

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-1478-MA-2015 (O&M)

Date of reserved:09.11.2023

Date of Pronouncement: 28.11.2023

State of Haryana

...Appellant.

Versus

Kewal Singh and another

...Respondents.

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

.....

Present: Mr. Hitesh Pandit, Addl. A.G., Haryana.

Sukhvinder Kaur, J.

1. Appellant-State of Haryana has preferred the instant application under Section 378(3) Cr.P.C. seeking leave to appeal against judgment dated 03.01.2015, pertaining to FIR No.209 dated 14.06.2012, under Sections 279, 337, 304-A, 420, 468 and 471 IPC and Section 15 of the NDPS Act, registered at Police Station Narnaund, passed by learned Additional Sessions Judge, Hisar, vide which the respondents/accused-Kewal Singh and Kashmir Kaur have been acquitted.

2. The factual scenario, as highlighted by the prosecution, is that on 14.06.2012, two ruqas regarding accident, one qua Sonu son of Naresh having "brought dead" and another qua admission of injured Naresh son of Mewa Singh, were received in Police Stataion Narnaund from General Hospital, Hisar, upon which ASI Mahender Singh alongwith EASI Sohan Lal reached at CHC Narnaund, where injured Suresh, who had sustained injuries in the same accident, was lying admitted and after obtaining opinion of the doctor, ASI Mahender Singh recorded the statement of Suresh

Kumar, wherein he stated that he was studying at Ding Mandi (Sirsa). On

that day, at about 7:00 A.M. he, Naresh and Sonu had left their village for Narnaund on the motorcycle of Naresh bearing registration No.HR-20D/7398 make Platina, which was being driven by Naresh. When they all reached near temple of Sai Baba on Narnaund-Jind road, then a car being driven in a rash and negligent manner came at a high speed from Hansi side and after coming on their side without blowing of any horn hit their motorcycle. The car was make Logan bearing registration No.CH-03R/2507. As a result of the impact of the accident, they all alongwith the motorcycle fell down on the road. He and Naresh sustained multiple injuries, whereas Sonu died at the spot. Pardeep son of Shishpal and Rajesh were coming behind them and they got them admitted at Government Hospital, Narnaund. As Naresh was seriously injured, he was referred to Government Hospital, Hisar by the doctor. On the said statement, a case under Sections 279, 337, 427 and 304-A IPC was got registered. During investigation, on 18.06.2012, at the time of mechanical examination of the car bearing registration No.CH-03R/2507, plastic bags containing poppy husk and two number plates bearing No.PB-11-AX-9506 were recovered from the dicky of the car. Two samples of 100 grams were separated and the weight of remaining poppy husk came to be 101 kg. The case property was taken into police possession. Then offence under Sections 420, 468 and 471 of IPC and Section 15 of NDPS Act were added. Accused persons were arrested and after the completion of investigation, the Challan under Section 173 Cr.P.C. was presented in the Court against the accused persons.

3. Copies of the report under Section 173 Cr.P.C. along with relevant documents were supplied to the accused free of cost. Charge under Sections 279, 337, 304-A, 420, 468 and 471 IPC and Section 15 of the

NDPS Act was framed against the accused persons to which they pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution has examined 18 witnesses i.e. ASI Satbir as PW1, ASI Sohan as PW2, Suresh as PW3, Rajesh as PW4, Pardeep as PW5, Anil as PW6, ASI Mahender as PW7, Sukhbir as PW8, Harikesh as PW9, EASI Sukhdev as PW10, ASI Dharmbir as PW11, Dr. Kamid as PW12, Dr. Reena Jain as PW13, Dalip as PW14, ASI Dhoop Singh as PW15, Inspector Surender Kumar as PW16, Dr. Shamsher as PW17 and EASI Satya Narain as PW18.

5. Thereafter, statements of the accused under Section 313 Cr.P.C. were recorded in which the incriminating circumstances appearing against them in the prosecution evidence were put to them, to which they denied and pleaded their false implication.

