
(2015) 08 SHI CK 0005
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 8 of 2013

Kalyan Singh and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 27-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 201, 302, 328, 34, 392

Citation : (2016) 1 ShimLC 237

Hon'ble Judges : Rajiv Sharma, J; Sureshwar Thakur, J

Bench : Division Bench

Advocate : Karan Singh Kanwar, for the Appellant; M.A. Khan, Additional Advocate General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sharma, J—This appeal is instituted against Judgment dated 3.11.2012, rendered by learned Sessions Judge, Chamba, Division Chamba, Himachal Pradesh in Sessions Trial No. 26/2012, whereby appellants-accused (hereinafter referred to as "accused" for convenience sake), who were charged with and tried for offences punishable under Section 302, 392, 328, 201, 473, 420/34 IPC, have been convicted and sentenced to imprisonment for life for offence under Section 302 read with section 34 IPC alongwith a fine of Rs. 25,000/- each. In default of payment of fine, to further undergo simple imprisonment for two years. All the accused were also sentenced to undergo seven years rigorous imprisonment for offence under Section 392 read with section 34 IPC and a fine of Rs. 15,000 each. In default of payment of fine, to further undergo simple imprisonment one year each. They are further sentenced to undergo rigorous imprisonment for seven years under Section 328 read with section 34 IPC and a fine of Rs. 10,000/-. In default of payment of fine, to further undergo simple imprisonment for one year. They are also sentenced to undergo rigorous imprisonment for three years for offence under Section 473 read with section 34 IPC. All the sentences are to run concurrently.

2. Case of the prosecution, in a nutshell, is that three accused in furtherance of their common intention arrived at the Taxi Stand, Chamba, on 3.12.2011 at about 8-9 am. They were trying to hire a taxi. They wanted to visit temples at Chintpurni, Jawalajji and Naina Devi Ji and thereafter they were to be dropped at Rampur. They hired the taxi. Deceased Deepak Kumar was owner of Bolero bearing registration No. HP01C-0771 and one Alto Car bearing No. HP01C-0242. The deal was struck for Rs. 17,000/-. Accused had checked in the guest house in the name and style of Krishna Guest House at Naina Devi Ji at around 5/6 pm. They occupied room No. 100 in the guest house. Body of the deceased was discovered on 13.12.2011 at about 9.45 am near Namogarh Siphon Bunga Sahib, Kiratpur. Inquest report was prepared on 15.12.2011. Post-mortem was conducted. On 15.12.2011, a Bolero bearing registration No. HR-36AD-6879 was signalled to stop at a Naka at Badripur, Paonta Sahib by Kailash Chand Walia. Vehicle was being driven at relevant time by accused Kalyan Singh. Accused Jagat Ram was sitting by the side of the driver and co-accused Hari Singh was sitting on the back seat. Kailash Chand PW-24 removed the number plate and found that it was bearing temporary number HP33(T)9303. Recoveries were effected on the basis of disclosure statements made by the accused. Call details record was also procured by the Investigating Officer. Investigation was completed and Challan was put up in the Court after completing all codal formalities.

3. Prosecution has examined as many as 24 witnesses to prove its case against the accused. Accused were also examined under Section 313 CrPC. According to them, they were falsely implicated. They were convicted and sentenced as noticed herein above. Hence, this appeal.

4. Mr. Karan Singh Kanwar, Mr. Raju Ram Rahi and Mr. Anoop Chitkara, Advocates have argued that the prosecution has failed to prove its case against accused.

5. Mr. M.A. Khan, Additional Advocate General has supported the judgment of conviction.

6. We have heard the learned counsel for the parties and also gone through the record carefully.

7. Prosecution has relied upon the following circumstances:

i) The vehicle bearing registration No. HP01C-0771 belonging to the deceased Deepak having been hired by the accused (s) from the Taxi Stand at Chamba on 3.12.2011;

ii) That the aforesaid vehicle having been recovered from the possession of the accused.

iii) The accused(s) and the deceased having been last seen in Shri Naina Devi Ji together on the evening of 3.12.2011.

iv) The calls details of the mobiles of the accused(s) showing their presence in

Chamba on the fateful day.

