

(2001) 01 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 96 of 1997

Bhupinder Chand and Another	Vs	APPELLANT
State of Himachal Pradesh		RESPONDENT

Date of Decision : 02-01-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 313
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 307, 324, 34

Citation : (2001) 2 ShimLC 71

Hon'ble Judges : R.L. Khurana, J

Bench : Single Bench

Advocate : M.S. Chandel, for the Appellant; M.C. Mandhotra, A.A.G. and B.B. Sharma, Asstt. A.G., for the Respondent

Final Decision : Dismissed

Judgement

R.L. Khurana, J.—The two Appellants, Bhupinder Chand alias Munna and Yashpal, hereinafter referred to as the accused, have assailed their conviction and sentence as recorded against them by the learned Additional Sessions Judge (2), Kangra at Dharamshala vide judgment dated 20.3.1997 passed in sessions case No. 10-P/ VII of 1996.

2. The two accused stand convicted and sentenced as under :

Name of accused Offence for which convicted Sentence imposed

Bhupinder Chand fine 307 Indian Penal Code Rigorous imprisonment for four years and of Rs. 2,000/-. In default of fine, rigorous imprisonment for a further period of one year.

Yash Pal 307 read with Section 34, Indian Penal Rigorous imprisonment for four years and fine of Rs. 2,000/-. In default of fine, rigorous imprisonment for a further period of one year.

3. Briefly, the prosecution story may be thus stated. Film 'Kranti' was being screened on 31.3.1995 for general public at Bus Stand, Chobin, by the officials of the Special Security Bureau (SSB). PW 3 Naresh Bakshi, accompanied by his younger brother PW 6 Mukesh Bakshi, PW 7 Ranjha Ram, PW9 Shami Sharma and one Bablu as well as the two accused were also watching the movie. All of them were sitting and watching the movie close to each other. At about 9.30 p.m., the accused Yashpal alias Bara, who runs a tea-shop at Bus Stand Chobin, while watching the movie, urinated at the place he was sitting. This act of his was objected to by PW 3 Naresh Bakshi. Accused Yashpal reported by saying that he had not urinated on him. Accused Bhupinder Chand intervened and asked PW 3 Naresh Bakshi to keep shut since the accused Yashpal was older to him. He also asked PW 3 Naresh Bakshi to go away and leave that place. PW 3 Naresh Bakshi retorted by saying that he (accused Bhupinder Chand) should take accused Yashpal away. As a result exchange of heated words ensued. Accused Bhupinder Chand then threatened PW 3 Naresh Bakshi that he would cut him to pieces. While so threatening accused Bhupinder Chand caught hold of PW 3 Naresh Bakshi by his collar. The latter tried to free himself from the clutches of the former. Whereupon accused Yashpal caught PW 3 Naresh Bakshi from behind and accused Bhupinder Chand after pulling out a knife gave a blow therewith on the right side of the abdomen of PW 3 Naresh Bakshi, who fell down profusely bleeding. He was immediately removed to Civil Hospital, Baijnath by two officials of the SSB and his younger brother PW 6 Mukesh Bakshi.

4. PW 1 Dr. Nirdosh Gupta, on PW 3 Naresh Bakshi having been brought to him in an injured condition, informed the police. On the receipt of such information PW 14 Sub Inspector Prem Singh visited the Hospital and after obtaining the opinion of PW 1 Dr. Nirdosh Gupta that the injured was fit to make a statement, recorded his statement Ex. PW 3/A u/s 154, Code of Criminal Procedure, on the basis of which a case came to be registered vide FIR Ex. PW8/C for the offence u/s 307, read with Section 34, Indian Penal Code.

5. PW 1 Dr. Nirdosh Gupta, who carried out the medical examination of the injured PW 3 Naresh Bakshi, found the following injury on his person:

Elliptical shaped clean wound, measuring 7 cm. x 2 cm. in the right hypochondrium bleeding profusely with clean edges (no lacerations), depth of the wound could not be assessed because of active bleeding. Marked tenderness around the wound was present. The patient was in agony. Per abdomen examination, tenderness in right hypochondrium present. Liver dullness present normally, bowels sound positive. Wound stitched in layers, that is, muscle and skin under asepsis.