6. After concluding the trial, the trial Court acquitted both the accused and aggrieved by the said decision, the appellant-State has filed the present application for leave to appeal against acquittal of accused Kewal Singh and Kashmir Kaur.

7. We have heard Mr. Hitesh Pandit, Addl. A.G., Haryana and have also perused the record.

8. Learned State counsel for the appellant has contended that the car bearing registration No.CH-03R/2507 was mechanically examined by Sukhbir Singh, in the presence of ASI Sukhvinder Singh and 101 kgs poppy husk was recovered from dicky of the said car. He has contended that since the recovery is of 101 Kgs of poppy husk, so chance of the same being planted is very minimal. He has also contended that accused Kashmir Kaur, who was registered owner of the said car also suffered a disclosure

statement that accused Kewal Singh was smuggling the contraband at the time of the incident while driving the aforesaid vehicle. He has submitted that the case of the prosecution has been duly proved by the prosecution witnesses and the evidence produced by the prosecution is cogent and trustworthy. He has urged that the judgment of acquittal of the accused persons is based upon assumptions and presumptions and the evidence on record has not been properly appreciated and has prayed that as there is sufficient evidence on record for conviction of the accused persons, so appellants may be granted leave to appeal against the judgment of acquittal qua respondents.

9. This is the trite law that the Appellate Court is to interfere with the judgment of acquittal only, when there is perversity of facts and law and judgment of acquittal should not be interfered with lightly.

10. Now adverting to the present case, after having heard learned counsel for the appellant-State at length and having perused the judgment as well as the other relevant record, we are of the considered opinion that the prosecution was unable to prove its case against the accused beyond the shadow of reasonable doubt. The judgment of trial Court is well reasoned judgment in which each and every aspect has been discussed.

11. In this case, respondent No.1-Kewal Singh has been charge sheeted under Sections 279, 337, 304-A IPC in addition to offences under Sections 420, 468 and 471 IPC and Section 15 of NDPS Act. In order to prove the offences under Section 279, 337 and 304-A IPC qua respondent No.1 Kewal Singh, the most material witnesses of the prosecution that have been examined are PW3-Suresh Kumar, PW4-Rajesh and PW5-Pardeep, who have been alleged to be the eyewitnesses to the accident in question.

But perusal of the statements of all the above said witnesses reveal that they have not supported the prosecution version at all and were declared hostile. But even during their cross-examination by the State counsel, after declaring them hostile nothing favourable could be extracted from their cross-examination which could connect them with the alleged offence. The trial Court has thus rightly reached at the conclusion that the charge framed against accused Kewal Singh for having committed offence punishable under Sections 279, 337 and 304-A IPC is not proved.

12. Besides that both the accused/respondents have been alleged to have committed offences punishable under Sections 420, 468, 471 IPC and Section 15 of NDPS Act.

13. NDPS Act provides for very stringent punishment in case the accused is found to have committed an offence under the same and therefore, it is all the more important and imperative for the prosecution to prove its case beyond the shadow of reasonable doubt. The several safeguards have been provided under the Act are to be complied by the investigating agency and the prosecution.

14. The trial Court has rightly held that the disclosure statement Ex.P4 suffered by the accused Kewal Singh is not a admissible as the same was recorded when accused Kewal Singh was in the police custody. The trial Court has further rightly observed that no recovery of any contraband etc was effected on the basis of disclosure statement Ex.P4 and so accused Kewal Singh cannot be connected with the alleged offence on the basis of alleged disclosure statement Ex.P4.

15. Adverting to the case in hand, PW7 ASI Mahender, the Investigating Officer has categorically stated during his cross-examination

that he did not prepare CFSL form at the time of the recovery. So admittedly when CFSL form was not prepared at the spot at the time of alleged recovery, then it is fatal to the prosecution case.

