

**IN THE COURT OF HARVINDER SINGH SINDHIA, PCS,
SUB DIVISIONAL JUDICIAL MAGISTRATE, RAJPURA.**

**IPC P.Ch.No. 139 OF 8.9.2011
CHI: 786/2013
Decided on : 08.09.2015**

State

Versus

1. Ashok Kumar @ Sonu son of Rajpal, resident of Shivpuri Colony, Jind-Patiala Chowk, Narwana road, Jind (Haryana)
2. Kulwinder Singh @ Binder son of Kaka Singh, resident of village Untsar, P.S.Ghanaur, at present Gulmohar Garden Colony, P.S. Gandakheri, Rajpura.

.....Accused

FIR No.27 of 25.04.2011
U/s 381/34 IPC
P.S. Ghanaur

Present: APP for the State.
Accused Ashok Kumar already declared Juvenile vide order dated 4.7.2015.
Accused Kulwinder Singh on bail represented by
Ch. Karamjit Singh Advocate.

JUDGMENT

1. The above named accused have been sent up by the SHO, P.S. Ghanaur, for facing trial under section 381/34 of IPC.

2. Brief facts of the prosecution version are that on 25.4.2011 ASI Baldev Singh along with other police officials were on patrolling duty and were present at Ghanaur-Bahadurgarh road, Baghora turn where complainant Jagtar Singh along with his father Harnek Singh met the police party and got recorded his statement to the effect that he is an agriculturist and is having two trucks and same were registered with Ghanaur Union. On his truck bearing no.PB-11-AT-9987 Gurmeet Singh of village Rurka was employed as driver whereas Monu

resident of Jind was employed as conductor by the complainant. Through the truck union on 21.4.2011 said truck was loaded by above named driver and conductor with 360 bags of wheat weighing 50 KG each from Mardanpur Mandi relating to the Markfed department for its de-loadation in the godowns at Ghanaur Mandi. Due to late night hours, it was not de-loaded and complainant left the driver and conductor along with truck of having 360 bags of wheat and went to his village. Complainant directed the driver and conductor to look after the same. On 22.4.2011 at about 10.00 AM his driver informed the complainant on telephone that truck and conductor were not there. Complainant also reached there and they tried their best to locate the truck and conductor but were not successful but came to know that his truck bearing no.PB-11AT-9987 loaded with 360 bags of wheat were stolen by conductor Monu and one Kulwinder Singh 2 Binder of village Untsar in the intervening night of 22/22.4.2011. Police proceedings were made by ASI Baldev Singh and sent the same to the police station, on the basis of which present FIR was registered. On 26.4.2011 after receiving secret information ASI Baldev Singh along with other police officials reached at the place of secret information where the truck was lying locked was found. On search, key of the truck was found and from the dias board, RC and other relevant papers of the truck were recovered. Billty no.1243 dated 21.4.2011 and gate pass issued by Mardanpur mandi were also recovered which were taken into police custody vide recovery memos. From truck no.PB-11AT-9987 355 bags of wheat weighing 50 kg each were also recovered and same were taken into police custody vide recovery memo. Site plan of the place of recovery was also prepared and statements of witnesses were recorded on different dates. On 24.7.2011 accused were arrested and offence u/s 201 IPC

was added. After completion of investigation in all respect, challan under section 173 Cr.P.C. was presented in the Court.

3. On presentation of challan copies of documents relied upon by the prosecution were supplied to the accused free of cost as required U/s 207 Cr.P.C.

4. Finding a prima facie case for the offence U/s 381/34 of IPC, a charge was framed against the accused to which accused pleaded not guilty and claimed trial. However, during the trial of case, an application for referring the case of Ashok Kumar accused to Juvenile Court was filed and it was allowed on 4.7.2015.

5. In order to prove its case, the prosecution has examined Gurmeet Singh as PW1, Santokh Singh branch incharge Markfed as PW2, Gurtej Singh as PW3, Bhagwan Dass as PW-4, SI Baldev Singh as PW-5, HC Jasmail Singh as PW-6, Rajo Bai, Jr. Asstt. As PW-7 and complainant Jagtar Singh as PW8.

