

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

CRR-823-2006(O&M)

Date of decision:-31.1.2020

Jagjit Kumar

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Narinder Singh, Advocate
for the petitioner.

Ms.Amarjit Kaur Khurana, DAG, Punjab.

Mr.K.S. Dadwal, Advocate
for respondents No.2 and 3.

H.S. MADAAN, J.

Briefly stated, the facts of the case are that Majhail Singh and Jaswant Singh, accused in FIR No.18 dated 21.2.1998 for the offences under Sections 427, 429, 447 and 34 IPC registered with Police Station Haryana faced trial by Judicial Magistrate Ist Class, Hoshiarpur.

As per the version of the prosecution on 21.2.1998 complainant Jagjit Kumar got his statement Ex.PA recorded with ASI Sanjiv Kumar (hereinafter referred to as the Investigating Officer/I.O.) from Police Station Haryana, wherein he stated that he was rearing honey

bees at villages Bassi Baboo Khan and Khanpur having 30 boxes and 78 boxes there respectively; he had another partner by the name of Jang Bahadur, resident of village Haryana; on 19.2.1998, Jang Bahadur had gone to Delhi in connection with some personal work; on that day at about 9:00 p.m. the complainant Jagjit Kumar along with Satnam Singh son of Krishan Chand and Ved Parkash were sitting inside a room at village Khanpur; when they came out, they saw that honey bees were humming and emitting smell of some medicine; they observed in torch light that many honey bees had died in the boxes, whereas some were gasping for breath; on checking being carried out, they came to know that insecticide had been put in all the boxes, resultantly the honey bees had died; then the complainant Jagjit Kumar along with Satnam Singh went to village Bassi Baboo Khan on their scooter to see the remaining boxes and they found that one Bajaj Chetak scooter without number plate of white colour was there near turning of Bassi Baboo Khan Farm; when they entered the farm, they saw honey bees lying dead in the boxes; they came near the scooter and found that all the three tyres including the stepeny were punctured; they had informed Yudhvir Singh, Sarpanch of the village Bassi Baboo regarding the incident and accompanied by other persons, they reached the farm and saw two persons starting the punctured scooter; they identified those persons as Majhail Singh son of Mehar Singh, resident of Gondpur serving as ADO in Agriculture Department and second one being Jaswant Singh son of Gurbachna Ram, since both of them were known to the complainant earlier.

In his said statement to the police the complainant added that

both those persons were taking off the plastic gloves from their hands and were putting those in the diggy of the scooter and smell of some poisonous substance was being emitted. One packet of insecticide and one empty bottle were lying nearby. According to the complainant, both such persons in connivance with each other had killed the honey bees with poisonous substance. They were taking care of the boxes of honey bees and accused who had been apprehended. However, respectables and Gurbachan Singh were trying to get the matter patched up but those efforts did not prove to be successful. According to the complainant they had suffered a loss of Rs.6 lakhs in the process.

The complainant had got such statement recorded with the Investigating Officer, who was heading the police party and was on patrol duty. The Investigating officer has appended his endorsement below such statement of the complainant and sent ruqa to the police station, on the basis of which formal FIR was registered. The Investigating Officer went to the spot and prepared rough site plans of the places of incident at village Khanpur and village Bassi Baboo Khan. He took into possession scooter Bajaj Chetak without number, sale letter, gloves plastic vide recovery memo Ex.PB. A packet containing insecticide was also taken into possession vide recovery memo Ex.PC.. A plastic bottle containing the insecticide in liquid form was also taken into possession vide recovery memo Ex.PD. Wooden boxes used for keeping the honey bees were taken into police possession vide memo Ex.PE as regards village Bassi Baboo Khan, whereas the boxes containing the dead honey bees of village Khanpur were taken into possession vide recovery memo Ex.PF. Report

from Chemical Examiner Ex.PW4/E was received. The Investigating Officer recorded statements of witnesses. After completion of investigation and other formalities, challan against accused was prepared and filed in the Court.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Hoshiarpur, she supplied copies of documents relied upon in the challan to the accused free of cost as provided under Section 207 Cr.P.C.

Learned Judicial Magistrate Ist Class, Hoshiarpur finding that charge for offences under Sections 429/447/34 IPC was disclosed against all the accused, charge-sheeted the accused for the said offences, to which, they pleaded not guilty and claimed trial.

