

PARVEEN @ SONU

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v.

THE STATE OF HARYANA

(Criminal Appeal No.1571 of 2021)

DECEMBER 07, 2021

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[R. SUBHASH REDDY AND HRISHIKESH ROY, JJ.]

Penal Code, 1860 – ss.224, 225, 332, 353, 302 r/w s.120-B – Case of prosecution that police party was escorting four accused to be produced before the Court – Appellant, a party to another accused group, conspired together to rescue them – One of the accused was alleged to have fired upon Head Constable who later succumbed to fire arm injuries – Accused persons convicted and sentenced – On appeal only by appellant, held: To prove the charge of conspiracy, within the ambit of s.120-B, it is necessary to establish that there was an agreement between the parties for doing an unlawful act – In the present case, except the vague and bald statement that the appellant is a member of alleged conspiracy, there is no other evidence to prove that the appellant conspired with other accused for the offences for which he was charged – Alleged confessional statements of the co-accused in absence of any other corroborative evidence, not safe to maintain the conviction and sentence of the appellant – Conviction recorded and sentence imposed on the appellant by Trial court and confirmed by High Court, set aside – Acquitted – Arms Act – s.25.

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Allowing the appeal, the Court
HELD: 1. PW-20 (Constable who is the eye-witness) has not referred the name of the appellant/accused in his deposition. The Trial Court has passed the conviction of the appellant, mainly relying on the medical reports and depositions of PW-20, PW-22 (Constable who corroborated the Statement of PW-20) and PW-23(Sub-Inspector who deposed that he recorded the statement of PW-20). Even according to the case of the prosecution, only four accused entered the train and one of them who was identified as Vinod, had thrown chilly powder in their eyes and other accused Amarjit had fired a shot upon Arjun Singh, Head Constable. It is also clear from the cross-examination of PW-20 that there were

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- A about 50–60 passengers in the compartment, but no one was examined. Even PW-22, disclosed the names of Vinod and Amarjit Singh only. Except the vague and bald statement that the appellant herein is a member of alleged conspiracy, there is no other acceptable evidence on record to prove conspiracy. For the reasons not known, in a case of this nature, the investigating agency has not conducted TIP (Test Identification Parade). It is also brought to Court's notice that the appellant was prosecuted for snatching away the Bolero car in Criminal Case No.535 of 2009 in the Court of HCS, Judicial Magistrate, 1st Class, Bhiwani, he was acquitted of the charge for offences under Sections 392, 216 r/w Section 34 of the Indian Penal Code and the said judgment has become final. To prove the charge of conspiracy, within the ambit of Section 120-B, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. At the same time, it is to be noted that it is difficult to establish conspiracy by direct evidence at all, but at the same time, in absence of any evidence to show meeting of minds between the conspirators for the intended object of committing an illegal act, it is not safe to hold a person guilty for offences under Section 120-B of IPC. A few bits here and a few bits there on which prosecution relies, cannot be held to be adequate for connecting the accused with the commission of crime of criminal conspiracy. Even the alleged confessional statements of the co-accused, in absence of other acceptable corroborative evidence, is not safe to convict the accused. Prosecution has failed to prove its case, that the appellant conspired with other accused for the offences for which he was charged. Except the alleged confessional statements of the co- accused and in absence of any other corroborative evidence, it is not safe to maintain the conviction and sentence imposed upon the Appellant. The findings recorded by the Trial Court in convicting the appellant mainly on the ground that he was one of the conspirators for the crime in question, is erroneous and illegal. The High Court has not considered the evidence on record in proper perspective and erroneously confirmed the conviction and sentence imposed on the appellant. Conviction recorded and sentence imposed on the appellant is set aside and he is acquitted of the charges levelled against him.
[Paras 10, 11, 12, 14 and 15][648-G-H; 649-B-H; 651-C-E]
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Indra Dalal v. State of Haryana, (2015) 11 SCC 31 : [2015] 7 SCR 1083; Uppa alias Manjunatha v. State of Karnataka, (2013) 14 SCC 729: 2013 (6) SCALE 652 – relied on.

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Firozuddin Basheeruddin and Others v. State of Kerala (2001) 7 SCC 596: 2001 AIR 3488; Raju Manjhi v. State of Bihar (2019) 12 SCC 784: 2018 AIR 3592 – held inapplicable.

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Case Law Reference

[2015] 7 SCR 1083

relied on

Para 8

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1571 of 2021.

