

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-1111-SB of 2003
Date of Decision: January 08, 2015

Jawala Singh

...Appellant

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.S.S.Dinarpur, Advocate
for the appellant.

Mr.Surender Singh Pannu, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the judgment of conviction and order of sentence dated 16.05.2003, passed by learned Special Judge, Jagadhri whereby he was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of one year under Section 7 and to further undergo rigorous imprisonment for a period of two years under Section 13(1) (d) of the Prevention of Corruption Act, 1988. He was further convicted and sentenced to undergo rigorous imprisonment for a period of one year under Section 384 IPC. All the sentences were ordered to run concurrently.

The brief facts of the prosecution case are that a case under Section 307 IPC was registered against Chanan Singh and his

son Ajaybir Singh in Police Station Sadhaura in case FIR No.197 dated 26.07.1997. The accused-appellant was SHO of that police station. Chanan Singh was arrested on the intervening night of 26/27 July, 1997 at 2.00 A.M. by ASI Pala Ram. On coming to know his arrest, Man Singh father-in-law of Ajaybir Singh went to Prem Kumar and took him to the police station, where they reached at about 2.30 A.M. Accused Jawala Singh was present in the police station and he refused Man Singh and Prem Kumar to meet Chanan Singh. Rather he pressurized them to produce Ajaybir Singh. At about 9.00 A.M., Man Singh again went to police station and met ASI Pala Ram and expressed his desire to meet Chanan Singh but he was not allowed. When Man Singh was standing in front of police station, he met Ram Gopal, Parveen Kumar @ Babli and Pritam Singh Ex-Municipal Commissioner. They all four went inside the police station and enquired about the SHO and then returned back. Again at about 2.00 P.M, ASI Pala Ram went to the poultry farm of Man Singh and pressurized him to produce Ajaybir Singh and threatened to implicate the ladies in the case if Ajaybir Singh was not produced. At about 7.00 P.M., Man Singh along with Ram Gopal, Parveen Kumar and Dalbir Singh went to police station and they succeeded in meeting Chanan Singh. Chanan Singh told them that he was given beating and turban of Chanan Singh was lying on the floor. Chanan Singh asked them to talk to police men on duty so that he would be saved from the harassment to be meted out by him at the night time. They then contacted ASI Pala Ram, who directed them to meeting accused-

appellant, who was present in his quarter. Dalbir Singh went to talk to accused and returned back after some time and told that accused-appellant was demanding ₹10,000/- for not giving beating to Chanan Singh and for planting a cross case upon the complainant party of that case. Harpal Singh son-in-law of Chanan Singh also reached there. He was having ₹5000/- with him. Man Singh brought an amount of ₹5000/- from his house. ₹10,000/- was then handed over to Dalbir Singh. Dalbir Singh along with Ram Gopal and Parveen Kumar went to the quarter of the accused. They returned after some time and told that bribe money had been paid to the accused. They went inside the police station and told Chanan Singh that the bribe has been given to the accused. On the next day, Man Singh went to the police station and met Chanan Singh, who told him that he was not given beating by the police. Chanan Singh was released on bail on 12.08.1997. On 17.08.1997, Chanan Singh accompanied by Man Singh and Harpal Singh met Superintendent of Police (SP) Yamuna Nagar and told him about the entire occurrence. Statement of Man Singh was recorded. The accused was arrested. After necessary investigation, challan was presented against accused-appellant.

On presentation of challan against accused-appellant, copies of challan and other documents were supplied to him under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant was charge-sheeted under Section 7 read with Section 13 of Prevention of Corruption Act, 1988 and Section 384 IPC, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Man Singh, who mainly deposed as per prosecution version. PW-2 Head Constable Bal Kishan brought the original record regarding posting of SI Jawala Singh Ex.PC, vide which he was transferred from Chhachhrauli to police station Sadhaura and was posted as SHO. PW-3 Ram Gopal also deposed as prosecution version. He also deposed that he along with Dalbir Singh and Parveen Kumar @ Babli went to the quarter of SHO Jawala Singh, who was present there and on his asking, they sat down there and SHO told them that work will be done and asked whether they have brought the money which he told to Dalbir. Thereupon, he (witness) gave ₹10,000/- to SHO Jawala Singh on his demand and he assured them to go carefree regarding Chanan Singh and also told that a cross case will be registered against the opposite party. PW-4 Parveen Kumar @ Babli also deposed as per prosecution version. PW-5 Constable Mulakh Raj mainly proved the site plan Ex.PF. Sardeep Singh was examined as PW-6. PW-7 Constable Pohla Singh is formal witness. PW-8 SI Isham Singh deposed regarding recording of formal FIR. PW-9 Constable Raghbir Singh is also formal witness. PW-10 Chanan Singh, who was arrested and kept in the lock up in the police station, also consistently deposed regarding prosecution version. PW-11 Head Constable Joginder Singh deposed that as per report No.40 dated 27.07.1997, SHO Jawala Singh had gone to Punjab in connection with a case FIR No.194/1997 in the intervening night of 26/27.07.1997. On 27.07.1997 at about 4.30 P.M., Jawala Singh along

with other police officials reached back to the police station. Jawala Singh told him to make entry regarding his arrival along with other officials in the DDR registered at 10.30 P.M. and he also asked him (witness) that he is taking rest at his government quarter as he is not feeling well. So, at 10.25 P.M. an entry was made by him in the DDR regarding the arrival of Jawala Singh along with police officials in the police station. PW-12 Harpal Singh also deposed as per prosecution version. PW-13 O.P.Kadiyan, SP, Hisar deposed regarding investigation of this case and regarding preparation of final report under Section 173 Cr.P.C.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. and he denied the correctness of the evidence and pleaded himself as innocent. He also pleaded that he has been falsely implicated in this case as the then SP was annoyed with him. He has not conducted any investigation against Chanan Singh. He was transferred from police station Sadhaura on 28.07.1997 to police station Yamuna Nagar but he was not relieved by the then SP and later on involved in this case.

