



2023INSC740

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No.2256 of 2011

BALLA @ FARHAT

... Appellant(s)

VERSUS

STATE OF MADHYA PRADESH

... Respondent(s)

WITH

Criminal Appeal No.2257 of 2011

J U D G M E N T

ABHAY S.OKA, J.

1. In these two appeals, we are dealing only with accused no.5-Balla @ Farhat, accused No.6-Habib and accused No.7-Imran.

2. It is not in dispute that appellant no.1 - Habib in Criminal Appeal No.2257 of 2011 is no more and, therefore, the said appeal insofar as appellant no.1-Habib is concerned stands abated.

3. We may refer to the prosecution case in brief. There were twelve accused and out of the twelve, it is alleged that

four were absconding. The trial proceeded against the remaining eight. The prosecution case is that on 26.11.2001 after getting a consignment of Masoor loaded in a truck at Silwani for being transported to Indore, Vivek (PW-15) boarded the truck, which at the relevant time, was allegedly driven by accused no.5 - Balla @ Farhat. The case of the prosecution is that Vivek (PW-15) was carrying a cash amount of Rs.1,00,000/- (Rupees one lakh) in a bag. He was also carrying 1350 silver coins in two plastic bags. Further, the case of the prosecution is that at Silwani, one Manoj (PW-4) handed over a red bag containing currency notes worth Rs.1,00,000/- (Rupees one lakh) and a list of grocery items to be handed over to Manohar (PW-5) for purchasing the same at Indore. It is, however, alleged that after the Truck reached Gairatganj, accused No.5 - Balla @ Farhat got down and one Lalmiyan started driving the Truck.

4. In the early morning of 27.11.2001, while the Truck was passing through Bairagarh, it was overtaken by a white Maruti Car. The criminals sitting in the car got out and stopped the truck under the false pretext that the Truck was involved in an accident. One of them pushed the driver aside and started driving the Truck himself. The other two persons entered the truck. They were brandishing weapons. The

allegation is that the offenders picked up all the articles in the Truck.

5. The case against the three appellants in these two appeals is of commission of an offence punishable under Section 411 of the Indian Penal Code, 1860¹ of dishonestly receiving stolen property. The allegation against them is that the stolen currency notes worth Rs.18,000/-, Rs.50,000/- and Rs.20,000/- respectively were seized from them based on memoranda under Section 27 of the Indian Evidence Act, 1872 (Exhibit P-11, P-12 and P-13).
6. The Trial Court had convicted the appellants herein for the offence under Section 120B of the IPC. They were also convicted for an offence punishable under Section 412 of the IPC. However, in the appeal so far as accused no.6 - Habib and accused no.7 - Imran are concerned, the conviction under Section 120B of the IPC was set aside and the conviction under Section 412 was converted into Section 411 of the IPC by the High Court of Madhya Pradesh vide the impugned judgment dated 22.10.2010. In the case of accused no.5 - Balla @ Farhat, the conviction for the offence under Section 120B was maintained. However, the conviction under Section 412 was converted into Section 411 of the IPC by

1. For short, "IPC"

the High Court. Except for accused no.5-Balla, no other accused was convicted for the offence punishable under Section 120-B of IPC. One accused was already acquitted by the Trial Court. The other accused were convicted by the High Court for the offences punishable under Section 395 and Section 395 read with Section 397 of IPC.

7. With the assistance of the learned counsel appearing for the parties, we have perused the material on record. It is not in dispute that PW 6 - Nirmal Kumar and PW 7 - Rakesh Jain are the only two witnesses, who according to the prosecution, were the witnesses to the recovery of the aforesaid cash amounts from the appellants and there is no other documentary evidence except memoranda at Exhibit P-11, P-12 and P-13.

8. As regards the conviction of accused no.5 - Balla @ Farhat under Section 120-B of IPC is concerned, we find that the High Court has set aside the conviction of all six other accused persons under Section 120B and accused no.5 - Balla @ Farhat is the only accused who has been convicted for the offence under Section 120-B. The ground on which he was convicted was that he was the only person who knew about the availability of huge amounts of money in the Truck. Section 120-A of the IPC defines criminal conspiracy. An agreement by

two or three persons is required to constitute a criminal conspiracy. There cannot be a conspiracy by only one accused, and it is necessary for the applicability of Section 120-B of the IPC that there must be two or more persons agreeing for the purpose of the conspiracy. This proposition of law finds support in a decision of a Bench of three Hon'ble Judges of this Court in *Topandas vs. The State of Bombay*². Therefore, the conviction of accused no.5 - Balla @ Farhat for the offence under Section 120-B of the IPC cannot be sustained.

9. As far as Nirmal Kumar (PW-6) is concerned, during the examination-in-chief, he had not deposed that he had seen a sum of Rs.18,000/- being recovered from accused no.5-Balla @ Farhat. He claims that recovery of a sum of Rs.50,000/- was made from accused no.7-Imran. He stated that he saw that Police had come to the house of accused nos.6-Habib and 7-Imran. However, in the cross-examination, he stated that he did not enter the house of accused nos.6-Habib and 7-Imran and in fact, he stated that he was not aware who was staying in said house. Therefore, this witness has not proved the recovery of the amount from any of the three accused with which we are concerned. As far as Rakesh Jain (PW-7) is concerned, firstly, he has been declared hostile. Secondly, he has not deposed that the aforesaid amounts were recovered

2. (1955) 2 SCR 881

in his presence from the appellants in these two appeals. Hence, the prosecution failed to prove the recovery of the alleged stolen cash from accused nos.5 and 7.

10. Therefore, as far as the appellants herein, namely, Balla @ Farhat, Habib and Imran are concerned, this is a case of no evidence. Accordingly, the appeals succeed, and we pass the following order:

(i) Criminal Appeal No.2257 of 2011 stands abated as far as appellant no.1 - Habib is concerned.

(ii) Appellant - Balla @ Farhat (accused no.5) in Criminal Appeal No.2256 of 2011 and appellant no.2 - Imran (accused no.7) in Criminal Appeal No.2257 of 2011 are acquitted of the offences alleged against them. To that extent, the impugned judgments are modified. Both the appellants - Balla @ Farhat and Imran are on bail. Therefore, their bail bonds stand cancelled.

11. The appeals are allowed in the above terms.

12. Pending application(s), if any, stands disposed of.

.....J.
(ABHAY S. OKA)

.....J.
(SANJAY KAROL)

New Delhi;
August 10, 2023