

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

CRA-D-904-DB of 2013 (O&M)
Date of decision: August 31, 2018

Ashwani Kumar Sachdeva and another

.....Appellants

Versus

Rahul Sharma alias Babbu alias Chocho and others

....Respondents

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

Present: Mr. H.S. Bhullar, Advocate for the appellants.

Mr. Achin Gupta, Advocate for respondents No.8 and 10.

Mr. Vivek Goel, Advocate for respondent No.9.

Mr. H.S. Sullar, DAG Punjab.

A.B. CHAUDHARI, J

Being aggrieved by judgment and order dated 27.05.2013, in Sessions case No.02 dated 16.01.2013, passed by the learned Sessions Judge, Faridkot, by which the learned trial Court acquitted accused/respondents No.1 to 10 for offences for which they were charged, the present appeal has been filed against them by the appellants-complainant-Ashwani Kumar Sachdeva and his daughter-S.

2. The present appeal has arisen out of FIR No.261 dated 24.09.2012, under Sections 452, 307, 363, 366-A, 376, 325, 323, 482, 420, 465, 467, 468, 471, 120-B, 212, 216 read with Section 149 of Indian Penal Code, 1860 (for short 'IPC'). There is a main connected appeal, i.e. CRA-D-781-DB of 2013, which has been decided along with other connected

appeals, vide common judgment of even date, by us. We have stated all the facts in the said judgment. We have also stated the entire prosecution evidence, defence, oral as well as documentary evidence and after appreciation of evidence and marshalling thereof, we have recorded our respective findings in the said common judgment. The present appeal is against some of the accused persons who are respondents in the present appeal. We, therefore, need not repeat facts, evidence, defence and the discussion made by us in the present appeal against acquittal.

3. Learned counsel for the appellants, however, contended that the trial Court committed an error in acquitting respondents No.1 to 10, though, according to him, there was evidence on record available for recording their conviction. To repeat, all the counsel for the parties were heard with reference to the evidence etc. and accordingly, we have decided the main connected appeal, i.e. CRA-D-781-DB of 2013 along with other connected appeals by making a detailed judgment of even date.

4. In so far as the present appeal against acquittal is concerned, we find that there is whatsoever no evidence against respondents No.1 to 10. Learned trial Court has recorded the findings regarding acquittal of respondents, Babu alias Rahul Sharma, Nishu Chopra and Kulwinder Kaur alias Kindu, in Paragraphs 75 to 80 of the impugned judgment, which we quote hereunder:-

“75. Now proceeding further, let us consider the claim qua accused Babbu alias Rahul Sharma, Nishu Chopra and Kulwinder Kaur alias Kindu. Qua them, linkage evidence is the testimony of Swaran Singh PW11. This witness has deposed about the aforesaid accused together Gurdev Singh (who has

*since been declared innocent), to have made extra judicial confession to him, qua their role, in the said incident, relating to the kidnapping of prosecutrix. He has deposed about Babbu alias Rahul Sharma, to have disclosed about having harboured Nishan Singh, in a rented premises, at Chandigarh, which related to earlier, 'taking away' of the prosecutrix and also further deposed about, having asked him, to produce before the police. Further, this witness made reference to the disclosure, made by Gurdev Singh, which need not be detailed, as he has been declared innocent. Also, this witness disclosed about Kulwinder Kaur alias Kindu, having disclosed about having associated Nishan Singh and facilitated handing over the money to Nishan Singh, at Chandigarh, at the behest of Navjot Kaur and out of the amount of Rs.2.5 lacs, Rs.50,000/- had been returned by Nishan Singh to her, to enquire about presence of the prosecutrix, in her house and further, he deposed about Kulwinder Kaur alias Kindu having disclosed about having accompanied Nishan Singh and her presence, at the spot of parking of the car, in which the prosecutrix was taken away. Likewise, this witness has also deposed about Nishu Chopra, to have disclosed about the plan of kidnapping, having given effect to, by Nishan Singh with some boys of Moga and that he, along with others, had also laid **Nakabandi**, to render assistance to Nishan Singh, for kidnapping of prosecutrix.*

76. Learned defence counsel has assiduously resisted the claim of the prosecution qua the testimony of this witness, on the ground that 'extra judicial confession' is weak type of evidence. Considering the said witness, to be an highly interested person and not enjoying any status of authority in the society, making of extra judicial confession, to this witness is highly doubtful.

