

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No. S-2535-SB of 2014

Date of Decision: 13.01.2016

Pipal Singh

...Appellant

Versus

State of Punjab

...Respondent

Coram: Hon'ble Mrs. Justice Raj Rahul Garg

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters? Yes
3. Whether the judgment should be reported in the Digest?

**Argued By: Mr. Ashutosh Hoshiarpuri, Advocate
for the appellant.**

**Mr. Surjeet Singh Chaudhary, Deputy Advocate General,
Punjab for the respondent-State.**

Raj Rahul Garg, J.

This appeal is instituted by appellant-Pipal Singh son of Shahida Singh against impugned judgment of conviction rendered by learned Sessions Judge, Ferozepur whereby he was held guilty and convicted under Section 489-B of the Indian Penal Code (for short 'IPC'). Vide order on sentence of the even date, he was sentence to undergo rigorous imprisonment for 7 years and a fine of Rs. 5000/- for committing offence punishable under Section 489-B IPC; in default of payment of fine, to further undergo rigorous imprisonment for 3 months.

2. Briefly, prosecution case is like this; that on 06.07.2011, Inspector Sarabjit Singh, Incharge CIA Staff along with police officials was going to village Gandhu Kilcha from village Habibwala, on patrol. When police party was one kilometer to village Gandhu Kilcha, they saw appellant-accused coming on foot from the opposite side. Seeing the police party, accused-appellant got perplexed and had tried to turn back. On the basis of suspicion, he was apprehended. His identity was verified. On search of appellant-accused, 244 counterfeit currency notes in the denomination of Rs. 1000/- each and 512 counterfeit currency notes in the denomination of Rs. 500/-each were recovered from the plastic bag held by the accused in his right hand. The counterfeit currency notes were totaling Rs. 5,00,000/- Same were put in a plastic bag and sealed with the seal of 'SS' and taken into police possession, vide separate recovery memo Ex. P-3. The seal after use was handed over to SI Pargat Singh. Specimen seal was also separately prepared. Ruqa, Ex. P-6, was sent to police station for the registration of the case, whereupon formal FIR Ex. P-7 was recorded. Site plan of the spot, Ex. P-8, was also prepared. Case property was deposited with the MHC of the police station Mamdot, with the seals intact. Accused was arrested. The counterfeit currency notes were sent to Currency Notes Press, Nasik. On receipt of report Currency Notes Press, Nasik (Ex. P-9), the currency notes were found as counterfeit notes. After completion of necessary investigations, challan was put in the court against the accused.

3. Finding a prima-facie case against the accused, He was

initially charge-sheeted for committing offence punishable under Section 489-C of the IPC vide order dated 04.11.2011. Later on, charge was amended, vide order dated 04.08.2013, finding a prima-facie case against the accused for offence under Section 489-B as well. Accordingly, accused was charge-sheeted for offences under Sections 489-B and 489-C of the IPC. After taking entire prosecution evidence, statement of accused, under Section 313 Cr.P.C., was recorded wherein each allegation of the prosecution appearing against him was denied and the accused pleaded his innocence and false implication. Regarding his false implication, accused stated that he was an informer of BSF. A huge quantity of heroin and fake currency notes was recovered by BSF people and an FIR was lodged regarding that in the year 2009 against Sarabjit Singh, Investigating Officer of this case. It was revealed by the smugglers that the consignment was to be delivered to Inspector Sarabjit Singh of CIA Staff and earlier one consignment of huge quantity of heroin and 10 lacs fake currency notes were delivered to Inspector Sarabjit Singh. Inspector Sarabjit Singh doubted that information regarding the movement of smugglers resulted in the apprehension of the smugglers and the registration of the case against Inspector Sarabjit Singh. The enquiry against the role of Inspector Sarabjit Singh, by the senior BSF officials was going on. He (accused) was arrested from his house without any recovery and was made a victim of false implication so that he may not join the enquiry and he may be made to be disbelieved in enquiry to be conducted by the BSF and senior police officials.

