

**IN THE COURT OF SH. MANIK KAURA, PCS,
JUDICIAL MAGISTRATE IST CLASS,
MUKERIAN (UID NO.PB0579)**

IPC Challan No.94
Date of Instt.23.11.2020
CIS No.CHI 216/2020
CNR No.PBHOC1001147-2020
Date of decision: 17.12.2021

State	Versus.	1. Kulwinder Singh son of Maukam Singh 2. Gurdeep Singh son of Himmat Singh, both residents of Village Sibochak, Police Station-Hajipur, District- Hoshiarpur. Accused
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**FIR No. 33 dated 01.05.2020
Under Section 188, 269, 271 Indian Penal Code.
Police Station :- Hajipur.**

Present: Sh. Inderjot Singh, Ld. APP for the State.
Accused on bail with counsel Sh.Surinder Minhas, Advocate

JUDGMENT

1. The above stated accused have been forwarded by the Officer In-charge, Police Station-Hajipur before this court to face trial for the commission of offence punishable under Section 188, 269, 271 of Indian Penal Code in case bearing F.I.R. No.33 dated 01.05.2020 registered at P.S. Hajipur.

2. The prosecution story, in brief, is that on 01.05.2020 at about 07:40 PM when ASI Nam Dev alongwith other police officials was present

at Village Sibbo Chak, P.S. Hajipur then two persons were seen coming on a motorcycle bearing Registration No. PB07-AE-9853. They were stopped by the police officials and ASI Nam Dev verified their names. The person who was driving the motorcycle disclosed his name as Kulwinder Singh son of Maukam Singh, resident of Village Sibbo Chak, Police Station- Hajipur, District- Hoshiarpur and the pillion rider disclosed his name as Gurdeep Singh son of Himmat Singh, resident of Village Sibbo Chak, P.S. Hajipur, Distt. Hoshiarpur. It is further mentioned in the report under Section 173 Cr.P.C. that the accused persons had violated the order No.3655/MA dated 14.04.2020 promulgated by Deputy Commissioner, Hoshiarpur and have committed an offence under Sections 188, 269, 271 IPC. Thereafter, Ruqa was prepared and sent to Police Station through PHG Gurbax Singh and the FIR was registered against the accused persons. Investigation was ensued and site plan was prepared on the spot. Accused were arrested. Thereafter, on completion of investigation, the Challan under Section 173 Cr.P.C. was forwarded against the accused for the commission of offences under Section 188, 269, 271 of IPC.

3. On appearance of the accused persons in the court, copies of all the documents sent along with the report and relied upon by the prosecution, were supplied to them, free of costs, as per mandatory requirement of Section 207 Cr.P.C.

4. After hearing arguments, finding prima facie case, charge for commission of offence punishable under section 188, 269 of Indian Penal

Code was framed against the accused, to which he pleaded not guilty and claimed trial.

5. To substantiate its case, prosecution got examined following witnesses:-

PW1	Surinder Kumar, Ahlmad, SDM Office, Mukerian.	Witness to prove on record document i.e. Complaint under Section 195 Cr.P.C. bearing No.1060/Reader dated 19.10.2020 issued by SDM, Mukerian Ex.P1 .
PW2	ASI Arun Kumar	Witness to prove on record the document such as arrest memo of accused Gurdeep Singh Ex.PW2/A , arrest memo of accused Kulwinder Singh Ex.PW2/B and recovery memo of motorcycle as Ex.PW2/C .
PW3	Amanpreet Singh, Clerk SDM Office, Mukerian.	Witness to prove on record documents i.e. Curfew order no. 3655/MC3/MA dated 14.04.2020 of District Magistrate, Hoshiarpur regarding the Covid-19 Ex.PW3/A and Authority letter Ex.PW3/B .
PW4	ASI Namdev	Investigating officer/complainant of this case to prove on record sequence of investigation and documents such as Ruqa Ex.PW4/A , FIR Ex.PW4/B , endorsement over the Ruqa Ex.PW4/C , rough site sketch Ex.PW4/D , arrest memo of accused Gurdeep Singh Ex.PW2/A , arrest memo of accused Kulwinder Singh Ex.PW2/B , recovery memo of motorcycle Ex.PW2/C .
PW5	ASI Ravinder Singh (wrongly typed as PW-4)	Witness to prove on record document i.e. copy of Register No.19 Ex.PW4/A/1 . (wrongly marked as PW4/A).

6. Thereafter, learned APP for the State has given up PW Ravi Dutt, RC Clerk, RTO office, Hoshiarpur being unnecessary and closed the

evidence of prosecution vide separate statement dated 23.11.2021.

7. Statement of accused under section 313 Cr.P.C. was recorded, in which incriminating prosecution evidence was put to the accused, to which they defied and pleaded their innocence.

8. Vide joint separate statement dated 17.12.2021, accused persons closed their defence evidence, without examining any witness.