v) The calls details of the mobile phones of the accused(s) and the deceased showing their presence at Shri Naina Devi Ji on the evening of 3.12.2011;

vi) The vehicle having been parked at ISBT Parking Dehradun on 4.12.2011;

vii) The alleged disclosure statement made by accused Kalyan Singh resulting in the recovery of piece of quilt and the same having been found to contain the contents of lorazepam which had also been recovered from the accused Kalyan Singh when he was apprehended alongwith the vehicle at Badripur.

viii) The entries made in the register of M/S Krishna Guest House at Shri Naina Devi Ji and the specimen signatures of accused Hari Singh were found to have been written by one and the same person;

ix) Test identification parade got conducted by the prosecution wherein the identifier Kehar Singh (PW4) had identified the accused (s).

x) The vehicle having crossed the Toll Plaza at around 23.40 hours on 3.12.2011 at Toll Plaza Behrampur Ropar; and;

xi) The contents of the lorazepam having been detected in the viscera of the deceased.

8. PW-1 Sudershan Kumar deposed that he has retired from police. His son was named Deepak. He was aged 27 years. He was plying taxies. One vehicle was bearing No. HP01C-0771 (Bolero) and Alto Car bearing No. HP01C-0242. Bolero was purchased about 2-3 months prior to the occurrence. His son used to drive Bolero. On 3.12.2011, his son left the house at around 8 am. At about 7 pm, his telephone was received by his daughter on landline No. 223749. He told his sister that he was going on a trip for 3-4 days. He had to take passengers to various temples. Thereafter, they were to be dropped at Rampur Bushahar. He has made call from Chintpurni from mobile No. 94187-10069. He got FIR Ext. PW-1/A registered at Police Station Sadar.

9. PW-2 Afzal Mohammad deposed that he reached taxi stand at 8 am. At 9.15 am, three passengers came to taxi stand. They wanted to hire a cab. They wanted to go to temples at Chintpurni, Jawalaji and Shri Naina Devi Ji. He asked them to hire a small vehicle. However, they refused saying that four other persons were to join them from Kangra. Deceased having a Bolero talked to three people. They settled for Rs. 17,000/- as fare. He recognized accused in the Court. In his cross-examination by learned Advocate appearing for the accused, he deposed that two persons were 24-25 years of age. They were talking in Hindi.

10. PW-3 Surinder Kumar also corroborated the statement of PW-2 Afzal Mohammad.

11. PW-4 Kehar Singh deposed that on 3.12.2011 at about 8.45-9 am, three people came to taxi stand. They wanted to hire a Mahindra Xylo, however, its

driver was not at the spot. He told that a new Bolero was available. Accused disclosed that they wanted to go to four temples including Chintpurni, Jawalaji, Chamunda and Naina Devi Ji. Thereafter, the accused called deceased. Thereafter, three accused talked to him. Fare was settled at Rs. 17,000/-.

12. PW-5 Yashpal deposed that at about 1.45 pm, he met vehicle No. HP01C-0771 at a place known as Khajjian, Nurpur. It was being driven by deceased Deepak Kumar. He told him that he was going to Kangra. There were three passengers in the vehicle. Accused Jagat Ram was on the front seat with driver. Other accused were in the vehicle. He has gone with Param Rishi to Paonta Sahib to search for deceased and his vehicle. On 15.12.2011, he was standing at Badripur with witness Param Rishi. A vehicle was coming from Nahan side. It was bearing No. HR-36AD-6879. It was signalled to stop. Vehicle was being driven by accused Kalyan Singh. Two other persons were sitting in the vehicle. They disclosed their names as Jagat Ram and Hari Singh. He recognized them in the Court. Vehicle was searched. On removing the number plate, temporary number HP33(T)-9303 was found. Vehicle belonged to Deepak Kumar. On search of the vehicle, one knife was found concealed inside a green coloured cloth, one iron rod was also recovered alongwith a rope. He identified the knife, Ext. P1, iron rod Ext. P2 and cotton rope Ext. P3. Personal search of accused was carried out. Recoveries were effected pursuant to search of accused Kalyan Singh vide Ext. PW-5/C, those of accused Jagat Ram were recovered vide Ext. PW-5/D, in respect of Hari Singh vide Ext. PW-5/E. Some powder was found in possession of Kalyan Singh in two paper pouches, 30 tablets were recovered from his possession. Haryana number plate which was removed from vehicle was also taken into possession.

