
(2004) 11 P&H CK 0080
In the Punjab And Haryana At Chandigarh
Case No : Criminal R. No. 2071 of 2004

Surjit Singh and Others

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 02-11-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 100(4), 100(5), 161, 313, 360(3)
Evidence Act, 1872 — Section 24, 27
Penal Code, 1860 (IPC) — Section 379, 411, 427

Citation : (2005) CriLJ 1176 : (2005) 1 RCR(Criminal) 683

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : K.S. Dhaliwal, for the Appellant;

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The accused-petitioners have filed the instant petition u/s 401 of the Code of Criminal Procedure, 1973 (for brevity, Cr.P.C.) challenging their conviction and sentence awarded u/s 411, Cr.P.C. to undergo rigorous imprisonment for one year along with fine of Rs. 1,000/-each. In default of payment of fine, they are to further undergo simple imprisonment for 15 days each. The Judicial Magistrate 1st Class, Ferozepur has recorded the conviction in his order dated 3-9-2001. On appeal, the order of conviction and sentence passed by the learned Judicial Magistrate has been upheld by the learned Additional Sessions Judge, Ferozepur vide his judgment dated 1-10-2004.

2. Before dealing with the contentions raised by learned counsel for the petitioners, few details and findings recorded by both the Courts below may be noticed. On 10-1-1997 theft of Forest trees of Sheesham from the area of RD Stone Nos. 56-57, 57-58 and 58-59 of the value of Rs. 50,000/-was reported by the Forest Range Officer, Jallalabad and Brahm Parkash and Mohinder Singh, Forest Guards of Village Lakho Ke and Village Gujjar Beat, Forest Block, respectively. It was alleged that trees were stolen on 4-1-1997 by Surjit Singh,

Karnail Singh, Makhan Singh, Mohinder Singh and Manal Singh. On the basis of aforementioned allegations made in memo Ex. P1 under the signatures of Tarlok Singh, first Information report Ex.PW-4/B was recorded and case was registered against the accused-petitioners under Sections 379/411 IPC. The site plan was prepared by ASI Hardyal Singh when he visited the place of theft on 11-1-1997 which is Ex.PS. 4/C.

3. The police officials along with the officials of the Forest Department caught the accused-petitioners red handed when they were carrying stolen wood in Mahindra tractor No. D-1-475 which was being driven by one of the accused-petitioners, namely, Madhan Singh. Six wood logs of different sizes were recovered from the tractor. The aforementioned wood logs were found to be the property of the Forest Department and the same was duly identified by the Forest Guards Mohinder Singh and Brahm Parkash. All the accused-petitioner were arrested and the case property was taken into possession along with the tractor and trolley vide recovery memo Ex. P6. On the basis of disclosure statement made by accused-petitioners Surjit Singh (Ex.P7) before Inspector Budh Singh in the presence of both the Forest Guards as well as ASI Hardyal Singh, eight wood logs were recovered from the courtyard of his house which had been situated in the fields. The recovery was got effected by accused-petitioner Surjit Singh himself and the wood logs have been identified by both the Forest Guards which have been taken into possession vide recovery memo Ex.P8. One axe and two saws were also recovered from the house of Surjit Singh. The wood logs have been identified as MO-1 to MO-6 which were taken into possession by Inspector Budh Singh vide recovery memo Ex.P8 which was duly attested. The axe and saws were also taken into possession vide recovery memo Ex. P9. Exs. P11 and P12 are the site plans of the places of recovery of wood. The accused-petitioners were challenged to face trial for having committed offences punishable under Sections 379, 411, 427, IPC. However, they were charged only u/s 411, IPC to which they did not plead guilty and claimed trial.

4. Tarlok Singh, Forest Range Officer appeared before the trial Court as P.W . 1 and proved the document Ex.P1 dated 10-1-1997 vide which theft of forest wood was reported to the police. He also proved photostat copies entries in the register Exs. P2 to P4 showing ownership of the forest wood in the area of Canal RD No. 56-57, 57-58, 58-59 and 59-60 from where the wood belonging to the Forest Department was stolen. The aforementioned version of P.W. 1 Tarlok Singh finds ready corroboration from P.W. 2 Brahm Parkash. He also proved recovery of six logs of stolen Sheesham wood belonging to the Forest Department. He fully corroborated the prosecution version by proving the recovery memo Ex.P6, disclosure statement Ex.P7 which was made by Surjit Singh accused-petitioner. He also corroborated the prosecution version of recovering wood logs MO-1 to MO-6 which was taken into possession by Inspector Budh Singh by recovery memo Ex. P8. Ex.P9 concerning recovery of two saws and one axe has also been testified along with search memo Ex.P10 of accused-petitioner Surjit Singh. P.W. 3 Khushal Chand, Clerk in the office of D.T.O., Ferozepur, has proved the

ownership of the tractor by producing registration certificate Ex.P5 which is in the name of accused-petitioner Surjit Singh. ASI Hardy Singh appeared as P.W. 4 and Inspector Budh Singh appeared as P.W. 5 completely supporting the prosecution version as indicated in the challan.

