

Chander Bhan Vs. State of Punjab

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Court : Punjab and Haryana

Decided On : Aug-30-2013

Appellant : Chander Bhan

Respondent : State of Punjab

Judgement :

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH Criminal Appeal not S-160-SB of 2002 Date of decision :

30. 08.2013 Chander Bhan ...Appellant Versus State of Punjab ...Respondent
CORAM : HON'BLE MR.JUSTICE INDERJIT SINGH *** Present : Mr.Sushil Sharma, Advocate, for the appellant.

Mr.Yogesh Gupta, Assistant Advocate General, Punjab, for the respondent-State.

*** INDERJIT SINGH, J Appellant Chander Bhan has preferred the present appeal against the judgment of conviction and order of sentence dated 02.01.2002, passed by Additional Sessions Judge, Ludhiana, vide which he has been held guilty for the commission of offence punishable under Section 380 IPC and accordingly convicted and sentenced to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs.500/- and in default of payment of fine to further undergo rigorous imprisonment for a period of two months.

However, co-accused Gorakh has also been convicted and sentenced under Sections 328 and 380 IPC but he has not filed any Malhotra Mamta appeal.

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Chandigarh Criminal Appeal not S-160-SB of 2002 [2].Brief facts of the prosecution case are that FIR in the present case has been registered on the statement of Jai Parkash.

As per prosecution version, on 11.07.1999, Rs.2,35,000/- in cash was kept by the complainant in Godrej almirah in the office of his factory because he had to make the payment on the next day.

Some employees of the factory namely Rajinder, Sudama, Bhadur etc., who were having their residence inside the factory premises in addition to those five employees namely Lambhu, Bhanje, Dharam Raj, Ganga Ram and Banwari Lal, who were having their residence outside the factory premises, were engaged for carrying the material of the factory.

On that day i.e.on 11.07.1999, Bhanje, who was a rehra puller, alongwith Dharam Raj, another rehra puller, and Gorakh brother-in-law of Dharam Raj approached the complainant that Dharam Raj had to hold a party and that they be granted permission to do so in the factory premises and complainant allowed them to do so.

On 12.07.1999 at about 6:00 a.m., when complainant alongwith brother-in-law of his brother namely Varinder Kapoor went to the factory premises, he found Bhanje, Dharamraj and Gorakh running away from inside the factory premises.

Complainant and Varinder Kapoor went inside the factory premises and found the lock of office door broken.

Lock of Godrej almirah was also broken and an amount of Rs.2,35,000/- alongwith important documents was found missing.

There is also allegation that 'laddoos' (sweets) were distributed amongst Sudhama, Bahadur, Vinod, Radhe Sham etc.which they ate Malhotra Mamta
2013.09.18 10:55 I attest to the accuracy and integrity of this document
Chandigarh Criminal Appeal not S-160-SB of 2002 [3].and became unconscious.

On 30.08.1999, Sampat Verma went to Police Post Miller Ganj and got recorded his statement to the fact that on 24.07.1999, Chander Bhan accused alongwith his wife came to him and stayed with him.

On 28.07.1999 at midnight, the said couple went missing.

Sampat Verma also stated that lock of his wooden almirah was broken and Rs.92,000/-, belonging to him, kept therein, was also missing.

He searched for Chander Bhan and his wife but in vain.

Sampat Verma stated in his statement that Chander Bhan had stolen the said amount of Rs.92,000/-.

The statement of Sampat Verma was entered in the Roznamcha and it was stated that it would be investigated in FIR No.51 dated 12.07.1999, which was already registered.

Chander Bhan was arrested in this case on 23.09.1999 and he suffered disclosure statement that he had deposited Rs.45,000/- in the Bank Account which is with Allahabad Bank and he had a pass book of the said account which is at his residential house and he could get recovered the same.

Thereafter, in police custody, Chander Bhan got recovered the said pass book from his residential house.

Then he was taken to Allahabad Bank, from where he withdrew Rs.45,000/- and the said amount was taken into police possession vide recovery memo Ex.PQ.

After necessary investigation, challan against the accused was presented before the Court.

On presentation of challan, copies of challan and other documents were supplied to accused under Section 207 Cr.P.C. Malhotra Mamta 2013.09.18 10:55 I attest to the accuracy and integrity of this document Chandigarh Criminal Appeal not S-160-SB of 2002 [4]. Finding a prima facie case against the accused Gorakh and Chander Bhan, they were charge-sheeted for the commission of offence

punishable under Sections 328, 380 and 411 IPC to which they pleaded not guilty and claimed trial.

