
(2011) 11 SHI CK 0300
In the High Court Of Himachal Pradesh
Case No : Criminal Revision No. 36 of 2006

Gita Ram and another

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 21-11-2011

Acts Referred:

Cinematograph Act, 1918 — Section 7
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 292, 34

Citation : (2011) 11 SHI CK 0300

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kuldip Singh, Judge

1. The judgment dated 22.2.2006 passed by learned Additional Sessions Judge, Fast Track Court, Solan Camp at Nalagarh in Case No. 7 FTN/10 of 2005/2004 affirming judgment dated 8.11.2004 passed by learned Sub Divisional Judicial Magistrate, Nalagarh in Criminal Case No. 16/2 of 2002 has been assailed in this revision. The petitioners have been convicted and sentenced u/s 292 IPC read with Section 34 IPC and Section 7 of Cinematograph Act, each petitioner has been sentenced to undergo simple imprisonment for six months u/s 292 IPC and fine of Rs. 1,000/-, u/s 7 of the Cinematograph Act, each petitioner has been ordered to pay fine of Rs. 1,000/- each. In default of payment of fine, each petitioner shall undergo simple imprisonment for a term of one month.

2. The prosecution case, in brief, is that on 7.12.2001 Chaman Lal, SHO, H.C. Jagat Singh and C. Jaswant Singh were patrolling at Sai Road, Baddi. A secret information was received that in Dhawan Video Hall, Sai Road petitioner No.1 and his servant petitioner No.2 were showing blue film to young men. A raiding party was constituted by associating Man Singh, Munna Ram and Parkash. The party raided Dhawan Video Hall and petitioners were found exhibiting/displaying

blue film to about 15 viewers in the hall.

3. The further case of the prosecution is that Chaman Lal, SHO took photographs from the running film which was being exhibited in the Video Hall. It has been alleged that C.D. of blue film namely "size matter" was being displayed by the petitioners to the viewers on Videocon T.V. Sony C.D. player, one C.D. namely "size matter", two C.D.s of "Jawani Ka Khel", remote, ticket book, T.V. and poster were taken into possession in the presence of the witnesses. The petitioner No.1 was running Dhawan Video Hall and petitioner No. 2 was working as servant with petitioner No.1 at that time. On completion of investigation, challan was filed against the petitioners u/s 292 read with Section 34 IPC and Section 7 of the Cinematograph Act.

4. The petitioners were charged for offences punishable u/s 292 IPC and Section 7 of the Cinematograph Act read with Section 34 IPC. The petitioners pleaded not guilty and claimed trial. The prosecution has examined eight witnesses. The statements of petitioners were recorded u/s 313 Cr.P.C. The petitioners denied the prosecution case but admitted that petitioner No. 1 was running Dhawan Video Hall and petitioner No.2 was servant working with petitioner No.1 on 7.12.2001. It has been alleged that petitioners have been falsely implicated in the case in connivance with Shanti Cinema Hall. In the beginning the petitioners desired to lead defence evidence but ultimately opted not to lead defence evidence. On completion of trial, the learned Sub Divisional Judicial Magistrate on 8.11.2004 convicted and sentenced the petitioners as noticed above. The learned Additional Sessions Judge on 22.2.2006 affirmed the judgment dated 8.11.2004, hence the petitioners have come in appeal.

5. It has been submitted on behalf of the petitioners that two Courts below have misconstrued and misinterpreted the evidence and have not appreciated the material contradictions in the prosecution evidence. The petitioners have been falsely implicated in connivance with owner of rival Shanti Cinema Hall. The material witnesses of the prosecution did not support the case of the prosecution, no alleged viewer of blue film has been examined by the prosecution. It has been submitted that the prosecution has miserably failed to prove the case against the petitioners. The two Courts below have taken a perverse view in convicting and sentencing the petitioners, ultimately submissions have been made for acceptance of revision and acquittal of the petitioners.

6. The learned Assistant Advocate General controverted the submissions made by learned counsel for the petitioners. It has been submitted that the prosecution has proved the case beyond reasonable doubt. He has submitted that even the testimony of hostile witness can be relied, merely witness has been declared hostile does not mean in law that his entire testimony is to be discarded or no portion of his statement can be relied. Generally viewer of the blue film is not expected to depose that he viewed the blue film. In these circumstances, simply because a viewer who watched the blue film has not been examined by the

prosecution is no ground to throw out the case of the prosecution when prosecution has proved the case against the petitioners beyond reasonable doubt. The allegations that petitioners have been implicated in connivance with owner of rival Shanti Cinema Hall is baseless. The two Courts below have rightly appreciated the material on record, in revision, evidence cannot be reappreciated.

7. Ex.P-1 is the recovery memo of T.V., C.D.player, blue C.D. "size matter", 2 C.Ds "Jawani Ka Khel" disc-I, disc-II, remote of T.V., remote of C.D. player, ticket book and poster. Ex.P-2 is the recovery memo of copy of Agreement, licence taken into possession from Gita Ram, Ex.P-3 is the spot map. Ex.P-8, copy of FIR, Ex.P-9 ruqa, Ex.P-10 to Ex.P-15 photographs and Ex.P-16 to Ex.P-21 negatives.