5. In the statement made u/s 313, Cr.P.C. the accused-petitioners simply denied the allegations and alleged false implication.

6. The trial Court after close analysis of the evidence recorded conviction of the accused-petitioners u/s 411 IPC and also ordered their sentence. On appeal, the learned Additional Sessions Judge upheld the order of conviction and sentence.

7. Mr. K.S. Dhaliwal, learned counsel for the accused-petitioners has argued that (i) the prosecution has failed to establish on record that the property recovered from the accused-petitioners belonged to the Forest Department. According to the learned counsel, there were no marks on the stolen property showing that it belonged to the Forest Department. (ii) It has further been urged that the original record of Ex.P2 to P4 with regard to the entries in the register showing ownership of the Forest wood in the concerned area should have been produced and the photostat copies of Exs. P2 to P4 produced cannot prove ownership of the Forest Department. (iii) Another submission made by the learned counsel is that there is no independent witness to support the recovery from the tractor or on the basis of the disclosure statement made by accused-petitioner Surjit Singh especially when the tractor was intercepted in the busy locality and the house of accused-petitioner Surjit Singh is also situated in the abadi area. (iv) Concluding his argument, the learned counsel submitted that the accused-petitioners being the first offenders are entitled to the benefit of probation.

8. The first argument of the learned counsel has failed to impress me because in the FIR registered on 10-1-1997, theft of Forest Sheesham wood was reported to the police from the area of Canal RD No. 55-56, 56-57, 57-58 and 58-59 which has been duly proved by the prosecution by placing on record entries Ex.P2 to P4. It has been shown that the Sheesham trees in between the area mentioned belonging to the Forest Department. P.W. 1 Tarlok Singh, Forest Range Officer had stated before the Court that Mohinder Singh and Brahm Prakash were posted as Forest Guards in that area. The recovery has been duly testified by P.W. 2 Brahm Prakash who was present when wood logs MO-1 to MO-6 were recovered from all the accused. He also testified recovery of MO-7 to MO-15 from accused-petitioner Surjit Singh. He identified the recovery of wood as the one belonging to the Forest Department because he was posted in the area where the theft had taken place. He is supposed to be acquainted with the quality of the forest wood. Therefore, the argument that the wood is not identified as the one belonging to the Forest Department cannot be accepted. The prosecution has proved by cogent evidence that the recovered wood belonged to the forest department. The accused petitioners have also failed to furnish any explanation in respect of possession of stolen wood. No evidence has been brought on record showing that they had purchased the wood logs from elsewhere. Therefore, the argument is

without any substance and the same is hereby rejected.

9. The second argument raised by the learned counsel before this Court, was also raised before the learned Additional Sessions Judge who had concluded that the original record was produced at the time when the examination-in-chief of P.W. 1 Tarlok Singh was recorded and on that day, no cross-examination of P.W. 1 Tarlok Singh was conducted. On the subsequent date of hearing, the witness did not bring the original record. If no request was made for producing the original record once again, then Ex. P2 to P4 have to be considered as true copies of the original because original was produced at the time when examination-in-Chief of P.W. 1 Tarlok Singh was recorded. Therefore, I am of view that Ex.P2 to Ex.P4 have been rightly relied upon by the Courts below.

10. The third argument raised before me was also highlighted before the learned Additional Sessions Judge who held that the recovery of stolen logs of wood MO-7 to MO-13 was made from the house of accused-petitioner Surjit Singh which was situated in the fields and there was no house of any person. It has further been held that Forest Guards Brahm Parkash P.W. 2 and Mohinder Singh were also accompanying the police party. Therefore, it cannot be concluded that any irregularity or illegality was committed by the Investigating Officer at the time of making recovery of MO-7 to MO-13 from the courtyard of Surjit Singh accused-petitioner on the basis of disclosure statement. It is well settled that a statement made by an accused to the police admitting his guilt is not admissible in evidence because it may be in the nature of confession and would be hit by Section 24 of the Indian Evidence, Act, 1872 (for brevity "Evidence Act"). However, Section 27 of the Evidence Act carves out an exception to the general rule by making only that part of the statement as admissible which has led to the recovery because recovery itself would ensure the veracity of the statement excluding the falsehood. However, when search is undertaken for seizing incriminating material without any prior knowledge under Chapter VII of the Cr.P.C. then the procedure of searching with independent witness is provided which is an entirely different proposition. The question came up for consideration of the Supreme Court in the case of The Transport Commissioner, Andhra Pradesh, Hyderabad and Another Vs. S. Sardar ali, Bus Owner, Hyderabad and Others, . That judgment has been followed by the Supreme Court in the later case of State, Govt. of NCT of Delhi Vs. Sunil and Another, The observations of their Lordships in this regard read as under :