During the course of its evidence, the prosecution had examined in as many as seven witnesses, the details of which are as under.

PW1 complainant Jagjit Kumar deposed as per his statement Ex.PA made before the police. PW2 Jang Bahadur also corroborated the version as given by the complainant Jagjit Kumar on material aspects proving various memos attested by him. PW3 Shiv Kumar proved photocopy of the receipt book as Ex.PW3/A. PW4 Govinder Kumar proved various documents, whereas PW5 B.S. Tagore proved the balance certificate record as Ex.PW5/A. Constable Sanjiv Kumar got his statement recorded as PW6 and Ram Murti got his statement recorded as PW7.

Since the prosecution failed to conclude its evidence despite ample opportunities, the evidence of the prosecution was closed by Court order dated 18.1.2005.

Statements of accused were recorded under Section 313

Cr.P.C. in which the accused while denying the incriminating circumstances appearing against them submitted that they were innocent and had been falsely involved in the case.

In defence evidence, accused examined Dr.Kulbir Singh as DW1 and Mohinder Singh as DW2.

After hearing arguments, learned trial Magistrate convicted the accused for the offences under Sections 447/34 IPC and 429/34 IPC. The operative part of the judgment runs as follows:

“13. I have considered their respective contentions. The present case against the accused persons was registered on the basis of the statement made by Jagjit Kumar Ex.PA. It is mentioned in the statement Ex.PA that on the turning of the road of Bassi Baboo Khan near farm, white colour without number Bajaj Chetak scooter was parked, when they entered the farm they saw that the bees were dead in the boxes and then again they came near the scooter and punctured the three tyres of the scooter including stepeny. It is also mentioned that two persons were starting the scooter and they were Majhail Singh sonof Mehar Singh and Jaswant Singh son of Gurbachna Ram and thus it is clear that the accused are very much named in the FIR. It is clear from the statement made by Jagjit Kumar before the police Ex.PA as well as from the statement made by Jagjit Kumar in the Court that the occurrence took place on 19.2.1998 at 9:00 p.m. and in the statement Ex.PA it is mentioned that the

efforts were being made for compromise so the delay if any in registration of the case is properly explained and is not fatal to the prosecution version. Jagjit Kumar while appearing as PW1 has given the full account of the occurrence and his statement finds corroboration from the statements of other prosecution witnesses. Even his testimony finds corroboration from the report of the Chemical Examiner Ex.PW4/E which reads as “both dichlorvos insecticide and chlorpyrifos insecticide are poisons and can be used to kill insects including honey bees”. There is nothing on record to show that accused persons ever moved any representation to the authorities regarding their alleged false implication in this case and rather from Ex.D1 which is enquiry report it becomes clear that complainant Jagjit Kumar had also moved complaint against the accused persons to the Agriculture Department. Thus, I find the prosecution version as disclosed by Jagjit Kumar which finds corroboration from the Chemical Examiner's report as well as from the testimony of other witnesses as lucid, cogent and convincing and the defence version of the accused persons is after thought and does not inspire confidence. Minor discrepancies occur with the passage of time and due to the difference in the power of observation and perception of different individuals. PW2 Jang Bahadur has also deposed that boxes containing dead honey bees were taken into

possession in his presence thus prosecution has proved the charges framed against the accused persons beyond any shadow of reasonable doubt and as such I hold both the accused guilty for the offences punishable under Sections 447/34 IPC and 429/34 IPC and convict them for the same. Let the accused be heard on the point of quantum of sentence.

They were sentenced as under:

Under Section	Sentence Awarded
447/34 IPC	Rigorous imprisonment for two months each.
429/34	Rigorous imprisonment for one year and to pay a fine of Rs.300/- each and in default thereof, to further undergo rigorous imprisonment for a period of fifteen days each.

Both the sentences were ordered to run concurrently.

