

383 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA S-1864-SB of 2008.
Decided on: 18.11.2015.

Mohinder Singh

... Appellant

Versus

State of U.T.

... Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Suman Jain, Advocate with
Mr. Man Mohan, Advocate,
for the appellant.

Mr. Anil Kumar Lamdharia, Add. PP for UT.

JITENDRA CHAUHAN.J.

This appeal is directed against the judgment of conviction dated 22.9.2008 and the order of sentence dated 24.9.2008, passed by the Special Judge, Chandigarh whereby the accused-appellant was convicted and sentenced as under:-

Offence	Sentence	Fine	In default
7 of PC Act	RI for one year	Rs.2000/-	RI for 3 months
13(1)(d)/13(2) of PC Act	RI for one year	Rs.3000/-	RI for 3 months

Both the sentences were ordered to run concurrently.

The facts of the case as noticed by the trial Court in para Nos. 2 and 3 of the judgment reads as under:-

“That Bir Singh son of Sh. Daya Chand, resident of

House No. 1828, Phase-II, Ram Darbar, Chandigarh made a complaint to the Vigilance Cell, Chandigarh alleging therein that his daughter Babita got married to Rajesh son of Kishan Chand, resident of Mohalla Kasampura, Tehsil Mandi, Meerut Cantt., about seven years ago at his residence that is house No. 1828, Phase-II, Ram Darbar, Chandigarh. After marriage, the in-laws of his daughter started harassing her and about two and half years back, she was turned out of her matrimonial home. The matter was reported to the Women and Child Support Unit, Sector 17, Chandigarh and thereafter both the parties reached a compromise. Then the in-laws of his daughter took her with them to Meerut. After 4/5 months they again started torturing Babita for dowry and about 3/4 months back, after giving beatings, they left her at Hallomajra Chowk, Chandigarh. He filed a written complaint in the Woman and Child Support Unit, Chandigarh, which was marked to Mohinder Singh, Sub Inspector. Thereafter, Mohinder Singh, Sub Inspector demanded Rs.6000/- to arrest the in-laws of his daughter. He paid Rs.3000/- to him in the last week of March. In the 1st

week of April 2006, he along with his daughter, SI Mohinder Singh and other police officials went to Meerut in the police vehicle and returned on next day. Then on next day, they again went to Meerut for recovery of dowry articles and SI Mohinder Singh asked him to bear all the expenses and both the days, he demanded bottle of whisky costing Rs.380/- and Rs.200/- for the meal of the accused and Rs.2000/- were incurred on the meal of other officials. After this, SI Mohinder Singh demanded the remaining amount of Rs.3000/- from him after producing accused Kishan Chand in the Court. On this, he explained that he has applied for loan and on receipt of loan he will pay the balance amount. SI Mohinder Singh told him that if he will not pay the amount then he will help the accused. Some of the dowry articles were recovered and some of the items are yet to be recovered. When he went to the office of SI Mohinder Singh for the recovery of remaining articles, he again demanded Rs.1000/- as bribe and told that if he will not pay money then the remaining items will not be recovered. On 17.4.2006, SI Mohinder Singh contacted the complainant on his mobile No. 9814921752 and demanded the balance

amount and also told him that he has to go to Meerut again to arrest the accused and complainant replied that he has only Rs.1000/- with him and promised to pay the same on next day.

On the basis of this complaint, FIR Ex.PY was registered. Two officials, namely, Kanshi Ram and Gian Chand from Food and Supplies Department were also summoned to join the raiding party. Complainant Bir Singh, on being asked, handed over two currency notes of the denomination of Rs. 500/- each bearing No. 5CC 652036 and SBP 350707. Inspector Bishwa Lal applied phenolphthalein powder and put his initials 'B.L' and date as '18.4.2006' thereon. After conducting personal search of complainant Bir Singh, the above said two currency notes were given to him with the instructions to hand over the currency notes to accused Mohinder Singh on his demand. Inspector Bishwa Lal prepared memo of jamatalashi and Havalgi Ex.PB to this effect, which was signed by the complainant and other witnesses. Kanshi Ram was directed to act as a shadow witness and was also instructed to listen to the conversation between the accused and the complainant; to watch their activities

and to give signal to the raiding party by moving right hand on his head immediately after acceptance of the amount by the accused.”