77. Time and again, the Courts have given a note of caution, while dealing with the evidence of 'extra judicial confession'. The Hon'ble Courts have laid various guidelines for the Trial

Courts about the manner of reception of this piece of evidence. While dealing with a stand of 'extra judicial confession' the Court has to satisfy that the same was voluntary and without any coercion and undue influence. 'Extra judicial confession' can form the basis of conviction, if the person, before whom, it is stated, to be made, appears, to be unbiased, not even remotely inimical to the accused. Where there is material to show animosity, Court has to proceed cautiously and find out, whether confession, just like any other evidence, depends on veracity of the witness, to whom it is made. It is not invariable that the Courts should not accept the evidence, if actual words, as claimed, to have been spoken, are not reproduced and the substance is given. It will depend upon circumstances of the case. If the substance itself is sufficient to prove culpability and there is no ambiguity about import of the statement made by the accused, evidence can be acted upon, even though, substance and not actual words have been stated. Credibility of the witness's capacity has to be appraised by the Courts and satisfaction has to be concluded, qua the genuineness of the confession, so made.

78. *In the light of the aforesaid, it is important to mention that Swaran Singh PW11 is established, from his cross-examination, to be not holding any position of authority. Even, Inspector Jatinder Singh, Investigating Officer PW51 had so stated. Also, from the cross-examination, it is evident that the said witness had actively participated in the **Dharnas** and processions etc. taking place, in the city, soon after the occurrence in question. He had also visited Nari Niketan, Jalandhar along with the parents as well as other high ups. Further, the most important factor, which weighs the mind of the court, for the reception of testimony of this witness is that this witness, in cross-examination, has admitted his son, to have got registered a case against Nishan Singh, which is pending in the Court at Faridkot*

and the said case bears FIR No.140 dated 22.5.2009, under Sections 323, 326, 148, 149 IPC, Police Station City Faridkot and he also admitted, to be correct that he is cited as a prosecution witness, in the said case. Thus, it is evidence that the said witness has his own axe to grind qua the role of Nishan Singh and various other accused, in the case in hand. Thus, the testimony of this witness, as such, is not sufficient to nail the aforesaid persons. Also, it is pertinent to mention that qua accused Nishu Chopra, there is no other incriminating circumstance coming forth. However, qua Kulwinder Kaur alias Kindu, it is submitted by the learned Public Prosecutor for the State that in fact, she had participated, in the occurrence, as she was standing near the car, in which the prosecutrix was bundled and had informed Nishan Singh, about the presence of the prosecutrix, in her house, at the relevant time. Very true, the prosecutrix has so deposed, while in the witness box, but however, omission, to this effect, is conspicuous, in both the previous statements of the complainant and that of the prosecutrix, which were got recorded on 21.10.2012 and 22.11.2012. In these circumstances, Kulwinder Kaur alias Kindu being named, for the first time, while in the witness box, as such, is not sufficient to nail her.

79. Another piece of evidence against accused Kulwinder Kaur alias Kindu is that she had handed over Rs.2.5 lacs to Nishan Singh at Chandigarh on 20.9.2012. Qua the same, there is testimony of PW6 Kuldeep Singh Chhabra, who has deposed about running of Hotel by the name of Hotel City Paradise, at Sector 22-C Chandigarh and he proved the entry of the register, maintained in due course, which is Ex.PG as well as CD of CCTV footage of the relevant time, which is Ex.PH and on the basis whereof, the prosecution claims about Kulwinder Kaur alias Kindu, to have met Nishan Singh and to have handed over money. No doubt, in the said CD, Kulwinder Kaur @ Kindu is

so depicted, to have come to the counter and even, Nishan Singh is depicted in the same, but this alone is not sufficient, to prove her culpability. No where, money, having exchanged hands, in such manner, is established. Further more, it should also be noted that the occurrence had taken place on 24.9.2012 and what was the necessity for Nishan Singh, to have sought arrangement of money, from Kulwinder Kaur, is also a big question mark. But any how, depicting of Kulwinder Kaur in the CD may raise a finger of suspicion, but in any case, it is not strong enough, to take place of proof, to establish her culpability.

80. In this view of the matter, the aforesaid evidence is not sufficient to establish the guilt of accused Nishu Chopra, Babbu alias Rahul Sharma and Kulwinder Kaur alias Kindu.”

