

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

CRA-S-878-SBA-2005

DATE OF DECISION : 13th DECEMBER, 2017

State of Haryana

.... Appellant

Versus

Ved Pal

.... Respondent

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

* * * *

Present : Ms. Tanushree Gupta, DAG, Haryana for the appellant.

Mr. Sandeep Kotla, Advocate for the respondent.

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A. B. CHAUDHARI, J. (Oral)

Being aggrieved by the judgment and order dated 05.11.2004 passed by learned Special Judge, Gurgaon in FIR No.19 dated 18.11.2000 registered under Sections 7 and 13(1(d) of Prevention of Corruption Act (in short, PC Act) at Police Station SVB (H), Gurgaon, the present appeal was filed by the State of Haryana in this Court against the acquittal of the respondent-accused.

In support of the appeal learned State counsel vehemently argued that the learned trial Court committed error in recording the order of acquittal by holding that the prosecution has failed to prove its case beyond reasonable doubt. In other words, the complaint has fully supported the case and therefore there is no reason the trial Court could reject the demand and acceptance. According to him since the money was found on the bed under the quilt the presumption under Section 20 of the PC Act, was raised which was not rebutted by the accused. She

therefore prayed for the reversal of the acquittal order passed by the trial Court.

Per contra, learned counsel for the respondent-accused vehemently opposed the present appeal and supported the judgment and order and reasons recorded by the trial Judge for acquitting the respondent-accused. He submitted that the trial Court has written a well reasoned judgment and there are no reasons why this Court should interfere with the order of acquittal, in the light of the parameters laid down by the Apex Court in the matter of appeal against acquittal. He therefore prayed for dismissal of the appeal.

Heard learned counsel for the rival parties at length and perused the entire judgment and order so also the reasons recorded therein.

The judgment recorded by the trial Judge is an ideal judgment which shows how to appreciate and marshal the evidence brought by both the sides before the Court. The judgment shows simple and clear English language without any conundrum and by putting the salient features in the prosecution case and its evidence in a neat and disciplined manner. Be that as it may, the trial Court recorded the order of acquittal and in my opinion, rightly because the very genesis of the prosecution case, namely that the complainant was made an accused in a drug case and the bribe money was being paid to the accused for removing his name from that case stood destroyed. The trial Court has rightly observed that to find out whether he was really involved in the drug case or not it was necessary for the prosecution to produce the documentary evidence along with the chargesheet to believe that indeed

the prosecution case was as was stated before the trial Court. When the documentary evidence was available, the parole evidence could not have been accepted as is the trite law. Thus there was a failure on the part of the prosecution in not producing the said documentary evidence.

The trial Court also held that the bed and the quilt under which the money was allegedly found during raid, in particular the quarter, was not proved to be the quarter that was allotted to the accused. In the governmental functioning, the Court would also always insist on the documentary evidence and, therefore, it was obligatory on the part of the prosecution to prove that quarter was indeed allotted to the accused and he was indeed in possession thereof on the date of the conduct of the raid. Though the prosecution relied on the oral evidence but did not think it necessary to bring documentary evidence in that behalf. I think the approach of the trial Court was perfectly legal, correct and proper. The trial Court also found that there were thus material inconsistencies in the evidence of the prosecution and those inconsistencies have been recorded by the trial Court. I have gone through those reasons and find that the inconsistencies have been correctly described by the trial Court as material discrepancies and therefore the trial Court has rightly made the order of acquittal. It would be proper to quote the following paragraphs from the judgment of the trial Court instead of repeating the reasons:

13. After considering the arguments of both the sides and going through the case file, it is clear that the prosecution has not produced any evidence to show that any recovery of narcotic substance i.e. opium was made from Yunis etc. The prosecution

should have produced the evidence showing that in the said recovery of opium, the accused was also alleged to be a culprit but it has not been done so. The prosecution has also not examined the mother of the complainant to show that the accused had contacted her at her residence in the absence of the complainant and directed her to send the complainant to P.P. The evidence was necessary to complete the link in the claim of prosecution story.

15. As per the allegations made in the complainant Ex.PE, the complainant was accompanied by Asloop but in the endorsement made as Ex.PE/2 on complaint Ex.PE, the complainant was accompanied by Abdul Wahab and not Asloop on 18.11.2000. So, it is clear not as to which of the two namely Asloop and Abdul Wahab came alongwith the complainant on 18.11.2000 to the DSP. For the sake of arguments, if it is said that Abdul Wahab was present during the raiding party as mentioned by PW7 to PW9, even then the non examination of Abdul Wahab who was the shadow witness is fatal to the prosecution story. In this regard the reliance can be placed on the observations made by the three judges Bench of the Hon'ble Apex Court in Meena

(Smt) W/o Balwant Hemke versus State of Maharashtra, 2000 Supreme Court cases (Cri) 878 wherein it has been clearly observed that when the shadow witness in the trap party was not examined then mere recovery of the currency notes and positive result of phenolphthalein test could not be said to be sufficient to establish the guilt against the accused.

