Bijender @ Mandar vs State Of Haryana on 8 November, 2021

Author: Surya Kant

Bench: Hima Kohli, Surya Kant, N.V. Ramana

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 2438 OF 2010

Bijender @ Mandar ..... Appellant

VERSUS

State of Haryana ..... Respondent

JUDGMENT

Surya Kant, J.

The instant Criminal Appeal emanates from the judgment and order dated 7th September 2009 of the High Court of Punjab and Haryana at Chandigarh, whereby the order dated 20 th March 2002 passed by the Additional Sessions Judge, Sonipat, convicting the Appellant□Bijender @ Mandar under Sections 392 and 397 IPC was affirmed. The High Court upheld the rigorous imprisonment of 5 years along with fine of Rs.5000/□for the offence punishable under Section 392 IPC. However, it reduced the sentence from 10 to 7 years rigorous imprisonment with a fine of Rs.10,000/□for the offence punishable under Section 397 IPC. Both the sentences were directed to run concurrently.

Page | 1 FACTS:

> 2. Briefly put, the Prosecution version is that on 14 th April 1999, at around 11:00 AM, Bal Kishan (Complainant) was on his way to Delhi on his motorcycle along with his nephew, Sanjay, to purchase a plot of land and was carrying a sum of Rs. 46,000/□for the said purpose.

When the Complainant reached near the farm house of one Virender Bansal, on Jatheri Road, he was intercepted by a vehicle. The Appellant and one Manjeet (co□accused) stepped out of the said vehicle, armed with country made pistols and asked the Complainant to hand over the amount. The Complainant then handed over the key of the bike. The Accused took out the bag containing the money from the boot of the motorcycle and fled from the spot. Whereafter, the Complainant rushed towards the nearest Police Station on foot, leaving his nephew and the motorcycle behind, at the

place of the incidence. To the good fortune of the Complainant, on his way to the Police Station, he met with ASI Rajinder Kumar (PW-14) and reported the occurrence to him. Consequently, an FIR was lodged and the investigation was set in motion.

3. Four accused persons, including the Appellant were arrested on the basis of secret information received by the police and they were charged under Sections 392, 397 and 120-B IPC and Section 25 of the Arms Act. Whilst the 5th co-accused (Vinod) could not be arrested and Page | 2 was declared a proclaimed offender under Section 82 Cr.P.C., the other Accused including the Appellant abjured their guilt and pleaded 'not guilty'. In the eventual trial, 14 witnesses were examined by the Prosecution. No evidence was led by the Defence. The Prosecution presented its narrative before the Trial Court that the Accused persons, along with Vinod, conspired together to loot the Complainant, who, they were aware was carrying money for the purchase of a plot in Delhi. Whereas co-accused Mukesh and Subhash had provided the information, the Appellant, Manjeet and Vinod actually carried out the robbery.

4. The case of the Prosecution banked heavily on the disclosure statements made by the Accused persons and the pre-trial recoveries made pursuant thereto. The Appellant in his revelation (Ex. PD) affirmed the chronicle presented by the Prosecution. He further stated that Rs. 10,000/- fell in his kitty as part of his share, out of which he had already spent Rs. 5,000/. The Appellant led the police to his residence and aided in recovering Rs. 5,000/- which were found wrapped in a 'red cloth' (Ex. P1), along with a passbook (Ex. P2). It is alleged that the 'red cloth' belonged to the wife of the Complainant, with the name 'Kamla' embroidered on it and the passbook belonged to the Complainant. Similarly, the disclosure statements of the co-accused led to the recovery of some paltry amount and a country Page | 3 made pistol belonging to co-accused Manjeet, which was allegedly used for commission of the crime. These incriminatory statements were in line with the divulgation of the Appellant.