6. As the condition of the injured was serious, he was referred to Sub-Divisional Hospital, Palampur for further management and treatment/The injured was operated upon by PW 2 Dr. Karan Sharma. During the course of such operation, a tear in liver as well as a tear in Lesser Omentum with intra peritoneal bleeding was detected. On the basis of such observation the nature of injury was opined

as dangerous to life and sufficient in the ordinary course to cause death. The injured remained admitted in the Hospital at Palampur till 11.4.1995. PW 2 Dr. Karan Sharma also opined that the injury on the person of the injured could be possible by knife Ex. P. 1.

7. During the course of investigation, PW 14 Sub Inspector Prem Singh took into possession blood stained clay from the spot. He also took into possession blood stained clothes of the injured, namely, Sewater Ex. P. 2 and Shirt Ex. P. 3, on the same having been produced before him by PW 10 Jagdish Chand, the father of the injured.

8. Accused Bhupinder Chand on 6.4.1995 whilst in custody made a disclosure statement Ex. PW 12/A leading to the discovery of knife Ex. P. 1 from the bushes under a ?Peepal? tree.

9. The clothes of the deceased, blood stained clay as well as the knife Ex. P. 1 were sent for chemical examination. Vide report Ex. PW 15/A all these articles were found stained with human blood.

10. On completion of investigation, the two accused were sent up for trial. Accused Bhupinder Chand was charged for the offence u/s 307, Indian Penal Code, while accused Yashpal was charged for the offence u/s 307, read with Section 34, Indian Penal Code. Both the accused pleaded not guilty and claimed trial.

11. The prosecution in support of its case, examined fifteen witnesses in all. The case of the two accused is that of denial and false implication.

12. Accused Bhupinder Chand in his statement u/s 313, Code of Criminal Procedure, after denying the prosecution story, has stated that he was watching the movie being screened while sitting at the shop of accused Yashpal. He did not see PW 3 Naresh Bakshi at all. He denied having made the disclosure statement Ex. PW 12/A and the discovery of the knife Ex. P. 1 in pursuance thereto. He stated that his signatures were obtained by the police on a blank paper. While pleading false implication, he, in answer to question No. 22 of his statement, has stated:

Naresh Bakshi and his brother Mukesh Bakshi, belonged to anti-party of college at Beatings. When I was General Secretary of College Mukesh Bakshi teased some girls of College and as a result of which Mukesh Bakshi was being rusticated from the college, on which the teased girls put a condition that Mukesh Bakshi should touch their feet but he refused on which I slapped Mukesh Bakshi in the college and got the matter compromised between Mukesh Bakshi and teased girls. Thereafter both Mukesh Bakshi and Naresh gave beating to taxi driver at beatings and that matter was also got compromised by me. Once, Naresh was beaten by college students at college gate and I provided him first aid in the hospital on the same day, the opposite party which was injured in the incident was also provided first aid by me on which Naresh Bakshi got angry

upon me.

13. Accused Yashpal in his statement recorded u/s 313, Code of Criminal Procedure, while denying the prosecution story has stated in answer to question No. 3 that he was sitting separately to see the movie alongwith his co-accused Bhupinder Chand. He, however, has not stated where he was sitting. Though he was not denied the presence of PW 3 Naresh Bakshi, in answer to question No. 5 he has stated that he did not talk to PW 3 Naresh Bakshi. In answer to question No. 22, he has stated:

Accused Bhupinder Katoch and Naresh Bakshi, complainant fought elections in the college, in which accused Bhupinder Katoch won elections while Naresh Bakshi lost, on which Naresh Bakshi nourished enmity with accused Bhupinder on the basis of which false case has been planted.

14. Pleading innocence, accused Yashpal has, in reply to question No. 23, stated:

I and accused Bhupinder Katoch belong to the same village, whereas Naresh Bakshi belongs to another village and false case has been planted on us. I am innocent.

No defence was led by the two accused.

15. The learned Additional Sessions Judge on consideration of the evidence led before him, convicted and sentenced each of the two accused as aforesaid.

16. While assailing the conviction and sentence imposed upon each of the two accused, the learned Counsel for the accused has, at the very outset, contended that the identity of the two accused to be the assailants has not been established and that the two accused have been implicated due to enmity. According to the learned Counsel, there was no light except the screen light. The movie was being screened in the dark and it was about 9.30 p.m. when the occurrence is alleged to have taken place.

