

(1976) 06 SHI CK 0008
In the High Court Of Himachal Pradesh

Smt. Bal Kaur

APPELLANT

Vs

The State of Himachal Pradesh

RESPONDENT

Date of Decision : 23-06-1976

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 517, 520
Penal Code, 1860 (IPC) — Section 201, 302

Citation : (1976) CriLJ 1928 : (1976) 5 ILR HP 493

Hon'ble Judges : D.B. Lal, J;C.R. Thakur, J

Bench : Division Bench

Judgement

D.B. Lal, J.—Lavinder Singh, Ajaib Singh and Rattan Singh were prosecuted before the Sessions Judge for the offences under Sections 302 and 201 of the I, P. Code. The case against them was that they brought the deceased a lady, in a car No. HRK-5379 somewhere near Barog and committed her murder. Some evidence was adduced that the three accused were seen near the car on the road a little before the actual murder was committed, that the lady was also brought to a hotel at Pinjore in the very same car, that some petrol was taken for the car at Ambala, and that false number plates were affixed by the accused in that car. After a trial before the learned Sessions Judge, Rattan Singh was acquitted, but Lavinder Singh was convicted under Sections 302 and 201 while Ajaib Singh was convicted only u/s 201 of the I. P. Code. Both of them came in appeal before the High Court, and under its judgment dated 2-8-1972 Lavinder Singh was acquitted for the offence u/s 302 although his conviction u/s 201 was maintained. The appeal of Ajaib Singh was, also dismissed and his conviction u/s 201 was maintained.

2. While the learned Sessions Judge convicted the two accused under Sections 302 and 201 of the Indian Penal Code, he proceeded u/s 517 of the Code of Criminal Procedure, 1898 and ordered that the car be confiscated to the State. After the decision by the High Court which was in the terms specified above, the present miscellaneous application Cri. M. P. No. 51 of 1972 was filed by Bal Kaur who is none else but the mother of Lavinder Singh and Ajaib Singh accused, u/s

520 of the Code for setting aside the order of confiscation made by the learned Sessions Judge.

3. The contention of Bal Kaur is that Lavinder Singh is acquitted of the offence u/s 302 of the I. P. Code and as such it could not be stated that the car was used for the commission of that offence and that would be a ground for release of the car. It is further stated in her application that the High Court while deciding the appeal did not pass any order regarding confiscation and that even otherwise there is no evidence leading to the conclusion that the car was used in the commission of the offence of murder. It is impressed on the Court on the basis of this reasoning that the car is liable to be released and the order of confiscation is likely to be set aside.

4. The learned Advocate-General was asked as to where the car was. as there was some dispute as to its actual disposal by the State Government. It was pointed out by the learned Advocate-General that the car has been transferred to the Health Department of the Government "for being used as an ambulance vehicle". As such any order regarding disposal or otherwise of the car will nevertheless apply to the vehicle now being used by the Health Department. The argument of the learned Advocate-General that the car is no longer in the custody of the Court as the appeal was decided on 2-8-1972, in our opinion, does not carry any weight. The car is still in the custody of the State Government. The order of confiscation was made by the learned Sessions Judge and that very order is the subject-matter of the present application u/s 520 of the Code.

5. We shall then come straight to the order passed by the High Court on 2-8-1972, and it is manifest the High Court did not apply its mind at all, to the order made by the learned Sessions Judge for confiscation and the attention of the High Court was not invited to Section 520 of the Code. It is, therefore, apparent on the face of the record that the High Court while deciding the appeal never entered into the enquiry u/s 520 of the Code, and neither revised nor confirmed the order of the learned Sessions Judge. The learned Advocate-General contended rather strenuously, that the decision by the High Court should be taken to have confirmed the confiscation order by the learned Sessions Judge. We are afraid, no such inference can be drawn. The obvious reason is that the attention of the High Court was never invited to Section 517 or 520 of the Code and in fact it was neither stressed by anybody nor decided by the High Court as to whether the order of confiscation was valid u/s 517, or needed any alteration or annulment u/s 520 of the Code.