PW-1 Gurmeet Singh driver of the truck stated about the fact of his employment with complainant Jagtar Singh about 10/12 years back but on his request his further examination in chief was deferred and later on he has not turned up to depose further in the Court.

PW-2 Santokh Singh, branch incharge Markfed, Ghanaur stated that in the year 2011 he was posted at branch incharge at Ghanaur godown and purchased grain in the year 2011 from mandi of village Mardanpur on behalf of the government and filled the same in the jute bags through the labourers. He called truck bearing no.PB-11AT-9987 from truck operator union, Ghanaur for loading the grains from mandi Mardanpur to Godown of Markfed and when the

same were loaded in the truck, obtained gate pass no.94598 dated 21.4.2011 and billty of truck union no.1243 regarding 360 bags of wheat weighing 50 kg each and on the gate pass accused Kulwinder Singh put his signature being driver. He further stated that but said loaded 360 bags of wheat were stolen in the way regarding which owner of truck bearing no.PB-11AT-9987 lodged report before the police and police recovered 355 bags along with said truck. He identified the bags of wheat which were loaded on 21.4.2011. He handed over copies of billty no.1243 and gate pass no.94598 to the police which were taken into police custody vide recovery memo on which he put his signature and identify the same. He produced original billty and gate pass in the Court and proved its copies Ex-PW2/A and Ex-PW2/B. He also identified signatures of Gurtej Singh, Gate keeper on gate pass. He got recorded his statement before the police.

PW3 Gurtej Singh stated that about 5 years back he was doing job on contract basis in the Cooperative Society at Rajpura and in the year 2011 he was posted at mandi of village Mardanpur. On 21.4.2011 truck bearing no.PB-11AT-9987 and Kulwinder Singh accused being driver of said truck had loaded 360 bags of wheat weighing 50 kg each from the commission agent Bhagwan Dass and Sons and on the bags stamp of Punjab Govt. was affixed. After loading the wheat Kulwinder Singh accused had put his signature on gate pass no.95598. He identified carbon copy of said gate pass on the judicial file and identified his signature on Ex-PW2/B. His statement was recorded by the police and he identified the accused present in the Court.

PW4 Bhagwan Dass stated that he is running commission agent shop under the name and style Bhagwan Dass & Sons and in the year 2011 manager of Markfed had purchased wheat from his shop and a truck bearing no.PB-

11AT-9987 was called from truck union Ghanaur on 21.4.2011 and billty no.1243 of said truck was issued by the truck union. On that day 360 bags of 50 kg each of wheat was loaded in the said truck and Gurtej Singh, gate keeper issued gate pass no.94598 to accused Kulwinder Singh and went for the godown of Markfed Ghanaur. He got recorded his statement before the police. He further stated that later on he came to know that said 360 bags were stolen by Kulwinder Singh accused and his companion. He identified accused present in the Court.

PW5 SI Baldev Singh, investigating officer stated that on 25.4.2011 he was posted at P.S.Ghanaur and on that day he along with other police official were on patrolling duty were present at Baghora turn where Jagtar Singh came with his father Harnek Singh and Jagtar Singh got recorded his statement Ex-PW5/A and signed the same. His father Harnek Singh had also put his signature on the same. Police proceedings Ex-PW2/B were made on said statement and it was sent to police station through PHG Kaka Singh, on the basis of which FIR Ex-PW5/C was registered. He also proved endorsement of FIR Ex-PW5/D. After that he along with complainant reached at the spot and he prepared site plan Ex-PW5/E and on 26.4.2011 he along with complainant and other police officials were present for investigation of the case then he received secret information and raided at that place as disclosed in the secret information and complainant Jagtar Singh identified accused Kulwinder Singh and conductor Monu and on seeing the police party, accused fled away from that place. 355 bags of wheat were recovered from the above said truck which were taken into police possession vide recovery memo Ex-PW5/F and from the truck relevant papers were taken into police custody vide recovery memo Ex-PW5/G.