5. In so far as the remaining respondents-accused are concerned, the learned trial Court has made discussion about the nature of evidence and the reasons for their acquittal from Paragraph 81 onwards, of the impugned judgment. We quote Paragraphs 81 and 82 of the impugned judgment, which read thus:-

“81. Now, let us consider the testimony of Raj Kumar PW10. He is the husband of maternal aunt of the prosecutrix. As per the claim of the prosecution, said witness claim, on 30.9.2012, to have over head the conversation of various accused, namely Sunny Ganja, Harpreet Singh alias Lucky, Amandeep Singh alias Goldy, Amandeep, Amna Tyranwala, Sahil Sharma alias Sekha, Gurdeep Singh alias Raju Bahattar, Rahul Sharma alias Babbu alias Chocho, Rajwinder Singh alias, Varinder Kumar alias Dhalla, Pardeep Singh alias Poppy and Toofan Singh alias Toofani. He had stated about the aforesaid persons, to be indulging, in the conversation, relating to kidnapping of the prosecutrix, on 24.9.2012 and they were overpowered by feeling

of repentance, with regard to kidnapping of the prosecutrix, to express their commitment of friendship with Nishan Singh and Ghali and they talked about Dharnas and processions and rallies, taking place in Faridkot city and news published, in the newspapers and also making an effort to find some person, to produce them, before the police. However, attempt made by the prosecution to establish the linkage of various aforesaid accused through this witness, falls to the ground, like a house of cards, when we go through his cross-examination. Firstly, it is pertinent to mention that such overhearing of conversation is also a statement of admission of guilt, which amounts to confession, whether it is communicated to another or not. In view of the same, there is no doubt about the said witness, to be an interested witness, being relative of the prosecutrix and also otherwise, appears to be highly interested, in tracking of the accused. While, in cross-examination, this witness had stated that on that day, he was carrying a mobile phone bearing number 98155-40691 and he also stated that he overheard the conversation, during the period 8.30 AM to 10.30 A.M and during this period, he did not make any call to any person and further, he stated that he directly came to the Police Station, after alighting from the bus, at Faridkot and met the SHO, who recorded his statement. All the aforesaid position stands belied from the evidence brought on the record. Firstly, it is important to mention that the accused, in defence, have examined DW17 S.P. Jain, Nodal Officer, Bharti Airtel Limited, who had brought the record of mobile phone number 98155-40691 along with mobile tower location, which are Ex.DW17/E and Ex.DW17/F. The detail of the call history of the said mobile phone for the relevant period of 30.9.2012, proves about various calls, made by this witness, but however, tower location, as depicted in call history and as decoded in Ex.DW17/F, shows about the presence of the said witness, in the area of Faridkot, which also

falsifies his claim, with regard to his presence at Moga bus stand and also about his claim of having not made any telephone call to any person. Not only this, even, his claim, of having gone to Police Station, directly and meeting SHO Jatinder Singh, also falsified from the testimony of Inspector Jatinder Singh PW51, who has deposed in cross-examination, to be away from the Police Station on 30.9.2012, on the basis of DDR register from 8.40 AM 11.00 PM and even this witness has though, sated about recording of the statement of this witness, but he has evaded giving of time of recording of the statement of this witness. In these circumstances, there is glaring contradiction coming forth, with regard to presence of Raj Kumar and the manner and time of meeting Jatinder Singh SHO. In these circumstances, doubt is raised about the said witness, to have overheard any such conversation.

82. *Very close to the same, is the testimony of PW30 ASI Balwant Singh, who has deposed about interception of Sunny Gana, Amandeep Singh alias Goldy, Amandeep Singh Gill alias Amna, Rahul Sharma alias Chocho, Sahil Sekha, Gurdeep Singh alias Raju Bahattar and Harpreet Singh alias Lucky from Train Restaurant on Kotakpura Road on 17.10.2012, who has also proved various documents vis-a-vis their arrest. Qua the aforesaid accused, it is pertinent to mention that no raid had earlier been conducted, at their places and the only linkage is the testimony of Raj Kumar PW10, which is, as such, doubtful. Besides the same, also, it is important to make reference to the owner of the said Restaurant, Raj Kumar who has stepped into witness box as DW3. He has denied about raiding of his Restaurant and apprehension of the aforesaid accused. In view of the same, no incriminating role of accused Sunny Ganja, Amandeep Singh alias Goldy, Amandeep Singh Gill alias Amna, Amna Tyranwala, Rahul Sharma alias Chocho, Sahil Sekha, Gurdeep Singh alias Raju Bahattar and Harpreet Singh alias*

Lucky, as such, is established.”

6. We have compared aforesaid findings for recording acquittal of these respondents in the aforesaid Paragraphs with evidence. Rather, we have already discussed the said evidence in our aforesaid common judgment. We do not find anything perverse on the part of the learned trial Court to record acquittal of these respondents. We agree with the above reasons recorded by the trial Court. In the result, we find that in the present appeal against acquittal, view taken by the learned trial Court in the impugned judgment cannot be said to be perverse and is a possible view. There is no perversity shown anywhere. Hence, there is no merit in the present appeal. In the result, we make the following order:-

ORDER

CRA-904-DB of 2013 filed by the appellants-Ashwani Kumar Sachdeva and S, is dismissed.

(A.B. CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

August 31, 2018
mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No