

(2005) 08 SHI CK 0032

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 135 of 1999

Kamal Bodhik and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 04-08-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161

Evidence Act, 1872 — Section 114

Penal Code, 1860 (IPC) — Section 120B, 420, 489A, 489D

Citation : (2005) 2 ShimLC 463

Hon'ble Judges : Surjit Singh, J

Bench : Single Bench

Advocate : R.K. Gautam and Archana Dutt, for the Appellant; H.K.S. Thakur, Dy. A.G., for the Respondent

Final Decision : Allowed

Judgement

Surjit Singh, J.—The Appellants are aggrieved by the judgment dated 23.4.1999, of the learned Additional Sessions Judge, Solan, camp at Nalagarh, whereby they have been convicted of the offence, u/s 420 read with Section 120B of the Indian Penal Code, and sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of Rs. 25,000/- each and in default of payment of fine to undergo rigorous imprisonment for a further period of six months.

2. Facts that have led to the prosecution, the conviction and the sentencing of the Appellants, may be noticed. One Veer Prakash runs a goldsmith shop at Nalagarh in Solan District, Appellant Prakash Chand and Baldev Kumar are also residents of Nalagarh area. They earn their living as fortune tellers. Some time in July, 1994 they allegedly went to said Veer Prakash, goldsmith, whom they had been knowing from before and after reading his palm and horoscope, told him that he was likely to make huge monetary gains in near future. They also told him that some persons from Bengal were likely to visit the area in a month or so and those persons knew magic of increasing currency notes. In August or

September, 1994 Appellant Kamal Bodhik and one Chander Shekhar (now a proclaimed offender) came to Nalagarh area. They were introduced to Veer Prakash by Appellant Prakash Chand and Baldev Kumar. All the four persuaded Veer Prakash that if he paid Rs. 5,00,000/-, he would be given Rs. 7.5 lacs in lieu thereof after some time. In December, 1994 Veer Prakash gave Rs. 5,00,000/- to Appellant Kamal Bodhik and proclaimed offender Chander Shekhar in the presence of other two Appellants. Veer Prakash had borrowed the money from his relatives and friends. The payment was made in the presence of Sewa Singh (P.W- 2), one Aslam and one Nathu Appellants Kamal Bodhik and proclaimed offender Chander Shekhar told Veer Prakash that he would be paid Rs. 7.5 lacs after some time. Appellant Kamal Bodhik and the said proclaimed offender Chander Shekhar then left for Calcutta along with the money. In January, 1995 Appellant Prakash Chand told Veer Prakash that he had gone to Calcutta to get his money along with the increase of 50%, but due to rush of work, the money could not be multiplied. In February, 1995 Veer Prakash, accompanied by Prakash Chand, himself went to Calcutta. Appellant Kamal Bodhik and the said proclaimed offender Chander Shekhar are alleged to have told him (Veer Prakash) that they would be visiting Nalagarh after about two months and would pay the money to him. On 6th March, 1995 Veer Prakash got drafted a complaint from an Advocate, practising at Nalagarh and submitted the same to the Sub-Divisional Judicial Magistrate Nalagarh, who forwarded it to the Station House Officer, Police Station, Nalagarh, on the basis of which an FIR was registered.

3. After investigation, challan was filed against the present Appellants, proclaimed offender Chander Shekhar and some more persons. The other persons, who were challaned along with the Appellants and the proclaimed offender Chander Shekhar, were discharged with the reasoning that they were, in fact, the victims of the crime and not the perpetrators. The present Appellants and the proclaimed offender Chander Shekhar were, however, charged with offences, under Sections 489A, 489D, 420 and 120B of the Indian Penal Code.

4. During the course of trial, Chander Shekhar absented. He was declared a proclaimed offender. The present three Appellants, on the conclusion of the trial, were held guilty of the offence, u/s 420 read with Section 120B of the Indian Penal Code and convicted and sentenced as aforesaid.