He prepared site plan Ex-PW5/G of the place of recovery. On 29.4.2011 copies of bill, billty and gate pass were obtained from the concerned person which were taken into police possession vide recovery memo Ex-PW5/I. He further stated that accused Kulwinder Singh and his companion were arrested on 24.7.2011 in the present case vide arrest memo Ex-PW5/J and Ex-PW5/K and persons search memos Ex-PW5/L and Ex-PW5/M were prepared. He also moved application Ex-PW5/N for verification of the ownership of the truck. He also identified accused present in the Court.

PW6 HC Jasmail Singh, recovery witness stated about the investigation conducted by SI Baldev Singh and identified his signatures on the various memos as attesting witness. He also identified accused present in the Court.

PW7 Rajo Bai, Junior Assistant, DTO, Patiala proved the ownership record of truck no.PB-11AT-9987 and according to their record Jagtar Singh son of Harnek Singh of village Alamdipur is registered owner of the said truck. She proved computerized screening report Ex-PW7/A and she also also proved endorsement Ex-PW7/B on police request and identified signature of the then clerk Manjit Singh and also identified signatures of ADTO Kulwant Rai Garg on Ex-PW7/A.

PW8 Jagtar Singh, owner of the truck/complainant stated that he is owner of truck bearing no.PB-11AT-9987 which was under the truck union Ghanaur and on that truck Gurmeet Singh was driver and Monu was conductor. On 21.4.2011 driver and conductor loaded the 360 bags of wheat relating to Markfed from mandi Mardanpur but due to late night hours same were not deloaded and then he went to his village after leaving the driver and conductor

near the truck. On the next morning on 22.4.2011 at about 10.00 AM when he came back, he found that neither the truck nor driver or conductor were present there. He tried his best to locate the truck and he came to know that accused Kulwinder Singh and conductor of the truck in the intervening night had stolen the same and then he got recorded his statement Ex-PW5/A before the police. On 26.4.2011 he was present with the police party of ASI Baldev Singh at Sarala Kalan road, then secret information was received by ASI Baldev Singh and they raided at the place of secret information from where truck along with bags were recovered but accused Kulwinder Singh and his companion fled away from that place after seeing the police party. Relevant papers from the truck as well as bags of wheat were recovered by the police vide recovery memo. He proved his signatures on various memos prepared at that time by the police and proved bill billty and gate pass Ex-PW8/A and Ex-PW8/B and identified signature of accused Kulwinder Singh on the gate pass. He proved copy of insurance of truck Mark-A. He further stated that police prepared site plan at that time. He identified accused present in the Court and stated that case regarding Ashok Kumar @ Monu was sent to Patiala.

6. Thereafter, prosecution has failed to conclude its remaining evidence despite availing sufficient opportunities including last opportunities. Perusal of the file shows that charge was framed on 14.12.2012 and since then, prosecution has availed number of opportunities including last opportunity to conclude its evidence but they have failed to do so. The Hon'ble Supreme Court of India in case titled as **Sanjay Gandhi Vs. Union of India and others**, further in case titled as **Hussainara Khatton Vs. State of Bihar** and also in case titled as **P.Ramachandra Rao Vs. State of Karnataka** has held

that speedy trial is the gist of entire trial, beginning from accusation and expiring with the final verdict which includes within its ambit investigation, the trial, appeal, revision and retrial etc and a duty is casted upon every Court in this country to ensure that every trial is completed within a reasonable time and no necessary adjournment be given to either side. It was time and again, while granting last opportunities, made clear to prosecution to bring forth on record the entire evidence upon which they rely but they have failed in doing so. Hence evidence of the prosecution was closed vide detailed order dated 27.08.2015.

7. All the incriminating evidence was put to the accused in his statement recorded under section 313 Cr.P.C to which he pleaded his innocence and false implication.

8. I have heard the arguments of Ld. APP for the State and Ld. counsel for defence and have gone through the judicial file carefully.

