

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

(i) CRR-3724-2016 (O&M)

Date of decision : 21.04.2017

Romi

...Petitioner

Versus

State of Haryana

...Respondent

(ii) CRR-3839-2016 (O&M)

Date of decision : 21.04.2017

Dheeraj Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Dr. Surya Prakash, Advocate for the petitioner in
CRR-3724-2016.

Mr. T.P. Singh, Advocate for the petitioner in
CRR-3839-2016.

Mr. Naveen Kaushik, Addl.AG, Haryana.

JITENDRA CHAUHAN, J.

This judgment of mine shall dispose of above captioned two criminal revision petitions having arisen out of the common impugned judgment/order dated 28.01.2016, passed by learned Chief Judicial Magistrate, Rohtak (for short, 'the trial Court'), whereby, the petitioners have been convicted and sentenced as under:-

Name of the convict	Conviction under Section	Sentence of imprisonment	Fine	In default
Romi	420 IPC	RI for 3 years	Rs.3,000/-	20 days
	120-B IPC	RI for 3 years	Rs.3,000/-	20 days
Dheeraj	419 IPC	RI for 3 years	Rs.3,000/-	20 days
	420 IPC	RI for 3 years	Rs.3,000/-	20 days
	120-B IPC	RI for 3 years	Rs.3,000/-	20 days

All the sentences were ordered to run concurrently.

Aggrieved against, the petitioners had preferred separate appeals before learned Additional Sessions Judge, Rohtak (for short, 'the appellate Court'), which were also dismissed vide common impugned judgment/order dated 19.08.2016.

Hence the instant revision petition.

Brief facts of the present case, as noticed in the trial Court judgment as reproduced as under:-

“2. Brief facts as culled out from the report under Section 173 of Cr.P.C. are that on 14.06.2009 ASI Jai Kishan were on official duty at the office of Director, Pre Medical Entrance Test (for the sake of brevity referred to as “PMT”), at Pt. Bhagwat Dayal Sharma Health University, Rohtak (for the sake of brevity referred to as “PGIMS”). There Dr. Ranbir Singh Dahiya, Controller of examination of Pt. Bhagwat Dayal Sharma Health University, Rohtak moved a

complaint in the name of SHO, Police Station Urban Estate, Rohtak to the effect that one Manish Kumar was found taking examination in the name of Romi whose roll no is 405680 and centre no.127 on 14.6.2009 in PMT entrance examination 2009. Accordingly, it is prayed that legal action be taken. The copy of documents pertaining to sitting plan , roll number, OMR sheet and the answer sheet were also attached with the said complaint. On the basis of said complaint, an offence under Section 419, 420, 120-B of IPC was found to be committed and formal FIR was registered. Investigation was conducted. Statements of witnesses were recorded. Accused Manish were arrested on 14.6.2009 who disclosed his real name as Dheeraj Kumar son of Umesh Kumar Jha, resident of Kumar Khand, Police Station Kumar Khand, District Madhopur Bihar. On 11.09.2009 accused Romi was arrested and both accused produced before the court. Further investigation was conducted. After completion of necessary investigation, the challan was prepared and presented in the court for trial.”

Accused Dheeraj was charged for commission of offence under Sections 419, 420 and 120-B IPC, whereas, accused Romi was charged under Section 420 read with Section 120-B IPC, to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined Narender Singh Rohilla as PW1; HC Rajesh Kumar as PW2; SI Udham Singh as PW3; ASI Mohinder Singh as PW4; Sunita as PW5; Inspector/SHO Rajender Singh as PW6; Dr. Ranbir Singh Dahiya (Retd. Sr. Professor) as PW7; Sh. T.K. Sharma, IAS as PW8; Retired

Inspector Ram Kumar, Finger Print Bureau as PW9; and Retired SI Jai Kishan as PW10.

In their statements recorded under Section 313 Cr.P.C., the accused denied all the allegations and pleaded not guilty. They opted to lead evidence in defence, but did not examine any witness despite availing many opportunities and ultimately, the evidence was closed on the statement of the accused dated 27.01.2016.

After hearing learned counsel for the parties and perusing the evidence on record, the learned trial Court, convicted and sentenced the petitioners as detailed at the outset of this judgment. Aggrieved against, the accused preferred separate appeals before the learned appellate Court, which were also dismissed.

On behalf of the petitioners, it is contended that they have been convicted solely on the ground that the thumb impression on the answering sheets was that of co-accused Dheeraj and not of the petitioner. It is contended that as per CBSE Rules/instruction, every candidate appearing for the PMET examination is under surveillance and videography is carried out at the time of entering into the examination hall, individually, along with his/her admit card held by him/her on the chest and thereafter videography is done of the examination hall while the candidates take their examinations. However, for the reasons best known to the prosecution, no such video recordings of the examination was placed on record by the prosecution. It is further contended that the star witness of the case, namely, Sushila, PW-5, has categorically stated that she being examination invigilator (exam supervisor or proctor) of two rows of

the examination hall, had diligently performed her duty of matching the photographs and signatures of the candidates and did not find any impersonation. Further, it is contended that there are contradictions in the statements of the prosecution witnesses. PW-7, Dr. Ranbir Singh Dahiya, has stated that it was Centre Superintendent, Narender Rohilla, PW-1, who had apprehended one Manish Kumar while writing examination in place of Romi, whereas, PW-1 has categorically denied this fact. Further, T.K. Sharma, PW-8, has admitted during his cross-examination that he had apprehended the accused while checking and had handed him over to the Centre Superintendent for making a case of unfair means. Lastly, it is contended that one more case of impersonation was registered vide FIR No.266 dated 14.06.2009, against Chiranjiv and Sanjiv Kumar, along with the present petitioners on the complaint of PW-7. However, the Court below has acquitted said Chiranjiv and Sanjiv Kumar on the ground that the prosecution failed to produce the video recording of the examination centre.

