

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1401 OF 2008

Vinod Kumar ... Appellant

Versus

State of Haryana

... Respondent

J U D G M E N T

Dipak Misra, J.

The present appeal is directed against the judgment of conviction and order of sentence recorded by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 245-DB of 1998 whereby the Division Bench has reversed the decision rendered by the learned Additional Sessions Judge (II), Jind wherein the learned trial Judge had acquitted the appellant and the co-accused, Joginder of the charges leveled against him

under Sections 363/109/364-A of the Indian Penal Code, 1860 ('IPC' for short).

2. The facts which are requisite to be stated for disposal of the appeal are that Jaivir Singh, informant, PW-1, was residing jointly along with his two brothers at village Ikkas. His younger brother, Jagbir Singh, was an employee at Railway Police. The accused-appellant, Vinod Kumar, a resident of Bijwasan, had come to the village of PW-1 in the month of May, 1996 and worked as a domestic help in the house of Jagbir Singh. Jagbir Singh had four children and he had employed two servants one of whom was the present appellant. After working for four months in the house of Jagbir Singh, Vinod Kumar, as the prosecution story unfurls, kidnapped Anand, the 3 ½ year old son of Jagbir Singh and Smt. Santosh, PW-2, on 24.09.1996. He was seen along with Anand by Harpal, PW-3, who had enquired from Vinod Kumar where he was proceeding with the child to which the reply was that he had to purchase shoes for Anand and medicine for himself from Jind. The mother, PW-2, searched for the child but did not find him, but found a letter, Exhibit P3,

which was addressed to her father-in-law, Manphul. The said letter was written by Vinod informing that he was taking Anand with him and would only release him on payment of ransom of Rs.1 lakh. She immediately brought the letter to the notice of her father-in-law who sent Jaivir to the police station and Jaivir, in turn, lodged an FIR. After the criminal law was set in motion, the Investigating Officer proceeded to village Ikkas, where the house of Jagbir Singh is situate, prepared the site plan, seized two other letters, Exhibits P1 and P2, written by Vinod, vide Memorandum Exhibit PB which was attested by Santosh, PW-2, and her father-in-law, Manphul. Thereafter, the investigating team, went to village Bijwasan in search of Vinod Kumar but did not find him in the village. Thereafter, Jaivir informed the Investigating Officer that Vinod Kumar had appeared in some examination at Village Beri. From the teachers of the school they came to know that Vinod Kumar was a student of the said school but had not attended the school for the last seven months. They also came to know that father's name of Vinod Kumar was one Om

Prakash, who is a resident of Village Dhansa. As the prosecution story further undrapes, the investigating team proceeded to village Dhansa and photograph of Vinod Kumar was shown by Om Parkash and the said photograph was that of the appellant who was employed by Jagbir as a servant. On the next day, SHO Police Station, Jind, PW-13, along with other members of the investigating team came to know that Anand had been recovered from the custody of Vinod Kumar. The accused-appellant was formally arrested on 26.9.1996. Eventually, he was produced before the learned Additional Chief Judicial Magistrate, PW-11, Jind along with the letters and before the learned Magistrate, he admitted that the letters were written by him and, accordingly, his statement was recorded by the learned Magistrate. The Investigating Officer, after recording the statements of other witnesses under Section 161 CrPC and completing the formalities, laid the chargesheet under Section 364-A read with Section 109 IPC against both the accused persons, namely, Vinod Kumar and

Joginder before the learned Magistrate, who in turn, committed the matter to the Court of Session.

3. Both the accused persons pleaded not guilty and claimed to be tried.

4. The prosecution, to substantiate its case, examined 13 witnesses. The principal witnesses are Jaivir Singh, PW-1, who had lodged the FIR; Smt. Santosh, PW-2, the mother of Anand; Harpal, PW-3, who had seen the accused taking Anand in a three-wheeler towards Jind; Mahipal, the Head Constable, GRP, PW-5, who had recovered Anand from the custody of Vinod at Old Delhi railway station and had arrested the accused; Sri Dharam Pal, Additional Chief Judicial Magistrate, Jind, PW-11, before whom the accused had made the statement that he had written the letters; Datta Ram, ASI, Investigating Officer, PW-12. The other witnesses, namely, Baljeet, Shakti, Rampal, Raisingh, Devanand, Balwant Singh and SHO, P.S. Jind PWs-4,6,7,8,9,10 and 13 respectively who are basically formal witnesses.

