

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

Crl. Appeal No. D-373-DBA of 1999 (O&M)
Date of Decision: 30.8.2019

State through Central Bureau of Investigation, ChandigarhAppellant

Vs.

Shashi Kumar Gupta and othersRespondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: - Mr. Sukhdev Singh Sandhu, Standing counsel
for the appellant-CBI.

Mr. Atul Lakhanpal, Senior Advocate with
Mr. R.S.Chahal, Advocate for respondent No. 1.

None for respondents No. 2 to 6.

Ms. Kanika Ahuja, Advocate
for the complainant.

HARNARESH SINGH GILL, J.

1. The present appeal has been preferred by the Central Bureau of Investigation challenging the judgment dated 13.6.1998 passed by the learned Additional Sessions Judge, Ambala, vide which the respondents were acquitted of the charges framed against them in case FIR No. RC/12/92 dated 8.6.1992, under Sections 120-B read with Sections 364 and 386 IPC and Sections 364 and 386 IPC, registered at Police Station CBI, Chandigarh.

2. The brief facts of the present case are that on 12.3.1990, two

sons of Pardeep Kumar Gupta, namely Anurag aged 12 years and Ruchin aged 10 years, had gone to play video game but did not return. Rekha Gupta, wife of Pardeep Kumar Gupta had sent one Jagat Parsad, gardener to enquire from the video game parlour regarding the whereabouts of her sons. The gardener had reported that the boys were not there in the video game parlour. Thereafter, Rekha Gupta had received a telephonic call that her sons had been kidnapped and the caller had demanded a ransom of Rs. 3.00 lacs for their release. She had immediately informed her husband Pardeep Kumar Gupta, who was in the factory at that time. She had also informed Uma-wife of Shashi Kumar Gupta over the phone. Since the whereabouts of the missing boys were not known, FIR No. 130 dated 13.3.1990 under Section 364 IPC was registered against the unknown persons, on the information given by Shashi Kumar Gupta, uncle of the boys.

3. Since the kidnapped boys could not be recovered nor any clue was found regarding the kidnappers, Pardeep Kumar Gupta-father of the boys had approached this Court and on the directions of this Court, the matter was referred to the CBI-appellant.

4. During investigation, it was found that Pardeep Kumar Gupta had also hired M/s Globe Detective Agency, New Delhi for detection of the kidnappers as he had the suspicion that the ransom letter had been written in the handwriting of one of the respondents-accused Siri Bhagwan. It was also found that Arvind Kumar, husband of the sister of the wife of Pardeep Kumar Gupta, had written two typed letters in Hindi, which were got despatched from Ambala through Rameshwar Singh Yadav, vide which Pardeep Kumar Gupta had been cautioned that his brother, respondent-

accused Shashi Kumar Gupta had been involved in kidnapping of his sons. During the course of events, Pardeep Kumar Gupta had developed strong suspicion of his brother's hand in the kidnapping of his sons in view of the property dispute.

5. During investigation, it was revealed that there had been an oral understanding between Shashi Kumar Gupta and his brother Pardeep Kumar Gupta in December 1989 that the urban property would go to accused-respondent Shashi Kumar Gupta while the rural property would go to the share of Pardeep Kumar Gupta. The said decision was to be implemented on 31.3.1990. However, before implementation of the said decision, Shashi Kumar Gupta had got the boys kidnapped. During investigation, it was also found that Balbadhar Mittal, a common friend of Shashi Kumar Gupta and Pardeep Kumar Gupta, had received a telephonic message for informing Pardeep Kumar Gupta to settle the property dispute with Shashi Kumar Gupta (respondent-accused) as per his wishes, failing which the kidnapped boys would be killed.

6. As per the prosecution, earlier Pardeep Kumar Gupta along with Shashi Kumar Gupta had been meeting accused-respondents Kala, Ramesh and Siri Bhagwan in jail and outside also and they had told Pardeep Kumar Gupta that the boys would be got released by them only if they were paid ransom. Accused-respondent Kala alias Afzal had demanded Rs. 30,000/- in the month of January/February 1992 from Pardeep Kumar Gupta for providing definite clue regarding the whereabouts of his kidnapped sons and the said amount was paid to him.

