

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

CRA-S-1979-SB-2003

Decided on : September 24, 2019

Sukhdev Singh & anr.

..... Appellants

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. Arnav Sood, Advocate
for the appellants.

Ms. Kanica Sachdev, AAG, Punjab.

Manjari Nehru Kaul, J.

The instant appeal has been preferred against the impugned judgment of conviction and order of sentence dated 01.10.2003 passed by Special Judge, Ferozepur vide which the accused-appellants were convicted and sentenced as under:

<i>Name of Convict</i>	<i>Offence</i>	<i>Period of sentence</i>	<i>Fine imposed</i>	<i>Period of sentence in default of payment of fine</i>
Sukhdev Singh Nazeer Chand	420 IPC	Rigorous imprisonment (RI) for two years	Rs.5,000/- each	RI for six months

2. Prosecution case in brief as set up during the trial was that the son of complainant Tehal Singh (PW-7) appeared in the matriculation examination held by the Punjab State Education Board (for brevity ' PSEB') in the month of March, 1993 as a student of Government School, Mallanwala. As he did not fair well in the said examination, he told the

complainant that one of his friends Sarbjit Singh too had not done well in the matriculation examination in the previous year but had still managed to get a “pass” matriculation certificate prepared through accused Sukhdev Singh, Nazeer Chand and Raman Monga, Sarpanch, member panchayat and teacher respectively. The complainant thereafter approached the accused-appellants Sukhdev Singh and Nazeer Chand in April, 1993 and sought their help in procuring a “pass” matriculation certificate for his son; the accused-appellants demanded Rs.13,000/- for getting the needful done. The complainant subsequently paid the amount demanded, to the appellant Sukhdev Singh, who assured him that the needful would be done. All this happened in the presence of Sarabjit Singh, Jarnail Singh and Virsa Singh. The money was then passed on to co-accused Raman Monga by the accused-appellants Sukhdev Singh and Nazeer Chand in the presence of the complainant and the aforementioned three persons, who had accompanied him. However, when the matriculation result was declared, his son's name did not figure in the list of successful candidates. Hence, in July 1993, the complainant went back to the appellants and in the house of the accused-appellant Nazeer Chand, a detailed marks card (for short 'DMC') of his son was delivered to him in which his son was shown to have passed the matriculation examination. The complainant took the DMC to the Education Office at Mohali where it was revealed to him that the said DMC was a fake certificate. He then again approached the accused-appellants and demanded back the money given by him to them. However, they refused to return the same. Further, the complainant PW-7 also stated that it had come to his knowledge that the accused-appellants had accepted money from

different persons including Mukhtiar Singh s/o Piara Singh, Sukhdev Singh s/o Makhan Singh and Virsa Singh for procuring such like fake certificates. On the basis of the statement of complainant Tehal Singh Ex.P-6 made to PW-10 ASI Jaswant Rai, FIR No.134 (Ex.P-9) was registered under Sections 420, 465, 468, 471, 34 IPC and Section 8/9 of Prevention of Corruption Act, 1988 leading to the arrest of the appellants Sukhdev Singh and Nazeer Chand on 16.11.1994 whereas accused Raman Monga was arrested on 26.11.1994. On her arrest, accused Raman Monga suffered a disclosure statement Ex.P-14 in pursuance to which, two forged DMCs of Amrik Singh and Sat Pal Singh were recovered vide recovery memos Ex.P-16 and P-17.

3. On completion of investigation, the accused-appellants were charged for offence under Section 420 IPC to which they pleaded not guilty and claimed trial.

4. In support of their case, prosecution examined as many as ten witnesses including Mukhtiar Singh – PW-5, Sukhdev Singh – PW-6, Tehal Singh, complainant PW-7, Raghbir Singh Chahal, DSP – PW-8, Labh Singh -PW-9 and ASI Jaswant Rai- PW-10.

5. After the conclusion of prosecution evidence, all the incriminating circumstances appearing against them in evidence were put to the appellants-accused under Section 313 Cr.PC to which they pleaded false implication.

6. Accused Raman Monga absented herself during the trial and was declared proclaimed offender.

7. After analyzing and perusing the evidence available on record,

the trial Court convicted the accused and sentenced them as already detailed above.

