

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.684 of 2017

DATE OF DECISION: May 14, 2019

SATPAL SINGH @ SATTU

...PETITIONER

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. H.S. OBEROI, ADVOCATE FOR THE PETITIONER.
MR. HARMINDER SINGH SITTA, AAG, PUNJAB.

MANOJ BAJAJ, J.(ORAL)

Convict Satpal Singh @ Sattu has filed the revision petition to challenge the Appellate Court judgment dated 7.12.2016 passed by the learned Addl. Sessions Judge, Patiala in CrI.A. No.28 of 22.9.2016, whereby it has upheld the judgment of conviction and order of sentence dated 8.9.2016, passed by the trial Court.

The prosecution arises from case FIR No.5 dated 26.1.2016, registered under Sections 380 and 454 IPC, Police Station Ghagga. The petitioner was awarded sentence of R.I. for 1 year alongwith fine of ₹250/- and in default to undergo a further period of SI for 15 days, for the offence punishable under Section 380 IPC and R.I. for 6 months alongwith fine of ₹250/- and in default to undergo a further period of SI for 15 days, for the offence punishable under Section 448 IPC. Both the sentences were ordered to run concurrently.

The facts leading to the revision petition are noticed below.

On 26.1.2016, Yadwinder Singh made a statement before HC

Buta Singh, who alongwith other police officials was present at Bus Stand Kakrala and stated that he was the President of Gurudwara Sahib Committee. On 25.1.2016 at about 5.00 p.m., when he alongwith another Committee Member Karamjit Singh went inside the Gurudwara Sahib for offering prayers, the Granthi of the Gurudwara Sahib was not there as he was bathing. When he went inside, he saw Satpal Singh @ Sattu was committing theft of currency notes from the golak of the Gurudwara Sahib and on seeing them, he ran away from the spot. An attempt was made to catch him, but they failed. He further stated that earlier also, thefts took place from the golak of the Gurudwara Sahib, but they were taking care. On the basis of the above statement, FIR No.5 dated 26.1.2016 under Sections 380 and 454 IPC was registered at Police Station Ghagga, Patiala.

After investigation of this case, the final report (challan) under Section 173 Cr.P.C. was submitted before the Court and the learned trial Court after completion of formalities proceeded to frame the charges against the accused under Sections 380, 411 and 454 IPC. The accused pleaded not guilty and claimed trial.

To bring home the guilt of the accused person, the prosecution in all examined 4 witnesses and also adduced documentary evidence. Thereafter, the statement of accused was recorded under Section 313 Cr.P.C., wherein he stated that he was innocent. It was explained that as there were two groups in Gurudwara Sahib Committee and he refused to support the complainant's group, therefore, he had been falsely implicated due to party faction.

The trial Court after examining the material on record proceeded to hold the accused guilty and imposed the sentence as noticed

above. Dissatisfied with the judgment of conviction and order of sentence dated 8.9.2016 passed by learned Judicial Magistrate Ist Class, Samana, an appeal was carried out by the convict bearing Appeal No.28 of 22.9.2016. The appeal was decided vide judgment dated 7.12.2016 passed by learned Additional Sessions Judge, Patiala.

Learned counsel for the petitioner has contended that the appellate Court has upheld the judgement of conviction without even hearing the counsel for the appellant and heard only the counsel for the State. Learned counsel has invited the attention of the Court to the testimony of PW1 Yadwinder Singh and PW2 Karamjit Singh to contend that the material produced by prosecution was not enough to prove the case against the convict beyond the shadow of reasonable doubt. It is further contended that the place of occurrence was well equipped with CCTV camera and the crucial evidence in that regard was not produced before the learned trial Court. It has been further pointed out that the case of the prosecution was lacking certainty, as the charge for the offence punishable under Section 411 IPC was also framed against the petitioner. According to the learned counsel, the ingredients of the offence of theft and receiving of stolen property are antithesis of each other and cannot co-exist. It is contended that the offence under Section 454 IPC may not be made out as the alleged place of occurrence is a Gurudwara where anybody can pay obeisance.

Learned State counsel has submitted that both the Courts below have given a well reasoned judgement based on correct appreciation of facts on record and therefore, do not suffer from any illegality and perversity.

After hearing learned counsel for the parties, this Court has noticed that the appellate Court has decided the appeal without hearing the appellant or his counsel. Since the criminal law provides for one appeal wherein the evidence of the prosecution is to be examined threadbare to arrive at a conclusion regarding validity and correctness of the impugned judgement passed by the trial Court. This Court is of the opinion that the remanding the case to the trial Court would further consume some time and therefore, it would be appropriate to reappraise the evidence adduced by the prosecution.

The entire case of the prosecution hinges upon primarily the evidence of two witnesses, PW1 Yadwinder Singh and PW2 Karamjit Singh. A perusal of their evidence reveals that the witnesses deposed that the accused was seen taking out money/currency notes from the golak placed at the Gurudwara Sahib. It needs to be noticed that none of the witnesses deposed that accused was holding currency notes. It is the case of the prosecution that the lock of said golak was found broken. However, the evidence of the investigating officer PW3 HC Buta Singh does not reflect that the said broken lock or the golak were taken into possession. This was the material piece of evidence which was not produced before the Court. Apart from this, it has also come in evidence of PW2 Karamjit Singh that there were CCTV cameras installed in the Gurudwara Sahib, but the same were not shown to the police. The recovery of the amount, that too on the disclosure statement of the accused from his house may not be sufficient to bring home the guilt regarding the charge for the offence punishable under Section 380 IPC, particularly when there is nothing on record to indicate

about the alleged amount contained in the golak or the amount taken away by the accused from the said golak. The evidence of the prosecution has left various unanswered questions and the benefit of the same must be extended to the accused.

The setting-up of charge under Section 411 IPC itself reflects uncertainty in the case of the prosecution, as far as the offence of theft is concerned. The other charge for the offence punishable under Section 454 IPC also may not be made out as the place of occurrence, i.e. Gurudwara Sahib is accessible and open to anyone and mere presence of the petitioner cannot be considered that he entered there with the intention to commit theft particularly, when the evidence on material aspects was lacking to accept the alleged commission of theft.

In view of the above, the case of the prosecution is surrounded by serious doubts and the benefit of the same must be extended to the accused. It will be unsafe to maintain the conviction of the petitioner. The judgement passed by the appellate Court suffers from illegality and impropriety warranting interference.

Resultantly, the revision petition is accepted and the impugned judgement dated 7.12.2016 passed by the learned Addl. Sessions Judge, Patiala in CrI.A. No.28 of 22.9.2016 is set aside and the petitioner is acquitted of all the charges levelled against him. The petitioner is on bail. His bail bonds stand discharged.

May 14, 2019
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes/No
Whether Speaking/Reasoned : Yes/No