Thereafter all the members of the raiding party reached Sector 17 Woman and Child Support Units, in a government vehicle. The complainant and the shadow witness went to the office where accused Mohinder Singh used to sit. All other members of the raiding party were deputed at different places. Accused Mohinder Singh met the complainant outside the office and demanded the amount. The complainant handed over the tainted currency notes to the accused, who put the said notes in the right pocket of his pant. The shadow witness, immediately, on the passing of the tainted currency notes to accused, by the complainant, gave signal to the police party by moving right hand on his head. Police party rushed there and apprehended the accused red-handed. Personal search of the accused was conducted and two currency notes were recovered from the right side pocket of the pant worn by him. The number of the recovered currency notes were tallied with the numbers mentioned in the memo of Havalgi. Thereafter, the accused was taken in a room and his hand wash was conducted in the Sodium Chloride solution in a plastic bucket. After the hand wash, the colour of the solution turned pink, which was taken in a nip Ex.P3. It was turned into parcel duly sealed with two seals of 'B.L.' Thereafter right side pocket of the pant of the accused was got washed in the separate solution of sodium chloride,

the colour of which also turned pink and the same was also put in a nip and sealed with two seals of 'BL'. It was also turned into parcel Ex.P4. The recovery memo in respect of the hand wash is Ex.PC and that of pocket wash is Ex.PD. Thereafter the pant worn by the accused was taken into possession vide memo Ex.PD after it was turned into a parcel. The currency notes Ex.P-1 and Ex.P2 were got washed in the freshly prepared solution of sodium chloride. On doing so, the colour of the solution turned pink and the same was put in a nip. It was turned into a parcel and was sealed with the seal of 'BL'. Recovery memo of the currency notes Ex. PE and that of the wash of the currency notes Ex.PF were prepared, which were attested by the witnesses. Jamatalshi of the accused was conducted vide +memo Ex.PG. Rough site plan of the place of occurrence Ex.PZ was prepared. Copy of the appointment order of the accused are Ex.PJ and Ex.PK. Sealed parcels were sent to the Central Forensic Science Laboratory, which gave reports Ex.PL and Ex.PM. Sanction for prosecution of accused Mohinder Singh was obtained through letter Ex.PO. Scaled site plan of the place of occurrence Ex. PP was prepared. Statements of the witnesses were recorded. After completion of investigation, challan/report under section 173 Cr.P.C was presented in the Court.

Charges under Section 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act (for short “the PC Act”) were framed against the accused to which he did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined as many as 12 witnesses.

The statement of the accused under Section 313 Cr.P.C was recorded in which all the incriminating circumstances appearing in the prosecution evidence were put to him, which he denied and pleaded false implication. It was stated by the accused that the complainant being inimical towards him, has falsely involved him in the case. In fact, the accused, Kishan Chand in dowry case was being interrogated in the presence of Bir Singh, the complainant in Woman and Child Support Unit, Sector 17, Chandigarh on 1.4.2006 when he was on police remand. Head Constable Gurbachan Singh was also present there. Bir Singh raised a demand of Rs.50,000/- from Kishan Chand falsely. On this, Kishan Chand got infuriated and slapped Bir Singh. On this, there was a great hue and cry. Inspector Ajaib Singh and other office staff also came there and both were pacified. Bir Singh was annoyed due to this incident and got him falsely involved in the case. He had already obtained warrants against other two accused in the dowry case and for execution of warrants, permission of Senior Officer was required. He has been falsely implicated by Bir Singh as he did not help Bir Singh in obtaining the amount of Rs.50,000/- from Kishan Chand.