9. This court has heard the submissions made by learned APP for the State and learned defence counsel and has gone through the prosecution evidence. From the entire case, the following points for determination emerge out of the case :-

1. Whether on 01.05.2020 at about 07:40 PM in the area of Village Sibochak present accused persons knowingly disobeyed the order bearing No. 3655/MC3/MA dated 14.04.2020 promulgated by District Magistrate, Hoshiarpur i.e. Public Servant where under he was directed to wear mask and not to roam in open area?

2. Whether on the same date, time and place accused negligently did an act which they knew or had reason to believe to be likely to spread the infection of Corona disease i.e. Covid-19, a disease dangerous to life?

3. Whether the evidence on record led by prosecution is sufficient to hold the accused guilty for commission of offence punishable under Sections 188, 269 IPC?

POINTS FOR DETERMINATION NO.1, 2 & 3:-

10. All the points for determination have been taken up together for the purpose of returning findings. Learned APP for the State raised arguments to the effect that all the prosecution witnesses have duly proved

on record the case of prosecution and documents such as complaint under Section 195 Cr.P.C. Ex.P1, arrest memo of accused Gurdeep Singh Ex.PW2/A, arrest memo of accused Kulwinder Singh Ex.PW2/B, recovery memo of motorcycle as Ex.PW2/C, Curfew order no. 3655/MC3/MA dated 14.04.2020 Ex.PW3/A, Authority letter Ex.PW3/B, Ruqa Ex.PW4/A, FIR Ex.PW4/B, endorsement over the Ruqa Ex.PW4/C, rough site sketch Ex.PW4/D and copy of Register No.19 Ex.PW4/A/1. So by placing reliance on the oral and documentary evidence placed on file, learned APP has further contended that accused persons have violated the order bearing No. 3655/MC3/MA dated 14.04.2020 promulgated by District Magistrate, Hoshiarpur i.e. Public Servant by roaming in open area despite having knowledge about the restriction order. Hence they have committed offence punishable under section 188, 269 of Indian Penal Code and are proved guilty beyond the shadow of reasonable doubt, as such they must be convicted and sentenced with maximum punishment and sentence as provided under law.

11. On the other hand, learned defence counsel has raised his counter arguments submitting that accused facing trial have been falsely implicated in this case and the prosecution case is full of latches. Statements of witnesses of the prosecution are not reliable. The prosecution has miserably failed to prove its case beyond shadow of reasonable doubt. It is further argued that no independent witness was joined by the police at the time of alleged occurrence, contrary to the provisions of Section 100 Cr.P.C.

Learned defence counsel has lastly prayed that the present accused persons deserves to be acquitted from the charges served upon them.

12. After giving thoughtful consideration to the rival submissions made by learned APP for the State as well as learned defence counsel, this court has minutely scrutinized the oral and documentary evidence and after going through the entire record otherwise available on the file, this Court is of the considered view that it is the burdened duty of the prosecution to prove its case beyond shadow of reasonable doubt.

13. In the present case, in the considered opinion of this court, prosecution has successfully proved its case, on the basis of testimony of the witnesses, **PW1** Surinder Kumar, Ahlmad, SDM Office, Mukerian, **PW2** ASI Arun Kumar, **PW-3** Amanpreet Singh, Clerk SDM Office, Mukerian, **PW-4** ASI Namdev, Investigating Officer/complainant of this case and **PW-5** ASI Ravinder Singh. Accused have been duly identified in court during the proceedings of this case by PW-2 ASI Arun Kumar and he has categorically stated that the accused persons had violated the order of Deputy Commissioner by coming out during the period of curfew. Even during his cross-examination, no material for the defence of accused came out. So, evidence of the prosecution stands duly proved on file. Hence the entire evidence of prosecution in totality proves the occurrence.

14. The counsel for the accused argued that in the present case complainant is none other than the Investigating Officer and the trial of the accused is vitiated on this ground only. The counsel for the accused relied

upon the decision of the **Hon'ble Supreme Court** in case titled as **Mohan Lal Versus State of Punjab, 2018 (17) (SC) 627**.

15. The arguments of the counsel for the accused that the trial of the present case is vitiated as the complainant and the Investigating Officer are the same person, does not have any merit as the decision of the Hon'ble Supreme Court referred by the counsel for the accused i.e. **Mohan Lal (Supra)** has been overruled by the Hon'ble Supreme Court in case titled as **Mukesh Singh Vs. State (Narcotic Branch, Delhi) (2020) 10 Supreme Court Case 120**. In this case the Hon'ble Supreme Court has held that:-

Para No.12 (II). In a case where the informant himself is the investigator, by that itself cannot be said that the investigation is vitiated on the ground of bias or the like factor. The question of bias or prejudice would depend upon the facts and circumstances of each case. Therefore, merely because the informat is the investigator by that itself the investigation would not suffere the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the accused is not entitled to acquittal. The matter has to be decided on a case to case basis. A contrary decision of this court in the case of Mohan Lal Vs. Station of Punjab (2018) 17 SCC 627 and any other decision taking a contrary view that the informant cannot be the investigator and in such a case the accused is entitled to acquittal are not good law and they are specifically overruled.