5. During the trial, a host of Prosecution witnesses turned hostile. Even though the Complainant (PW-4), in his deposition, acknowledged that the 'red cloth' belonged to his wife but he refuted that the pass book and/or the said cloth was recovered from the possession of the Appellant in his presence. He further denied that the Accused, including the Appellant, matched the identity of the persons who committed the felony. He also denied that the recovery memo (Ex. PD/2) bore his signature. The Complainant's nephew, Sanjay (PW-6), who was an eye-witness, also debunked the very occurrence of the incident in its entirety and testified that no amount was snatched from his uncle, the Complainant. In a similar vein, PW-5 and PW-8, who were independent witnesses to the recovery of the articles by the police and to the alleged conspiracy, respectively, also resiled and were declared hostile.

6. Only the formal witnesses supported the tale of the Prosecution and stood their ground qua the guilt of the Accused. In this regard, the testimony of ASI Rajinder Kumar (PW-14), who was in-charge of the investigation, bears some significance. This witness affirmed to the legitimacy of the disclosure statements presented by all the Accused, Page | 4 including the Appellant, and stated that the Complainant in his supplementary statement before the police had contended that Rs. 46,000/- were wrapped in a 'red cloth' which had Complainant's wife's name embroidered on it along with a

Passbook of Indian Bank. Albeit, ASI Rajinder Kumar in his cross-examination, admitted that the 'red cloth' which was recovered from the house of the Appellant was easily available in the market and that the name 'Kamla' could also be easily engraved thereupon. Further, he also deposed that whilst co-accused Manjeet had sought for Test Identification Parade (for short, "T.I.P."), the Complainant refused to participate in the same and instead had tendered an affidavit, claiming that if he were to identify Manjeet he would be killed. H.C. Karmbir Singh (PW-13), who was present with PW-14 when the disclosure statements were tendered by the Accused, also supported the Prosecution version and deposed that the recovery of the incriminating articles was made in his presence.

7. The Appellant in his 313 Cr.P.C. statement denied the recovery of all the incriminating evidence put before him. To the same effect were the statements made by other co-accused under Section 313 Cr.P.C., denying the Prosecution version completely.

8. The Trial Court found strength in the contention of the Prosecution that the material witnesses had substantially proved its version though with minor discrepancies. The Court further noted that Page | 5 an admission by an accused leading to the discovery of any fact could be used against them and that in the instant case, the Accused had failed to provide any explanation as to how they came into possession of the articles, especially the 'red cloth' and the passbook, which were recovered from the custody of the Appellant. In light of the instant fact scenario, the Trial Court concluded that recovery of the Articles was sufficient to draw the inference of culpability and to bring home the guilt of the Accused. Consequently, the Trial Court convicted the Appellant and Manjeet under Sections 392 & 397 IPC. Manjeet was further convicted under Section 25 of the Indian Arms Act, 1959. Accused Mukesh and Subhash were also convicted under Section 120B IPC. All the Accused were sentenced with a maximum sentence of rigorous imprisonment of 10 years each under Section 397 IPC and/or Section 120B IPC.

9. Discontented, the Accused preferred separate appeals before the High Court of Punjab and Haryana. Their primary contention was that none of the eye-witnesses or the independent witnesses supported the Prosecution case and that they could not be convicted solely on the basis of disclosure statements. Upon re-appraisal of evidence, the High Court was unimpressed by the plea raised on behalf of the Accused and concurred with the findings of the Trial Court and further noted that due to enormous rise in instances of dacoity, the Page | 6 non-identification of the accused in the Court could not be construed as a material consideration where other evidence points towards the commission of the crime. The High Court vide a common judgment maintained the conviction of the Accused persons. Nonetheless, the High Court reduced the sentence under Section 397 IPC to rigorous imprisonment of 7 years so as to meet the ends of justice.