5. Appellants are aggrieved by the judgment of the learned Additional Sessions Judge. Their contention is that their plea that they had received only Rs. 2,00,000/- from Veer Prakash and that too on account of part payment of jewels and stones, which they had sold to him, has been rejected by the learned Additional Sessions Judge without proper application of mind. Also, it is their contention, that the evidence on record does not prove the prosecution story, but proves their aforesaid plea.

6. I have heard the learned Counsel for the parties and gone through the record.

7. It may be stated at the very outset that a reading of the complaint Ext. PA,

which was filed by Veer Prakash before the Sub-Divisional Judicial Magistrate, indicates that this may not be a case of deception, in the manner, as has been tried to be made out by complainant Veer Prakash, during the course of trial. While in the witness box, he stated that he was told that the notes would be doubled by a magic and out of those notes, three parts would be given to him and one part would be retained by the Appellants. In the complaint at page 2 it is stated that the complainant was told by the Appellants that by using some mechanism and talent, the Appellants would double the currency notes and three parts, out of four parts of such doubled notes, would be given to the complainant and one part would be retained by the Appellants. It is also mentioned in the complaint that the complainant was told by the Appellants that the original notes, given by him (the complainant) would be returned along with original currency notes equivalent to half the amount of currency notes given by the complainant in circulation in West Bengal, and the duplicate currency notes, prepared from the currency notes, made available by the complainant, would be taken to the West Bengal, where the same could easily be put into circulation, as the chances of detection of duplicate notes in West Bengal were to be minimal on account of the original notes, with similar numbers being in circulation in tins part of the country. The compliant has been proved by the complainant himself, while appearing as P.W.-1. The aforesaid allegations clearly show that the complainant was a privy to the conspiracy of counterfeiting the currency notes and his plea of having been deceived is an after thought. Not only this, he made a supplementary statement, u/s 161 of the Code of Criminal Procedure, Ext. P.W.-22/J, in which vide portion "A" to "A", with which he was duly confronted, he stated that it was demonstrated to him by Appellant Kamal Bodhik and the proclaimed offender how the currency notes would be doubled by them by using some chemicals etc.

8. It is in this backdrop that the evidence of the complainant, namely P.W.-1 Veer Prakash, who appears to be an accomplice, is required to be appreciated. Needless to say that when the complainant himself is shown to be an accomplice, the presumption is that he is unworthy of credit, unless corroborated in material particulars, in view of the provisions of Section 114, illustration (b) of the Indian Evidence Act, 1872.

9. In his deposition as P.W.-1, the complainant stated that he was approached by Prakash Chand, Appellant, who was accompanied by Baldev Kumar, Appellant, in July, 1993 and after reading his palm and horoscope, they told him that his future was bright and he was likely to make financial gains. He also stated that they told him that two persons from Bengal, who knew magic, were likely to visit the area and that those persons, by use of their magic, would double the currency notes. He stated that in December, 1993 the three Appellants and Chander Shekhar, proclaimed offender, visited his house and he paid them Rs. 5,00,000/-, on being allured by them that the currency notes would be doubled and that out of those doubled currency notes, he would be paid three parts and fourth parts would be retained by them. He stated that the Appellants were given

the money by him at his residence in the presence of Aslam Chaudhary, Sewa Singh and Nathu Ram. He stated that Appellant Kamal Bodhik and proclaimed offender Chander Shekhar left for Calcutta with the money promising that soon they would be returning and pay Rs. 7.5 lacs to him. Further he stated that about one-and-a-half month after the money was paid by him, Prakash Chand, Appellant told him that his money could not be multiplied and that thereafter he went with Prakash Chand to Calcutta and Appellant Kamal Bodhik and proclaimed offender Chander Shekhar assured him that they would be visiting Nalagarh area about two months later and pay him the promised amount of money. He stated that when he became suspicious, he lodged the complaint Ext. PA.

