

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

(i) Crl. Appeal No.D-805-DB of 2010 (O&M)

Satwant Singh

...Appellant

VERSUS

State of Punjab

...Respondent

(ii) Crl. Appeal No.D-818-DB of 2010 (O&M)

Narinder Kumar alias Nita

...Appellant

VERSUS

State of Punjab

...Respondent

Date of Decision: March 06, 2018

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

Present: Mr.K.D.S.Sodhi, Advocate
 for the appellant (in CRA No.D-805-DB of 2010).

 Mr.Kuldeep V. Singh Ahluwalia, Advocate
 for the appellant (in CRA No.D-818-DB of 2010).

 Mr.H.S.Sullar, Deputy Advocate General, Punjab
 for the respondent-State.

INDERJIT SINGH, J.

This judgment shall dispose of above mentioned two
connected criminal appeals arising out of the same judgment of conviction
and order of sentence dated 22.07.2010 passed by learned Judge, Special

Court, Ferozepur, whereby the appellants were convicted and sentenced to

undergo rigorous imprisonment for a period 11 years and to pay a fine of ₹1,00,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months each under Section 15 of the NDPS Act.

The brief facts of the case are that on 23.04.2003, SI Jagroop Singh, SHO, along with other police officials was present at the main chowk of village Danewala in connection with patrol duty. Then Baljinder singh came there, who was joined in the police party. In the meanwhile, at about 6.00 a.m., a Tata sumo was seen coming from the side of village Bakainwala and Hindumal Kot on metaled road and on seeing the police party, the driver of the Tata Sumo stopped the same at a distance of 200 yards from the chowk. The driver of the vehicle and one more person from other side of the vehicle came out and ran towards the backside in the fields. On suspicion, SI Jagroop Singh chased them and Head Constable Baljinder Singh was left to guard the vehicle. SI Jagroop Singh along with other police officials and Baljinder Singh, private witness, chased both the accused but they could not be arrested and managed to escape. Therefore, SI Jagroop Singh came to Tata Sumo and Baljinder Singh, after reading the number of said vehicle told that the vehicle belongs to Satwant Singh. He further told to SI Jagroop Singh that owner and driver of the vehicle used to bring poppy husk from vend of Hindumal Kot. Search was conducted by the Investigating Officer SI Jagroop Singh. Six bags containing poppy husk from the backside of the vehicle and two bags containing poppy husk from the middle seat of the vehicle were recovered. Two samples of 100 grams each of poppy husk were separated from each bag and their separate parcels

800 grams in each bag and separate parcels were prepared. All the parcels were sealed by SI Jagroop Singh with his seal bearing impression 'JS'. Sample seal chit was also prepared. Case property was taken into police possession vide recovery memo Ex.P5. Ruqa Ex.P6 was sent to the police station, on the basis of which, FIR Ex.P7 was registered. Statements of the witnesses were recorded. On return to the police station, SI Jagroop Singh kept the entire case property in his safe custody. On 24.04.2003, the case property was produced before learned Magistrate. On 30.04.2003 ASI Manjit Singh arrested accused Satwant Singh and on 03.05.2003, he also arrested accused Narinder Kumar. Nothing was recovered from their personal search. After necessary investigation, challan was presented against the accused-appellants.

On presentation of challan, copies of challan and other documents were supplied to the accused-appellants under Section 207 Cr.P.C. Finding prima facie case, the appellants 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 Constable Harbans Singh, who deposed regarding taking of sample parcels and sample seals to the office of Chemical Examiner. PW-2 Head Constable Baldev Singh deposed that on 03.05.2003, he along with ASI Manjit Singh was present in Police Station Khuian Sarwar. Ramesh Kumar Soni produced accused Narinder @ Neeta before ASI Manjit Singh, who was arrested. PW-3 Head Constable Bharbhagwan mainly deposed regarding sending Special Report to senior officers. PW-4 SI Jagroop Singh, Investigating Officer, mainly deposed regarding investigation

conducted by him in this case. PW-5 ASI Manjit Singh, who was along with the police party, deposed as per prosecution version and recovery in this case.