7. Similarly, accused-respondent Siri Bhagwan had told Pardeep Kumar Gupta that he knew about the kidnappers and also demanded

Rs. 1.25 lacs by way of ransom. He had received Rs. 80,000/- in cash in the presence of Bal Bhadar Mittal. Accused-respondent Gurnam Singh was also paid Rs. 4,50,000/- by Pardeep Kumar Gupta in the presence of Ajit Pal Singh. However, no trace of the boys was ever found.

8. Thus, according to the investigation of the CBI, accused-respondents had entered into a criminal conspiracy with other accused and got the boys kidnapped to get ransom under the threats of death.

9. After completion of investigation and necessary formalities, challan was presented against accused-respondents.

10. On 5.8.1996, charges were framed against the accused-respondents under Sections 364, 386, 302 read with Section 120-B IPC to which they pleaded not guilty and claimed trial.

11. In order to prove its case, the prosecution had examined as many as 52 witnesses.

12. In the statement recorded under Section 313 Cr.P.C., the accused-respondents had denied the charges and pleaded false implication. In defence, the accused had examined Mahesh Inder Pal Vashisht as DW-1.

13. After taking into consideration the evidence on record and hearing the counsel for the parties, the trial Court, vide judgement 13.6.1998, acquitted the respondents of the charges framed against them by giving them benefit of doubt. Hence, the present appeal by the CBI.

14. Learned counsel appearing for the CBI has argued that both the children were kidnapped to pressurize their father, Pardeep Kumar Gupta to settle the property dispute with his brother Shashi Kumar Gupta. In this regard, PW-34 S.K.Gupta (brother-in-law of Pardeep Gupta) deposed that in the year 1989, there was an oral agreement between the two brothers for

partition of rural and urban properties which was to be implemented on 31.3.1990. It is further argued that even PW-7 Balbadhar Mittal, who was the old classmate of Pardeep Kumar Gupta, stated that he had received a telephonic message after 8-9 months of kidnapping for getting the dispute settled regarding the property between Pardeep Kumar Gupta and Shashi Kumar Gupta, in favour of Shashi Kumar Gupta otherwise their children would be killed. Learned counsel for the appellant has laid stress on the confessional statements of Mohd. Musa and Sunil Kumar Gautam recorded under Section 164 Cr.P.C. before PW-31 S.K.Dhawan, Chief Judicial Magistrate and PW-42 Bhupinder Singh, Additional Chief Judicial Magistrate, respectively and extra judicial confession made before PW-8 Mohar Singh that he was told by Kala that the children had been kidnapped for a sum of Rs. 5.00 lacs on the asking of the brother of Pardeep Kumar Gupta. Even PW-3 Kapil Sharma stated that the children had been present in the video shop and were still there when the said witness along with his brother had returned from the shop. Learned counsel has further argued that two sons of Pardeep Kumar Gupta had been kidnapped and murdered by the respondents-accused and the trial Court has erred by acquitting them even though there is ample evidence on record. He has prayed that the judgment of the learned trial Court may be set aside and the respondents may be convicted.

15. Per contra, learned senior counsel for respondents No. 1 to 6 has argued that the trial Court has rightly acquitted the respondents as the present case is based on confessional statements which is not a substantive piece of evidence against the co-accused and, therefore, these confessional statements cannot become the basis for conviction. He has further argued

that there is no corroborative evidence to hold that the respondents-accused were guilty of the offences. The confession by one accused against the other cannot be relied upon. Even otherwise, the evidence on record is not free from suspicion. The statements of the witnesses examined in this case are merely hear-say evidence. He has also argued that even the statements of Balbadhar Mittal (PW-7), Mohar Chand (PW-8) and Chand Singh (PW-9) nowhere inspire confidence in the case of the prosecution. The extra judicial confession by any of the accused before Mohar Singh and other witnesses, whose conduct is also not free from suspicion, cannot be made the basis for conviction of the respondents.

