driving his own vehicle or he was employed by somebody as a driver. He also deposed that he did not make enquiry from the Registering Authority of car No.DDU-7320, as to who is registered owner of the said vehicle. This witness also stated in his cross-examination that he never used car driven by Sukhvinder Singh as a taxi. He came to know the name of Sukhvinder Singh during the course of his official duty when he used to check vehicles including his vehicle and he (Sukhvinder Singh) disclosed his name to him. Even if it is

Dharambir Singh, Investigating Officer, came to know name of accused but still, how he came to know father's name of accused, his address etc. which have been mentioned in the ruqa.

In the facts and circumstances of the present case, a reasonable doubt exists regarding the identity of the accused and prosecution has failed to prove the identity of the accused by leading cogent evidence beyond reasonable doubt.

In view of the above discussion, we find that the impugned judgment of conviction dated 28.11.2002 and order of sentence dated 30.11.2002, passed by learned Addl. Sessions Judge, Fatehabad, are not as per evidence and law and the same are set aside. The accused-appellant Sukhvinder Singh is acquitted of the charge framed against him.

Therefore, finding merit in the appeal, the same is allowed.

As appellant Sukhvinder Singh is on bail, his bail/surety bonds stand discharged.

(A.B.CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

April 19, 2018
Vgulati

Whether speaking/reasoned
Whether reportable

Yes
No