
(1987) 04 P&H CK 0033
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 92 of 1985

Ram Singh and our

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 21-04-1987

Acts Referred:

Citation : (1987) 2 AICLR 782 : (1987) 2 PLR 357 : (1987) 2 RCR(Criminal) 208

Hon'ble Judges : Ujagar Singh, J

Advocate : Ramesh Hooda, R.S. Dhankar, Advocates for appearing Parties

Judgement

Ujagar Singh, J.

1. Ram Singh petitioner was found seated on the carrier of the bicycle which was being pulled by Des Raj petitioner on 31.12.1980 They were noticed by a police party consisting of Yad Pam. Hari Singh, Ram Kumar, Karan Singh, Dalip Singh Constables in the area of village Nizampur while they were on duty of excise checking Mahabir Prashad, an independent witness had been joined by them both the petitioners were apprehended and Head Constable Yad Ram started the proceedings with regard to the bladder which was found fitted on the bicycle The bladder was taken into possession and in the meantime one bus belonging to a private concern having registration Dumber RJY 2674 was coming from Rajasthan side. Ram Singh petitioner signaled the bus driver to stop it, Sardara Singh was the Conductor of that bus. In the meantime four to five persons, who were travelling in the bus, got down and Data Rain, driver of the bus turned the bus towards the side from which he was bringing it. Yad Ram P.W. raised an alarm. Two persons come there but they could not do anything. The driver and the conductor come down from the bus and threatened the police party and used filthy language to Yad Ram and other constables and thereafter took away the bus with the accused.

2. A case was registered on a report lodged by Yad Ram The liquor in the bladder was poured into 14 bottles. A sample was sent for chemical analysis and report of the Chemical Examiner, Exhibit P.H. Indicated that it was of counter liquor

having different composition as manufactured in the distilleries of Haryana in respect of the ingredients noted therein. I her petitioners along with their accomplices Data Ram driver and Sardara Singh conductor were sent up for trial. The petitioners were charged under Section 61(1)(a) of the Punjab Excise Act and Sardara Singh and Data Rain were charged under Sections 225/186/353/506, Indian Penal Code. They were tried together and the prosecution examined Hari Singh P.W. 1 Yad Ram Head Constable P.W. 2, Jai Narain P.W.3. Head Constable, Dalip Singh PW.4. A.S.I. Bhagat Singh P.W. 5 and Mahabir Parshad P.W 6. After examining the petitioner and their accomplices under Section 313. Criminal Procedure Code, and after hearing arguments, the trial Court convicted the petitioners under Section 61(1)(a) of the Punjab Excise Act and sentenced them to undergo rigorous imprisonment for six months and to pay fine of Rs. 250/ each and in default to further undergo rigorous imprisonment for three months. The other accused, since acquitted, were convicted Under Sections 225/186/353, Indian Penal Code, and sentenced to undergo rigorous imprisonment for three months under each section but the sentences were directed to run concurrently. The other accused were, however, acquitted under Section 506, Indian Penal Code.

3. On appeal, the appellate Court acquitted Data Ram, driver and Sardara Singh conductor of the charges under Sections 186/225/351, Indian Penal Code. The convictions and sentences of the petitioners were, however, confirmed under Section 61(1) (a) of Punjab Excise Act 1914.

4. I have heard the learned counsel for the parties and have also gone through the records. The learned counsel for the petitioner has submitted that Mahabir Parshad was only independent witness but he did support the prosecution trial" Court in its judgment has ignored the statement of Mahabir Parshad by simply observing as Under :

"if we leave Mahabir Parsha aside, we were, left with three P.Ws. namely, Hari Ram (?), Yad Ram and Dalip Singh."

Similarly, the appellate Court has also ignored the statement of Mahabir Parshad by observing as under:

"..... merely because Mahabir Parshad, independent witness has not supported the prosecution case it will not cast any shadow of doubt about the prosecution story because no animus or ill will is proved on the part of police officials against the accused "

5. Mahabir Parshad, when examined as P.W. 6 stated that he knew the accused and on 31.12.1980 he had gone to Police Station. Nangal Chaudhri and was told there that there was some dispute between the accused and the constables and his signatures were obtained on blank papers. After this statement permission was sought for declaring the witness as hostile and the Assistant Public Prosecutor was allowed to cross-examine him. In cross-examination he was confronted with his statement under Section 161 of the Code of criminal

Procedure and the witness denied having made any such statement and also denied the suggestion that he was making a false statement at the instance of the petitioner. His statement under Section 161, Cr.P.C. was exhibited as Exhibit P.W. 6/A. There is nothing on the record to show that the prosecution made any attempt to prove the statement of Mahabir Parshad under Section 161, Cr.P.C. and this statement Exhibit P.W. 6/A is not proved on the record and cannot be taken into consideration at all with the result that the statement of Mahabir Parshad P.W. 6 on oath has to be taken as correct. Mahabir Parshad P.W.6 has falsified the story of the prosecution regarding recovery of illicit liquor from the petitioners. As against the testimony of Mahabir Parshad P.W. 6 the statements of remaining witnesses, who are police officials cannot be preferred. As laid down by their Lordships of the Supreme Court in Satpal v. Delhi Administration, 1976 CrL. L.J. 295 evidence of a hostile witness cannot be discarded as a whole. After discussing in detail the law on the statement of a hostile witness their lordships made the following observations :

"From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge " of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process the credit of the witness has not been completely shaken he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process the witness stands squarely and totally discredited the Judge should as matter of prudence, discard his evidence in toto."

In view of the above, the statement of Mahabir Parshad P.W. 6 was not shaken at all and his testimony is creditworthy and has therefore to be believed. Both the Courts below committed an illegality in discarding the statement of Mahabir Parshad P.W.6 altogether.

6. Bladder recovered contained liquor which was poured into 14 bottles. As per Chemical Examiner, the liquor had composition different from the one manufactured in distilleries of Haryana in respect of the ingredients noted therein there is no evidence that in Haryana only liquor having composition as manufactured in distilleries of Haryana in respect of the ingredients noted is sold. In the absence of such evidence, possibility of the liquor seized having composition as manufactured at a place outside Haryana cannot be ruled out. Thus the liquor cannot be said to be of illicit nature. Even if it was limit liquor conviction sentence, of course, could be based for possession of more than the requisite quantity.

7. Even otherwise the discrepancies in the statements of the remaining witnesses

noted by the Courts below are sufficient to indicate that the pi prosecution version is doubtful. In view of the discussion above, I accept this revision, set aside the convictions and sentences of the petitioners and acquit them of the charges.