From the Judgment and Order dated 17.03.2020 of the High Court of Punjab and Haryana at Chandigarh in CRA-D No.232-DB of 2010 (O&M).

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Rishi Malhotra, Adv. for the Appellant.

Ms. Bansuri Swaraj, Addl. AG, Siddhesh Kotwal, Ms. Ana Upadhyay, Ms. Pragya Barsaiyan, Ms. Manya Hasija, Akash Singh, Vishwa Pal Singh, Rajendra Prasad, Ms. Pallavi, Brijender Singh Dhull, Advs. for the Respondent.

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The Judgment of the Court was delivered by

R. SUBHASH REDDY, J.

1. Leave granted.

2. This Appeal is directed against the judgment dated 17th March, 2020 passed in CRA-D No.232 of 2010 by the High Court of Punjab and Haryana at Chandigarh, whereby, the High Court has dismissed the Appeal filed by the appellant / accused and upheld the conviction and order of sentence passed by the Additional Sessions Judge, Rewari.

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3. Briefly stated, the facts of the case, as called out from the case of the prosecution, are as under.

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On 14.03.2009, the police party was escorting four accused namely Nadeem, Naushad, Ravi & Sunil from the Central Jail, Jaipur and they were to be produced in the Court of CJM, Bhiwani. They reached Railway Station Rewari, in the morning at 04:30 hrs. They then boarded

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- A the train for Bhiwani. When the train reached at Railway Station Nangal Pathani, four young boys entered their compartment and attacked the police party in order to rescue the accused, who were in police custody and were to be produced in the Court of CJM, Bhiwani. The accused, who were in custody, also tried to escape. They even tried to snatch the official carbine. It is alleged that one of the accused fired upon Head Constable Arjun Singh. In the complaint, it was stated that the police overpowered one person, who had thrown chilly powder in their eyes and the remaining three accused succeeded in fleeing. The apprehended accused disclosed his name and identity of other assailants. Injured Head Constable Arjun Singh was shifted to hospital, who succumbed to fire arm injuries subsequently. After completing investigation, all the accused were prosecuted for the offences punishable under Sections 224, 225, 332, 353, 392, 307, 302, 120-B of the IPC and Section 25/54/59 of the Arms Act.
- 4. To prove the guilt of the accused, prosecution examined as many as 23 witnesses in support of its case. The statements of the accused were also recorded under Section 313 of the Cr.P.C. As they have pleaded that they were innocent and they have been falsely implicated, they were tried for the aforesaid offences in the Court of Additional Sessions Judge, Rewari, in Sessions Case No.32 of 2009.
- E The learned Additional Sessions Judge by judgment dated 14.01.2010, held all the accused guilty for commission of offences punishable under Sections 224, 225, 332, 353, 302 r/w Section 120-B of the Indian Penal Code. The accused Amarjit Singh and Surender Singh @ Dhattu were further held guilty for commission of offence punishable under Section 25 of the Arms Act. By order dated 18.01.2010 on the quantum of sentence, they were sentenced to life imprisonment along with fine of Rs.5,000/- each for the offences under Section 302 r/w Section 120-B of the Indian Penal Code, apart from conviction for other offences, as referred above. The sentence for various offences was ordered to run concurrently.
- G 5. Aggrieved by the judgment of conviction and sentence imposed by the Sessions Court, the appellant herein, and four other accused have preferred separate appeals before the High Court of Punjab and Haryana at Chandigarh. All the appeals were dismissed by common judgment dated 17.03.2020, confirming the conviction and sentence imposed by the Sessions Court. Hence this Appeal.
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6. The 3rd Accused Parveen @ Sonu is appellant in the present Appeal. We were informed that no appeals were preferred by other accused in the common judgment of the High Court. A

7. We have heard Mr. Rishi Malhotra, learned Counsel appearing for the Appellant and Ms. Bansuri Swaraj, learned Addl.AG appearing for the respondent – State of Haryana and carefully perused the material available on record. B