At the close of prosecution evidence, the accused-appellants were examined under Section 313 Cr.P.C. They were confronted with the evidence of the prosecution and they denied the correctness of the evidence and pleaded themselves as innocent. Accused Satwant Singh also pleaded that he has been falsely implicated in the present case after bringing him from his house in the presence of family members and respectables. No incriminating substance was ever recovered from them. The alleged recovery of poppy husk has been falsely planted upon them.

In defence, accused-appellants examined DW-1 Baljinder Singh, Sarpanch, who deposed that on 23.04.2003, he had gone to police station Khuian Sarwar regarding release of Parkash Singh from the police station. He did not join any police party regarding recovery of poppy husk. He further deposed that he has seen the accused now present in the Court for the first time. He never witnessed any recovery. He identified his signatures on Ex.P5 but stated that the contents were not there when he signed the same and he signed in lieu of release of Parkash Singh.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellants as stated above.

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

At the time of arguments, learned counsel for the appellants argued that in the present case, prosecution has failed to prove the guilt of the accused beyond reasonable doubt. No cogent evidence has been

produced to prove the identity of the persons who fled away from the vehicle. They further argued that there is no cogent evidence on record to connect the present appellants with the commission of the offence. They next argued that no test identification parade has been conducted to establish the identity of the accused. It is further argued by learned counsel for the appellants that Baljinder Singh, private witness, who is stated to have been joined in the police party, appeared in defence and deposed that he has not joined the police party. They next contended that there is nothing in the ruqa or in the statements of the witnesses that they were knowing the accused persons earlier to the occurrence or they identified them at that time. Even, the Investigating Officer in the chief-examination has nowhere stated that these are the accused, who ran away from the spot. Learned counsel for the appellants, therefore, argued that there being merit in both the appeals, the same should be allowed and accused-appellants should be acquitted.

On the other hand, learned State counsel argued that identity of the accused has been duly proved by the PWs. PW-5 ASI Manjit Singh has duly proved the identity of the accused present in the Court. He next argued that PWs have consistently deposed regarding prosecution version and there are no material contradictions or improvements in their statements. He further contended that there is nothing on the record as to why the PWs would implicate the appellants in a false case. Learned State counsel, therefore, argued that there being no merit in both the appeals, the same should be dismissed.

After hearing learned counsel for the appellants as well as

prosecution has failed to prove the identity of the accused-appellants beyond reasonable doubt. Neither in the FIR nor in the statement of Investigating Officer, there is anything that they have identified the accused, who ran away from the vehicle. There is also nothing as to whether they were knowing them earlier to the occurrence or not. The vehicle was stopped on seeing the police party at a distance of 200 yards, and the driver and one other person stated to have run away. In the ruqa, no detailed description of those persons has been given and only their age has been given. The prosecution case is that the Investigating Officer along with other police officials chased them but accused succeeded in running away.

In the facts and circumstances of the present case, the test identification parade was necessary but no test identification parade was got conducted to establish the identity of the accused beyond doubt. Even the Investigation Officer, in the chief-examination, has not deposed that the accused present in the Court are the same persons, who fled away from the spot and he identified them. Another PW ASI Manjit Singh, who is recovery witness, has simply stated in his statement that accused now present in the Court, were successful in running on that day after leaving the Tata Sumo and were arrested by him in this case but he nowhere stated that at that time, when the accused fled away from the spot, he identified them.

From the perusal of the evidence on record, we find that learned trial Court has not appreciated the evidence in right perspective. The findings given by learned trial Court are perverse and against the evidence. The prosecution has failed to prove the identity of the accused and reasonable doubt exists in this case. Benefit of doubt always goes in favour

of the accused. Therefore, by giving benefit of doubt to the accused-

appellants, they are acquitted of the charge levelled against them.

In view of the above discussion, we find that the impugned judgment of conviction and order of sentence dated 22.07.2010, passed by learned Judge, Special Court, Ferozepur, are not correct, as per evidence and law and the same are set aside.

Therefore, finding merit in both the appeals, the same are allowed.

Since appellant Satwant Singh is on bail, his bail/surety bonds stand discharged.

Appellant Narinder Kumar alias Nita, who is stated to be in custody, be set at liberty forthwith, if his custody is not required in connection with any other case.

(A.B.CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

March 06, 2018
Vgulati

Whether speaking/reasoned
Whether reportable

Yes
No