6. According to the plain language of Section 517 the very custody of the car gave jurisdiction to the Sessions Judge to make an order for its disposal. It was not necessary to confer jurisdiction that the car must have been used for the commission of the offence. If the car was produced before the Court or was in its custody, that alone could confer jurisdiction upon the Court for making an order regarding its disposal. This view has been upheld in *B. Ram Lal Vs. State*, . It

was held, that it does not matter if the property has not been used for the commission of any offence or is not one regarding which any offence has been committed. The bare fact that it is produced by the police before the Magistrate invests him with the authority to pass an order for its disposal.

7. The learned Counsel then contended that Lavinder Singh was acquitted of the offence u/s 302, I.P. Code, and that should be sufficient ground for the release of the car. That too does not appear to be correct. As we have stated, the commission of the offence was not the only ground for conferring jurisdiction for disposal of the property. Merely because the car was in possession of the Court or was in its custody, gave the Court jurisdiction to make an order regarding its disposal. The learned Counsel was insistent to point out that the evidence regarding the commission of the offence u/s 302, I. P. Code, was not believed by the Court. We have perused the appellate judgment of the High Court. It was never held that the evidence adduced by the prosecution was false, but it was only considered doubtful. Benefit of a reasonable doubt was given to the accused Lavinder Singh and he was acquitted of the offence u/s 302 of the I. P. Code, It was not a case where the prosecution evidence was disbelieved but was a case in which it was held to be of doubtful validity. It may be that the car was used by the culprits for the commission of the offence or may be that it was not used for the commission of that offence. The participation of Lavinder Singh was held to be of a doubtful nature and that is why he was acquitted of the charge u/s 302 of the I. P. Code. Nonetheless both Lavinder Singh and Ajai Singh were held guilty u/s 201 of the I. P. Code and their conviction and sentence under that section were maintained As held in Gour Chandra Gouda and Another Vs. The State, , no doubt, the general rule is that when property is seized from a person and he is acquitted at the trial, the property should ordinarily be returned to him. But this cannot be taken as a hard and fast rule and it must depend upon the circumstances of each case, and the accused cannot claim as of right the return of the article seized from his custody or possession. Therefore, the Court will have to enter into the enquiry u/s 517 of the Code to see if circumstances are made out for confiscation of the car even though Lavinder Singh was acquitted of the offence u/s 302 of the I. P. Code.

8. It is submitted that the registration of the car existed in the name of Bal Kaur and the accused never claimed the vehicle as their own and that should be sufficient for the Court to release the car. The learned Advocate-General moved an application Cri. M. P. No. 45 of 1973 on 11-6-1973 for further enquiry into the matter. He placed before us the special diary prepared by the Police containing the statements u/s 162 of the Code including confessional statements made by the accused. It was pointed out that such an evidence was admissible and perhaps the learned Counsel would be in a position to prove before the Court that the car was actually used for the commission of the offence. Be it as it may, the first question before us would be as to whether fresh enquiry is needed u/s 520 specially so when the High Court had not entered into the question u/s 520 of the Code for modification or annulment of the order of confiscation. Such an

enquiry can be ordered at this stage. For this, in our opinion, the jurisdiction is there u/s 520 because the Court can make such "further orders that may be just." It cannot be disputed that the application u/s 520 of the Code could be moved even at this stage. For this, support can be had from the authorities reported in Ram Abhilakh and Another Vs. The State, and Lala Har Bhagwandas and Another Vs. Diwan Chand, . It is also undisputed that even confessional statements although inadmissible for proving guilt of the accused are admissible to prove or disprove as to whether the car was used for the commission of any offence. For this, there is preponderance of authority, and reference can be made to Pohlu v. Emperor AIR 1943 Lah 312 , Prakash Chandra Jain Vs. Jagdish and Another, and Dhanraj Baldeokishan and Another Vs. The State,

9. We, therefore, hold that the application u/s 520 of the Code is maintainable. But we allow the application of the State which is Cr. M. P. No. 45 of 1973. We direct that fresh enquiry be held by the learned Sessions Judge having jurisdiction u/s 517 of the Code, in the light of the appellate judgment delivered by the High Court. The report as to the disposal or release of the car shall be submitted by the learned Sessions Judge to this Court for further orders u/s 520 of the Code.