
(2010) 05 SHI CK 0156
In the High Court Of Himachal Pradesh

State of Himachal Pradesh

APPELLANT

Vs

Brij Mohan and Others

RESPONDENT

Date of Decision : 03-05-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471

Citation : (2010) 05 SHI CK 0156

Hon'ble Judges : Rajiv Sharma, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—This appeal by the State is directed against the judgment dated 12th April, 1996, delivered by the learned Judicial Magistrate Ist Class, Court No. I, Mandi, in Criminal Case No. 4-1 of 1991/143-II of 1996, whereby he acquitted the accused of having committed offences punishable under Sections 420, 467, 468, 471 read with Section 120B of the Indian Penal Code.

2. PW-1 Mathru, complainant made a complaint dated 6th February, 1996 to the Superintendent of Police, Mandi. This complaint has obviously been drafted through a Lawyer or some other person well conversant with law. The complaint is in the form of legal pleadings. In this complaint, it was alleged that the complainant is an illiterate woman aged about 61 years. According to her, the twelve persons named as accused in the complaint had hatched a conspiracy to deprive her of her property. She alleged that on 6th January, 1996, accused No. 1 Brij Mohan came to her residence and requested her to sell 763.13 sq. meters of land to him for a consideration of Rs. 35,000/-. She accepted this offer.

3. According to the averments made in this complaint, the complainant was taken towards Raj Mahal Hotel by accused Brij Mohan, where he offered her a drink, which first she did not accept since she normally does not drink, but occasionally does so to deal with her stomach problem. According to her, she was given a heavy dose of liquor and became intoxicated and lost her senses.

4. Taking advantage of the fact that the complainant was under intoxication and not in her senses, the accused Nos. 1 to 5 got her thumb impressions on six sale deeds for the sale of six pieces of land, which were registered on 16.1.1986 before the Tehsildar, Sadar Mandi. On the basis of this complaint, F.I.R No. 57/1986 Ext. PW-19/B was registered against the nine persons out of the seventeen persons named in the complaint. They were charged with having committed the offences aforesaid. They denied having committed any offence and claimed trial. After trial the accused were acquitted. Hence the present appeal by the State.

5. During the course of evidence, a number of witnesses were examined, but the most relevant evidence is the evidence of PW-1 Mathru complainant, PW-2, her son-in-law Moti Ram and PW-3 Chuda Mani. In Court, the complainant gave a different version as to what had happened. Whereas in the original complaint, she had stated that she was given liquor near Raj Mahal Hotel, Mandi and thus became intoxicated, while appearing in the witness box as P.W. 1, she stated that she got some stomach ailment near the stairs of the office of the Tehsildar and she was given some medicine for stomach ailment, due to which she lost her senses. These two versions are totally inconsistent with each other. Whereas in the original statement, it was clearly mentioned that she was plied with liquor, in Court, she stated that she was given some medicine.

6. From the averments made in the original complaint, it appears that the complainant was alleging that the sale deeds were executed in her absence in the office of the Sub Registrar, Mandi. She made a specific allegation that she had been wrongly identified by Shri Hemant Kumar Vaidya, Advocate and the witnesses to the Sale Deeds had also appended their signatures wrongly. However, when appearing in the Court, this witness gave a different version. Here, she stated that when she was produced before the Tehsildar and the Tehsildar inquired from her, whether she had received the sale consideration, she informed the Tehsildar that she had not received the money. Thereafter, she was taken to the room of the Tehsildar, where four persons showed her currency notes. Since, she was unable to count the money, she called her son-in-law PW-2, Moti Lal who counted Rs. 20,000/- and the accused agreed to make payment of the balance amount of Rs. 15,000/-. After some days, she came to know that in fact, she was made to sign on six sale deeds. Surprisingly, she also stated that on enquiry by the Tehsildar, she admitted before him that she had received the money. When asked, who had filed the complaint before the Superintendent of Police, she stated that it might have been filed by her nephew. It is, therefore, apparent that it was not she, who had filed the complaint, though she had signed it.

7. PW-2 Moti Ram is the son-in-law of the complainant. According to him, on 16.1.1986, complainant Mathru came to him and told him that she had sold some portion of the land and is unable to count the money. He stated that she told him that the sale consideration was Rs. 45,000/-. He then went to the Tehsil

Office, where he was asked to count the money. He counted cash amount to Rs. 35,000/- and was given a pronote of Rs. 10,000/-.

8. PW-3 Chuda Mani stated that the complainant had agreed to sell one plot to accused No. 1. In his presence, the Tehsildar asked the complainant whether she had received the money. According to him, the complainant stated that she had sold land of one house for consideration of Rs. 25,000/-. He further stated that the complainant had consumed liquor and was smelling of liquor. In cross-examination, he stated that he did not enter the office of the Tehsildar and the Tehsildar did not ask the complainant about the sale of the land or the receipt of the money.

9. The versions of these three witnesses are totally contradictory. According to the complainant, the sale consideration was Rs. 35,000/- and she was only given Rs. 20,000/- in cash and she was promised that she would be given Rs. 15,000/- later on. PW-2 Moti Ram stated that the sale consideration was Rs. 45,000/- and he counted Rs. 35,000/- in the office of the Tehsildar and a pronote of Rs. 10,000/- was given. The pronote was never produced in Court. According to PW-3 Chuda Mani, the total sale consideration was Rs. 25,000/-. These three statements cannot co-exist together. Thus, we are of the view that these witnesses are telling lies.

10. Six sale deeds have been executed. The complainant was identified by Shri Hemant Kumar Vaidya, Advocate (PW-7). Though, he was initially shown as an accused, but later on, he was examined as a prosecution witness.

11. In view of the inconsistency and contradictions in the prosecution evidence, the story of the prosecutrix, does not inspire confidence. Her version that she was made to drink liquor to such an extent that she lost her senses and then she was then taken to the Tehsil Office and made to sign six sale deeds, does not appear to be true. It cannot be believed that the Deed Writer, the two witnesses to the sale deeds, the purchaser of the land, the Counsel who identified her, the Patwari, the Kanungo, the Tehsildar and the staff in the office of the Tehsildar, would all inspire to cheat the complainant and deprive her of her property. The complaint, as held by us above, was obviously drafted after taking legal assistance, but the complainant has not stated that it was she, who went to a Lawyer or some other person to get the complaint drafted. Who got this complaint drafted and who drafted the complaint? These questions remain unanswered.

12. The story of the complainant also does not appear to be true since she admitted that she had not filed any civil suit for cancellation of the sale deeds. In case, the complainant had been duped and cheated, as alleged by her, in addition to taking criminal action which may lead to the punishment of the accused, she would have definitely filed a civil suit to get the sale deeds cancelled because that was the only way she could have redeemed her property.

13. In view of the above discussion, we find no merit in the appeal and which is

rejected accordingly. Bail bonds, if any, furnished by the accused, are ordered to be discharged.