17. As per the statements of PW7 to PW9, the hand wash of the accused Ved Pal turned pinkish but if we go through the report of FSL proved on the file as Ex.PG, it is clear that in the hand wash of the accused, only sodium carbonate was detected. Thus, it is not understandable as to how the colour of the hand wash of accused turned pinkish in the absence of phenolphthalein powder sticking on his hands. So, the statements of these witnesses which are not in consonance with the actual facts, cannot be believed for convicting the accused. This also shows that in fact the money was not given to the accused.

19. The prosecution has also failed to show that in fact the quarter no.2 from where the tainted money was recovered lying beneath the quilt was not proved to be allotted to the accused because no evidence has been led to prove this fact by the

prosecution. On the other hand, the accused has examined CHC Virender Singh as DW2 who has stated that on 18.11.2000 when he was posted in CIA Nuh, he along with HC Ramesh Chand was residing in quarter no.2 and that accused Ved Pal who was ASI at that time never stayed in this quarter. Therefore, it can not be said that the accused was having any connection with the quarter no.2 from where the recovery was effected. For the sake of arguments, if it is admitted that at the time of raid, he was present in the said room but it did not mean that he demanded and received the tainted money from the complainant. So, on this count also, the prosecution story has become doubtful and cannot be accepted.

20. If we go through the statements of the witnesses, it is clear that the same are not in consonance with one and another. PW7 has stated that before getting the hands of the accused, his (PW7's) hands, currency notes and the portion of Chaddar washed, nothing was mixed in water but PW9 has stated that sodium carbonate was mixed before doing so. As per the statement of PW7, there was only one room on the ground floor and one room on the upper floor whereas PW8 has stated that besides the room, from where the

recovery was effected, there was also a drawing room there whereas PW9 has stated that there was also a kitchen therein. PW7 has stated that after putting the tainted money beneath the quilt he came down stairs and gave signal to the raiding party but in his cross-examination, he has stated that he had given the signal by just coming out of the door of the room whereas PW9 has stated that the complainant passed a signal while standing in the stairs. PW7 has stated that the money was recovered by the raiding party itself while PW9 has stated that accused had himself produced those currency notes kept on the chaddar and under the quilt. PW8 has stated that the distance between the raiding party and the place of signal was 20 yards whereas PW10 has told this distance to be 250 yards. As per the statement of PW7, the raiding party was standing in the stairs whereas PW9 has stated that he was standing near a temple from where he could see PW7. While PW10 has stated that from the temple, stairs were not visible. Though the complainant a PW7 has stated that Tehsildar had marked the portion of the Chaddar on which the tainted money was placed but if we go through his statement further, then it become clear that there was no pen mark on the chaddar.

PW8 has stated that he had gone to the office of SP Vigilance on the order of Deputy Commissioner but PW9 has stated that Tehsildar Om Parkash was taken by them from his office. As per the statement of PW7, he had borrowed the tainted money a day before 18.11.2000 from his friend Asloop Khan at Delhi but Asloop Khan while appearing in the witness box as DW7 has stated that Abdul Rajak never demanded any sum of Rs.10,000/- from him. Thus, from the aforesaid discussion, it can be said that when the statements of the witnesses are contradictory on the material points, then the reliance thereon would be fatal to the justice particularly when the statements of PW7 and POW8 are improved ones.”

Though the trial Court has not diverted to the validity and legality of the sanction order, nor recorded finding on that fact, I find that sanction given by the specified authority, namely Superintendent of Police, who was appointing authority of the respondent-accused, was never got proved from the specified authority. On the contrary as usual the prosecution brought HC from the office of Superintendent of Police and allegedly proved the sanction order. The prosecution ought to have examined concerned Superintendent of Police who has passed the order granting sanction for prosecution of the accused, in order to prove the sanction order in accordance with Evidence Act and that has not been done.

In view of the discussion made hereinabove, it would not be possible to interfere with the order of acquittal since the order of acquittal is based on evidence and no perversity is seen therein. There is no merit in the present appeal. In the result, I make the following order:

ORDER

- (i) CRA-S-878-SBA-2005 is dismissed.

13TH DECEMBER, 2017
‘raj’

(A. B. CHAUDHARI)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>