5. The accused-appellant, in his statement under Section 313 CrPC took the plea that he was falsely

implicated in the crime as he had expressed his unwillingness to work in the house of Jagbir Singh and demanded his salary. It was his further stand that the employer had refused to make payment and involved him in the false case. Explaining the letters it was his plea that his signatures were obtained forcibly and the letters were got written by him under the pressure of police. However, the defence chose not to adduce any evidence.

6. The learned trial Judge, on the basis of the evidence brought on record, came to hold that the prosecution had not been able to establish any case against the accused Joginder inasmuch as his name was not mentioned in the FIR and none of the witnesses had implicated him and from the disclosure statement of accused Vinod Kumar, nothing was revealed which could be considered against Joginder under Section 27 of the Indian Evidence Act, and accordingly acquitted him. As far as the present appellant is concerned, the learned trial Judge found that though the accused Vinod Kumar had worked in the house of the in-laws of the brother of PW-1 for some time and on his recommendation he had come to work in the

house of the husband of PW-2 and alleged to have worked there for four months, yet nobody had bothered to find out his parentage; that from the evidence of PW-4 and 5, it was difficult to come to a definite conclusion that Anand was recovered from the custody of accused Vinod Kumar; that as regards time of kidnapping of Anand and registration of the case, the evidence of PWs 1, 3 and 12 are discrepant and, therefore, their testimony could not be given credence to; that there was discrepancy with regard to the name of the father of the accused, for at some places he had been described as son of Suraj Bhan whereas he is actually son of Om Prakash; that the letters, Exhibit P1 to P3, which were the foundation of the case of the prosecution, could not be placed reliance upon inasmuch as had there been any truth in the said letters, the police could have waited at the relevant place till that time which was mentioned for the purpose of collection of ransom and further the investigating agency had not taken any steps to effect the arrest of the accused at the place given in the letters; that there was doubt with regard to the existence of letters prior to

24.9.1996 i.e. the date of lodging of the FIR; that the plea of the accused that the letters were got written from him by the police under pressure created a dent in the prosecution version and that apart it was difficult to give credence to the letters when it is appreciated in the backdrop of the evidence in toto; that there was material discrepancy in the statements of PWs 1, 2 and 12 regarding bringing back of Anand from Delhi to Ikkas; that the PWs 1 and 4 had deposed about the facts in their own manner without bothering about the actual facts of the case and they are interested witnesses; and that the statements of PWs 4 and 5 were liable to be disbelieved as they had stated different particulars of the person from whom Anand was recovered. Being of this view, the learned trial Judge acquitted both the accused persons.

7. The prosecution, being dissatisfied with the said judgment of acquittal, sought leave to appeal before the High Court. The application for leave against Joginder was declined as there was no evidence whatsoever against him and, the prayer for grant of leave was restricted to Vinod Kumar.

8. It was contended before the High Court by the prosecution that Anand was seen in the company of the accused Vinod Kumar while going towards Jind in a three-wheeler; that there was no warrant or justification to discard the letters Exhibit P1 to P3, which were recovered by the police and written by the accused; that the plea advanced that the letters were got written from him by police under pressure was nowhere suggested to any of the witnesses; that the learned trial Judge had given undue emphasis relating to the name of the father of the appellant while there is material on record to show that he had disclosed his father's name as Suraj Bhan, resident of Bijwasan; that the discrepancies which had been highlighted by the trial court were minor in nature and could not have been considered to discard the otherwise irreproachable testimony of the witnesses; and that the appreciation of the evidence on record was basically fallacious and, therefore, the view expressed could not be remotely treated as a plausible one.

9. The contentions put forth by the prosecution before the High Court was controverted by the accused-

respondent on the bedrock of reasons ascribed by the trial Judge.

10. The High Court, as we notice, has scrutinized the evidence on record in detail and come to hold that Vinod Kumar was seen by Harpal Singh, PW-3, who had made queries from him as to where he was going with the grandson of Manphul; that on 24.9.1996 along with the complaint a letter was produced before the police which gave rise to the lodgment of the formal FIR; that the recovery of the boy Anand from the custody of Vinod Kumar at Old Delhi railway station had been fully proven by the prosecution; that acquittal of Joginder could not be a factor to be taken into consideration for recording acquittal of Vinod Kumar; that the trial court had given undue emphasis on the name of the father of the accused Vinod Kumar, for there is evidence on record to show that he himself had stated before the witnesses that he is son of Suraj Bhan; that there is nothing on record to disbelieve the writing in Exhibit P1 to P3 on the ground that they have been written at the instance of Joginder or under the police pressure. On the basis of aforesaid

findings, the High Court has opined that the view expressed by the learned trial Judge is absolutely untenable, and, in fact, based upon total erroneous appreciation of facts and certain conjectures and accordingly has dislodged the judgment of acquittal.