13. PW-6 Ram Parkash deposed that he was running a canteen in Naina Devi Ji. On 3.12.2011, he received an order for sending four plates in Krishna Guest House, Naina Devi Ji. On 22.12.2011, police had taken into possession the register of Krishna Guest House. Police had also taken into possession photocopy of register Mark A vide memo Ext. PW-6/A. His waiter Mast Ram identified photo of deceased Ext. PW-6/B. His waiter also identified the accused.

14. PW-7 Balwinder Kumar deposed that on 3.12.2011 at about 5-6 pm, three accused came to his hotel. They occupied room No. 100. Entry was made at page 152. Signature was put by accused Jagat Ram. They stayed in his guest house. Accused were accompanied by a driver. He identified his photograph. Register Ext. PX was taken into possession vide Ext. PW-6/A. He has signed the memo alongwith Ram Parkash. On 23.12.2011, accused were brought by the police to Sri Naina Devi Ji. He recognized the accused. On 23.12.2011, accused led police party to a place known as Chhidawala Choe. It was at a distance of 10 kms from Naina Devi Ji towards Anandpur Sahib. They got recovered piece of cloth. Mast Ram identified the same piece from the quilt which was given to the accused in the Hotel. It was taken into possession vide Ext. PW-7/B.

15. PW-8 Mast Ram deposed that the accused had come at around 6.30 pm and

left at 8.30 pm. They stayed in room No. 100. Driver was also in the vehicle. Accused Kalyan Singh has taken quilt from him.

16. PW-9 Constable Amit Kumar deposed that he accompanied ASI Joginder Singh to Kiratpur Sahib. The place known as Bunga Sahib where body was found. On 20.12.2011, MHC Pawan Kumar handed over one cloth parcel stated to be containing viscera of deceased. He deposited articles at RFSL Dharamshala.

17. PW-10 Captain Bachan Ram issued transaction slip relating to movement of vehicle on 3.12.2011. According to transaction slip, vehicle No. HP01C-0771 had crossed toll plaza at 23.40 hours on 3.12.2011 through lane No. 5.

18. According to PW-11 Vijender Singh deposed that police had sought verification of vehicle No. HR-36AD-6879. He deposed that no such series has been started at Rewari nor any number was issued to any person by Registering and Licensing Authority, Rewari.

19. PW-12 Kavinder Singh deposed that Mahindra Bolero bearing No. HP33(T)-9303 was issued permanent number by RTO Chamba being HP01C-0771. He issued documents relating to vehicle vide Ext. PW-12/A to Ext. PW-12/C.

20. PW-13 Preetinder Singh deposed that he was member of the Board constituted for conducting autopsy of Deepak Kumar. Body was brought by ASI Joginder Singh. Body was brought on 16.12.2011 at about 7.30 pm. He proved post-mortem report Ext. PW-13/B. According to the Board, cause of death was Asphyxia due to ante mortem drowning, which was sufficient to cause death in ordinary course of nature. Time between death and post mortem was 7-10 days and time between injury and death was not mentioned as same could not be stated by post mortem examination. Final opinion is Ext. PW-13/C. In his cross-examination, he has admitted that body was in advance stage of decomposition. According to him, facial features were identifiable. Body had only started decomposing from internal organs.

21. PW-14 Vijay Parkash has proved Ext. PW-14/A. According to him, location of mobile number 94187-10069 was at Naina Devi Sector and same was incorporated by him in his report Ext. PW-14/A.

22. PW-15 Davidner Verma deposed that police had sought details of mobile bearing No. 98177-47999, 88943-34555 with effect from 16.11.2011 till 16.12.2011. These were supplied vide Ext. PW-15/A. Details of mobile phone number 88943-34555 were supplied vide Ext. PW-15/B. He also issued call detail report Ext. PW-15/C of mobile No. 98153-92941. He had also proved Ext. PW-15/E. He also proved Ext. PW-15/F and Ext. PW-15/G as well.