10. The aggrieved Appellant is now before this Court. CONTENTIONS:

11. We have heard learned counsel(s) for the Appellant and the Respondent-State at a considerable length and perused the record in-depth. The principal contention raised on behalf of the Appellant is that his conviction is based solely on the basis of the 'disclosure statement' and that there is no other cogent evidence to withstand his conviction under Sections 392 and 397 IPC. It was further

contended that during the pendency of the present appeal, this Court, in Criminal Appeal No. 1375 of 2010 and Criminal Appeal No. 1328 of 2013 had already acquitted co-accused Mukesh and Suresh with a finding that there was a lack of evidence to sustain their conviction under Section 120B IPC.

12. Learned State Counsel, on the other hand, reminded us of the limited scope of interference by this Court in a case of concurrent finding of fact and canvassed that the conviction of the Appellant, on Page | 7 the basis of his disclosure statement, which led to the recovery of Rs. 5,000/- along with the 'red cloth' and the Indian Bank passbook, was sufficient to foster the conviction of the Appellant. Regarding the acquittal of the co-accused, it was rebutted that the allegations qua them pertained only to the extent of conspiracy, and hence, their acquittal did not have any substantial impact on the conviction of the Appellant herein, who is alleged to have actually carried out the malfeasance.

ANALYSIS:

13. It may be accentuated at the outset that although this Court is bestowed with capacious powers under Article 136 of the Constitution, yet, while beseeching such powers in a criminal appeal by special leave, this Court would by and large abstain from entering into a fresh re-appraisement of evidence and doubt the credibility of witnesses when there is a concurrent finding of fact, save for certain exceptional circumstances where the decision(s) under challenge are shown to have committed a manifest error of law or procedure or the conclusion reached is ex-facie perverse.

14. Adverting to the case at hand, indubitably, the only eye-witnesses to the alleged crime, i.e., the Complainant (PW-4) and his nephew (PW-6) have not supported the case of the Prosecution. The Complainant (PW-4) in his testimony before the Court unequivocally Page | 8 denied that the Appellant or his co-accused were involved in the execution of the offence. Further, in the deposition of ASI Rajinder Kumar (PW-14), who was the investigating officer of the case, there is no mention of T.I.P. even attempted to be led, in so far as the Appellant is concerned. Ergo, the very identity of the Appellant as one of the perpetrators stands obscured, particularly, considering that all the accused in the case were arrested on the basis of a secret information, the origin of which is naturally unknown.

15. The short question that falls for our consideration thus is whether the conviction of the Appellant on the strength of the purported disclosure statement (Ex. PD) and the recovery memo (Ex. PD/2), in the absence of any corroborative evidence, can sustain?

16. We have implored ourselves with abounding pronouncements of this Court on this point. It may be true that at times the Court can convict an accused exclusively on the basis of his disclosure statement and the resultant recovery of inculpatory material. However, in order to sustain the guilt of such accused, the recovery should be unimpeachable and not be shrouded with elements of doubt. 1 We may hasten to add that circumstances such as (i) the period of interval between the malfeasance and the disclosure; (ii) commonality of the recovered object and its availability in the market; (iii) nature of the Vijay Thakur vs. State of Himachal Pradesh, (2014) 14 SCC 609 Page | 9 object and its relevance to the crime; (iv) ease of transferability of the object; (v) the testimony and

trustworthiness of the attesting witness before the Court and/or other like factors, are weighty considerations that aid in gauging the intrinsic evidentiary value and credibility of the recovery. (See: Tulsiram Kanu vs. The State2; Pancho vs. State of Haryana3; State of Rajasthan vs. Talevar & Anr 4 and Bharama Parasram Kudhachkar vs. State of Karnataka5)

17. Incontrovertibly, where the prosecution fails to inspire confidence in the manner and/or contents of the recovery with regard to its nexus to the alleged offence, the Court ought to stretch the benefit of doubt to the accused. Its nearly three centuries old cardinal principle of criminal jurisprudence that "it is better that ten guilty persons escape, than that one innocent suffer". The doctrine of extending benefit of doubt to an accused, notwithstanding the proof of a strong suspicion, holds its fort on the premise that "the acquittal of a guilty person constitutes a miscarriage of justice just as much as the conviction of the innocent".