In the defence evidence, the accused examined DW-1 HC Brij Lal, DW-2 Inspector Ajaib Singh (retired), DW-3 HC Gurbachan Singh, DW-4 SI Sucha Singh and closed the evidence.

After appraisal of evidence, the learned trial court vide the impugned judgment of conviction and the order of sentence dated 24.09.2008, convicted and sentenced the accused as narrated above.

Feeling dissatisfied with the impugned judgment and the order, the present appeal has been directed, which was admitted on 01.10.2008 and sentence of appellant was suspended during the pendency of the appeal.

On behalf of the appellant, it is contended that there are material contradictions in the statements of PW-10, Atamjit Singh and PW-12, Inspector Bishwa Lal with regard to personal search of accused Mohinder Singh. It has come in the testimony of PW-10, Atamjit Singh that Bishwa Lal did not offer himself for search to the accused before he was searched, whereas, PW-12, Inspector Bishwa Lal has stated that before taking personal search of the accused, he had asked the accused to take his personal search but the accused refused to do so. PW-12 in his examination-in-chief has stated that the accused, Mohinder Singh met him outside the office. After getting the signal from the shadow witness Kanshi Ram, the I.O along with the raiding party reached the spot and apprehended the accused whereas, in the cross-examination, this very witness has stated that the complainant, Bir Singh made a telephonic call to the accused Mohinder Singh at his instance. The next contention of learned counsel for the appellant is

that the present case has been lodged against the accused as the

complainant, Bir Singh was inimical towards the accused. When Kishan Chand, the accused in the dowry case was being interrogated in the presence of the complainant Bir Singh, he raised a demand of Rs. 50,000/- from Kishan Chand. On this, Kishan Chand got infuriated and slapped Bir Singh. With the intervention of Police officials, both were pacified. The complainant was annoyed due to this incident and as such, got implicated IO Mohinder Singh in this case. It is further contended that the alleged mobile phone from which the call was made, has not been taken into possession. The particulars of that mobile have not been brought on record by the prosecution. It is further contended that the version of the complainant is not corroborated by the testimony of shadow witness, Kanshi Ram. PW-1, the complainant, Bir Singh has stated that he had handed over the tainted currency notes to the accused, who put the said notes in his right pocket whereas, PW-2, Kanshi Ram, the shadow witness, has deposed that the complainant Bir Singh bent before the accused for touching his feet. Bir Singh was holding something in his fist. He inserted that into the pocket of trouser of the accused. It is further contended that once the work had already been done i.e. the FIR in dowry case had already been registered and the accused had already been arrested, therefore, there was no occasion for the appellant/accused Mohinder Singh to demand illegal gratification from the complainant.

On the other hand, the learned State counsel submits

that the prosecution has established its case beyond a shadow of

reasonable doubt. The demand, acceptance and recovery of the illegal gratification has been proved on the record. The complainant has proved the case of the prosecution. The shadow witness has corroborated the testimony of the complainant. Thus, he supports the judgment and the order passed by the trial Court.

I have heard learned counsel for the parties and have gone through the record of the case carefully.

The prosecution case is unfolded by the complainant Bir Singh who appeared as PW-1 and stated that the accused Mohinder Singh was the Investigating Officer of the dowry case of his daughter. The accused in the dowry case were the residents of Meerut. In order to arrest the accused, the Investigating Officer Mohinder Singh demanded an amount of Rs. 6,000/- from the complainant. The complainant paid him Rs. 3,000/- in the last week of March 2006. In the first week of April 2006, the complainant along with his daughter, I.O Mohinder Singh and other Police officials went to Meerut in the police vehicle and arrested the father-in-law of his daughter. On the next day, they again went to Meerut and effected recovery of some of the dowry articles. The I.O. Mohinder Singh demanded Rs. 3,000/- from the complainant and threatened in case of non-payment, he would help the accused. On 17.04.2006, the accused rang to the complainant to arrange the remaining amount. The complainant showed his inability to pay the amount and made complaint to the Vigilance Department. Two currency notes in the denomination of Rs. 500/- were handed over to