23. PW-16 ASI Rajesh Thakur deposed that on 23.12.2011, accused Jagat Ram disclosed to the IO that mobile phones of the deceased had been stolen by them and thrown on national highway. His statement was recorded vide Ext. PW-16/B.

24. PW-17 Krishan Kumar is a formal witness.

25. PW-18 Pawan Kumar is also a formal witness.

26. PW-19 ASI Joginder Singh deposed that he clicked photographs of body with official camera. He proved photographs Ext. PW-19/B-1 to Ext. PW-19/B-3. On 16.12.2011, he moved an application for autopsy of body of deceased at Rajindera Medical College, Patiala and procured post-mortem report.

27. PW-20 Gian Singh is a formal witness.

28. PW-21 Vivek Sharma deposed that on 8.12.2011, an application was moved in his Court seeking specimen signatures of Hari Singh accused. Accused had been identified by Salim Mohammad. Specimen signatures were taken in the Court in his presence on Ext. PW-21/A-1 to Ext. PW-21/A-13. Application was allowed by him vide Order Ext. PW-21/A-14. Consent of Hari Singh in written was obtained vide Ext. PW-21/A-15. Test identification parade was also held by him in District Jail, Chamba. On 18.12.2011 he conducted test identification in District Jail. He has taken consent of three accused. He recorded statement of identifier Kehar Singh vide Ext. PW-21/E.

29. PW-22 Sanjay Sharma, deposed that on 24.12.2011, police party came to him and took into possession extracts of register relating to vehicle bearing No. HR-36AD-6879. The vehicle had entered parking lot on 10.12.2011. Vehicle left parking lot on 12.12.2011. Vehicle bearing No. HP33(T)9303 also left on 5.12.2011. He proved extract Ext. PW-22/A, Ext. PW-22/B, Ext. PW-22/C, Ext. PW-22/D.

30. PW-23 Inder Singh deposed that on 13.12.2011, at 9.45 am, a telephonic message was received at police Station by Narinder Singh Mate BBMB Power House Kotla that one naked body was seen floating at Namogarh siphon near Bunga Sahib. He alongwith HC Sohan Singh left for Bunga Sahib and got the body of the deceased photographed. Body was got extracted from the canal and sent to dead house at CH Anandpur Sahib. He denied the suggestion that body was not identifiable when it was recovered.

31. PW-24 Inspector Kailash Chand was the Investigating Officer. He recorded statements of witnesses. He applied for the call details of the deceased to SP Chamba. He received information on 14.12.2011 that body of deceased was found at Kiratpur Sahib. He proceeded to Kiratpur. On 15.12.2011, he received information about movement of vehicle. He set up a Naka 100 metres from Badripur towards Nahan. One Yashpal and Param Rishi were also present. Vehicle was being driven by accused Kalyan Singh. Accused Jagat Ram was sitting by the side of driver. Accused Hari Singh was on the backseat. Vehicle was carrying registration plate No. HR-36AD-6879. He searched the vehicle. One iron rod, jungle knife and rope were recovered and taken into possession. Personal search of Kalyan Singh was carried out and two packets having some orange powder substance and three strips of Lorezapam-B atevin 2 mg were also recovered.

Accused disclosed to him during investigation that they threw deceased in canal near Lamlehadi at village Miyanpur. Accused were identified by Mast Ram on 23.12.2011. Accused Jagat Ram also made disclosure statement that they threw mobile phones somewhere on national highway short of Ambala. However, nothing was recovered from the spot. On 25.12.2011, Kalyan Singh made a disclosure statement that he could get piece of cloth recovered from Naina Devi Ji. Piece of quilt was recovered vide memo Ext. PW-7/B.