9. Ld.APP for the state argued that prosecution has fully proved the charges against the accused that accused along with one Ashok Kumar @ Sonu conductor on the truck bearing no.PB-11-AT-9987 belonging to Jagtar Singh in connivance with each other committed theft by stealing truck loaded with 360 bags of wheat from possession of Jagtar Singh. She further referred to the evidence on the file and submitted that the accused deserves to be punished under law. As such she prayed for conviction of the accused.

10. On the other hand the ld.Counsel for the accused argued that prosecution has miserably failed to prove its case beyond reasonable shadows of doubt. He argued that there is unexplained delay in lodging of FIR and nothing has been brought on record against accused Kulwinder Singh because nobody has been him while committing alleged theft and alleged recovery was not

effected from accused Kulwinder Singh and he was implicated on the basis of here say version and witnesses examined by the prosecution have not supported the prosecution version. Similarly he has also drawn attention of this court to the cross examination of witnesses. He argued that in fact the accused is innocent and the present case has been falsely registered against him. He further argued that there is no evidence on the file against the accused. Therefore he concluded his arguments referring judgment of Hon'ble Supreme Court of India titled as **Dasari Shiv Parsad Reddy Vs. The Public Prosecutor, High Court of A.P.-2004(34)RCR(criminal)-106-** wherein it has been held that **"Strong suspicion existed against husband of deceased but such suspicion can not be the basis of conviction going by the standard of proof required in a criminal case- The distance between 'may be true' and must be true' shall be fully covered by reliable evidence adduced by the prosecution. Therefore, he prayed for acquittal of the accused.**

11. Having deliberated upon the rival submissions made by both the sides and after scrutinizing the documents and evidence available on the file, I am of the considered opinion that prosecution could not prove the charges framed against the accused beyond reasonable shadows of doubt. First of all PW-1 Gurmeet Singh, who was driver of the truck in question owned by complainant stated nothing about the prosecution case and after stating formal few lines requested for adjournment and on his request his examination in chief was deferred and later on he has not turned up to depose in the Court. PW-2 Santokh Singh, branch incharge of Markfed has deposed about the purchase of wheat, hiring of truck no.PB-11-AT-9987, loading of wheat in the said truck

and when he came to know about theft he handed over relevant documents to the police. This witness has nothing stated about the involvement of accused in the alleged theft. PW-3 Gurtej Singh deposed about the loading of bags of wheat in truck no.PB-11-AT-9987 from Mardanpur mandi and issuance of gate pass and stated that accused Kulwinder Singh put his signature on gate pass being driver of the said truck, however in his cross examination he stated that he never seen accused person and he has no knowledge, who committed theft and police has not identified accused from him. Similarly, PW-4 Bhagwan Dass, commission agent has proved the fact of loading of wheat bag in truck no.PB-11AT-9987 purchased by Markfed through his commission agent shop from Mardanpur Mandi and gate pass issued by Gurtej Singh, however in cross examination he stated that he never seen accused and he can not identify accused. He further stated that police recorded his statement on 22.4.2011 i.e. after a day of occurrence. PW-5 investigating officer SI Baldev Singh proved the investigation conducted in the present case but in cross examination he admitted that he was informed first time on 25.4.2011 regarding the theft and he had seen accused first time on the day of his arrest and prior to that he has not seen accused persons. He also admitted that no recovery was effected from accused. His further cross examination was deferred but later on he has not come present. Similarly, attesting witness PW-6 HC Jasmail Singh corroborated version of investigating officer and his further cross examination was also deferred but later on he has not come present. PW-7 Rajo Bai, Junior Assistant has proved only the ownership of the truck in question. Star witness of the prosecution on whose statement present case was registered has stated in his cross examination that he owned two trucks bearing no.PB-11AT-8887 and PB-