16. The present appeal has been preferred by the CBI against the judgment of acquittal. The law is well settled that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of the criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court. It is further the settled principle of law that the Appellate Court can only interfere with the conclusion of acquittal arrived at by the trial Court if the said conclusion is palpably wrong or based on erroneous view of law or if such conclusion is allowed to stand it is likely to result in grave injustice. Merely, because the appellate Court on re-appreciation and re-evaluation of the evidence is inclined to take a different view interference with the judgment of acquittal is not justified. If the view taken by the trial Court is a possible view, the evenly balanced view of the evidence must not result in

interference by the appellate Court in the judgment of the trial Court. If two reasonable conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the findings of acquittal recorded by the learned trial Court. The powers under Section 378 Cr.P.C can only be exercised by the Appellate Court in order to prevent the failure or miscarriage of justice. To support the aforesaid view reference can be made to cases *A.P. Raju V. State of Orissa 1995 S.C.C (Criminal) 675, Murugan and Anr. Vs. State Rep. By Public Prosecutor Madras, Tamil Nadu & Anr. 2008 (4) RCR (Criminal) 906, Prem Singh Vs. State of Haryana (2011) 3 Supreme Court Cases (Criminal) 794, Anil Kumar Gupta Vs. State of Uttar Pradesh, (2011) 3 Supreme Court Cases (Criminal) 94, Sunil Kumar Sambhudayal Gupta (Dr.) and others Vs. State of Maharashtra, (2011) 2 Supreme Court cases (Criminal) 375, C.K. Dasegowda @ Ors. V. State of Karnataka 2014(3) R.C.R (Criminal) 696, Muralidhar @ Gidda & Anr. V. State of Karanataka 2014(2) R.C.R (Criminal) 507 and Basappa V. State of Karnataka 2014(2) R.C.R (Criminal) 144.*

17. In case *Mrinal Das and others Vs. State of Tripura, (2011) 3 SCC (Criminal) 810*, the Supreme Court has laid down that in an appeal against acquittal in the absence of perversity in the judgment and order, the Appellant Court should not interfere. The order of acquittal is to be interfered with only when there are compelling and substantial reasons for doing so i.e. when the order is clearly unreasonable; the trial Court has ignored the evidence or misread the material evidence or has ignored the material documents.

18. Keeping in view of the aforesaid settled legal position, we have to examine the case in hand.

19. It is the case of the prosecution that in the year 1989, there was an oral agreement between the two brothers i.e. Pardeep Kumar Gupta and Shashi Kumar Gupta for partition of rural and urban properties. S.K.Gupta (their brother-in-law) and father Om Parkash were instrumental for the partition of agricultural land and urban properties. The said agreement was to be implemented on 31.3.1990 but could not be implemented because two boys were kidnapped. The Rural property, which was worth Rs. 60 to 70 lacs, was opted by Pardeep Kumar Gupta and the urban property, which was between Rs. 20 to 25 lacs, was opted by Shashi Kumar Gupta, who wanted rural property which had much more value and, thus, carved a plan of kidnapping two small boys of Pardeep Kumar Gupta.

20. In February 1991, a written agreement was entered between the parties according to which the urban properties were to go to Pardeep Kumar Gupta and the rural properties, including the agricultural land, were to go to Shashi Kumar Gupta. Balbadhar Mittal (family friend of Pardeep Kumar Gupta and Shashi Kumar Gupta) and S.K.Gupta, brother-in-law were the witnesses in the said written agreement. Further, as per the prosecution case, PW-31 S.K.Dhawan, Chief Judicial Magistrate had got recorded the statements of Raj Kumar and Mohd. Moosa @ Pappu under Section 164 Cr.P.C. which are Ex. P-22/1 and Ex. PW31/1, respectively. Similarly, PW-42 Bhupinder Singh, Additional Chief Judicial Magistrate deposed that Sunil Kumar Gautam had voluntarily got his confessional statement recorded under Section 164 Cr.P.C and proved same as Ex. PW-42/2. PW-8 Mohar Singh stated that 1½ years ago, on his asking, Kala had told him that the children were kidnapped for a sum of Rs. 5.00 lacs on the asking of the brother of Pardeep Kumar Gupta and the children had been

killed after 8-9 days of kidnapping. PW-9 Chand Singh, Ex-serviceman deposed that Ramesh had told him that the boys of Pardeep Kumar Gupta had been kidnapped by his gang members and he (Ramesh) was also with them.