4. After hearing both the counsel for the parties and appraising the entire evidence and material on record, the learned trial Court recorded the judgment of conviction dated 09.09.2013 and order on sentence of the even date as set out in the earlier part of this judgment.

5. We have heard Mr. Ashutosh Hoshiarpuri, Advocate for the appellant-accused and Mr. Surjeet Singh Chaudhary, Deputy Advocate General, Punjab for the respondent-state and have also gone through the entire evidence and material on record.

6. Referring the statement of SI Pargat Singh, PW-3, it was argued by the learned counsel for the appellant-accused that during the course of his cross-examination PW-3 SI Pargat Singh deposed that a pistol was recovered from the accused at the spot and subsequently another pistol was recovered from his house. If two pistols were recovered from the accused, where those pistols have gone as no case in Arms Act was registered against the appellant-accused and this fact shows his false implication.

7. The above argument of learned counsel for the appellant-accused is devoid of any force as it is not the prosecution case that at the time of apprehension of the accused and recovery of counterfeit currency notes from his possession, pistols were also recovered from him. Even it is not the prosecution case that any raid was conducted at the house of the accused or that any pistol was recovered from his house. Under these circumstances, if SI Pargat Singh, PW-3, during the course of his cross-examination, deposed about recovery of pistols from the possession of

accused, that is nothing but an attempt to favour the accused by creating doubt in the prosecution case. During the course of his examination-in-chief, he did not state any such thing. So far recovery of 244 counterfeit currency notes of the denomination of Rs. 1000/- each and 512 counterfeit currency notes of the denomination of Rs. 500/- each are concerned, the statement of PW-3 SI Pargat Singh and that of Inspector Sarabjit Singh, PW-4, are consistent. As such the statement regarding recovery of pistols from the possession of accused is liable to be ignored.

8. It was next argued by learned counsel for the appellant-accused that in fact appellant-accused was the informer of the BSF and FIR bearing No. 12 dated 02.02.2009 Ex. D-1 was registered at police station-Mamdot against Inspector Sarabjit Singh, PW-4. Inspector Sarabjit Singh, admitted that in the aforesaid FIR there was allegation that he was to receive the consignment of the narcotic and counterfeit currency notes. He also faced enquiry regarding delivery of huge quantity of heroin and Rs. 10 lacs fake currency notes. With this evidence on the file, the defence version becomes probable that since appellant-accused was the informer of BSF, therefore, PW-4 Inspector Sarabjit Singh, CIA Staff suspected that the information regarding delivery of consignment of heroin and fake currency notes was given by the accused to the BSF people and since appellant-accused was to appear as witness against him in the enquiry, therefore, he was got implicated falsely in this case. The above argument of learned counsel for the appellant-accused is again not substantiated on record. Though FIR, Ex. D-1, was registered against Inspector Sarabjit

Singh with aforementioned allegations, yet, inspector Sarabjit Singh as PW-4 deposed that the allegation against him were false. He also denied the suggestion that the appellant-accused was to appear against him as witness or that for that very reason he was implicated falsely in this case. Even otherwise, the aforesaid FIR was registered on 02.02.2009 whereas the recovery in this case was effected on 06.07.2011 i.e. after a lapse of more than two years. Under these circumstances, it cannot be said that appellant-accused has been falsely implicated on account of registration of FIR, Ex. D-1, against Inspector Sarabjit Singh. Apart from it, the matter pertaining to Inspector Sarabjit Singh was reported by the BSF to the Punjab Police and further investigations in the matter was conducted by the Punjab Police and the FIR has already been registered in the police station-Mamdot. Under these circumstances, the BSF is set to have seized of the matter. There is nothing on record to show that on the date of registration of this case against the appellant-accused, some enquiry was going on against Inspector Sarabjit Singh in which appellant-accused was to appear as witness. It is, of course, true that the burden of proof on the defence is not as strict as on the prosecution. It is enough for the accused if he succeeds in showing the defence version probable so as to create doubt in the prosecution case. But for the above recorded reasons, appellant-accused has failed to show that the defence version is in any way probable.

