

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

(i) Crl. Appeal No.D-447-DB of 2015 (O&M)

Sukhwinder Singh @ Sukhi

...Appellant

VERSUS

State of Punjab

...Respondent

(ii) Crl. Appeal No.D-635-DB of 2015 (O&M)

Manga @ Gabbar

...Appellant

VERSUS

State of Punjab

...Respondent

(iii) Crl. Appeal No.D-754-DB of 2015 (O&M)

Makhan Singh

...Appellant

VERSUS

State of Punjab

...Respondent

Date of Decision: February 16, 2018

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

Present: Mr.Mandeep S. Sachdev, Advocate
 for the appellant (in CRA No.D-447-DB of 2015).

Ms.Amandip Kaur, Advocate for
Mr.J.B.S.Gill, Advocate
for the appellant (in CRA No.D-635-DB of 2015).

Mr.R.P.Dhir and Ms.Simsi Dhir Malhotra, Advocates
for the appellant (in CRA No.D-754-DB of 2015).

Ms.Ruchika Sabharwal, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

This judgment shall dispose of above mentioned three connected criminal appeals arising out of the same judgment of conviction and order of sentence dated 13.02.2015 passed by learned Judge, Special Court, Hoshiarpur, whereby they were convicted and sentenced to undergo rigorous imprisonment for a period 12 years and to pay a fine of ₹1,25,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two years each under Section 15 of the NDPS Act.

The brief facts of the case are that on 20.08.2007, SI Gurmit Singh, Police Station Tanda, along with ASI Ram Tirath, Head Constable Narinder Singh etc. was present at bus stand Tanda. Then, he received secret information that one Tata Sumo bearing registration No.PB-01-2932 loaded with intoxicated substance is coming from Jammu towards Tanda, which was being driven by Veeru, who used to supply intoxicated substance and if nakabandi is held at Darapur by-pass Tanda then poppy husk/intoxicated substance can be recovered in heavy quantity from the above-said vehicle. After joining Baldev Singh in the police party, Naka was held at Darapur by-pass Tanda and information to DSP Dasuya was also given. Then from the side of Dasuya, one Tata Sumo was seen coming, which was signalled to stop but the driver took the vehicle ahead with fast speed. Then SI Gurmit Singh along with other officials in Govt. vehicle followed Tata sumo. However, driver of the Tata Sumo along with other two persons ran away after parking the vehicle on one side near animal market. DSP Dasuya along with his staff came at the spot, to whom SI

Gurmit Singh disclosed that three persons after alighting from Tata Sumo succeeded in running away and their identification cannot be made. Under the supervision of DSP Dasuya, search of Tata Sumo was conducted, from which 7 bags containing poppy husk were recovered. Two samples each weighing 250 grams were separated from each bag and after preparing parcels, remaining poppy husk on weighment came to 22kgs. 500 grams in each bag. The bags along with sample parcels were taken into police possession vide recovery memo. Ruqa was sent to the police station. FIR was registered. Accused were arrested. Statements of witnesses were recorded. 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 Head Constable Malkiat Singh and PW-2 Head Constable Sukhwinder Singh, formal witnesses, who tendered into evidence, their affidavits Ex.PA and Ex.PB respectively. PW-3 SI Gurmit Singh, Investigating Officer, mainly deposed same facts as narrated above while giving facts of prosecution case. He also deposed in chief-examination that three persons, who were present in the said vehicle, ran away from the spot by taking benefit of darkness. In cross-examination, this witness admitted that none of the absconder could be identified at the spot. No test identification parade was got arranged after

the arrest of the accused. PW-4 SI Prem Kumar mainly deposed that on that

day, SI Gurmit Singh produced before him 14 samples and 7 bags containing poppy husk duly sealed with seal bearing impression 'HS'. He checked the said articles and sealed the same with his seal bearing impression 'PK' and also affixed his seal on the sample seal. PW-5 ASI Ram Nath, who was with SI Gurmit Singh, also deposed regarding recovery of poppy husk from the vehicle. He also deposed that police party followed Tata sumo on government vehicle and they reached near cattle mandi. The vehicle was stopped there and three occupants of said vehicle escaped. In cross-examination, this witness stated that secret informer did not give him identification description of any of the accused. He also admitted that secret information was given against Veeru. He further stated that the police party did not identify the absconders. This witness stated that distance of absconders was about 100 yards from the police party. PW-6 Shiv Singh, owner of Tata Sumo, turned hostile and has not supported the prosecution version. He stated that he did not employ Sukhwinder Singh @ Sukhi on his vehicle on 20.08.2007. PW-7 DSP Harpreet Singh Mander mainly deposed that he reached at the spot after receiving V.T. message and also deposed regarding preparing of parcels etc. PW-8 Pardeep Kumar, Stenographer, mainly proved the ownership of Tata Sumo bearing registration No.PB-01-2932, which was registered in the name of Shiv Singh. PW-9 Paramjit Singh also did not support the prosecution version and turned hostile. He deposed that he was not a financier. Accused are not known to him nor he ever met them. They never confessed before him that their vehicle Sumo was apprehended by the police.

At the close of prosecution evidence, the accused-appellants

evidence of the prosecution and they denied the correctness of the evidence and pleaded themselves as innocent.

No witness was examined in defence.

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 mainly argued on one point that there is nothing in the evidence against the appellants that they were the persons, who ran away from the spot. They further argued that there is not an iota of evidence on record to connect the present appellants with the commission of offence. Learned counsel for the appellants, therefore, argued that there being merit in all the appeals, the same should be allowed and accused-appellants should be acquitted.

On the other hand, learned State counsel argued that prosecution has duly proved its case beyond reasonable doubt. The PWs have consistently deposed regarding prosecution version. Learned State counsel, therefore, argued that there being no merit in all the appeals, the same should be dismissed.

After hearing learned counsel for the appellants as well as learned State counsel and after going through the record minutely and carefully, we find that there is not an iota of evidence on record to prove the identity of the accused in the present case. The owner of the vehicle PW-6 Shiv Singh as well as PW-9 Paramjit Singh, who is witness of extra judicial confession to connect the accused with the crime, have not supported the prosecution version and turned hostile. Even, from their cross-examination,

nothing substantial came out to support the prosecution version. The Investigating Officer and the recovery witness have deposed before the Court that identity of the accused, who ran away from the spot, could not be established. Further, we find that in the present case, no identification test parade took place to establish the identity of the accused. It is in the statement of the Investigating Officer that accused fled away by taking benefit of darkness. The recovery witness, in the cross-examination, has stated that they could not identify the persons who ran away from the spot and distance between them and the persons, who ran away, was about 100 yards. Even, in the ruqa, this fact has been mentioned by the Investigating Officer, that the identity of the accused persons could not be established. No description of any type regarding accused has been mentioned in the FIR. Even, the secret informer has not given any description of Veeru against whom the secret information was given.

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 guilt of the accused-appellants beyond doubt.

In view of the above discussion, we find that the impugned judgment of conviction and order of sentence dated 13.02.2015, passed by learned Judge, Special Court, Hoshiarpur, is not as per evidence and law and the same are set aside. The accused-appellants in all the above-mentioned three appeals are acquitted of the charge levelled against them.

Therefore, finding merit in all the appeals, the same are allowed. Since, appellants Sukhwinder Singh @ Sukhi and Manga @

Gabbar are on bail, their bail/surety bonds stand discharged. Appellant Makhan Singh, 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

February 16, 2018
Vgulati

Whether speaking/reasoned
Whether reportable

Yes
No