

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-885-SB of 2004 (O&M)

Date of decision: 06.04.2018

Rajiv Kumar @ Sanjiv and another

..... Appellants

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Piyush Aggarwal, Advocate
for the appellants.

Mr. A.A. Pathak, Addl. AG, Punjab.

ANIL KSHETARPAL, J.

Although, efforts to trace out the appellants-accused have failed, however, with the able assistance of learned counsel for the legal aid and Additional AG, Punjab, this Court has finally heard the arguments and proceed to decide the case.

The appellants have filed this appeal against the judgment of conviction under Section 379 of the Indian Penal Code and order of sentence directing the appellants to undergo rigorous imprisonment for a period of two years and pay a sum of Rs.800/- each as fine. In default of payment of fine, each appellant is to undergo further rigorous imprisonment for two months.

Originally, the prosecution filed case against three accused namely Rajiv Kumar, Seema Sharma and Anita under Section 328 and 379 of the Indian Penal Code. However, the learned trial Court acquitted all the

accused under Section 328 of the Indian Penal Code. Seema Sharma-accused was also acquitted of offence under Section 379, IPC. The appellants namely Rajiv Kumar and Anita have been found guilty of having committed offence.

Case set up by the prosecution as mentioned by the learned Additional Sessions Judge is extracted as under:-

“The case of the prosecution in nutshell is that the police machinery was set into motion on the statement of one Parveen Kumar a Rickshaw Puller, who had stated that on 06.04.2001 he noticed two ladies and one man had been accompanied one person in unconscious state at railway park, Railway Station Phagwara and after some time they left the place leaving behind the person in unconscious state alone. Said Parveen Kumar suspecting some foul play informed the police. The police party headed by SI Ajit Singh, HC Daya Singh and other police officials followed those person and apprehended them from whose possession they recovered one black colour brief case mark 'Samsonite' having numbering lock which the accused could not open nor they could give any explanation for possessing the same. The unconscious person was shifted to Civil Hospital, Phagwara who regained consciousness on 07.04.2001. The said person disclosed his name as A.K. Roy. He made statement to police stating that on 06.04.2001 he travelled from Dehradun to Jalandhar in a train along with the accused persons and on the way all the accused offered him water at Hardiwar due to which he felt drowsiness and they offered him tea at Ludhiana Railway Station as a result he felt unconscious. According to him the accused alighted from the train at Jalandhar Railway Station and from there they took him to Phagwara in a car and on regaining consciousness he noticed the articles belonging to him having been stolen which were recovered by the Police Party from the accused. The said A.K. Roy then identified his

articles in the police station. The accused were arrested in the case and the investigation was started.”

In order to prove its case, the prosecution has examined ASI Daya Singh as PW-1, Dr. Vidhur Bhalla as PW-2, Dr. Baldev Rai as PW-3, Dr. Ajay Kumar as PW-4, ASI Ujjagar Singh as PW-5, Jasbir Singh as PW-6, Sudesh Vij as PW-7, ASI Taranjit Singh as PW-8, Constable Amarjit Kaur as PW-9, Parveen Kumar as PW-10 and A.K. Roy Chaudhary as PW-11. Statements of the accused were recorded under Section 313 of Cr.P.C. and incriminating evidence was put to them but all accused pleaded false implications and claimed trial.

In defence, the appellants-accused examined Sh. Vijay Kumar Dhingra as DW-1 and Swaran Kanta as DW-2.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

Learned counsel for the appellants has submitted that the learned trial Court on same set up of evidence have found that the prosecution has failed to bring home the guilt of the accused under Section 328 of the Indian Penal Code. However, the learned trial Court on the same evidence has convicted the appellants under Section 379 of the Indian Penal Code. He has further submitted that Seema Sharma, the third accused have also been acquitted under Section 379, IPC.

Learned counsel for the appellants has further submitted that the police machinery was set in motion on the statement of Parveen Kumar, a Rickshaw Puller. He has pointed out that Parveen Kumar was examined as PW-10 and during the course of his examination, prosecution got him

declared hostile. He did not support the case of the prosecution. He has

further pointed out that the prosecution has examined Jasbir Singh as PW-6, a taxi driver and owner. He has read over the statement of Jasbir Singh in complete and has submitted that from the reading of the statement of Jasbir Singh, it is proved that Sh. A.K. Roy Chaudhary, the complainant was normal and was not under the sedation as is being alleged. Jasbir Singh has stated that all the persons on reaching Phagwara came out of his car at Phagwara Railway Station on their own. Hence, he submitted that even Jasbir Singh has not supported the prosecution story. He has further submitted that from the reading of the statement of Jasbir Singh, it is clear that Sh. A.K. Roy Chaudhary, the complainant is not telling the correct facts. He has further argued that Parveen Kumar, Rickshaw Puller who is said to have found A.K. Roy Chaudhary in unconscious state and informed the Police and thereafter the appellants-accused are said to have been apprehended along with the stolen suit-case has not supported the case of the prosecution. He has submitted that the appellants said to have made no attempt to escape. He has submitted that such conduct from the persons who have committed an offence is not normal.

On the other hand, learned counsel for the State has supported the judgment passed by the learned trial Court. He has submitted that the learned trial Court after appreciating the evidence available on the file has arrived at a conclusion which does not require any interference by this Court.

The entire case set up by the prosecution is that the accused had administered some intoxicant sedative to Sh. A.K. Roy Chaudhary. However, the prosecution failed to prove this allegation. It is not in dispute that PW-6 Jasbir Singh when appeared in the evidence has stated that when

he dropped all the four persons who had hired the taxi including Sh. A.K. Roy Chaudhary, everybody got down from his car on his own. Sh. Jasbir Singh, PW-6 has not stated that Sh. A.K. Roy Chaudhary was sedated or intoxicated or he noticed anything abnormal.

Further, Parveen Kumar has not supported the prosecution. He was got declared hostile. It is strange that Parveen Kumar is said to have informed the Police and the Police rather than trying to take Sh. A.K. Chaudhary to the hospital immediately apprehended the accused along with the stolen suit-case. It is the case of the prosecution that the accused and Sh. A.K. Roy Chaudhary had travelled from Dehradun to Jalandhar in the train. They had met in the hospital in Dehradun. The story put forth by Sh. A.K. Roy Chaudhary does not appear to be believable. Sh. A.K. Roy Chaudhary was to go to Delhi first of all. However, he stated to have boarded the train for going to Saharanpur. At Saharanpur, he does not get down and proceed towards Delhi. Sh. A.K. Roy Chaudhary also states that he was offered a cup of tea at Ludhiana Railway Station. Even at that stage, Sh. A.K. Roy Chaudhary never raised any alarm or made any attempt to get down from the train to go to Delhi. Such being the position, in the considered opinion of this Court, the prosecution has failed to prove its case beyond reasonable doubt.

Hence, the judgment under appeal is set aside and the appellants are given benefit of doubt.

The appeal is allowed.

(ANIL KSHETARPAL)
JUDGE

06.04.2018
Dinesh Bansal

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No