18. It may not be wise or prudent to convict a person only because there is rampant increase in heinous crimes and victims are oftenly AIR 1954 SC 1 (2011) 10 SCC 165.

(2011) 11 SCC 666 (2014) 14 SCC 431 Page | 10 reluctant to speak truth due to fear or other extraneous reasons. The burden to prove the guilt beyond doubt does not shift on the suspect save where the law casts duty on the accused to prove his/her innocence. It is the bounden duty of the prosecution in cases where material witnesses are likely to be slippery, either to get their statements recorded at the earliest under Section 164 Cr.P.C. or collect such other cogent evidence that its case does not entirely depend upon oral testimonies.

19. Unmindful of these age□old parameters, we find that the Prosecution in the present case has miserably failed to bring home the guilt of the Appellant and Courts below have been unwittingly swayed by irrelevant considerations, such as the rise in the incidents of dacoity. In its desire to hold a heavy hand over such derelictions, the Trial Court and the High Court have hastened to shift the burden on the Appellant to elucidate how he bechanced to be in possession of the incriminating articles, without primarily scrutinizing the credibility and admissibility of the recovery as well as its linkage to the misconduct. We say so for the following reasons:

> Firstly, the High Court and the Trial Court failed to take into consideration that the testimony of ASI Rajinder Kumar (PW□14) exhibited no substantial effort made by the police for conducting the search of the residence of the Appellant in the presence of local Page | 11 witnesses. The only independent witness to the recovery was Raldu (PW□8) who was admittedly a companion of the Complainant. Secondly, the Complainant (PW□4) as well as Raldu (PW□8), have unambiguously refuted that neither the passbook, nor the 'red cloth' was recovered from the possession of the Appellant, as claimed in his disclosure statement.
>
> Thirdly, while the Complainant (PW□4) negated his signatures on the recovery memo (EX. PD/2), on the other hand, Raldu (PW□8) also neither enumerated the recovery memo (Ex. PD/2) in the catalogue of exhibited documents, nor did that he affirm to having his endorsement.

Fourthly, the recovered articles are common place objects such as money which can be easily transferred from one hand to another and the 'red cloth' with 'Kamla' embossed on it, as has been acceded by the Investigating Officer, Rajinder Kumar (PW-14), can also be easily available in market.

Fifthly, the recovery took place nearly a month after the commission of the alleged offence. We find it incredulous, that the Appellant during the entire time period kept both the red cloth and the passbook in his custody, along with the money he allegedly robbed off the Complainant.

Page | 12 Sixthly and finally, there is no other evidence on record which even remotely points towards the iniquity of the Appellant.

20. It appears to us that the Trial Court and the High Court have erroneously drawn adverse inference against the Appellant, in spite of the Prosecution having lamentably failed to adequately dispense with its burden of proof to depict culpability of the Appellant. As far as the view of the Trial Court and the High Court qua the alleged threat is concerned, we find it hard-pressed to give credence to such allegations in the absence of any compelling evidence to substantiate the same. Although, the Prosecution has attempted to place reliance on the affidavit presented by the Complainant during the T.I.P. offered by the co-accused-Manjeet, we find that the said affidavit does not name the Appellant herein and pertains solely to Manjeet.

21. In light of the afore-stated discussion, we are of the considered opinion that the evidence on record does not establish the guilt of the Appellant beyond reasonable doubt and the Courts below have arrived at recording the guilt of the Appellant in absence of any cogent rationale, justifying his conviction.

CONCLUSION:

22. Consequently, and as a sequel thereto, the criminal appeal is allowed. The judgments and orders passed by the Trial Court and Page | 13 High Court are set-aside and the Appellant is acquitted of all charges. Bail bond, if any, stands discharged.

..... CJI.

(N.V. RAMANA) ..... J.

(SURYA KANT) ..... J.

(HIMA KOHLI) NEW DELHI DATED : 08.11. 2021 Page | 14