

(1970) 02 P&H CK 0004

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Chander Bhan Ram
Chand

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: Feb. 3, 1970

Acts Referred:

- Prevention of Food Adulteration Act, 1954 - Section 16

Citation: (1971) CriLJ 197

Hon'ble Judges: Jindra Lal, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Jindra Lal, J.

Chander Bhan, the present petitioner, resident of Shakarpura, Tehsil Hissar, has been sentenced to one year's rigorous imprisonment and a fine of Rs. 1,000 or in default of payment of fine to three months further rigorous imprisonment u/s 61(l) (c) of the Punjab Excise Act. His appeal has been dismissed" by the learned Additional Sessions Judge, Hissar, and Chander Bhan has come up in revision.

2. Notice of this revision was issued because the learned Counsel for the petitioner cited some authorities and urged that the law is well settled that if the other independent witnesses do not support the prosecution version, it is not safe to base a conviction on the statements of official witnesses alone.

3. learned Counsel, therefore, wanted me to hold that it is practically a rule of law that where independent witnesses are joined but do not support the prosecution, then conviction cannot be upheld on the testimony of official witnesses alone.

4. I am afraid I am unable to lay down such a proposition and must content myself by saying that in each case the Court must come to the conclusion whether the

evidence, which has supported the prosecution version, whether from official source or otherwise, is sufficient to bring home the guilt to an accused.

5. In the present revision, the prosecution case is that Sub-Inspector Sukhdev Singh and Excise Inspector Balbir Singh went on a raiding party with some constables. They reached outside village Shakarpura at about 5 P. M. and learnt that the accused was working a still in his house. A ruqa was prepared and sent for the recording of the First Information Report. A constable was sent to call independent witnesses from village Shakarpura. Three witnesses, ie., Bakar Singh, Nikka Singh and Kabul Singh, were called. The raiding party then went to the house of the accused which was without a door and caught him red handed. At the trial, Nikka Singh and Kabul Singh, were given up as having been won over and Bakar Singh was declared hostile and cross examined. Sub-Inspector Sukheo Singh and Excise Inspector Balbir Singh supported the prosecution version fully -which has been set out above. I have read through their cross, examination and I find that both of them have stood the test fully and nothing has been brought out from which it can be remotely suggested either that they are interested witnesses in the sense that they were out to implicate Chander Bhan or that they have told lies. In any case, it has been urged by the learned Counsel for the petitioner that since the independent witnesses have not supported the prosecution version, therefore, conviction cannot be based on the testimony of Sub-Inspector Sukhdev Singh and Excise Inspector Balbir Singh alone. To support this, he has cited some authorities.

6. In Criminal Revn. No. 1213 of 1962 (Punj), Charan Singh v. The State decided by E. P. Khosla J., on 15-7-1963, the learned Judge came to the conclusion that the testimony of the non-official witnesses in that case was wholly unsatisfactory and observed♦

It is not otherwise safe to base the conviction on the statements of the Excise Sub-Inspector and the other official witness, name, ly, Eartar Singh Assistant Sub-Inspector police.

The learned Judge in that case had come to the conclusion that oral evidence produced by the prosecution was not consistent in respect of time of occurrence and the venue and that one Kartar Singh was virtually a stooge of the police. It means that the learned Judge came to the conclusion that the police trump, ed up the case against the accused and had brought false evidence to support it. This case, therefore, does not support the proposition that merely because the independent witnesses do not support the prosecution version, the conviction should not be based on the evidence of official witnesses alone.

7. The next authority relied upon by the learned Counsel is Criminal Revn. No. 532 of 1968 (Puni), (Balwant Singh v. The State) decided by Gujral J., on 7-11 -1969. There also one Teja Singh, who was joined as an independent witness, was held to be stooge and stock witness of the police. He was also dubbed as a chance witness. It

was also held that Teja Singh's evidence was contrary with regard to the time when the memoranda were prepared and the manner in which they were prepared. The discrepancies in the evidence of Teja Singh and Kirpal Singh were noticed by the learned Judge and he came to the conclusion that it threw doubt on the truth of the prosecution case. Gujral J., held that since the official witnesses did not join any person from the Tillage of the accused, it threw doubt on the prosecution case as a whole and that the joining of stock witnesses also made the case doubtful. This case also does not support the contention of the learned Counsel for the petitioner.

8. The third case relied upon by the learned counsel for the petitioner is Criminal Revn. No. 517 of 1968 (Punjab), *Uttam Singh v. The State*, decided by Suri J., on 14.11.1969. There 600 kilograms of Lahan was recovered in a raid but no independent witness was joined and the learned Judge held that no explanation had been given why no independent witnesses were joined. He held that since it is requirement of law that independent witnesses must be joined, their non-joining without giving an explanation made the prosecution story doubtful. In that case the accused was a young boy of 13 years, not being a previous offender. It may be noticed that the revision was accepted because provisions of law had not been complied with and it has not been laid down that testimony of official witnesses, where the other witnesses have not supported the prosecution version, cannot be relied upon.

9. The next case cited was Criminal Revn. No. 972 of 1967 (Punjab), *Ram Parkash v. the State* decided by R. P. Khosla J., on 6-3.1968. That was a case u/s 16(1)(a) of the Prevention of Food Adulteration Act and the judgment shows that what impressed the learned Judge was that no independent witness had been joined at the time when the raid was carried out. The learned Judge further held that since law enjoins that at least one witness of independent origin ought to be associated in such raids and that having not been done and no explanation having been given, the conviction could not be upheld.