10. Out of the three persons, in whose presence the money was allegedly paid by the complainant to the Appellants, only Sewa Singh (P.W.-2) was examined. The witness stated that a sum of Rs. 5,00,000/- was paid in December, 1994 by the complainant to the Appellants in his presence. He stated that Aslam and Nathu Ram were also present there. In the cross- examination, he stated that the money was paid by the complainant to the Appellants at his shop. He also stated that the money was paid for the purchase of gems by the complainant.

11. The prosecution examined P.W.-3 Jyoti Parkash, P.W.-4 Lekh Ram, P.W.-9 Romesh Bhagga and P.W.-16 Rakesh Kumar to seek corroboration to the testimony of the complainant that he had borrowed money from his friends and relatives. These witnesses stated that together they paid Rs. 3,25,000/- to the complainant as loan.

12. Admittedly, no receipt was obtained by the complainant from the Appellants, when he allegedly paid a sum of Rs. 5,00,000/-. It is not believable that a man, particularly he who deals in gold, would make payment of as huge an amount as Rs. 5,00,000/- to strangers, hailing from as far a place as Calcutta, without obtaining any receipt. A huge amount of money can, however, be paid by a shopkeeper to some other person, without obtaining any receipt, if he gets something in exchange, equivalent in value to the money paid by him. In this case P.W.-2 Sewa Singh has categorically stated that the money was paid by the complainant for the purchase of gems. This statement not only falsifies the plea of the complainant but also corroborates the defence plea that the complainant had purchased gems from them and an amount of Rs. 2,00,000/- was paid by him towards part payment of the price of those gems and that when the Appellants insisted for the payment of the balance price money, they were falsely implicated in the case.

13. It also appears from the reading of testimony of the complainant and P.W.-2 Sewa Singh that the story regarding payment of Rs. 5,00,000, as put forward by the complainant, is not true. The complainant has stated that he paid the money to the Appellants at his residence, but Sewa Singh (P.W.-2) says that the money was paid by the complainant at his shop. The other two witnesses, in whose presence the money is alleged to have been paid, were given up by the prosecution as unnecessary. Now, when, Sewa Singh (P.W.-2) had not supported

the complainant's version, inasmuch as he said that the money was paid on account of purchase of gems and that it was paid at the shop and not at the residence of the complainant, as claimed by the latter, it was all the more necessary for the prosecution to have examined these two witnesses. It may not be out of place to mention that the prosecution did not cross-examine P.W.-2 Sewa Singh, despite his having contradicted the complainant in material particulars and, therefore, there is no reason to disbelieve his testimony, in so far as he corroborates the defence plea that the money was paid by the complainant as price of the gems purchased by him.

14. Defence plea is further corroborated by the fact that when the police, after arresting Appellant Kamal Bodhik, searched his house in a village in District Hugli, among the items recovered were 28 pieces of moon stones, four pieces of pearls, two pieces of Sapphire, four pieces of other type of pearls, 6 Gomeds, six pieces of Cat's eye, four pieces of Ruby, four pieces of Panna and a necklace of pearls. The fact is borne out from the seizure memo. Ext. P.W.-21/A as also the testimony of the Investigating Officer Shri Gurmeet Singh (P.W.-22). This fact indicates that Appellant Kamal Bodhik deals in precious stones and gems and further probablizes the defence plea that the complainant had paid the money to the Appellants towards the payment of price of precious gems.

15. In any case, as already noticed, the complainant himself being an accomplice in the conspiracy to counterfeit the currency notes, his testimony cannot be believed unless corroborated. As demonstrated hereinabove, Sewa Singh (P.W.-2) not only does not corroborate the testimony of the complainant, but also probablizes the defence plea. Other two witnesses, in whose presence the money was allegedly paid by the complainant, have not been examined.

16. As an upshot of the above discussion, the appeal is accepted and the conviction and the sentence of the Appellants for the offence, u/s 420 read with Section 120B of the Indian Penal Code, as ordered by the trial Court, are set aside and the Appellants are acquitted. Bonds furnished for their appearance are discharged.