The prosecution, in support of its case, examined Jai Parkash as PW1, Varinder Kapoor as PW2, Sudama as PW3, Bahadur as PW4, ASI Satinder Pal Singh as PW5, Head Constable Amarguru as PW6, ASI Ranjit Singh as PW7, Head Constable Darshan Singh as PW8, Dr.

Sanjiv Goel as PW9, Prem Parkash Sharma as PW10 and Sampat Verma as PW11.

At the close of prosecution evidence, the accused were examined under Section 313 Cr.P.C. and were confronted with the evidence of prosecution.

The accused denied the correctness of the evidence and pleaded themselves as innocent.

They also pleaded that it is a false case and they have not committed any offence.

No evidence was led in defence.

The trial Court, after appreciation of evidence, convicted and sentenced the appellant-accused, as stated above.

At the time of arguments, learned counsel for the appellant contended that there is no evidence on the record against appellant Chander Bhan in this case.

Learned counsel for the appellant further contended that there is delay in reporting the matter to the police and the police had wrongly investigated the matter in FIR No.51 dated 12.07.1999.

There is no evidence to prove the Malhotra Mamta 2013.09.18 10:55 I attest to the accuracy and integrity of this document Chandigarh Criminal Appeal no S-160-SB of 2002 [5].offence of theft in the present case.

Therefore, learned counsel for the appellant contended that the appeal should be allowed and the appellant should be acquitted accordingly.

On the other hand, learned State counsel contended that case of the prosecution has been duly proved by PW11 Sampat Verma.

Learned State counsel further contended that as per disclosure statement, Rs.45,000/- have been recovered from the appellant which connects him with the crime and duly proves the prosecution version.

Learned counsel for the appellant further contended that there being no merit in the appeal, it should be dismissed.

I have gone through the evidence on record minutely and carefully and I have also heard the learned counsel for the appellant and learned State counsel.

From the record, I find merit in the contentions of learned counsel for the appellant.

FiRs.of all, the occurrence dated 11.07.1999 is totally separate occurrence regarding which FIR No.51 dated 12.07.1999 has been registered by Police Station Division No.2, Ludhiana, whereas as per prosecution version, this occurrence took place on 28.07.1999 in the house of Sampat Verma (PW11) from where Rs.92,000/- stated to have been stolen.

Therefore, this occurrence has nothing to do with the occurrence relating to FIR No.51 dated 12.07.1999.

Secondly, in both the occurrences, time, place and subject matter are different.

There is no evidence on the Malhotra Mamta 2013.09.18 10:55 I attest to the accuracy and integrity of this document Chandigarh Criminal Appeal not S-160-SB of 2002 [6].record to show that anybody has seen the appellant committing theft.

The only statement is of Sampat Verma (PW11).who reported the matter to the police on 30.08.1999.

There is delay of more than one month in reporting the matter to the police and there is no explanation regarding this delay which creates doubt in the prosecution version.

Secondly, there is no cogent evidence on the record to prove that Rs.92,000/- were lying in the house of Sampat Verma (PW11) and the said amount has been stolen by Chander Bhan, relative of Sampat Verma (PW11). There is no recovery of currency notes which are stated to be stolen from the almirah of Jai Parkash, complainant.

The disclosure statement, made by appellant Chander Bhan is only regarding recovery of pass book.

There is no cogent evidence on the record that the stolen money was deposited in the bank.

The police has shown the recovery of Rs.45,000/- after getting withdrawn the same from Allahabad Bank when the accused was in custody.

So, in no way, recovery can be held to be in pursuance of the disclosure statement.

The appellant has been convicted under Section 380 IPC but, as already discussed, there is no cogent evidence on record to prove the theft committed by Chander Bhan in the house of Sampat Verma (PW11). Therefore, a reasonable doubt exists in the prosecution version.

Prosecution has failed to prove beyond reasonable doubt the guilt of the accused by producing cogent evidence, therefore, benefit of doubt is to go to the accused.

Therefore, giving benefit of doubt to the appellant, he is Malhotra Mamta 2013.09.18 10:55 I attest to the accuracy and integrity of this document Chandigarh Criminal Appeal not S-160-SB of 2002 [7]. acquitted of the charges framed against him.

Accordingly, finding merit in the appeal, the same is allowed.

Bail bond/ surety bond, furnished by the appellant, stands discharged.

30.08.2013 (INDERJIT SINGH) mamta JUDGE Malhotra Mamta 2013.09.18 10:55 I attest to the accuracy and integrity of this document Chandigarh Criminal Appeal

not S-160-SB of 2002 [8].Malhotra Mamta 2013.09.18 10:55 I attest to the accuracy and integrity of this document Chandigarh

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