8. In this Appeal, it is contended by learned Counsel for the appellant that though there was no concrete proof to establish the participation of the appellant in the alleged crime, the Trial Court as well as the High Court believed the prosecution story in absence of any supporting evidence and convicted him. It is submitted that except the alleged confessional statements of co-accused, there was no other acceptable evidence to connect the appellant herein to the crime. It is submitted that as per the case of prosecution, apart from the police party who were escorting accused in the train, there were about 50–60 passengers. No independent witness was examined. Out of the four young boys who boarded the train, only one was having a country made pistol and fired. There was no TIP (Test Identification Parade) conducted. The accused, who was apprehended as per the prosecution, was only Vinod and all the other three persons fled away. But the other person who is stated to be identified, was Amarjit who had fired a shot upon Arjun Singh, Head Constable. It is submitted that though there was absolutely no evidence to connect the appellant/accused, the Trial Court has convicted the appellant in absence of any acceptable evidence to prove the guilt of the appellant. It is submitted that even the High Court, except recording the depositions of all the witnesses, has not considered any of the grounds urged, and dismissed the Appeal. In support of the case of the appellant, learned Counsel has relied on the judgment of this Court in the case of *Indra Dalal v. State Of Haryana*¹ and the judgment of this Court in the case of *Uppa alias Manjunatha v. State of Karnataka*². C

9. On the other hand, learned Addl.AG appearing for the respondent – State supported the view taken by the Courts below. She submitted that there was sufficient material and evidence on record which clearly establishes the guilt of the accused, beyond reasonable doubt. It D

¹ (2015) 11 SCC 31

² (2013) 14 SCC 729

- A is submitted that there was credible evidence available on record to believe that appellant was a party to the accused group, who conspired together to rescue the other four accused, who were being taken by the police party to produce before the Court. Learned Counsel in support of her argument to prove the case of the prosecution of criminal conspiracy, has relied on the judgment of this Court in the case of *Firozuddin Basheeruddin and Others v. State of Kerala*³. Further, on the aspect of confessional statements made by the co-accused, has relied on the judgment of this Court in the case of *Raju Manjhi v. State of Bihar*⁴.

10. Having heard the learned counsels on either side, We have given our thoughtful consideration to the facts and circumstances of the case and the material placed on record. We have also perused depositions of various witnesses which are placed on record. To prove the case, the prosecution has examined as many as 23 witnesses. PW-1, PW-3, PW-4, PW-7 and PW-21 are doctors. PW-6 is Sub-Inspector of Police and he was on duty on 14.03.2009 at Police Station GRP Rewari. In the statement, he has referred to the disclosure statement of the other accused by name Vinod, which was exhibited as Ex.PS. In his cross-examination, he has deposed that several persons were assembled at the place of occurrence, but none of them was ready to join or associate with investigation. PW-16 is ASIAjit Singh, who has deposed that accused Sunil @ Bachhu made a disclosure statement. PW-18 is Sub-Inspector Pratap Singh, who has deposed that on 11.05.2009, stating that he along with other police officials arrested accused Amarjit @ Dana and Surender @ Dattu. He referred to the disclosure statement made by accused Amarjit. PW-20 is Constable Inder Raj, who is the eye-witness. In his deposition, he has stated that when the train reached Railway Station, Nangal Pathani, four boys aged about 20–25 years, entered their compartment and one of them was carrying a polythene bag and one other was armed with country made pistol. He too has deposed that apprehended accused was Vinod and he clearly stated that he had thrown chilly powder in their eyes and accused Amarjit, who had fired a shot upon Arjun Singh, Head Constable. In the cross-examination, he deposed that there were as many as 50–60 passengers in the compartment. It is to be noticed that PW-20 Inder Raj has not referred the name of the appellant / accused i.e. Parveen @ Sonu in his deposition. PW-22 is another Constable by name Satbir, who has corroborated the statement

³ (2001) 7 SCC 596

H ⁴ (2019) 12 SCC 784

of PW-20. He too has deposed that accused Vinod had thrown chilly powder on them and other accused by name Amarjit had fired at Arjun Singh, Head Constable. PW-23 is Sub-Inspector Randhir Singh, who deposed that on 14.03.2009, he recorded the statement of Constable Inder Raj.