8. PW-1 Man Singh has stated that he is running a Karyana Shop at Baddi, Gita Ram is the owner of Video Hall. The police conducted a raid. He was associated in the raiding party. The licence was demanded from Devi Dayal servant, who told that the licence was with the owner. The police party took into possession television, C.D. player and nothing else happened in his presence. He was declared hostile and cross-examined by the Prosecutor. He has stated that Devi Dayal was present on the spot. He admitted his signatures on recovery memo Ex.P-1. He is a local man and has education upto 10th standard.

9. PW-2 Munna Ram has stated that he had been doing bookings in Shanti Cinema, Baddi since September, 2001. He does not know Gita Ram runs a Video Hall at Baddi. The owner of Shanti Cinema had sent him to Barotiwala for signing and there he put his signatures. He was declared hostile and was cross-examined by the Prosecutor. He has stated that he has education upto 10th standard. He is working in Shanti Cinema. He admitted his signatures on Ex.P-1 as witness. Brij Mohan Sharma, runs Shanti Palace.

10. PW-3 Rajinder Kumar has stated that 5-7 months ago police took his signatures on some papers. He was declared hostile and cross-examined by the Prosecutor. He admitted his signatures on Ex.P-2 as witness. He has stated that he has education upto Inter class. PW-4 H.C. Kewal Singh has stated that in the year 2001 he was posted as Investigating Officer in Police Post, Baddi. On 17.12.2001 he was present at Sai Road Baddi, H.C. Jagat Singh, C.Jaswant Singh and SHO were also present at that place. A secret information was received that Gita Ram in connivance with his servant Devi Dayal showing blue film to youths in Dhawan Video Hall owned by Gita Ram. The SHO associated Man Singh, Munna Ram and Parkash Chand in the raiding party and raided Dhawan Video Hall where Gita Ram and his servant Devi Dayal were present, blue film was being exhibited in the Video Hall, about 15 persons were watching the blue film, SHO took photographs of the blue film which was being shown.

11. PW-4 further stated that the C.D. was taken out from the C.D.player. On the C.D. "size matter" was written, 2 other C.Ds were also taken into possession which were "Khel Jawani Ka" disc-1, "Khel Jawani Ka" disc-II. T.V. with C.D. etc.

were taken into possession vide Ex.P-1, spot map Ex.P-3 was prepared. Gita Ram and Devi Dayal were arrested on 7.12.2001 but were released on bail. Agreement is Ex.M-1, Ikrarnama Ex.M-2, Licence Ex.M-3, C.D. "size matter" Ex.M-4, C.D."Jawani Ka Josh" M-5 and M-6. In cross-examination, he has stated that secret information was with respect to the specific video hall which was raided. He has denied suggestion that police asked licence from Devi Dayal, who told that he would produce the licence on return of owner. He also denied that he was asked to show the licence and take back C.D.player and other articles. He denied that C.D. was taken from Sharma Ji owner of Shanti Palace and petitioners have been falsely implicated in the case.

12. PW-7 Chaman Lal, S.I. has stated that he had been SHO, Police Station, Barotiwala since November, 2001. On 7.12.2001 he received secret information that Gita Ram owner and his servant Devi Dayal had been showing obscene film in Dhawan Video Hall. On this a raiding party was constituted consisting of Munna Ram, Parkash Singh and Man Singh by him and the raiding party reached Dhawan Video Hall. Inside the video hall Gita Ram and Devi Dayal were present, there were about 15 youths, who were watching obscene film. The photographs Ex.P-10 to Ex.P-15 were taken and the articles were taken into possession vide Ex.P-1. C.Ds M-4 to M-6 were taken into possession, ruqa Ex.P-9 was sent for registration of the case and FIR Ex.P-8 was registered.

13. PW-7 in cross-examination answered in affirmative that as per memo T.V., C.D. player, remote, C.D, poster, ticket book were taken into possession. He denied that he wanted only to check the licence in the video hall. PW-8 Ramesh Dhawan has stated that Dharam Vir Video Hall was earlier owned by him. He sold the licence of that video hall to Gita Ram for Rs. 50,000/- alongwith all articles. Gita Ram in his statement u/s 313 Cr.P.C. has admitted that he was running video hall in the name and style "Dhawan Video Hall" at Baddi on 7.12.2001 and accused Devi Dayal was servant at the relevant time.