Feeling aggrieved, the accused/convicts had preferred an appeal before the Court of Sessions, which was allowed by learned Sessions Judge, Hoshiarpur, resultantly the judgment of conviction and order of sentence passed against the accused were set aside and they were acquitted of the charges framed against them. The points of determination formulated by learned Sessions Judge, Hoshiarpur and conclusion reached were as under:

Sr.No.	Points of determination	Conclusion
1.	Whether section 429 IPC is not attracted in this case and is not made out?	Referring to Definition of Section 429 IPC and judgment Nabin Chandra Gogoi Vs. The State, AIR 1961 Assam page 18 , it was concluded that a honey bee cannot

		be taken as a domestic animal since it does not fall in the category of animals mentioned in Section 429 IPC.
2.	Whether there is no eye-witness who had seen the occurrence?	From the record it came out that there was no eye-witness to the occurrence.
3.	What is the effect of non-production of case property?	Non-production of case property leads to drawing an adverse inference against the prosecution as at least some of the dead honey bees could be easily produced and production of empty boxes in the Court did not advance the case of the prosecution in any manner qua the liability of the accused.
4.	Whether PW2 Jang Bahadur is not a trustful witness?	The deposition of PW2 Jang Bahadur was not trustworthy for the detailed reasons given in paras No.24 and 25 of the judgment
5.	Whether there is no independent corroboration in this case?	Satnam Singh, Ved Parkash Gorkha, Yudhvir Singh, Sarpanch and Gurbachan Singh were most material witnesses, who could throw light about the involvement of the accused. However, none of them was examined by the prosecution for that reason adverse inference was drawn against the prosecution.
6.	Whether the prosecution story is most improbable and unnatural?	The prosecution story is unreliable because in case the accused really wanted to do any mischief, they could easily engage some one to do the mischief instead of knowing well that they were Govt. officers likely to be prosecuted if they did any illegal act and the question of committing minor crime by them being Govt. servants, shows that the act complained cannot be attributed to them.
7.	Whether the solitary statement of the complainant PW1 suffers from infirmities?	From the detailed reasons given in paras No.28 to 30, a conclusion was drawn that solitary statement of the complainant suffered from

		infirmities and it did not inspire any confidence, rather the statement was untrustworthy.
8.	Whether there is delay in sending sample to the office of the Chemical Examiner?	The incident had taken place on 19.2.1998. As per the Chemical Examiner report Ex.PW4/E the samples were received in that office on 23.4.1998 after a lapse of more than two months. There was no explanation as to why the samples were not sent immediately. Therefore, the possibility of tampering with the samples could not be ruled out, which led to drawing an adverse inference against the prosecution.
9.	Whether the defence version appears to be more probable than prosecution version?	Referring to the statement of complainant PW1 Jagjit Kumar and PW2 Jang Bahadur and evidence adduced by the accused in defence version, it was observed that possibility could not be ruled out that the honey bees might have died due to cold weather and improper care and precaution in feeding them, providing medicines to them and to keep them in a warm atmosphere.

The complainant felt aggrieved by such judgment passed by learned Sessions Judge, Hoshiarpur and has approached this Court by way of filing the present revision petition, notice of which was issued to respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

For ready reference, Section 397 Cr.P.C. is being reproduced as under:

397. Calling for records to exercise powers of revision.

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order,- recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record. Explanation.- All Magistrates whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub- section and of section 398.

(2) The powers of revision conferred by sub- section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

Learned counsel for the respondents No.2 and 3 has referred to judgment **Jangir Singh and others Versus The State, 1962 PLR 328** by a Division Bench of this Court wherein it was observed that High Court in exercise of its appellate or revisional powers under Section 423(1)(b) or Section 439 is not competent to reverse the finding of acquittal recorded by the trial Court in favour of the appellant in respect of an offence which directly was not the subject matter of the appeal.

The second judgment referred to by him was **Bindeshwari Prasad Singh @ B.P. Singh and others Versus State of Bihar (Now Jharkhand) and another, 2002(4)RCR(Criminal)61** wherein it was

observed that the High Court should not re-appreciate the evidence to reach a finding different from the trial Court except to prevent miscarriage of justice.

I find that the learned trial Court had passed the judgment of conviction without properly analysing the factual and judicial position and applying a judicious mind. Several vital loopholes and lacunae in the case of complainant were overlooked and ignored, which would have adversely affected the merits of the case. Whereas the judgment passed by learned Sessions Judge, Hoshiarpur is well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The judgment is certainly not arbitrary or against the settled principles of criminal justice. I do not see any reason to interfere with it by accepting the revision petition.

Finding no merit in the revision petition, the same stands dismissed accordingly.

Necessary information be sent to the quarter concerned.

31.1.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No