17. There is no denying that accused Bhupinder Chand is well known to PW 3 Naresh Bakshi since they were studying in the same college at Beatings. Nothing has come on the record to show that accused Yashpal was not known to and was a stranger to PW 3 Naresh Bakshi. As per PW 3 Naresh Bakshi, at the relevant time, he was sitting on a ?Tiala? (Platform) under a ?Peepal? tree, while watching the movie. The two accused and PW 4 Anit Singh, PW 5 Mintu, PW 6 Mukesh Bakshi, PW 7 Ranjha Ram and PW 9 Manoj Kumar alias Shami were also sitting on such ?Tiala?.

18. Assuming that at the relevant time, save and except the light from the screen, there was no other light, there is nothing on the record that it was pitched dark and not possible to recognise the persons sitting nearby. The movie was being screened in an open ground. In the absence of evidence to the effect that there was darkness to the extent that it was not possible to recognise even a known person, the stand taken by the accused that they have been falsely

implicated and that their identity as assailants have not been established cannot be accepted.

19. It was next contended on behalf of the accused that in the medico-legal certificate Ex. PW1/A, there is no mention of the name of the assailant(s). PW 1 Dr. Nirdosh Gupta, who had medically examined the injured PW 3 Naresh Bakshi was supposed to write down the history of the injured and in the absence of the names of the assailant in the medical certificate, the only inference that the name of the two accused have come to be incorporated as assailants as an afterthought as a result of deliberations and consultations. In support of his contention, the learned Counsel for the accused placed reliance on the decision of the Supreme Court in *Rehmat Vs. State of Haryana*,

20. No doubt the name of the assailant(s) is not mentioned in medico-legal certificate Ex. PW1/A. The Hon'ble Supreme Court in the above referred to case has not laid down a general proposition that in all cases absence of the name of the assailant in the medical legal certificate would be fatal to the prosecution case. Each case will have to be considered on the basis of the facts involved. In *Rehmat v. State of Haryana* case (supra), the occurrence had taken place at about 3.30 or 4 a.m. on 7.4.1986. The injured was immediately removed to the hospital with bullet injuries. The report to the police was made only at about 9 p.m. on 7.4.1986, that is, after about 17 hours of the occurrence. The name of the accused therein as assailant was given for the first time in such police report. Considering the delay involved in making the report, it was held that failure to name the assailant in the medico-legal certificate was fatal to the prosecution case.

21. In the present case, the occurrence had taken place at about 9.30 p.m. on 31.3.1995. The injured was taken to the hospital at Beatings at about 10 p.m. PW 1 Dr. Nirdosh Gupta immediately gave information to the police about the injured having been brought to the hospital with stab injury. PW 14 Sub-Inspector Prem Singh went to the hospital and recorded the statement of the injured u/s 154, Code of Criminal Procedure, at about 10.30 p.m., that is, approximately within one hour of the occurrence. The two accused have been specifically named therein as assailants. Therefore, on the facts of the present case, non-mentioning of the names of the accused as assailants in medico legal certificate Ex. PW1/B is of no consequence.

22. No doubt, PW 4 Anit Singh, PW 5 Mintu, PW 7 Ranjha Ram and PW 9 Manoj Kumar alias Shami, the alleged eye witnesses of the occurrence have not supported the prosecution case, however, it is in their evidence that PW 3 - Naresh Bakshi was injured while watching the movie and that the two accused were also present and were watching the movie.

23. Occurrence is proved to have taken place at the 'Tiala' of the 'Peepal' tree, where PW 3 Naresh Bakshi was sitting watching the movie. The specific stand taken by accused Bhupinder Chand in his statement recorded u/s 313, Code of

Criminal Procedure, in answer to question No. 3 is that he was watching the movie while sitting alongwith accused Yashpal at the later's shop. Accused Yashpal though has stated that he and accused Bhupinder Chand were sitting together separately, that is, away from PW 3 Naresh Bakshi, has not stated as to where they were sitting. The stand of accused Bhupinder Chand that he was sitting at the shop of accused Yashpal and watching the movie from there stands belied by PW 4 Anit Singh, who has categorically stated that he alongwith PW 5 Mintu, PW 3 Naresh Bakshi and the two accused amongst others were sitting on the 'Tiala', while watching the movie. This witness was never cross-examined by the accused. Therefore, the only inference is that the accused admit that they were watching the movie while sitting on the 'Tiala' alongwith PW 3 Naresh Bakshi and Ors.. PW 5 Mintu has also admitted that the two accused were sitting behind him alongwith PW 3 Naresh Bakshi. This witness too has not been cross-examined by the accused.