"19. In this context we may point out that there is no requirement either u/s 27 of the Evidence Act or u/s 161 of the Code of Criminal Procedure, to obtain signature of independent witness on the record in which statement of an accused is written. The legal obligation to call independent and respectable inhabitants of the locality to attend and witness the exercise made by the police is cast on the police officer when searches are made under Chapter VII of the Code. Section 100(5) of the Code requires that such search shall be made in their presence and a list of all things seized in the course of such search and of the places in which

they are respectively found, shall be prepared by such officer or other person "and signed by such witnesses". It must be remembered that a search is made to find out a thing or document about which the searching officer has no prior idea as to where the thing or document is kept. He prowls for it either on reasonable suspicion or on some guesswork that it could possibly be ferreted out in such prowling. It is a stark reality that during searches the team which conducts, the search would have to muddle with lots of other articles and documents also and in such process many such articles or documents are likely to be displaced or even strewn helter-skelter. The legislative idea in insisting on such searches to be made in the presence of two independent inhabitants of the locality is to ensure the safety of all such articles meddled with and to protect the rights of the persons entitled thereto. But recovery of an object pursuant to the information supplied by an accused in custody is different from the searching endeavour envisaged in Chapter VII of the Code. This Court has indicated the difference between the two processes in the *The Transport Commissioner, Andhra Pradesh, Hyderabad and Another Vs. S. Sardar ali, Bus Owner, Hyderabad and Others*, (para 7). Following observations of Chinnappa Reddy, J. can be used to support the said legal proposition : (SCC p 254 para 8).

Section 100 of the Criminal Procedure Code to which reference was made by the counsel deals with searches and not seizure's. In the very nature of things when property is seized and not recovered during a search, it is not possible to comply with the provisions of Sub-sections (4) and (5) of Section 100 of the Criminal Procedure Code. In the case of a seizure under the Motor Vehicles Act, there is no provision for preparing a list of the things seized in the course of the seizure for the obvious reason that all those things are seized not separately but as part of the vehicle itself."

20. Hence, it is a fallacious impression that when recovery is effected pursuant to any statement made by the accused the document prepared by the Investigating Officer contemporaneous with such recovery must necessarily be attested by the independent witnesses. Of course, if any such statement leads to recovery of any article it is open to the Investigating Officer to take the signature of any person present at that time, on the document prepared for such recovery. But if no witness was present or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the recovery evidence unreliable. The Court has to consider the evidence of the Investigating Officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth."

11. When the facts of the present case are examined in the light of the views expressed by the Supreme Court in the aforementioned judgments it becomes evident that no legal infirmity fatal to the case of the prosecution could be found. On the basis of a statement made by accused-Surjit Singh before Inspector Budh Singh (Ex. P-7) which was in the presence of Forest Guards and ASI Hardyal

Singh eight logs of wood were recovered from the courtyard of the house of accused-Surjit Singh. The house of accused-petitioner-Surjit Singh is situated in the fields. The recovery memo Ex. P-8 is duly attested and the logs have been duly identified by both the forest guards. Apart from recovery of logs of wood an axe and saw were also taken into possession vide Ex. P-9. Therefore, I do not find any substance in the argument raised by the learned counsel as the recovery was in pursuance to the statement made by accused u/s 27 of the Evidence Act which does not require by law to be conducted in the presence of any independent witnesses. Moreover, there is ample evidence in this case to accept the prosecution version as forest guards were accompanying the Investigating Officer and have identified the logs of wood. The recovery memo is also duly attested. Therefore, this argument is also rejected.

12. The last argument praying for releasing the accused-petitioners on probation is also liable to be rejected because there are no extenuating circumstances warranting exercise of powers vested for releasing the accused on probation u/s 360(3) of Cr. P.C. The instant case involves the recovery of stolen trees from the possession of the accused-petitioners, who are seven in numbers. The offence committed by the accused-petitioners is not trivial in nature. Moreover, the accused-petitioners were found while carrying the stolen wood in their tractor trolley and some of the logs of wood were recovered from the courtyard of the house of accused-petitioner-Surjit Singh. Therefore, I am not inclined to accept the prayer for releasing the accused-petitioner by granting them benefit of Section 360(3) of Cr. P.C.

13. For the reasons recorded above, this petition fails and same is dismissed.