11. We have heard Mr. Rajiv Singh, learned counsel for the appellant and Mr. Vikas Sharma, learned counsel for the respondent. It is submitted by learned counsel for the appellant that while overturning the judgment of acquittal and recording a conviction, it is the obligation of the High Court to give adequate reasons and to meet every aspect but in the impugned judgment there is no discussion for reversing the same and, therefore, it warrants interference by this Court. It is contended by him that the High Court has erroneously, in a cryptic manner, observed that the discrepancies are minor in nature, though they really cast a doubt in the prosecution version which has been appositely appreciated by the learned trial Judge. Learned counsel would contend that the High Court has erroneously noted that the accused has not stated a word that the letters were got written from him

by Joginder or the letters were got written by police under pressure, for there is a definite stand in the statement recorded under Section 313 CrPC that the letters were written under pressure by the police. It is further submission that it is a case where the appellant should have been extended the benefit of doubt regard being had to the discrepancies pertaining to time and place and the plea taken in the statement recorded under Section 313 CrPC and the discrepancies with regard to the recovery of kidnapped boy.

12. Mr. Vikas Sharma, learned counsel appearing for the State, per contra, would contend that the discrepancies pointed out by the learned trial Judge are absolutely minor in nature and under no circumstances, can discredit the testimony of the witnesses. It is put forth by him that the plea of the accused that the letters were written under the pressure by police deserves to be rejected because the defence had really not asked any question to the witnesses relating to the letters except a bald suggestion given to PW-12. Learned counsel would contend that though the said aspect has been slightly

erroneously understood by the High Court, but that would not make the judgment of conviction fallible. Additionally, it is submitted by him that the prosecution has proven to the hilt that the accused-appellant was arrested in Delhi and put in Tihar jail and from his custody the kidnapped boy was recovered. Learned counsel would further urge that the High Court has rightly interfered with the judgment of acquittal and, therefore, there is no justification to dislodge the view expressed by the appellate court.

13. Before we dwell upon the factual score whether the prosecution has proven the case to warrant a conviction, we think it apt to recapitulate the principles relating to the jurisdiction of the High Court while deciding the appeal against acquittal. In this context, reproducing a passage from ***Jadunath Singh v. State of U.P***¹ would be profitable:

“This Court has consistently taken the view that in an appeal against acquittal the High Court has full power to review at large all the evidence and to reach the conclusion that upon that evidence the order of acquittal should be reversed. This power of the appellate court in an appeal

¹ (1971) 3 SCC 577

against acquittal was formulated by the Judicial Committee of the Privy Council in *Sheo Swarup v. King Emperor*² and *Nur Mohammad v. Emperor*³. These two decisions have been consistently referred to in the judgments of this Court as laying down the true scope of the power of an appellate court in hearing criminal appeals (see *Surajpal Singh v. State*⁴ and *Sanwat Singh v. State of Rajasthan*⁵).

14. Similar view has been expressed in ***Damodarprasad Chandrikaprasad V. State of Maharashtra***⁶, ***Shivaji Sahabrao Bobade V. State of Maharashtra***⁷, ***State of Karnataka V. K. Gopalakrishna***⁸, ***Anil Kumar V. State of U.P.***⁹, ***Girja Prasad V. State of M.P.***¹⁰ and ***S. Ganesan V. Rama Raghuraman***¹¹.