On the other hand, learned State counsel has vehemently argued that petitioner Manish Kumar was apprehended on the spot while impersonating Romi, the original actual examinee. The instant FIR was lodged on the complaint moved by Dr. R.S. Dahiya, Controller of Examinations. It is not the case of the accused-petitioners that they were previously known to any of the officers/officials present at the examination centre, therefore, there was no motive to falsely implicate them.

I have heard learned counsel for the parties and perused the record.

In a nutshell, the case of the prosecution is that one Dheeraj Kumar was caught taking the examination in place of the actual candidate Romi. This fact came to the notice of the authorities when PW-7 Dr. Ranbir Singh Dahiya, visited Centre No.127 and found that Dheeraj had been taking the examination in place of co-accused Romi. PW-7 Dr. Ranbir Singh Dahiya compared the original form of Romi affixed with his photograph. On comparison, the photographs mismatched. After securing the permission of the Vice Chancellor, he moved an application for lodging the FIR in the instant case. He appeared as PW-7 and specifically stated that the Centre Superintendent Narender Rohilla had caught one Manish Kumar taking the exam in place of Romi and he prepared the case of impersonation and sent the said Manish with the unfair means form to him. He compared the photograph of accused Manish with the original form of Romi but the said photograph mismatched. The testimony of this witness finds corroboration from the testimony of PW-8 T.K. Sharma. Furthermore, PW-1 Narender Singh Rohilla, though has not supported the case of the prosecution, but has specifically stated that Shri T.K. Sharma was the Registrar of the University and Mr. Dahiya visited the Centre. In the cross-examination, this witness has admitted that Dheeraj was apprehended while impersonating Romi. Furthermore, the evidence of Shri Ram Kumar, PW-9, Handwriting and Fingerprint Expert from Forensic Science Laboratory, Madhuban, also reveals that the OMR sheet

Ex.PX-2 bears the thumb impression of Dheeraj at point X-3 and the same does not belong to Romi, the original examinee.

Another important aspect of the matter reflecting the mind of accused Dheeraj also warrants mention here. After the accused Dheeraj was apprehended from the spot, he revealed his name as Manish. The police, therefore, accordingly recorded the name of the examinee as Manish at the time of his arrest and produced him before learned Judicial Magistrate 1st Class on 15.06.2009 with the same name i.e. Manish. Subsequently, on 18.06.2009, the accused revealed his real name as Dheeraj Kumar. The report of the FSL clearly establishes that answer sheet in question bears the thumb impression of Dheeraj Kumar.

As far as the contention raised by learned counsel for the petitioners regarding non-production of video recordings is concerned, the reasons for the same have not come on record. Therefore, at this stage, the Court is not inclined to express any opinion in the context, however, it feels that it was a serious lapse on the part of the prosecution and calls for an explanation of the prosecution for withholding the most material evidence to prove its case. Otherwise, there is clear and clinching evidence on record in the form of FSL report and conduct of petitioner, Dheeraj Kumar in concealing his identity at the time of his arrest.

As regards the testimony of the prosecution witnesses, no doubt there are minor discrepancies in their statements. However, when read together, it emerges that Shri T.K. Sharma, the then Registrar of the Health University, had inspected the examination

centres on 14.06.2009. During inspection, petitioner Manish was caught taking the examination in place of Romi against Roll No.405680. PW-1 Shri Narender Rohilla, Centre Superintendent, was asked to prepare an unfair means case against the accused. PW-7 Dr. Ranbir Singh Dahiya, was Controller of Examinations. Centre Superintendent, Narender Rohilla had detected Manish while impersonating Romi. He also compared the photographs of Romi with the photo on the admit card. Therefore, the finding recorded by the Courts below to the effect that Manish @ Dheeraj had changed his photograph on the admit card cannot be said to be unfounded even if PW-5 Sushila has stated that when she compared the photograph, the same matched with the examined but the photograph was not clear, moreso, when accused Manish @ Dheeraj was apprehended on the spot and was handed over to the police by PW7 Dr. Ranbir Singh Dahiya on the same day.

In view of the above discussion, this Court does not find any ground to unsettle the concurrent findings recorded by learned Courts below and the same are, therefore, affirmed. Accordingly, the instant revision petitions are hereby dismissed.

The conduct of the officials viz., PW-5 Sushila in not being vigilant and PW-7, Narender Rohilla, the Centre Superintendent, in not supporting the case of the prosecution as well as the authorities in not producing the clinching evidence i.e. video recording before the Court, creates a doubt in the mind of the Court that instead of serving the cause of the prosecution, have done considerable damage to the case of the prosecution.

In the circumstances, the respondent-State through the Director General of Police is directed to get a detailed investigation conducted in the matter on the points and send a report to the Registry of this Court within six weeks from the date of receipt of a certified copy of this judgment.

21.04.2017
atulsethi

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No