Dharambir alias Dharam Vs State of Haryana

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Feb. 11, 2004

Citation: (2004) 3 AICLR 567 : (2004) 2 CCC 185 : (2004) 2 CCJ 125 : (2004) 2 RCR(Criminal) 777

Hon'ble Judges: Nirmal Singh, J

Advocate: Shri Vikas Awasthy, Advocate. Shri K.S. Chuahan, DAG Haryana., Advocates for appearing Parties

Judgement

Nirmal Singh, J.

1. The petitioner was prosecuted under Section 61(1)(a) of the Punjab Excise Act for keeping in his possession 100 bottles of illicit liquor in a

plastic tube within the area of village Sundh, Police Station Tauru on 8.11.1986. After trial, the petitioner has been convicted and sentenced to

undergo rigorous imprisonment for a period of two years and to pay fine of Rs. 4,000/. In default of payment of fine he shall further undergo civil

imprisonment for three months.

2. On appeal, the conviction and sentence was upheld by the Additional Sessions Judge, Gurgaon vide order dated 12.7.1999. Aggrieved by the

orders of the Courts below the present revision petition has been preferred.

3. Shri Vikas Awasthy, learned counsel for the petitioner submitted that the learned trial Court has erroneously convicted and sentenced the

appellant without appreciating the evidence on record in right perspective and the law cited before it. He contended that the petitioner is to be

acquitted on the short ground that the prosecution has not produced the case property in the Court nor any plausible explanation has been given.

He further contended/submitted that the appellant was not apprehended at the spot nor any explanation has been given by Bal Chand PW1 who is

alleged to have identified the appellant has also not given any explanation how he knew him; whether Dharampal was his friend or he is Panch,

Sarpanch or lambardar of his village or he was a witness or an accused in any other case. He submitted that without any explanation, it cannot be

said that the petitioner was known to Constable Bal Chand PW1. He also pointed out that after arrest of the petitioner, there is no identification

parade and the case of the prosecution hinges on the statement of the official witnesses. They are materially discrepant in their statement. He

contended that the case of the prosecution was based on a secret information but the investigator of this case has not joined any independent

witness even though they were available.

4. Shri K.S. Chauhan, DAG, Haryana submitted that mere nonproduction o the case property in the Court does not make the case of the

prosecution doubtful. He contended that the case property is mere corroboration to the version given by the recovery witnesses. He contended

that mere nonproduction of the case property is not a ground of acquittal. In support of his arguments, he has relied upon Balraj Singh v. State of

Punjab, 1982 Crl.L.J. 1374. He further submitted that the independent witnesses were asked to join the investigation but they have refused

5. After hearing the learned counsel for the parties and perusing the record, I am of the considered opinion that the present petition has merit and

deserve to succeed.

6. There is no dispute regarding the proposition of law as laid down in Balraj Singh (supra). In paragraph 15 it has been held as under :

I must, however, sound a strong note of caution that the view I am inclined to take must not be misunderstood to mean as if the production of the

case property is to be dispensed with at the trial. Normally, it is the duty of the prosecution to do so. Equally if some thing vital turns on it the

accused can insist upon its production and the refusal to do so would be a factor for adverse notice against the prosecution by the Court. But in the

ultimate analysis the issue is one of the prejudice caused to the accused and any failure of justice resulting therefrom. In this context the question

whether such an objection could be, but has not been raised at the earliest stage of trial is of considerable relevance. In a case of innocent or

inadvertent nonproduction of the case property material prejudice is to be shown by the accused in order to claim the vitiation of the convict. No

abstract or absolute rule that ""no case property, no conviction"", can possibly be raised to the pedestal of a rule of law, because this by itself is

likely to occasion a failure of justice. As has been said earlier the substantial issues in a criminal trial like the proof and punishment of crime should

not be converted into a plaything of technicalities. If the prosecution has innocently or inadvertently failed to exhibit the case property, yet the

accused even though duly represented by counsel makes no objection or grievance thereof at the time of the trial, it would hardly lie in his mouth at

the revisional stage to say that all the proceedings stand vitiated even though connived at or wholly condoned by his own conduct.

7. Similar proposition came up before this Court in Suba Singh v. State of Punjab, 1985(1) C.L.R. 79 : 1984(1) RCR(Cr.) 429 (SC) and after

taking into consideration the law laid down in Balraj Singh (supra), it has been observed as under :

Thus the aforesaid authority is of no help to the prosecution. There is no quarrel with the principles of law as laid down in the aforesaid authority.

The only observation is that the case property is a sort of corroborative evidence and that mere nonproduction of part or the whole of the case

property would not by itself vitiate the subsequent conviction of the accused but in the same authority it is observed that the principle must not be

misunderstood to mean as if the production of the case property is to be dispensed with at the trial and normally it is the duty of the prosecution to

do so and in the present case as observed earlier the prosecution has not given any explanation as to how the liquor disappeared from the tubes. It

seems that the aforesaid authority is being misused by the prosecution and the courts below in the present case without reading the whole of the

judgment have blindly convicted the petitioner. The principle of law as laid down in the aforesaid authority is to be applied cautiously in the facts

and circumstances of each case if there is plausible evidence that the case property could not be produced or was destroyed. In the absence of

any plausible explanation for nonproduction of the case property benefit must be given to the accused.

8. Similar view has been taken in Partap Singh v. State of Haryana, 1997(4) RCR (Criminal) 400.

9. As it has been noticed above, in the instant case that there is no plausible explanation given by the investigator why the case property has not

been produced, so, nonproduction of the case property in this case is fatal to the case of the prosecution. There are number of other infirmities in

the case. The present case was based on secret information that the appellant was selling liquor in a graveyard and if a raid is conducted he can be

apprehended rend handed. The case of the prosecution is that on seeing the police party, the petitioner ran away from the spot after leaving the

tube in which the illicit liquor was contained and he was identified by C. Bal Chand PW1. C. Bal Chand in his statement has not stated how he

knew the petitioner ? No identification parade was conducted after the arrest of the petitioner. The case of the prosecution hinges on the statement

of C. Bal Chand PW1, Kishan Singh PW2 and Janki Parsad as PW4. They are official witnesses. No doubt the evidence of the official witnesses

is as good as that of public witnesses but when the official witnesses are materially discrepant in their statements but their statements are self

contradictory. The discrepancies have been pointed out before the learned lower appellate Court, the note of which have been taken in

paragraph5 of the judgment. The learned trial Court has brushed aside these discrepancies by observing that these are minor discrepancies. But

these discrepancies can not be considered as minor in nature. HC Kishan Singh PW2 stated that the petitioner was taken into custody from the

fields of Aharhar which were at a distance of 150 yards but lateron he changed his statement and stated that the petitioner was arrested on

17.11.1996. Such like discrepancies cannot come in the evidence of a witness if he has witnessed the occurrence. If HC Krishan Singh had been

present at the place of occurrence then he would not have deposed that the petitioner was taken into custody from the fields of Aharhar which

were at a distance of 150 yards. So, the version given by the witnesses is not believable. Therefore, the conviction and sentence awarded to the

appellant can not sustain. Hence, the appeal is accepted. The judgment of conviction passed by JMIC, Nuh dated 13/14.1.1999 and affirmed by

Additional Sessions Judge, dated 12.7.1999 are set aside. The petitioner is on bail. His bail bond and surety bond stand discharged.