15. In this regard, we may fruitfully remind ourselves the principles culled out in ***Chandrappa v. State of Karnataka***¹² :

“42. From the above decisions, in our considered view, the following general principles regarding

² AIR 1934 PC 227

³ AIR 1945 PC 151

⁴ AIR 1952 SC 52

⁵ AIR 1961 SC 715

⁶ (1972) 1 SCC 107

⁷ (1973) 2 SCC 793

⁸ (2005) 9 SCC 291

⁹ (2004) 13 SCC 257

¹⁰ (2007) 7 SCC 625

¹¹ (2011) 2 SCC 83

¹² (2007) 4 SCC 415

powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

16. On the bedrock of aforesaid settled principles, it is our obligation to scrutinize the judgment of the High Court whether it withstands close scrutiny within the parameters stated hereinabove or a conviction has been recorded solely because a different view can be taken. At the very outset, we are obligated to state that the learned counsel for the parties, with lot of pains, have taken us through the evidence on record. On a scrutiny of the evidence, we find that the appellant was working as a servant in the house of husband of PW-2, Santosh, who was the first to notice that her son Anand, a 3 ½ year old boy, was missing. She had also found the letter regarding kidnapping of Anand and demand of ransom by the accused and had shown it to her father-in-law, Manphul. Jaivir, PW-1, had gone to the police station wherein he had submitted an application Ex. PA annexing the letter on the basis of which the FIR was lodged. The Investigating Officer, Data Ram, PW-12 had proceeded to

the house of Santosh wherefrom he had recovered two letters, Exhibit P1 and P2. They were kept at different places in the house. The letters were seized in presence of two persons, namely, Manphul and Santosh. Thereafter, he had proceeded to the village Bijwasan where he came to know that Vinod Kumar did not belong to that village. Being told by Jaivir that Vinod Kumar had appeared in some examination from the school at Beri, the Investigating Officer had gone to the school where he learnt that one Vinod Kumar was studying there and had remained absent for last seven months. On further investigation it was found that the accused was son of Om Prakash who had shown the photograph of Vinod Kumar that matched with the identity of the man working in the house of the husband of Santosh. While the investigation was proceeding in this way, Vinod Kumar was apprehended by Mahipal, PW-5, the Head Constable in GRP, along with Anand. He was arrested and sent to Tihar jail. It is in the evidence of PW-12 that on 26.9.1996 he had moved application Ex. PH/1 before the learned Magistrate for issuance of warrant of production of

accused Vinod and vide order Ex. PH/2 the ACJM Jind being the concerned Magistrate had ordered for issuance of production warrant of accused Vinod with direction to execute the warrant upto 30.9.96. It is also in his testimony that he took the warrant, Ex. PH/3, to the Superintendent, Central Jail, Tihar, Delhi and sought the custody of accused Vinod Kumar, but he was informed by the jail authorities that they would not hand over the custody of accused Vinod to him without the formal order of Chief Metropolitan Magistrate, Delhi. Thereafter he moved an application before the Chief Metropolitan Magistrate, Delhi who passed the order, Ex. PH/5, allowing him to take the custody of accused Vinod from the jail whereafter he could bring Vinod jail to Jind and formally arrested him on 27.9.96. The High Court has appreciated this aspect with proper scrutiny and clarity.

17. It is apt to note here that the High Court has taken note of four aspects, namely, (i) that the accused was working as a servant in the house of Jagbir, husband of Santosh, and had himself stated to be son of Suraj Bhan, resident of Bijwasan and that his photograph was shown

by Om Prakash; (ii) that the letters written to the parents of Anand have duly been proven by the prosecution and the plea that the letters were written under police pressure was not acceptable; (iii) that the discrepancies which had been highlighted by the learned trial Judge are minor and on that score the reliable evidence of the witnesses could not have been thrown overboard; and (iv) that acquittal of Joginder, other co-accused, could not have any impact on the role played by Vinod Kumar.

18. It is imperative to state here that the learned trial Judge has posed two questions, namely, whether accused Joginder abetted accused Vinod Kumar to kidnap Anand, a 3 ½ years old boy of Jagbir Singh for ransom and whether accused Vinod Kumar kidnapped Anand for ransom and wrote letters Ex P1 to P3 on having been abetted by accused Joginder. After analyzing the evidence and arriving at the conclusion that Joginder could not have been convicted, for there was no evidence on record, he has proceeded to scrutinize the evidence against the appellant. One of the facets for arriving at the conclusion that Vinod Kumar could not be found guilty

as the case set forth by the prosecution against Joginder has no legs to stand upon, is absolutely unacceptable. It was the case of the prosecution that Joginder had abetted in the crime as he had instigated Vinod Kumar to kidnap the child. We perceive no reason how his acquittal would affect the case of Vinod Kumar. The High Court has rightly discarded the said reasoning of the learned trial Judge.