24. PW 6 Mukesh Bakshi, who is the younger brother of the injured PW 3 Naresh Bakshi, has supported the case of the prosecution. It was contended by the learned Counsel for the accused that no reliance can be placed on the evidence of PW 6 Mukesh Bakshi for the reason that he is the younger brother of the injured and as such an interested witness. Secondly, his very presence at the spot is doubtful and he appears to have been introduced as a witness of the occurrence at a subsequent stage as an afterthought.

25. There is no merit in the contention of the learned Counsel for the accused. The evidence of PW 6 Mukesh Bakshi cannot be discarded simply on the ground that he being the younger brother of the injured is an interested witness.

26. In State of Rajasthan Vs. Teja Ram and Others, while dealing with the question of related witness, it has been held:

Another reason which the High Court advanced to repel the testimony of such a good number of probable witnesses is that they are all close relatives of the deceased and that independent witnesses were not examined by the prosecution. The over-insistence on witnesses having no relation with the victims often results in criminal justice going awry (sic). When any incident happens in a dwelling house the most natural witnesses would be the inmates of that house. It is unpragmatic to ignore such natural witnesses and insist on outsiders who would not have even seen any thing. If the Court has discerned from the evidence or even from the investigation records that some other independent person has witnessed any event connecting the incident in question then there is justification for making adverse comments against non-examination of such person as prosecution witness. Otherwise, merely on surmises the Court should not castigate a prosecution for not examining other persons of the locality as prosecution witnesses. Prosecution can be expected to examine only those who have witnessed the events and not those who have not. seen it though the neighbourhood may be replete with other residents also.

27. The presence of PW 6 Mukesh Bakshi at the spot at the time of occurrence is established and as such he cannot be said to have been introduced as a witness subsequently. PW 5 Mintu has admitted that PW 6 Mukesh Bakshi was sitting behind him while watching the movie. This witness, as pointed out above, was not cross-examined by the accused. It is also in the evidence of PW 1 Dr. Nirdosh Gupta that PW 6 Mukesh Bakshi was accompanying the injured PW 3 Naresh Bakshi to the hospital. This fact is also find mentioned in medico-legal certificate Ex. PW 1/A.

28. Ex. PW 12/A is the disclosure statement made by accused Bhupinder Chand in pursuance of which knife Ex. P. 1 was got recovered by him. It was contended on behalf of the accused that neither the alleged disclosure statement Ex. PW 12/A nor the discovery of the knife Ex. P. 1 is admissible in evidence u/s 27 Evidence Act, since the police was already in the know of the fact discovered. Referring to the statement of PW 12 Hoshiar Singh, it was contended that the police was in know of the knife Ex. P-1 before statement Ex. PW 12/A was recorded.

29. PW 12 Hoshiar Singh has deposed with regard to the making of disclosure statement Ex. PW 12/A by the accused in the following terms:

...Police called us to Chobin Rest House and told us that the accused Bhupinder Katoch was telling that the knife with which he had stabbed Naresh Bakshi, he could get that knife recovered. Thereafter accused Bhupinder Katoch made a statement to the police in our presence that he had thrown the knife in the bushes under a Peepal tree, which he could get recovered. This statement of Bhupinder Katoch was recorded by the police which is signed by accused Bhupinder as well as other witnesses Darshan Lal, which is Ex. PW 12/A.

30. The above statement does not show that the police was in the know of the facts discovered. Nor anything could be elicited during the cross-examination of either PW 12 Hoshiar Singh or the investigation officer PW 14 Sub-Inspector Prem Singh to show that the police was in the know about the knife before the recording of the statement Ex. PW 12/A. It is in the evidence of PW 12 Hoshiar Singh and PW 14 Sub-Inspector Prem Singh that the knife Ex. P-1 was got recovered by the accused, who had himself picked up the knife from the bushes.

31. On having been sent for chemical examination, human blood stains were found on such knife, though the blood group could not be ascertained.