11-AQ-9987 and driver of the truck which has alleged to be stolen was Gurmeet Singh of village Rurka and said Gurmeet Singh taken the truck in question on 21.4.2011 from Mardanpur to Ghanour FCI Godown. He further stated in his cross examination that Gurmeet Singh met him on 22.4.2011 at truck union, Ghanaur and at that time all the office bearers of the union including the Amrik Singh President were present there, who also known about the theft of truck and after that they all reached at P.S.Ghanaur at about 10.00/11.00 AM on 22.4.2011 and complainant moved an application before the police regarding said theft and police also recorded their statement on that day. He further stated that application was moved before the police and statements were made as per the version heard by him from driver Gurmeet Singh and Kulwinder Singh was not his driver nor he knew Kulwinder Singh before alleged occurrence and he has not seen the alleged occurrence of theft. He also stated in his cross examination that after lodging the complaint before the police on 22.4.2011, he himself did not try to find the stolen truck. He further stated in his cross examination that police found his truck on 22.4.2011 or 23.4.2011. He further stated in his cross examination that on the day on which his vehicle was found, police met him but he can not tell the name of official exactly but they were constables and they took him with them at Canal near village Sarala. He further stated that due to heaviness of the trees nothing are visible from the alleged site. He also stated that all the memos including fard makbujgi etc. were prepared by the police officials at police station Ghanaur and police obtained his signatures in the presence of office bearers of the union in the police station. He also stated that name of Kulwinder Singh was told to him by the union officer bearers. From all these facts shows that investigation conducted in the present case by

the police is faulty and there is unexplained delay of three days in lodging of FIR because complainant as well as members of union had already informed and lodged complaint of theft in the Police Station, Ghanaur. Rather the same fact has been concealed by the police in the present case and prepared a false story that on 25.4.2011 complainant met the police and got recorded his statement. The truck in question alongwith loaded wheat bags were recovered earlier to 25.4.2011 and after that a case was planted upon accused. Evidence led by the prosecution is not sufficient to hold the accused guilty. Therefore, strong suspicion has crept in the version of the prosecution. If application was moved by complainant on 22.4.2011 and also statements were recorded in the police station, such documents could not come on the file. When Kulwinder Singh was not driver of the truck no.PB-11-AT-9987 and it is stated by complainant that Gurmeet Singh was employed as driver by him on the said truck, then how signatures of Kulwinder Singh come on gate pass Ex-PW8/B, this fact has not been explained by the prosecution. From all these facts and circumstances, it is proved that a false recovery has been planted upon accused Kulwinder Singh. Such failure on the part of investigating officer goes to the route of the matter to create serious dent in the case of the prosecution. Now in view of the aforesaid discussion, there is no credible evidence on the file to say that charges framed against the accused have been proved by the prosecution. At this I find substance in the contentions raised by the ld. defence counsel that suspicion can not be the basis of conviction and the judgment cited by him 2004(4)RCR(supra) is fully applicable to the facts and circumstances of the present case. The distance between “ may be true” and “must be true” has not been fully covered in the evidence adduced by the prosecution. On the other

hand defence has been able to prove their stand to falsely implicate accused person. It is cardinal principle of Indian Criminal law that when two incredible versions confront the court, the court has to give benefit of doubt to the accused and it is not safe to base the conviction.

12. Therefore, in view of the reasons discussion above, I am of the considered opinion that the prosecution has not been able to prove the charges framed against the accused beyond reasonable shadows of doubt and accused deserves to the benefit of doubt. Thus accused is acquitted from the charges framed against him. His bail bonds and surety bonds are hereby discharged. Case property if any be disposed of after expiry of period of filing appeal/revision. File be consigned to the record room.

Pronounced:
08.09.2015

(H.S.Sindhia) PCS,
Sub Divisional Judicial Magistrate,
Rajpura.
Directly dictated

Present: APP for the State.
Accused Ashok Kumar already declared Juvenile vide order dated 4.7.2015.
Accused Kulwinder Singh on bail represented by
Ch. Karamjit Singh Advocate.

No DW is present. Accused closed his defence evidence. Arguments heard. Vide separate judgment of even date the accused is acquitted from the charges framed against him. Case property, if any, be disposed off after expiry of period of filing appeal/revision. File be consigned to the record room.

Pronounced:
08.09.2015

(H.S.Sindhia) PCS,
Sub Divisional Judicial Magistrate,
Rajpura.