In defence, accused-appellant examined DW-1 Head Constable Gurcharan Singh, DW-2 Rajesh Kumar, DW-3 Constable Raj Karan and DW-4 Head Constable Lal Singh.

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

During the pendency of the appeal, appellant Jawala Singh died and his LRs were impleaded for the purpose of pursuing

the appeal vide order dated 29.08.2014.

At the time of arguments, learned counsel for the appellant argued that in this case Dalbir Singh before whom SHO Jawala Singh made demand of ₹10,000/-, has not been examined, therefore, demand is not proved. He further argued that even the amount was handed over to Dalbir Singh for payment to SHO Jawala Singh, therefore, even the acceptance of the amount has not been proved. Learned counsel for the appellant next argued that as per DDR, on that day, accused along with other police officials returned at 10.30 P.M. and PW-11 Head Constable Joginder Singh's oral statement cannot be believed and documentary evidence cannot be ignored. He next contended that there is delay in recording the FIR, which also creates doubt in the prosecution version. He further argued that in this case, sanction is defective as it was given by SP whereas it should be given by the DIG. He next argued that there was no motive for asking bribe. Learned counsel for the appellant, therefore, argued that there being merit in the appeal, it should be allowed.

On the other hand, learned State counsel argued that the prosecution has duly proved its case by leading cogent evidence. PW-1 Man Singh, PW-3 Ram Gopal, PW-4 Parveen Kumar @ Babli, PW-10 Chanan Singh and PW-12 Harpal Singh have consistently deposed regarding prosecution version. The demand has been duly proved by PW-3 Ram Gopal. The payment of the bribe money has been duly proved by PW-3 Ram Gopal and PW-4 Parveen Kumar @ Babli. He further argued that there is motive also to ask for the bribe,

as accused assured that Chanan Singh will not be given beating in the lock up and the witnesses have duly proved that after giving bribe, no beating or harassment was given to Chanan Singh in the lock up. Learned State counsel next argued that SP has promoted Jawala Singh, therefore, the sanction is to be given by the SP and not by the DIG. He further contended that act was not done while performing official duties by the accused, therefore, the sanction under Section 197 Cr.P.C. is also not required. Learned State counsel, therefore, argued that there being no merit in the appeal, the same should be dismissed.

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

From the record, I find that there is no merit in the arguments of learned counsel for the appellant. First of all, though Dalbir Singh was sent to talk to SHO Jawala Singh and demand was raised to him but the demand of bribe has been duly proved by the PWs, especially PW-3 Ram Gopal, who stated that when they went to pay the amount of ₹10,000/-, accused Jawala Singh, who was the then SHO had asked whether they have brought the amount and after receiving the same, he assured that they should be carefree that Chanan Singh will not be harassed. Therefore, if Dalbir Singh has not been examined, in no way, it can be held that demand and acceptance has not been proved. This witness has proved the demand and acceptance of the bribe and also proved as to why the

money was demanded and paid. The statement of PW-1 Man Singh complainant is duly supported and corroborated by PW-3 Ram Gopal, PW-4 Parveen Kumar @ Babli, PW-10 Chanan Singh and PW-12 Harpal Singh. All these PWs have consistently deposed regarding prosecution version. There is no reason or ground as to why the PWs would depose falsely against the accused. Even if, it is taken that accused had some enmity or motive against the SP, though not proved on the record by leading any cogent evidence, even then there is nothing to show as to why these private PWs would depose falsely against the accused. There is nothing in the cross-examination of these PWs, which may make their statements unreliable. There are no material contradictions or material improvements in their statements, which may create doubt in the prosecution version. The motive has been duly proved as bribe money was demanded for not giving beating to Chanan Singh, who was in the police lock up and who was earlier given beating and harassment in the lock up. The act of asking bribe for not giving beating, cannot be held as done while performing official duties, so there is no need of sanction under Section 197 Cr.P.C. As regarding sanction under Section 19 of the Prevention of Corruption Act, it has been given by the SP as the SP is the competent authority to give the sanction. Learned trial Court in the judgment, has discussed provisions of Police Rules and has correctly held that sanction is valid. I fully agree with the findings of the learned trial court regarding grant of sanction by the SP. In no way, it can be held that DIG is competent to grant the sanction. As Chanan Singh

was in the lock up in the police station and the present accused was the SHO of that police station, therefore, the FIR cannot be registered immediately because there was every apprehension with the complainant that accused may create problem for Chanan Singh and can harass him. After the release of Chanan Singh, the complainant party met the SP because the complaint was against the SHO. Keeping in view the facts and circumstances of the present case, the delay in getting the FIR registered, in no way can be held fatal to the prosecution case. The statement of PW-11 Head Constable Joginder Singh further supports and corroborates the prosecution version that SHO Jawala Singh was present in this quarter on that day and he (witness) had given the time of his (accused) arrival on that day as 10.30 P.M. on the asking of the accused, who was his superior officer.

From the evidence on record, I find that prosecution has duly proved its case against accused-appellant by leading cogent evidence beyond any reasonable doubt. The findings of learned Special Judge, Jagadhri are correct, as per law and the same are upheld.

Therefore, finding no merit in the present appeal, the same stands dismissed. As the appellant had already died, therefore, no further proceedings are required to be initiated in this case regarding his surrender.

January 08, 2015
Vgulati

(INDERJIT SINGH)
JUDGE