(Circumstance i)

The vehicle bearing registration No. HP01C-0771 belonging to the deceased Deepak having been hired by the accused (s) from the Taxi Stand at Chamba on 3.12.2011;

32. Prosecution has duly proved that vehicle bearing registration No. HP01C-0771 was hired by the accused from deceased Deepak on the basis of statements of PW-2 Afzal Mohammad, PW-3 Surinder Kumar, PW-4 Kehar Singh and PW-5 Yashpal. PW-2 Afzal Mohammad has categorically deposed that three persons had come to the spot at 9/9.15 am on 3.12.2011. They hired taxi from Deepak. Similarly, PW-3 Surinder Kumar also deposed that taxi was hired for a sum of Rs. 17,000/-, which was owned by Deepak. PW-4 Kehar Singh was driver of Alto car bearing No. HP01C-0242. He also corroborated statements of Sudershan Kuma PW-1, Afzal Mohammad PW-2, Surinder Kumar PW-3 regarding the manner in which accused hired the taxi on 3.12.2011 from deceased for a sum of Rs. 17,000/-. PW-5 Yashpal has met the deceased near Khajjian, Nurpur on 3.12.2011.

(Circumstance ii)

That the aforesaid vehicle having been recovered from the possession of the accused.

33. Vehicle was got recovered at Badripur Chowk. PW-5 Yashpal has categorically deposed that he alongwith Param Rishi was present with the police at Badripur Chowk. Vehicle bearing registration No. HR36AD-6879 coming from Nahan side was signalled to stop. It was intercepted. It was being driven by Kalyan Singh. Other accused were also sitting in the vehicle. Number of vehicle was found to be fake. However, after removing number plate of Haryana, number HP33(T)9303 was found below the number plate. Vehicle was searched. A Knife, rod and rope were recovered. Kalyan Singh was also searched. 30 tablets of lorazepam were recovered. Registration of the vehicle was duly proved by PW-12 Kavinder Kumar from RTO Office Chamba. It has come in the statement of PW-11 that no vehicle bearing registration No. HR36AD-6879 was registered by Registering and Licensing Authority Rewari.

(Circumstance iii)

The accused(s) and the deceased having been last seen in Shri Naina Devi Ji together on the evening of 3.12.2011.

34. PW-7 Balwinder Kumar deposed that he runs a guest house at Naina Devi in the name and style of Krishna Guest House. On 3.12.2011 at about 5-6 pm, accused came to his hotel and occupied room No. 100. Entry was made at page 152. He identified the accused. Accused were accompanied by Driver. Police has taken into possession register of the hotel, PX vide Ext. PW-6/A. Accused were also identified by Mast Ram PW-8. Mast Ram has served them food. He also identified photograph of deceased Ext. PW-6/B.

(Circumstance iv)

The calls details of the mobiles of the accused(s) showing their presence in Chamba on the fateful day.

(Circumstance v)

The calls details of the mobile phones of the accused(s) and the deceased showing their presence at Shri Naina Devi Ji on the evening of 3.12.2011;

35. PW-14 Vijay Parkash has proved call details of mobile of deceased Deepak. Phone was in use from 27.11.2011 to 3.12.2011 till 19.52 hours. Last location of the mobile number 94187-10069 was in Naina Devi Ji Sector B. Prosecution has examined Davinder Verma, Nodal Officer, Bharti Airtel, Kasumpti. He has supplied call details of mobile No. 98177-47999 and 88943-34555. The Police has also sought call details of mobile No. 98153-92941. Calls were generated from the tower No. 60921 in District Chamba. Phone No. 98177-47999 was in operation from 7 to 9 pm at Naina Devi. 16 calls were received by that mobile as per Ext. PW-15/A. Call from mobile No. 98177-47999 to 88943-34555 was made at Badripur at 7.56 am on 4.12.2011. Accused Hari Singh was in possession of mobile No. 98050-15225, Kalyan Singh was in possession of phone No. 98056-69669.

(Circumstance vi)

The vehicle having been parked at ISBT Parking Dehradun on 4.12.2011;

36. Prosecution has also proved circumstance vi) that vehicle was parked at Dehradun on 4.12.2011 on the basis of statement of PW-22 Sanjay Sharma.

(Circumstance vii)

The alleged disclosure statement made by accused Kalyan Singh resulting in the recovery of piece of quilt and the same having been found to contain the contents of lorazepam which had also been recovered from the accused Kalyan Singh when he was apprehended alongwith the vehicle at Badripur.