14. In ruqa Ex.P-9, PW-7 Chaman Lal, S.I. has stated that when the raiding party reached video hall of Gita Ram, he found Gita Ram and his servant Devi Dayal inside the video hall. There were 15 youngmen who were watching the blue film. He took photographs of blue film and took into possession blue film C.Ds. "size matter" and "Khel Jawani Ka" disc-1 and "Khel Jawani Ka" disc-II and other articles. The petitioners in their statements under Sections 313 Cr.P.C. have admitted that petitioner No. 1 was running video hall in the name and style "Dhawan Video Hall" at Baddi on 7.12.2001 and petitioner No.2 was working as servant at that time. The petitioners however denied the prosecution case and took defence that they have been falsely implicated in the case in connivance with owner of Shanti Cinema Hall a rival of petitioner No.1.

15. The close scrutiny of cross-examination of PW-4 H.C. Kewal Singh indicates that petitioners have not denied the police raid. It has been suggested to PW-4 in cross-examination that police asked licence from Devi Dayal, who told that he would produce the licence on return of owner. This witness was also put the

suggestion that Devi Dayal was asked to show the licence and take back the C.D.player and other articles. The petitioners also put suggestion to this witness that C.D. was taken from Sharma Ji owner of Shanti Palace. PW-4 has denied all these suggestions. The petitioners similarly in cross-examination suggested to PW-7 Chaman Lal, S.I. which he answered in affirmative that as per memo T.V., C.D.player, C.D. poster, ticket book were taken into possession. PW-7 was also suggested that he only wanted to check the licence but he denied this suggestion. This indicates that the petitioners have not denied the police raid at Dhawan Video Hall on 7.12.2001.

16. It has been contended that independent witnesses PW-1 Man Singh, PW-2 Munna Ram and PW-3 Rajinder Kumar have not supported the case of the prosecution and Parkash Singh, member of the raiding party has not been examined. It emerges from the statements of PW-1 Man Singh, PW-2 Munna Ram and PW-3 Rajinder Kumar that they have not disclosed entire truth. They wanted to help the petitioners for reasons best known to them. In State of Gujarat Vs. Anirudh singhh and another, it has been held that it is the duty of the trial Judge or the appellate Judge to scan the evidence, test it on the anvil of human conduct and reach a conclusion whether the evidence brought on record even of the witnesses turning hostile would be sufficient to bring home the commission of the crime. In Shri Rabindra Kumar Dey Vs. State of Orissa, it has been held the mere fact that a witness is declared hostile by the party calling him and allowed to be cross-examined does not make him an unreliable witness so as to exclude his evidence from consideration altogether. It is not necessary to multiply the case law on the point, it is settled law that merely because a witness has been declared hostile his evidence cannot be discarded altogether on this ground alone.

17. The statement of PW-1 Man Singh, however, indicates that he has not denied the police raid. He has admitted his signatures on recovery memo Ex.P-1. It is not believable that PW-1 Man Singh signed recovery memo Ex.P-1 without knowing its contents. PW-1 has education upto 10th standard. In the recovery memo Ex.P-1 recovery of offending CDs, T.V. C.D.player etc. has been clearly stated. PW-2 Munna Ram has also admitted his signatures on Ex.P-1. He has also education upto 10th standard. It is not believable that PW-2 signed Ex.P-1 without knowing its contents. There is no worth believing evidence on record that PW-1 and PW-2 witnessed and signed recovery memo Ex.P-1 under the pressure of police and in connivance with owner of Shanti Cinema. PW-1 and PW-2 were declared hostile but still their statements have corroborated the prosecution case.

18. The police witnesses PW-4 H.C. Kewal Singh and PW-7 Chaman Lal have fully proved the prosecution case. PW-4 and PW-7 cannot be disbelieved only on the ground that they are police officials. In Tahir Vs. State (Delhi), , it has been held where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form the basis of conviction and the absence of some independent witness of the locality to lend

corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case. There is no reason to disbelieve PW-4 and PW-7, rather their statements inspire confidence. The petitioners have not denied the police raid while cross-examining PW-4 and PW-7. The defence projected by them of denial of running blue film at the time of raid in the Dhawan Video Hall has been proved to be false. There is evidence on record that at the time of raid 15 youngmen were watching the blue film "size matter" and PW-7 took photographs Ex.P-10 to Ex.P-15 of blue film which was being run in Dhawan Video Hall. The photographs more particularly Ex.P-10, Ex.P-13 coupled with other photographs are definitely obscene, more over it is not the case of the defence that photographs Ex.P-10 and Ex.P-13 and other photographs of blue film are not obscene. It is too much to expect from a viewer of blue film to support the prosecution in the Court that he had been watching the blue film at the time of police raid. Therefore, petitioners cannot take any benefit that prosecution has not examined any person who had actually seen the blue film. The prosecution has independently proved the case against the petitioners.

19. The two Courts below have rightly appreciated the material on record. There is no perversity in the impugned judgment, in revision the scope is very limited but in order to satisfy the legality and propriety of the impugned judgment, I have again considered the evidence and I am of the view that no fault can be found with the impugned judgment. There is no merit in the revision.

20. In view of the above discussion, the revision fails and is accordingly dismissed. The bail bonds of the petitioners are cancelled. The petitioners are directed to surrender immediately to serve out the sentence imposed.