10. In Criminal Revn. No. 560 of 1933 (Punjab) *Chamkaur Singh's. The State*, decided by Gurdev Singh J, on 16-7 1963. the case was u/s 61 (1) (o) and 61 (I) (a) Excise Act. The defence was that the accused in that case had been involved by Balwant Singh P.W., who had long standing enmity with them. Defence evidence was produced to show that when the accused were arrested, they were standing outside their house and were not working the still. Gurudev Singh J.. came to the conclusion that the evidence left no doubt that Balwant Singh's relations with Sher Singh accused were strained and his evidence could not inspire confidence. The Court was left with the solitary statement of A. S. I. Kirpal Singh and it was held that apart from the fact that he would be interested witness, his conduct in associating in the raid a sworn enemy of Sher Singh accused raised a good deal of doubt regarding his bona fide. Consequently, the learned judge was not inclined to act upon the solitary statement of the official witness, specially when Ramji Dass had not supported the

prosecution case.

11. learned Counsel then relied upon *Piara Singh v. The State* (1968) 70 PLR 156. In that case some witnesses of the locality had been joined but did not fully support the prosecution case. The learned Judge observed as under: ♦

..., it will not be safe to rely on the evidence of the investigating officer alone and convict an offender especially when some allegations of partiality and interestedness are made against such officer.

In the present case, there is no allegation of any partiality and it is not a case which rests on the sole testimony of a single official witness.

12. In *Kartar Singh v. The State* (1966) 68 PLR 5, E. P. Khosla J., decided Criminal Revn. No. 904 of 1964 on 3-9-1965. It was held ♦

Where the two non-official witnesses declined to support the prosecution case and the only evidence left was that of head Constable, it would as a matter of prudence be not safe to sustain the conviction on the testimony of the said lone official witness.

There is no evidence in this case whether any allegations were made against the investigating officer, but this was a case of a single official witness.

13. learned Counsel then relied upon *Romesh Paul v. The State* 1967 CriLJ 212 (Punj. & Har.). That was a case where Bedi J. held that "official witnesses are not to be dis-believed simply because they happen to be officials, but it depends on the facts of each case. The law is well set that while going for such raids and recoveries at least two respectable non-officials are to be joined with the party.....although there was sufficient time for the Excise Officials to join in respect, able nonofficial witnesses with them, but for one reason or the other they did not do so."

14. Here again it is a case where no non-official witnesses were joined and no explanation was given why they were not joined.

15. learned Counsel for the petitioner has then urged that official witnesses are partisan witnesses and since they are interested in the success of the case, their evidence in certain circumstances should not be accepted and thus should be scrutinized carefully. He has submitted that there are three types of witnesses, interested, disinterested and accomplices. In the present case the two official witnesses are certainly not accomplices. They are interested only because they have started the prosecution and would naturally like to see that their version is accepted. In [The State of Bihar Vs. Basawan Singh](#), , the correct rule laid down was as under : ♦

If any of the witnesses are accomplices who are "particeps criminis" in respect of the actual crime charged, their evidence must be treated as the evidence of accomplices is treated; if they are not accomplices but are partisan or interested witnesses, who

are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested by the application of diverse considerations which must vary from case to case, and in a proper case, the Court may even look for independent corroboration before convicting the accused person.

It was further held that♦

Independent corroboration does not mean that every detail of what the witnesses of the raiding party have said must be corroborated by independent witnesses. Even in respect of evidence of an accomplice, all that is required is that there must be some additional evidence, rendering it probable that the story of the accomplice is true and that it is reasonably safe to act upon it. Corroboration need not be direct evidence that the accused committed the crime; it is sufficient even though it is merely circumstantial evidence of his connection with tin tricot.

Their Lordships of the Supreme Court have themselves laid down that if there are interested witnesses, some corroboration is necessary. In the present case, there is no indication at all that two official witnesses or even the non-official witnesses had any animus against the accused. As mentioned above, both the official witnesses have given a consistent version and nothing has been brought out to show that they had any motive for implicating the accused falsely. They joined three nonofficial witnesses of the same village and it is obviou³ that the^{3e} villagers are not willing to give evidence against one of their own co-villagers. The recovery of the working still was made and vide recovery memo Exhibit P. A. articles Exhibits P.I top. 12 were taken into possession by the raiding party. It is not possible to believe that in the heart of the village, the police and the Excise, Inspector would foist such a case on the accused.

16. On a consideration of the authorities mentioned above, I have come to the conclusion that there is no such inflexible rule as suggested by the learned Counsel for the petitioner and in each case the Court must examine whether on the facts of that case there is sufficient evidence brought before the Court to bring home the guilt to the accused. Various circumstances are to be considered by the Court and applying the test I have come to the conclusion that the case against the pre-lent petitioner has been fully brought home to him.

17. Mr. Narinder Singh, learned Counsel for the petitioner, has urged that the minimum sentence prescribed in a case of this nature is six months" rigorous imprisonment and a fine of Bs. 200, that the petitioner has undergone lengthy trial on a point which was not free from doubt and that consequently the sentence awarded to the petitioner be reduced. There is merit in this submission of Mr. Narinder Singh. While upholding the "conviction of the petitioner, I reduce the sentence to six months" rigorous imprisonment and a fine of Rs. 200. In default of payment of fine, the petitioner shall undergo further rigorous imprisonment for two months.