9. The next argument raised by learned counsel for the appellant-accused is this that no independent witness was joined in this case so as to

show the genuineness of the prosecution case. When the police party was one kilometer to village Gandhu Kilcha, as per prosecution version, appellant-accused was apprehended. Investigating Officer, PW-4, deposed during the course of his cross-examination that Gandhu Kilcha and Habibwala road is straight road and a *Pakka* road. The said road is a thoroughfare. There are fields on both the sides of road. There are Sarpanch, Panch and other respectable in Gandhu Kilcha and Habibwala. Under these circumstances, the independent witnesses could be very well available to the Investigating Officer to join them in the investigations of this case. But for the reasons best known to him, no independent witness was joined in the investigations. The simple statement of Investigating officer that none was ready to join the investigations is not sufficient to absolve Investigating Officer of his liability to join the independent witnesses in the investigations. Even the statements of PW-3 and PW-4 on this point are contradictory. PW-3 SI Pargat Singh deposed that no effort was made to join the independent witnesses in the investigations of this case whereas per Investigating Officer the effort was made but no one was ready to join the investigations. Thus, the statements of the both the witnesses are contradictory on this point and cannot be said to be free from doubt. Benefit of which has to go to the accused.

10. The above argument of learned counsel for the appellant-accused is not sustainable as firstly there is no contradiction in the statements of aforesaid two witnesses. SI Pargat Singh, PW-3, deposed that HC Sher Singh was sent to arrange for a public witness but no one

was ready to join the police party. The statement of Inspector Sarabjit Singh, PW-4, is also to the same effect. Of course, he deposed that he had not recorded the statement of that police official who was sent to call the respectables from the village. He also did not know as to which respectables were approached by that official. This statement of Investigating Officer does not make out a case in favour of the accused as by now it is the settled proposition of law that though it is imperative for the Investigating Officer to join the independent witnesses in the investigations of the case, yet, the independent witnesses generally avoid to stand as witness so that they may not earn enmity of the person against whom they were appearing as witnesses. They seldom assist the investigating officer in the investigations of the case. It is also the settled proposition of law that the statements of official witnesses cannot be discarded simply for the reason that the witnesses are official witnesses. The testimonies of official witnesses are at par with the testimonies of non-official witnesses, in case they are trustworthy, consistent and inspire confidence in the mind of the court regarding guilt of the accused. In the case in hand, fake currency notes to the tune of Rs. 5 lacs were recovered from the possession of the accused which he was carrying in a plastic bag in his right hand. These currency notes were 244 of the denomination of Rs. 1000/- each and 512 notes of the denomination of Rs. 500/- each. Report of Currency Notes Press, Nasik, Ex. P-9, proves that the currency notes recovered from the possession of accused were counterfeit currency notes. Possessing such a huge number of currency notes in the border area

clearly speaks volumes about the activities being carried on by the police officials on duty guarding the border. Recovery of such a great number of currency notes from the possession of appellant further goes to show that the appellant-accused was indulging in the smuggling at the border area. The offence is serious in nature which does not deserve any kind of leniency. The learned trial Court while holding accused guilty under Section 489-B of the IPC, skipped sentencing him under Section 489-C of the IPC. The State has not filed any appeal in this regard. Even otherwise, the sentence provided under Section 489-C is lesser than the sentence provided under Section 489-B of the IPC. Even otherwise, had accused been sentenced for committing offence under Section 489-C IPC, both the sentences would have been made concurrent. As such, by not sentencing the accused separately under Section 489-C IPC, it does not make much difference. Therefore, it is left as that.

11. For the reasons recorded above, finding no merit in this appeal, maintaining the judgment of conviction dated 09.09.2013 and order on sentence of the even dated, the appeal is dismissed.

(Raj Rahul Garg)
Judge

13.01.2016

Waseem Ansari