32. The learned Counsel for the accused next contended that there has been delay in sending the clothes of the injured and the knife Ex. P-1 for chemical examination. The seal used in sealing these articles remained with the police, these articles also remained with the police during the entire period, therefore, there was every possibility of tampering with such articles.

33. The clothes of the injured, that is, sweater Ex. P-2 and shirt Ex. P-3 were taken into possession by the police from PW 10 Jagdish Chand, father of the injured, on 2.4.1995 while the knife was discovered and taken into possession on

6.4.1995. All these three articles were sent to Forensic Science Laboratory on 19.4.1995. During the intervening period these articles remained in police custody.

34. The prosecution has examined the necessary link evidence to show that the case property since from the time of its having been taken into possession till it reached the laboratory was not tampered with. None of the witnesses to this effect has been cross-examined by the accused.

35. Relying on the provisions contained in paras 22.18 and 22.49 of the Punjab Police Rules, as applicable to the State of Himachal Pradesh, it was contended by the learned Counsel for the accused that the registers required to be maintained have not been proved in, the present case to show that case property was in fact safely deposited in the store of the police station and, as such, no reliance can be placed on the oral evidence led in the present case.

36. I do not find any force in the contention of the learned Counsel. Suffice to say that the oral evidence coming on record was never assailed by cross-examination nor there is any suggestion that the case property was not deposited as per the Rules, or that the same was tampered with.

37. It was further contended by the learned Counsel for the accused that the cause leading to the pccurrence, as per the prosecution case, was the act of urination by the accused Yash Pal. No evidence is forthcoming in this regard save and except the sole testimony of the injured PW 3 Naresh Bakshi and the version of PW 3 as in his statement u/s 154, Code of Criminal Procedure and that given by him in Court as PW 3 is self contradictory. According to the learned Counsel, though PW 3 in his statement in Court has stated that accused Yash Pal had urinated on him, in his earlier version given to the police he had not so stated but stated that accused Yash Pal had urinated at the place where he was sitting while watching the movie.

38. The contradiction pointed out by the learned Counsel is not very significant going to the root of the case. It is in evidence that PW 3 and accused Yash Pal were sitting together on the ?Tiala?. The act of urination of accused Yash Pal there while sitting on the ?Tiala? can also lead to urination on PW 3 Naresh Bakshi, who was sitting close by. Therefore, no benefit can be drawn by the accused on account of such alleged contradiction.

39. It was also contended that there is no evidence against accused Yash Pal that he had held the hands of PW 3 from behind in order to facilitate the stabbing by accused Bhupinder Singh. In other words, the case put forth is that there is no evidence to show that the two accused shared a common intention.

40. PW 3 Naresh Bakshi has deposed that on the accused Bhupinder Chand having threatened that he would cut him (PW 3) to pieces, accused Bhupinder Chand had immediately caught him from behind and accused Bhupinder Chand by taking out a knife had stabbed him in the abdomen. Such part of the

statement of PW 3 has remained unrebutted and there is no reason to disbelieve and discard such statement of PW 3 Naresh Bakshi.

41. It is significant to note that the reason advanced by the two accused in their statement for their false implication is contradictory to each other. Besides, no enmity has been shown between PW 3 and the two accused so as to give a cause to PW 3 to falsely implicate the two accused.

42. Though a case was tried to be set out by the accused that PW 3 Naresh Bakshi had sustained the injuries as a result of fall on angle iron fixed in the ground where movie was being screened, no evidence has been led to show that any such angle iron existed at the spot. Besides, the medical evidence belies such a situation.

43. It was lastly contended that no case u/s 307, Indian Penal Code is made out since there was no intention to cause the death of PW 3 and that at the most the offence is the one u/s 324, Indian Penal Code.

44. There is no merit in the contention. The knife blow was given on the abdomen, a vital part of the body. Therefore, even if the element of intention may not be there, the accused can be said to have the knowledge that their act might cause death of PW 3. The injury was found to be dangerous to life and sufficient in the ordinary course to cause death. Therefore, a case u/s 307 read with Section 34, Indian Penal Code is made out against the two accused, for which they have been rightly convicted and sentenced.

45. Resultantly, the present appeal fails and the same is accordingly dismissed.

46. The two accused, who are on bail, are directed to surrender themselves to their bail bonds before the learned trial Court within four weeks from today to receive and serve out the sentence imposed upon them, failing which the learned trial Court shall proceed against the two accused in accordance with law.