

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA No.S-1761-SBA of 2002 (O&M)
Date of Decision: January 21, 2015

U.T. Chandigarh

...Appellant

VERSUS

Shamsher Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.A.S.Sullar, Addl. Advocate Public Prosecutor,
for the appellant-U.T. Chandigarh

Ms.Ekta Thakur, Advocate
for the respondents.

INDERJIT SINGH, J.

Appellant-U.T. Chandigarh has filed this appeal against Shamsher Singh, Kaur Singh, Mukhtiar Singh and Gulzar Singh respondents challenging the impugned judgment dated 12.04.2002 passed by learned Addl. Sessions Judge, Chandigarh vide which the judgment of conviction and order of sentence dated 05.02.2000 passed by learned Addl. Chief Judicial Magistrate, Chandigarh was set aside and accused-respondents were acquitted.

The challan against Shamsher Singh, Kaur Singh, Mukhtiar Singh and Gulzar Singh was presented by SHO, Police Station East, Chandigarh in case FIR No.210 dated 26.06.1994 under Sections 379, 411, 332, 353/34 IPC. The brief facts of the case are that on 26.06.1994 SI Sukhpal Singh, who was present near Gurdawara Tibba Sahib along with other police officials received secret information that Shamsher Singh, Driver and Kaur Singh,

Conductor of Bus No.PB-11A-9230 of PEPSU Roadways, Bathinda, were selling diesel from said government bus to Mukhtiar Singh, Driver and Gulzar Singh, Cleaner of Truck No.CH-01-8107 near Weighment Bridge, Transport Area, Sector-26, Chandigarh and if a raid was conducted, then they can be caught red handed. The police party joined Mustaq Ali alias Khurshid and went to the spot where bus No.PB-11A-9230 was parked near Weighment Bridge, Transport Area, Sector-26, Chandigarh and Shamsheer Singh was taking out the diesel from the tank of the bus by putting a pipe therein and Kaur Singh was holding second end of pipe in a can wherein the diesel from the tank of the bus was being received. Gulzar Singh was found holding that can. Mukhtiar Singh was found holding a plastic can having capacity of 20 litres with 10 litres of diesel. When the police party stopped all these persons, Mukhtiar Singh dropped the can therein and then picked up a brick bat and hurled it towards SI Sukhpal Singh which hit him on the back side of his head. Thereafter, Mukhtiar Singh, ran away. SI Sukhpal Singh, apprehended the remaining accused. SI Sukhpal Singh along with Constable Gurmit Singh was sent to General Hospital, Chandigarh for the purpose of medical examination. After necessary investigation, challan was presented against the accused-respondents.

On presentation of challan against accused-respondents, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the accused-respondents were charge-sheeted under Sections 409, 379, 332 and

353 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined sixteen witnesses and closed the evidence.

At the close of prosecution evidence, the accused-respondents were examined under Section 313 Cr.P.C. and they denied the correctness of the evidence and pleaded themselves as innocent. In defence, accused examined DW-1 Constable Baljit Singh from Police Headquarters, who brought the summoned record regarding seizure of PRTC bus No.PB-11A-9230 with time 9.27 P.M. dated 26.06.1994. He stated that after receipt of message, the same was flashed to all the police stations by wireless. This bus was intercepted by vehicle No.E-10 of Control Room near Housing Board Chowk and thereafter, officials from Bapudham Colony Police Post informed the Control Room in that regard and proved the entry of the same as Ex.DW1/A.

Learned ACJM, Chandigarh after appreciating the evidence, convicted and sentenced accused-respondents under Sections 409, 379, 332 and 353 read with Section 34 IPC.

Feeling aggrieved from the above-said judgment, accused-respondents filed an appeal before the Sessions Court and learned Addl. Sessions Judge, Chandigarh accepted the appeal and acquitted the accused-respondents vide impugned judgment dated 12.04.2002.

Against the above-said impugned judgment passed by learned Addl. Sessions Judge, Chandigarh, present appeal has been

filed by U.T. Chandigarh..

I have heard learned Addl. Public Prosecutor for U.T. Chandigarh as well as learned counsel the respondents and have gone through the record minutely and carefully.

From the record, I find that findings given by learned Addl. Sessions Judge, Chandigarh in the judgment dated 12.04.2002 are correct and as per law. The evidence has been re-appreciated in correct perspective. From the record, also I find that there are two parallel version. As per the prosecution version, a secret information was received at about 10.00 P.M. that accused were committing theft of diesel from the tank of the bus near Gurdwara and Dharamkanda in Transport Area, Sector-26, Chandigarh. The other story of the accused is that bus was taken into police possession at 9.31 P.M. from the Housing Board Chowk and it was taken to Bapu Dham Colony. The accused examined DW-1 Constable Baljit Singh, who has brought the summoned record and deposed as per the summoned record that on 26.06.1994, report was recorded at 9.27 P.M. about the fact of rounding one bus No.PB-11A-9230. Thereafter, wireless messages were sent to various police stations that this bus was rounded up by the van of the Police Control Room No.E-10 at Housing Board Chowk on 26.06.1994 at 9.31 P.M. The record brought by DW-1 is a public record maintained by a public servant in the discharge of his public duty. There is nothing on the record to disbelieve this documentary evidence. If the Police Control Room record shows that bus in question was rounded up at 9.31 P.M. at

Housing Board Chowk, which is away from the place of occurrence i.e. Transport Area, Sector-26, Chandigarh, a reasonable doubt exists in the prosecution version. If the bus was already taken in police possession at 9.31 P.M., then the whole prosecution version regarding receiving of secret information and pilferage of diesel from the tank of the bus etc., becomes doubtful. Learned Addl. Sessions Judge, Chandigarh has also discussed other points for the acquittal as the prosecution has not proved the quantity of the diesel in the tank at the time of occurrence and there is nothing to show that diesel has been found less in the tank of the bus.

Keeping in view the facts and circumstances of the present case, especially the defence version that the bus in question was already in police possession, a reasonable doubt exists in the prosecution version. The accused is not to prove the defence version by leading cogent evidence beyond reasonable doubt. Rather, the accused, by producing the defence evidence, has to create doubt in the prosecution version. So, if two versions are available and a reasonable doubt is created in the prosecution version, then benefit of doubt is to be given to the accused. Therefore, learned Addl. Sessions Judge, Chandigarh, by giving benefit of doubt, has rightly acquitted the accused-respondents by holding them not guilty.

Therefore, finding no merit in the present appeal, the same is dismissed.

January 21, 2015
Vgulati

(INDERJIT SINGH)
JUDGE