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11. The Trial Court has passed the conviction of the appellant herein, mainly relying on the medical reports and depositions of PW-20, PW-22 and PW-23. Even according to the case of the prosecution, only four accused have entered the train and one of them who was identified as Vinod, had thrown chilly powder in their eyes and other accused Amarjit had fired a shot upon Arjun Singh, Head Constable. It is also clear from the cross-examination of PW-20 that there were about 50–60 passengers in the compartment, but no one was examined. Even PW-22 Constable Satbir, who has corroborated the Statement of PW-20, disclosed the names of Vinod and Amarjit Singh only. Except the vague and bald statement that the appellant herein is a member of alleged conspiracy, there is no other acceptable evidence on record to prove conspiracy. For the reasons not known, in a case of this nature, the investigating agency has not conducted TIP (Test Identification Parade). Except the alleged confessional statements of co-accused, there is no other evidence on record to implicate the appellant. It is also brought to our notice that the appellant was prosecuted for snatching away the Bolero car in Criminal Case No.535 of 2009 in the Court of HCS, Judicial Magistrate, 1st Class, Bhiwani, he was acquitted of the charge for offences under Sections 392, 216 r/w Section 34 of the Indian Penal Code and the said judgment has become final.

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12. It is fairly well settled, to prove the charge of conspiracy, within the ambit of Section 120-B, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. At the same time, it is to be noted that it is difficult to establish conspiracy by direct evidence at all, but at the same time, in absence of any evidence to show meeting of minds between the conspirators for the intended object of committing an illegal act, it is not safe to hold a person guilty for offences under Section 120-B of IPC. A few bits here and a few bits there on which prosecution relies, cannot be held to be adequate for connecting the accused with the commission of crime of criminal conspiracy. Even the alleged confessional statements of the co-accused, in absence of other acceptable corroborative evidence, is not safe to

- A convict the accused. In the case of *Indra Dalal v. State Of Haryana*¹, this Court has considered the conviction based only on confessional statement and recovery of vehicle used in the crime. In the said case, while setting aside the conviction, this Court has held in paragraphs 16 & 17 as under:
- B “16. The philosophy behind the aforesaid provision is acceptance of a harsh reality that confessions are extorted by the police officers by practising oppression and torture or even inducement and, therefore, they are unworthy of any credence. The provision absolutely excludes from evidence against the accused a confession made by him to a police officer. This provision applies even to those confessions which are made to a police officer who may not otherwise be acting as such. If he is a police officer and confession was made in his presence, in whatever capacity, the same becomes inadmissible in evidence. This is the substantive rule of law enshrined under this provision and this strict rule has been reiterated countless by this Court as well as the High Courts.
- C 17. The word “confession” has nowhere been defined. However, the courts have resorted to the dictionary meaning and explained that incriminating statements by the accused to the police suggesting the inference of the commission of the crime would amount to confession and, therefore, inadmissible under this provision. It is also defined to mean a direct acknowledgment of guilt and not the admission of any incriminating fact, however grave or conclusive. Section 26 of the Evidence Act makes all those confessions inadmissible when they are made by any person, whilst he is in the custody of a police officer, unless such a confession is made in the immediate presence of a Magistrate. Therefore, when a person is in police custody, the confession made by him even to a third person, that is, other than a police officer, shall also become inadmissible.
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- H 13. Further, in the case of *Uppa alias Manjunatha v. State of Karnataka*², this Court has held that when an accused is held guilty and sentenced to imprisonment, confirmation of sentence by the High Court is justifiable only in the event of giving sound reasons upon analysis of

material evidence. In the case on hand, a perusal of the judgment of the High Court reveals that except referring to depositions, High Court has not considered the evidence at all and confirmed the conviction and sentence as ordered by the Trial Court. The judgments relied on by the learned Addl. AG in the case of *Firozuddin Basheeruddin and Others v. State of Kerala*³ and in the case of *Raju Manjhi v. State of Bihar*⁴, are not helpful to support the case of prosecution, having regard to the facts of the case and evidence on record.

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14. On close scrutiny of evidence on record, we are of the considered view that prosecution has failed to prove its case, that the appellant herein, has conspired with other accused for the offences for which he was charged. Except the alleged confessional statements of the co-accused and in absence of any other corroborative evidence, it is not safe to maintain the conviction and sentence imposed upon the Appellant. The findings recorded by the Trial Court in convicting the appellant mainly on the ground that he was one of the conspirators for the crime in question, is erroneous and illegal. The High Court has not considered the evidence on record in proper perspective and erroneously confirmed the conviction and sentence imposed on the appellant.

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15. For the aforesaid reasons, this appeal is allowed. Conviction recorded and sentence imposed on the appellant is, hereby, set aside and he is acquitted of the charges levelled against him. The appellant be released forthwith, unless his custody is required in connection with any other case.

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Divya Pandey

Appeal allowed.