37. Now as far as circumstance No. vii) is concerned, piece of cloth was recovered on the basis of disclosure statement made by accused Kalyan Singh. On 25.12.2011, PW-7 Balwinder Kumar and PW-8 Mast Ram deposed that accused Kalyan Singh led police party to place where he got piece of quilt recovered, lying on the spot.

(Circumstance viii)

The entries made in the register of M/S Krishna Guest House at Shri Naina Devi Ji and the specimen signatures of accused Hari Singh were found to have been written by one and the same person;

38. Prosecution has also proved circumstance viii) whereby accused have stayed in Krishna Guest House Naina Devi Ji. Prosecution has proved register of Krishna Guest House (Ext. PX). It was proved by Balwant Kumar PW-7 that accused Jagat Ram has put his signatures. Prosecution has obtained specimen signatures of Hari Singh before Shri Vivek Sharma, PW-21. Specimen handwriting, questioned signatures and register Ext. PX were sent to RFSL Dharamshala for comparison. According to report, specimen signatures S1 to S30 were written by one and the same person as well as entry was made in the Register by the same person.

(Circumstance ix)

Test identification parade got conducted by the prosecution wherein the identifier Kehar Singh (PW4) had identified the accused (s).

39. Accused were identified on the basis of test identification parade held by Shri Vivek Sharma, Civil Judge (Junior Division)-cum-JMIC Dalhausie. He obtained consent of three accused vide Ext. PW-21/B, Ext. PW-21/C and Ext. PW-21/D. He prepared report vide Ext. PW-21/F. Accused were identified by Kehar Singh PW-4.

(Circumstance x)

The vehicle having crossed the Toll Plaza at around 23.40 hours on 3.12.2011 at Toll Plaza Behrampur Ropar;

40. Prosecution has also proved circumstance x) on the basis of statement of Captain Bachan Ram. He has proved report Ext. PW-10/B.

(Circumstance xi)

The contents of the lorazepam having been detected in the viscera of the deceased.

41. Prosecution has also proved recovery of lorazepam from Kalyan Singh and the same is proved by report of RFSL, Ext. PA.

42. PW-2 Afzal Mohammad, PW-3 Surinder Kumar, PW-4 Kehar Singh, PW-5 Yashpal have proved hiring of the vehicle from Deepak at Chamba by the accused persons. Their presence at Naina Devi temple has been proved by prosecution on the basis of statements of owner of guest house, PW-7 Balwinder Kumar and PW-8 Mast Ram and that vehicle had crossed at Behrampur toll Plaza which was duly proved by PW-10 Captain Bachan Ram. Vehicle was duly registered by Registering and Licensing Authority Chamba. Call details have been proved by PW-14 Vijay Parkash and PW-15 Davinder Verma. Prosecution has proved on the basis of call detail report the conversation from Chamba to Naina Devi and thereafter at Badripur Chowk. Post-mortem was conducted by PW-13

Dr. Preetinder Singh. He has categorically deposed that body was identifiable. He has also deposed that body had started decomposing from internal organs only. Time between death and post-mortem was about 7-10 days, time between injury and death was not mentioned as the same could not be reported in post mortem examination. Accused were identified on the basis of test identification parade conducted by PW-21 Vivek Sharma. Accused were identified by one Shri Kehar Singh PW-4. Test identification was held strictly as per law. Accused had also been identified by PW-2 Afzal Mohammad, PW-3 Surinder Kumar, PW-4 Kehar Singh, PW-5 Yashpal, PW-7 Balwinder Kumar as well as PW-8 Mast Ram. Accused have hired vehicle from Chamba and had come to Naina Devi. Thereafter they murdered the deceased and threw the body in the canal. Photographs of the body were taken. PW-19 ASI Joginder Singh. Body was got recovered from the canal by PW-13 Inder Singh. He has categorically denied in his cross-examination that body was not identifiable when it was recovered. Thus, there is no merit in the contention of advocates appearing on behalf of the appellants that the body was not identifiable. Prosecution has thus proved all the circumstances discussed herein above against the accused. Chain is complete. All the circumstances point towards the guilt of the accused. There is no occasion for us to interfere with the well reasoned judgment of trial Court.

43. In view of the discussion and analysis made hereinabove, there is no merit in the appeal and the same is dismissed. Pending applications, if any, are also disposed of.