8. Learned counsel for the appellants has contended that the approach of the trial Court in recording a finding of conviction is totally erroneous and the evidence has not been appreciated in the right perspective. He has challenged the impugned judgment primarily on the following grounds:

- i) The complainant Tehal Singh (PW-7) did not support the case of the prosecution and was declared hostile. He was subjected to extensive cross-examination but the prosecution failed to elicit anything favourable from him.
- ii) PW-5 Mukhtiar Singh supported the case of the prosecution and in his testimony before the Court below stated that he had paid money to the accused-appellants Sukhdev Singh and Nazeer Chand for procuring a matriculation certificate for himself and the same had been done in the presence of one Sahib Singh. However, said Sahib Singh was not examined by the prosecution.
- iii) When PW-5 Mukhtiar Singh was recalled for cross-examination, he stated that the said Sahib Singh was not present with him when the amount was paid to the accused-appellants, which was at variance with his deposition in the examination-in-chief.
- iv) Sarabjit Singh, Virsa Singh and Jarnail Singh, who

accompanied the complainant Tehal Singh were not even examined by the prosecution.

Learned counsel for the appellants further urged that the trial Court based the conviction of the appellants on the basis of the solitary evidence of PW-5 Mukhtiar Singh, whose evidence was at best one of hearsay.

9. Learned State counsel, on the other hand, has vehemently opposed the submissions made by learned counsel for the appellants by contending that there is sufficient evidence to hold the accused-appellants guilty and fully liable for offence under Section 420 IPC and prays for dismissal of the appeal.

10. I have heard learned counsel for the parties besides going through the evidence and other material available on record.

11. I have no hesitation in holding that the trial Court erred in recording a finding of conviction of the accused-appellants only on the basis of the testimony of PW-5 Mukhtiar Singh. In fact in the FIR, complainant Tehal Singh (PW-7) had himself stated that he learnt about PW-5 Mukhtiar Singh also having paid money to the accused appellants for procuring matriculation certificate for himself. Further the best witness, who could have corroborated the exchange of money between the complainant Tehal Singh (PW-7) and the accused-appellants was PW-6 Sukhdev Singh but he admittedly did not support the case of the prosecution. In this background, the credibility of the information so acquired by the complainant Tehal Singh (PW-7) does become suspect as the same was based on hearsay, which is per se inadmissible. Moreover, coming to the testimony of PW-5

Mukhtiar Singh, the next best person, who could have corroborated the exchange of money between him and the accused-appellants was Sahib Singh since he had supposedly accompanied PW-5 Mukhtiar Singh when the payment was made. However, Sahib Singh was neither joined in the investigation nor cited as a witness.

12. Hearsay evidence, more often than not is liable to be fallacious and its value gets diminished as the possibility of the same getting distorted and misinterpreted is very high. Hearsay evidence is inherently a weak type of evidence and the salutary rule is to save people from being indicted on the basis of uncorroborated testimony of a person, who cannot be subjected to the ordinary test enjoined by law for ascertaining the correctness or otherwise of his testimony.

13. Hence, in this background, the deposition of PW-5 Mukhtiar Singh lacks in credibility and reliance on it is fraught with dangerous consequences. The cumulative effect is that the conviction has been based only on the testimony of PW-5 Mukhtiar Singh, who admittedly did not accompany the complainant at the time of payment of money to the accused-appellants. It would be unsafe to place reliance on the testimony of PW-5 Mukhtiar Singh as he figured for the first time only in the statement Ex.P-6 of the complainant Tehal Singh PW-7. It is not even the case of PW-5 Mukhtiar Singh that prior to the registration of the FIR Ex.P-9 he had ever reported the matter to any authority or lodged any complaint against the appellants. The evidence on the face of it is not at all sufficient for convicting the accused-appellants for the offences charged with.

12. As a sequel to the above discussion, the present appeal is

allowed and the impugned judgment and order of conviction dated 01.10.2003 is hereby set aside. The appellants Sukhdev Singh and Nazeer Chand are consequently acquitted of the charge against them. They are on bail and accordingly their bail bonds stand discharged.

September 24th, 2019
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No