the Inspector Bishwa Lal, who initialed, dated and smeared phenolphthalein powder on the same. The complainant further deposed that his personal search was made and thereafter, the currency notes were handed over to him. Thereafter, the complainant along with PW-2 Kanshi Ram, the shadow witness and the other witness Gian Chand went to the office of the accused. The accused Mohinder Singh came outside the office and demanded the amount. The complainant handed over the tainted currency notes to the accused who put the same in the right pocket of his pant. On this, the shadow witness gave a signal whereupon the police party immediately rushed on the spot and apprehended the accused red handed. The accused was personally searched and two currency notes in the denomination of Rs. 500/- were recovered from his right side pocket of the pant which were tallied with the memo Ex. PB. The hand was washed out in sodium chloride solution in a plastic bucket. The colour of the solution turned pink which was taken in a nip Ex. PB. The right side pocket of the pant of accused was got washed in a separate solution of sodium chloride, the colour of which also turned pink. The solution was taken into possession vide separate recovery memo. To the similar effect is the statement of PW-2 Kanshi Ram who corroborated the version given by the complainant. A perusal of Ex. DG, the application moved by the Investigating Officer for issuance of non-bailable warrant and Ex. DH, the order passed thereon, shows that the accused Mohinder Singh was

authorized by the Court to make arrest of the remaining two accused on

13.04.2006. The demand of Rs. 3000/- was made on 17.04.2006. There was every reason for the accused to make demand of illegal gratification as the arrest of remaining two accused was yet to be made.

With respect to the contradictions pointed out by the learned counsel for the appellant, this Court is of the opinion that though, PW-2, Kanshi Ram has not deposed about the demand of illegal gratification yet, his deposition is corroborative of the recovery effected from the accused. The statement of the complainant is in consonance with his earlier complaint Ex. PA. The recovered notes were the same which were handed over to the complainant for being given to the accused. Here, Section 20 of the P.C. Act can well be pressed into service. Section 20 states that when the amount has been recovered from the possession of the accused, the amount is said to be one which was given by the complainant to the accused otherwise than as legal remuneration, a presumption is against the accused that such gratification was accepted otherwise than legal remuneration. Otherwise also, if a witness turns hostile, his entire testimony cannot be brushed aside. The evidence of a hostile witness can be relied upon by the Court to the extent to which it supports the case of either party. PW-9, Gian Chand deposed that the complainant approached Inspector Bishwa Lal. Two currency notes in the denomination of Rs. 500/- each were initiated, dated and after smearing phenolphthalein powder, the same were handed over to the complainant. The same currency notes

were recovered from the accused and he failed to explain the recovery

from the pocket of his pant. The minor contradictions in the statements of the prosecution witnesses are bound to occur because the occurrence took place on 18.04.2006 whereas the statements of the prosecution witnesses were recorded after a gap of two years. It rather, lends support to the case of the prosecution that the witnesses are not tutored.

The contention of the learned counsel for the appellant that since Kishan Chand accused in dowry case slapped Bir Singh, the present case was got registered against the appellant I.O. Mohinder Singh falsely, carries no weight. The accused has not proved on record any demand of Rs.50,000/- by Bir Singh from Kishan Chand, nor any of the defence witnesses deposed to this effect. Otherwise also, it is highly improbable that a person would implicate another for the simple reason that in his presence somebody else slapped him.

In view of the observations made above, the prosecution has successfully established its case against the accused. Consequently, finding no merit in the present appeal, the same is dismissed. The impugned judgment of conviction and the order of sentence are upheld. The accused is on bail. He be taken into custody to serve the remaining part of the sentence.

18.11.2015.
SN

(JITENDRA CHAUHAN)
JUDGE