16. The question is as to whether a safe conviction can be based

upon the sole testimony of the Investigating Officer and other official witnesses. The matter can very well be testified by the quality of evidence and not by quantity of it, which matters for the success of the prosecution case. The conviction can be safely based upon the sole testimony of the Investigating Officer as well as other official witnesses provided that testimony of the Investigating Officer and other official witnesses inspires confidence in the mind of the court. Moreover, this court is of the view that it is not the defence of the accused that police was inimical towards them on some grounds and a false case has been planted upon them. Furthermore, there is no evidence from the side of the accused to prove their version. There is no suggestion as to why the accused would have been implicated in this false case by the police of P. S. Hajipur. Further, there is nothing on record to show that the accused have taken appropriate steps by approaching to the Higher Police Authorities against their alleged false implication in this case.

17. The counsel for the accused further argued that the offence under Section 269 of IPC against the accused person is not made out as the prosecution has not placed on record any document which proves that accused had spread the infection of disease Corona Virus which is dangerous to life. This argument of learned counsel for the accused is not tenable as for the application of Section 269 “**knowledge or reason to believe**” that the act of the accused is likely to spread the infection of any disease dangerous to life, is sufficient. The act of the accused persons of

roaming around in the open area without any pass could have acted as a catalyst in spreading disease of Corona Virus. Therefore, the offence under Section 269 is made out against the accused persons.

18. Hence in the considered opinion of this court, prosecution has successfully proved its case beyond shadow of reasonable doubt by producing proper cogent and convincing prosecution evidence. From the ocular versions of **PW1** Surinder Kumar, Ahlmad, SDM Office, Mukerian, **PW2** ASI Arun Kumar, **PW-3** Amanpreet Singh, Clerk SDM Office, Mukerian, **PW-4** ASI Namdev, Investigating Officer/complainant of this case and **PW-5** ASI Ravinder Singh, it stands categorically proved that accused persons had violated the order of Deputy Commissioner by coming out during the period of curfew due to Covid-19 Pandemic. Hence, accused Kulwinder Singh and Gurdeep Singh held guilty for the commission of offence punishable under section 188, 269 of Indian Penal Code and they are hereby convicted accordingly for the said offence. Let the convicts be taken into custody and be heard on the question of sentence.

Pronounced in the open court

Dated :17.12.2021

Upendra-Steno Gr.II

(Manik Kaura, PCS)

Judicial Magistrate Ist Class,

Mukerian-UID No.PB0579

QUESTION OF SENTENCE:-

Present: Sh. Inderpal Singh, Ld. APP for the State
Convicts present in person with counsel Sh.Surinder Minhas Advocate.

1. I have heard learned APP for the State and learned counsel for convicts and convicts in persons. Convicts have submitted that they are the

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only bread winner of their family and they are first offenders. A prayer has been made for taking a lenient view.

2. On the other hand, APP for the State argued that convicts should be severally punished so that the punishment awarded to the convicts acts as a deterrent to the like minded people.

3. After giving my thoughtful consideration to the rival submissions of learned APP for the State and learned counsel for convicts, this court is of the view that before proceeding further to award sentence of imprisonment upon convict, this court is bound to consider the fact as to whether convicts are entitled to be released on probation or not. Section 361 Cr.P.C. provides that where in any case court does not give benefit of probation to the accused, then it is the duty of the court to record special reasons for not doing so. Taking into consideration the nature of offence committed by the convicted person, this Court is of the view that the act of convicted person could have acted as a catalyst in spreading the disease of Corona Virus. As such, in view of the above said discussion, convicts have been sentenced as under :-

Convict Kulwinder Singh

Under Sections	Fine Rs.	In Default of payment of fine, Simple Imprisonment for
188 IPC	Rs. 500/-	10 days
269 IPC	Rs. 500/-	10 days

Convict Gurdeep Singh

Under Sections	Fine Rs.	In Default of payment of fine, Simple Imprisonment for
188 IPC	Rs. 500/-	10 days
269 IPC	Rs. 500/-	10 days

4. All the sentences shall run concurrently. The period of detention already undergone by convict during the period of inquiry/investigation or trial, if any, is ordered to be set off against the substantive sentence awarded to him today. Fine paid. Receipts issued. Compliance of Section 437-A Cr.P.C. has been done and personal bonds have been duly furnished. The case property, if any, is ordered to be dealt with as per law, after the expiry of period of appeal or revision, if any. Copy of Judgment be given to the convict, free of costs. File be consigned to the record room after due compilation.

Pronounced in the open court
Dated : 17.12.2021
 Upendra-Steno Gr.II

(Manik Kaura, PCS)
Judicial Magistrate Ist Class,
Mukerian-UID No.PB0579

(Manik Kaura), PCS,
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