21. In our view, the confessional statement suffered by Sunil Kumar Gautam Ex. PW-42/2, recorded by Additional Chief Judicial Magistrate on 28.1.1994 is inadmissible in evidence as there is no other cogent, sufficient or reliable evidence on record to convict the accused persons. Moreover, the prosecution has not brought on record any cogent evidence in order to complete the link of the evidence as to what had transpired and what were the terms and conditions settled earlier between accused-Sunil Kumar Gautam and Pardeep Kumar Gupta which had led Sunil Kumar Gautam to reach Patiala. It was not a convincing plea that immediately after getting the police remand, Sunil Kumar Gautam was again produced for recording his statement under Section 164 Cr.P.C. before the Special Judicial Magistrate. The said accused could have been produced at a convenient time and sufficient opportunity could have been given to the accused before making the confessional statement. The confessional statement of accused-Sunil Kumar Gautam was recorded on oath for which there is no such provision in law.

22. Similarly, the confessional statement of accused Mohd. Musa Ex. PW-31/1, got recorded on oath by the Chief Judicial Magistrate, Chandigarh on 22.9.1994 is also inadmissible in evidence. Thus, confession by one accused against the other accused cannot be made basis for conviction of any of the accused.

23. As per Pardeep Kumar Gupta (PW-40), in July 1990, Bal Kishan, husband of his sister's daughter had called him to Gangoh (U.P.) as he offered to help. Pardeep Kumar Gupta and his brother Shashi Kumar Gupta went there where they met one Asif who told that Kala had informed him that the children were got kidnapped by Shashi Kumar Gupta. Both the brothers came together, stayed together and ultimately Pardeep Kumar Gupta only made complaint against Shashi Kumar Gupta in 1992. The reason to remain silent for such long period is not known. Even as per ASI Sadhu Ram (PW-17), Shashi Kumar Gupta got recorded his statement (Ex. PW-17/1) regarding kidnapping of his two nephews Anurag aged 12 years and Ruchin aged 10 years, on 12/13.3.1990 at 12.30 A.M.

24. Thus the trial Court has rightly recorded that the evidence on record is not free from suspicion. The statements of the witnesses examined in the case are merely hearsay evidence. Even the statements of PW-7 Balbhadar Mittal, PW-8 Mohar Singh and PW-9 Chand Singh and other witnesses nowhere inspire confidence in the case set up by the prosecution. The extra judicial confession of any of the accused made before Mohar Singh and other witnesses, whose conduct is also not free from suspicion, cannot be made the very basis of conviction of the accused-respondents.

25. Thus, from the evidence on record, we find that though sincere efforts were made by various persons including some of the accused persons in getting the missing children traced out and even by making payment to some bad characters, but the whereabouts of the children could not be known. On the other hand, it is important for the Court to go through the evidence and not to convict the accused-respondents merely on the basis of suspicion, probabilities, conjectures and surmises. In the present case, the

FIR is ante-timed, false witnesses had been produced and no motive could be proved. Even plea of alibi of Shashi Kuamr Gupta stood proved and above all, the confessional statements of the accused-respondents were found to be inadmissible in evidence.

26. Thus, after considering the above facts, we are of the considered opinion that the trial Court has rightly acquitted the respondents. There are no compelling and substantial reasons to interfere with the findings recorded by the learned trial Court. Learned counsel appearing for the appellant-CBI could not point out any material illegality or perversity in the impugned judgment of acquittal.

27. Resultantly, the appeal is dismissed.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

August 30, 2019
Gurpreet

Whether speaking /reasoned : Yes
Whether Reportable : Yes