19. The next facet relates to the discrepancies in the evidence of the witnesses. The learned trial Judge has found discrepancies with regard to the handing of letter by Santosh to Manphul; the discrepancies relating to the place and time pertaining to various aspects stated by witnesses and the identity of the accused at the time of arrest. The discrepancies which have been noted are absolutely minor. The High Court has correctly observed that the minor discrepancies like who met whom, at what time and who was dropped and at whose place and at what time, etc. have been given unnecessary emphasis. It is well settled in law that minor discrepancies on trivial matters not touching the core of the case or not going to

the root of the matter could not result in rejection of the evidence as a whole. It is also well accepted principle that no true witness can possibly escape from making some discrepant details, but the Court should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that it would be justified in jettisoning his evidence. It is expected of the Courts to ignore the discrepancies which do not shed the basic version of the prosecution, for the Court has to call into aid its vast experience of men and matters in different cases to evaluate the entire material on record. [See **State of U.P. V. M.K. Anthony**¹³, **Rammi v. State of M.P.**¹⁴ and **Appabhai V. State of Gujarat**¹⁵]

20. Tested on the touchstone of the aforesaid principles, we are inclined to concur with the opinion expressed by the High Court that the learned trial Judge has really given undue emphasis on the discrepancies which are minor in nature. To elaborate, emphasis has been laid on

¹³ (1985) 1 SCC 505

¹⁴ (1999) 8 SCC 649

¹⁵ (1988) Supp SCC 241

the fact that the arrest memo indicates Vinod Kumar son of Suraj Bhan. The learned trial Judge has failed to appreciate that Vinod Kumar has been describing himself as son of Suraj Bhan. There is no dispute with regard to the fact that he was found along with boy Anand. There is no dispute with regard to his identity or the fact that he was working in the house of the husband of Santosh. It has also been brought in evidence that Harpal, PW-3, had seen him taking Anand and on a query being made, he answered that he was taking the child to Jind to buy shoes for the boy and medicine for himself. That apart, Vinod Kumar has not taken the plea that he was not employed by Jagbir. Thus, the hypertechnical approach of the learned trial Judge has correctly not been accepted by the High Court.

21. The next aspect which is required to be scrutinised is whether the letters vide Exhibit P1 to P3 are to be ignored on the basis of the plea advanced by the accused. The learned trial Judge has delved into this facet in a slightly peculiar manner. His reasoning is to the effect that a perusal of the letters, Ex. P1 to P3, go to

show that the accused was to receive the amount of ransom at Rohtak near the post office and the bus stand on 26.9.96 early in the morning and hence, had there been any truth in these letters the police must have waited till the time mentioned in the letters and must have made arrangement for the arrest of the accused at the place mentioned in the letters; that in those circumstances there was no necessity to run immediately for the arrest of the accused particularly in the circumstances when the correct address of the accused were not there with the complainant or the police. Exception has been taken to the action of the investigating agency not taking any steps to effect the arrest of the accused at the place given in the letters and on that bedrock, a conclusion has been arrived at that the letters were not in existence on 24.9.96. That apart, it has weighed in his mind that there was no necessity to write three letters at the same time and, therefore, reliance on the letters was an afterthought. He has also observed that the bringing of such type of letters into existence is not impossible for the police and hence, as

the accused had taken the stand that the said letters were got written from him by the police under pressure, no much reliance could be placed on the letters.

22. To appreciate the aforesaid reasoning, it is first necessary to understand the plea of the accused. He has stated in his statement recorded under Section 313 CrPC that these letters were written under the pressure of police. When he was produced for the first time before the Additional Chief Judicial Magistrate, PW-11, he had admitted his signatures. It has come in evidence of the said witness that he had showed the letters to the accused who has admitted before him that the letters were written by him. Letters were read over and explained to him and he had admitted the correctness. The accused had not stated before the learned ACJM that the letters were got written from him by the police under pressure. Keeping that in view, his statement under Section 313 CrPC should be appreciated. In question no.2 and the answer thereto are to the following effect:

“Q.No.2 That while leaving Ikkas for Jind, you left letters Ex. P1 to Ex. P3 in the house of Jabir. You addressed those letters to Jagbir and

Manphul that you had kidnapped Anand for ransom. If they wanted to get release Anand, they were asked to pay a sum of Rs. One lac on 26.9.96 in between 2 to 4 p.m. at a place situate near post office near bus stand Rohtak.

Ans.: It is incorrect”.

