
(2012) 08 SHI CK 0070
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 82 of 2005

State of Himachal Pradesh

APPELLANT

Vs

Sidhumal

RESPONDENT

Date of Decision : 23-08-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 420

Citation : (2013) CriLJ 1468

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Advocate : P.M. Negi, Deputy A.G, for the Appellant; K.S. Banyal, for the Respondent

Final Decision : Dismissed

Judgement

Surinder Singh, J.—Heard and gone through the record. The State felt aggrieved by the judgment of acquittal passed by the learned Additional Sessions Judge (Fast Track Court), Hamirpur, whereby the conviction and sentence of the respondent, hereinafter referred to as "the accused", for the offence u/s 420 of the Indian Penal Code, was set aside.

2. Precisely, the case of the prosecution, as stated by the prosecution witnesses, is that complainant PW 1 Kuldeep Kumar was running a vegetable shop, whereas the accused was running a grocery shop at Mehre Bazar, Tehsil Barsar, District Hamirpur. They were in visiting terms in the shops of each other. One day, the accused represented to the complainant that a labourer came in his contact and told him that during the digging operation he found 2.5 kgs. gold biscuits and if the accused intended to purchase it, he would sell it on cheaper rate. On this, the accused contacted the complainant. Both of them intended to purchase the gold biscuits from the said labourer.

3. On 31.5.2001, the complainant withdrew an amount of Rs. 1,10,000/- and took an amount of Rs. 40,000/- from PW 5 Amar Nath. The accused also

arranged for the money and both of them hired a vehicle for which both of them paid in equal shares and went towards Talmehra in District Una. When they crossed Mubarakpur at a distance of two kilometers, and reached Bhanjal near Atta Chaki, the vehicle was stopped. The accused got down and directed the complainant to wait for about ten minutes. After sometime the accused returned with two bags in his hands, one was kept by him and another was given to the complainant. Both of them had made the payment of the alleged gold. The complainant had paid through accused. Thereafter both of them returned to their respective places. The complainant kept the said bag of gold biscuits at his residence and went to Kullu in connection with his business, then returned after about 20 days.

Thereafter he took out one biscuit as a sample to show it to the goldsmith in village Badni, who told that it was not gold but of a gold plated-brass. Thereafter he took another biscuit to the goldsmith at Mehre in the bazar and had shown to another goldsmith. He also confirmed the fact that the said biscuit was not of gold, whereas about two months before the said incident, the accused is said to have got tested the sample which was stated to be of pure gold.

4. The complainant, on coming to know that he was cheated, contacted the accused. In turn, he told him that he should hire a vehicle and visit Hoshiarpur. In the meantime, he was also coming to meet the said person and they would get the amount back from the person from whom they had purchased the above gold biscuits, but the accused did not accompany him. Thereafter he contacted the shopkeepers of the bazaar and complained about the above incident to them. They also insisted upon the accused to refund his amount, but in vain, at last he lodged the FIR Ext. PW 1/A in the Police Station and also produced the gold biscuits weighing 1.480 kgs., which were taken into possession by the police vide memo Ext. PW 1/B.

5. The accused was arrested. During interrogation he told the police that he was also cheated and produced 1 kg. 95 grams of alleged gold which was purchased by him. The police took it into possession vide memo Ext. PW 2/A. Both the alleged gold, one produced by complainant and another by the accused, were sealed and sent for the examination to the Central Forensic Science Laboratory, Chandigarh. On its examination vide Ext. PW 6/E, it was opined that the stuff sent to them was not of gold, but of brass.

6. After completing the investigation, the challan was presented in the Court for the trial of the accused. He was accordingly, charge-sheeted for the offence u/s 420 of the Indian Penal Code. At the end of trial, the accused was convicted and sentenced to undergo imprisonment for a period of one year and to pay a fine of Rs. 1,000/-, by the learned trial Court.

7. Feeling aggrieved, he filed the appeal before the Court of Sessions which came to be decided by the learned Additional Sessions Judge (FTC). After hearing the parties and going through the record, the learned Additional Sessions Judge held

that there was inordinate delay in lodging the FIR and also that that the complainant as well as the accused both were cheated by some person and he also took note of the statement of ASI Raj Kumar that during those days in District Una some of the persons were involved in selling the forged gold and similarly in village Chakmoh, one Kishan Chand was dodged by a person in a similar way, thus set aside the judgment of conviction and sentence and acquitted the accused. Hence, the present appeal.

8. On the reappraisal of the evidence, I do not find that the delay in lodging the FIR is very much fatal in this case. The circumstances which appear in this case are indicative of the fact that the complainant and the accused, both were cheated. Since the complainant had spent a considerable amount for the purchase of the gold, thus he insisted the accused to pay his money back as he was instrumental in alluring him for the said purchase. But simultaneously he also deposed that the accused had also purchased the gold for which he paid the money and when they returned from the spot, the stuff purchased by the accused was taken by him to his place whereas another bag which was handed over to him was brought home by the complainant. He also admitted the news which had appeared in the newspapers was also with respect to the selling of forged gold by some other persons. He further stated that one Prem Dass of village Ree and one Kishan Chand of village Chakmoh were also cheated by someone in a similar way.

9. PW 2 Karam Chand stated that when the complainant was making the allegations that it was the accused and the accused only who had taken the complainant for the purchase of gold, at the same time the accused was also imputing similar allegations to the complainant that he was also cheated. Even in the cross-examination conducted by the accused he admitted that both of them were cheated by a stranger whose whereabouts were not known. This fact is also corroborated by PW 4 Des Raj. Even in the cross-examination conducted by the learned Public Prosecutor he stated that the complainant had told him that he along with the accused both had gone to the person from whom they had purchased the alleged gold. In cross-examination by the accused he also admitted that both were cheated by the person from whom they had purchased the gold. Even the Investigating Officer admitted about the fact that some gang was operating in District Una to sell the forged gold and many persons fell prey of those cheats.

10. To prove the fact that the accused had also paid an amount of Rs. 1 lac for the purchase of gold after withdrawing the same from the bank, he examined DW 1 Vinod Kumar an employee of State Bank of Patiala. He proved the withdrawal slip. Even during the investigation the alleged gold which was purchased by the accused was also produced by him to the police. Therefore, in view of the above facts appearing in the evidence, in my opinion, it was not the accused who had allured and tracked the complainant by getting any undue advantage by selling the forged gold to him or that he had ever played a trick by

adopting the modus-operandi as projected by the complainant. For the purpose of holding a person guilty u/s 420 of the Indian Penal Code, the evidence adduced must establish beyond doubt, mens rea on the part of the accused. The prosecution in this case failed to prove deliberate and intention act.

11. Therefore, in these circumstances, it cannot be said that the prosecution could prove its case beyond reasonable doubt. Thus, in the judgment passed by the learned Court of Sessions I do not find any perversity as the findings of acquittal are borne out from the evidence on record. The appeal filed by the State is without any merit, hence dismissed.

12. The respondent is discharged of his bail bonds entered upon by him at any time during the proceedings of this case. Send down the record.