16. This is again the admitted fact that no independent witness was joined at the time of the alleged recovery of the contraband and the fake number plates. Trial Court has rightly held that no explanation has been given by the prosecution as to why no independent witness was joined at the time of aforesaid recovery or at the time of preparing recovery memo Ex.P14, when it is not the version of the prosecution that no independent witness was available to the police at that time. The trial Court has thus rightly held that the non-joining of an independent witness while effecting recovery of alleged contraband and alleged forged number plate from the dicky of the aforesaid car as alleged by the prosecution, has created a doubt regarding genuineness of the version of the prosecution and in this context has rightly relied upon decision of this Court in *Fateh Singh Vs. State of Haryana, 2006 (2) Criminal Court Judgments 45.*

17. It is also pertinent to note that as per PW7, the aforesaid car was taken into police possession from the spot on 14.06.2012 and as per statements of PW7 and PW8, the alleged contraband and the fake number plates were recovered from the dicky of the said car on 18.06.2012 when it was being mechanically examined by PW8. But no satisfactory explanation has been given by the prosecution that why the aforesaid car was not mechanically examined and its dicky was checked on 14.06.2012 itself when it had been taken into possession from the spot, which again creates a dent in the case of the prosecution.

18. In *Ramji Singh Vs. State of Haryana 2007(3) RCR*

(Criminal), 452, it has been held that as per the standing instructions issued by the Narcotics Control Bureau, the sample must be dispatched to the laboratory within 72 hours of its seizure to avoid any legal objections. In that case, the samples were forwarded to the Chemical Examiner, after 8 days of their seizure and this circumstance was held to be fatal to the prosecution case.

19. But in the instant case the alleged recovery of contraband was effected on 18.06.2012 but the samples were given to PW10-Sukhdev Singh on 27.07.2012 for depositing the same at FSL Madhuban and thus there was delay of 39 days in sending samples for examination to FSL, Madhuban. No explanation has been given by the prosecution for such a long delay in sending of the samples. The trial Court has rightly held that the possibility of tampering with the samples and the case property cannot be ruled out.

20. Trial Court has also rightly held that accused Kashmir Kaur cannot be connected with the alleged offence on the basis of the disclosure statement Ex.P18, allegedly suffered by her when admittedly she was in police custody as it is the settled law that disclosure statement made by the accused while in police custody is not admissible.

21. The perusal of the statements of PW7 and PW8 reveal that as per these witnesses dicky of the car was opened with the key, while as per PW15, the lock of the dicky of the car was opened by breaking the glass and it was not opened with the key. PW17 has also stated that the lock of the dicky was broken in his presence. All these major contradictions in the statements of the prosecution witnesses regarding manner of opening of the dicky of the car from where the contraband was allegedly recovered makes the case of the prosecution highly doubtful.

22. The registration certificate of the car in question has not been proved on record. So when the actual registration number of the said car has not been proved then the offences under Sections 420, 468 and 471 are also not proved.

23. Thus, when the contraband and the alleged forged number plate were not recovered from the conscious possession of the accused, when the alleged recovery of contraband was effected after a gap of 4 days from the date when the car had been allegedly taken into police possession, when there was delay of about 40 days in sending of samples to FSL, when no CFSL form was prepared at the spot and when no independent witness was joined at the time of the alleged recovery to make the case of the prosecution credible, then keeping in view the totality of all the circumstances discussed above and after appreciating the evidence on record, the trial Court has rightly reached at the conclusion that the prosecution has not been successful in proving its case against the accused persons beyond the shadow of the reasonable doubt and the accused persons have been rightly acquitted by the trial Court.

23. In view of the above, no case is made out for grant of leave to appeal against acquittal of accused Kewal Singh and Kashmir Kaur. The application without having any merits stands dismissed and the leave to appeal is declined.

(DEEPAK SIBAL)
JUDGE

(SUKHVINDER KAUR)
JUDGE

28.11.2023

Komal

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