Question No.9 and the reply given in that regard are as follows:

“Q.No.9 That on 28.3.96 in police station Sadar, Jind you were interrogated in the presence of witnesses by PW-12 and you made disclosure statement Ex.PC leading to the involvement of your co-accused Joginder in the case. You informed the police that accused Joginder instigated you to kidnap Anand and got written letters Ex. P1 to Ex. P3 from you and then you kidnapped Anand and took him to Rohtak for ransom. You also admitted the contents of Ex. P1 to Ex. P3 and signed your disclosure statement Ex.PC.

Ans. It is incorrect. I never made disclosure statement Ex.PC and never admitted the contents of Ex. P1 & P2. My signatures were obtained forcibly and these letters were got written from me under pressure by the police”.

23. We have referred to the statement in detail as the High Court in the impugned judgment has observed that when examined under Section 313 CrPC the accused did not state a word that the letters were got written from him by Joginder or the letters were got written by police

under pressure. Such an observation is in consonance with the answer to question no.2. The other answer makes a slight departure, for the question that was put to him was with regard to the disclosure statement and the letters have been written at the instance of Joginder. Be that as it may, even assuming that it was a plea in the statement recorded under Section 313 CrPC that he had written the letters being pressurized by the police, the said stand does not deserve to be accepted on two grounds, namely, i) he had not made that allegation when the letters were shown to him by the Additional Chief Judicial Magistrate, PW-11, and in fact he had admitted the correctness of the letters and ii) that in the cross-examination of the witnesses barring a bald question to PW-12, nothing has been put with regard to the letters. It is apt to be stated here that the Additional Chief Judicial Magistrate has been examined as PW-11 by the prosecution and has unequivocally proven the fact that the letters were produced before him and the accused-appellant had identified the letters and admitted his signature. Nothing has been elicited in the cross-

examination. Similarly, there has been really no cross-examination of any of the witnesses that the letters were written under pressure of police.

24. In this context, we may usefully refer to the authority in ***State of U.P. V. Nahar Singh***¹⁶, wherein the Court has dealt with the effect of absence of cross-examination. True it is, the factual matrix was different therein, but the observations are salient. In the said case, it has been held:

13.In the absence of cross-examination on the explanation of delay, the evidence of PW 1 remained unchallenged and ought to have been believed by the High Court. Section 138 of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. The scope of that provision is enlarged by Section 146 of the Evidence Act by allowing a witness to be questioned:

- (1) to test his veracity,
- (2) to discover who he is and what is his position in life, or
- (3) to shake his credit by injuring his character, although the answer to such questions might tend directly or indirectly to incriminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

¹⁶ (1998) 3 SCC 561

14. The oft-quoted observation of Lord Herschell, L.C. in *Browne v. Dunn*¹⁷ clearly elucidates the principle underlying those provisions. It reads thus:

“I cannot help saying, that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which, it is suggested, indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness, you are bound, whilst he is in the box, to give an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but it is essential to fair play and fair dealing with witnesses.”

Be it stated in the said case, this Court did not approve the conclusion of the High Court that the explanation for the delay was not at all convincing and the said view was expressed as there was no cross-

¹⁷ (1893) 6 R 67

examination. In the instant case, in the absence of cross-examination of the witness, barring a bald suggestion to PW-12, we are inclined to hold that the appellant was the author of the letters and the same were not written under any pressure.

25. Apart from what we have stated hereinabove, it is also important that kidnapped boy was recovered at railway station. The accused has not explained how the child could be brought to Delhi. Harpal has categorically deposed that he had seen Anand with Vinod Kumar. The learned trial Judge has noted certain discrepancies in the evidence of Harpal, but without any justifiable reason. The learned trial Judge has really niggled on unimportant and unnecessary details. It is quite natural on the part of Harpal to pose a question to Vinod Kumar as he was slightly anxious to see a domestic help taking a child. This is inherent in human nature and, therefore, the version of Harpal could not have been ignored. These aspects, in our view, weigh quite heavily against the accused.

26. Tested from the aforesaid angles, we are disposed to think that the judgment of reversal by the High Court is absolutely defensible and does not warrant any interference. Resultantly, the appeal, being devoid of merit, stands dismissed.

.....J.
[DIPAK MISRA]

.....J.
[N.V. RAMANA]

NEW DELHI
JANUARY 08, 2015.



JUDGMENT