

(1990) 05 SHI CK 0015

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 119 of 1987

Kishan Chand and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 31-05-1990

Acts Referred:

Arms Act, 1959 — Section 25, 54

Criminal Procedure Code, 1973 (CrPC) — Section 313, 428

Penal Code, 1860 (IPC) — Section 34, 342, 344, 395, 397

Citation : (1990) 1 ILR HP 371

Hon'ble Judges : Bhawani Singh, J

Bench : Single Bench

Advocate : M.C. Mandhotra, for the Appellant; M.S. Guleria, Assistant A.G., for the Respondent

Final Decision : Dismissed

Judgement

Bhawani Singh, J.—This appeal, by the accused, challenges the judgment of Additional Sessions Judge, Solan, incase No. 3-Sjl of 1986, decided on 21-5-1987. The accused were prosecuted for offences Under Sections 395, 397, 398, 342 and 324 of the Indian Penal Code and Sections 25/54 of the Indian Arms Act. 1925 and were ultimately convicted Under Sections 395, 324 and 342 read with Section 34 of the Indian Penal Code and sentenced to rigorous imprisonment for five years and a fine of Rs. 1,000 (Under Section 395 of the Indian Penal Code), rigorous imprisonment for one year (Under Section 324 of the Indian Penal Code) and six months rigorous imprisonment (Under Section 342 of the Indian Penal Code). AH the sentences have been ordered to in concurrently

2. The facts, in brief, are that truck No. HPS-5676, owned by Chet Ram. son of Lekh Ram of village Koti Nugaon, Tehsil Arki. Disrict Solan, was engaged for the carriage of Bajri from Darlaghat to Pchugha" on Kunihar-Ajki Road at the relevant time. Bhagat Ram was the driver of the vehicle and Hari Ram was its

conductor. The incident took place on 12-10-1984 in the afternoon when the said vehicle had taken Bajri to Pehughati and soon after unloading the same, all the accused alongwith Rajinder Singh, who had absconded and was tried separately, came there in a car with registration No. UTL-7551 and after inquiring from the driver about the passage for crossing and taking screw driver from him on the pretext of setting the gear of the car in order, surrounded the driver of the vehicle from both sides, aiming revolver towards the diver and succeeded in getting into the vehicle. Thereafter, accused Kishan Chand gave a few slaps to Bhagat Ram whereas accused Devinder Kaushik and Talib Hussain aimed knives towards him. Accused Kishan Chand took charge of the steering of the vehicle and started driving the same. At a place, beyond the place of occurrence, when Bhagat Ram tried to stop the vehilce, Talib Hussain gave him a knife blow on the head and took away the truck. These occupants were shown daggers and the revolver and were threatened with dire consequences.

3. Narain Dutt (P.W.2), a Road Roller driver, noticed the forcible taking away of the vehicle and scuffle between the accused and the other occupants. He reported the matter to the police at police station, Arki (Ex. P.W. 19/A) at 4 P. M. The First Information Report (Ex. P.W. 1/A) appears to have been recorded at 5.40 P.M. on the same day at the instance of Anoop Kumar (P.W. 1), who was working as Munshi of the owner of the said truck. On this report, a wireless message was sent to the Superintendent of Police, Solan, S.D.P.O. Nallagarh, and the Station House Officers of District Solan. Although, it was given stop-signal by the Station House Officer at Dharm-pur, but: the vehicle was not stopped. At a place beyond Dharampur (Sanwara) the vehicle was stopped for a short-while and Bhagat Ram, Hari Ram, Narpat Ram and Jia La1 were allowed to go from the vehicle and they came to Police Station, Dharampur, by a bus. Bhagat Ram, who had sustained head injury and had blood stained shirt (Ex. P. 1), reported the matter at the police station. He was not medically examined by the police from Dr. Sudha Prakash (PW. 18) from the hospital at Dharampur and there is medico-legal certificate (Ex. P.W. 18/A) on the record of this case. His shirt (Ex. P.I) was taken into possession vide seizure memo. (Ex. P. W. 3/B).

4. The accused also ran away from the place after deserting the vehicle. Ultimately, accused Devinder Kaushik, Subhash Chand, Rajinder Singh and TalibHussain were arrested from the jungle. The vehicle was taken into possession vide seizure memo. (Ex. P. W. 12/A). Site plan (Ex. P,W. 23/A) was also prepared. Accused Kishan Chard and Karan Paul took the car to Uttar Pradesh. They were arrested and the car was also taken into custody vide seizure memo. (Ex. P. W. 13/A). The police also took into possession shirt (Ex. P. 2) of Narpat Ram vide seizure memo. (Ex. P.W. 3/C).

5. In pursuance of the disclosure statements, revolver (Ex. P. 4), knife (Ex. P. 3) and dagger (Ex. P. 7) was recovered and taken into possession by the police vide separate recovery memos. On completion of investigation, the matter was initiated for the trial of the accused. They were charged for offences Under

Sections 395, 342, 324, read with Section 34 of the Indian Penal Code.

6. The prosecution has produced number of witnesses in support of the charge against the accused. Anoop Kumar (P.W. 0) states that "he was Munshi (Clerk) with the owner of the vehicle at the relevant time. The report, on the basis of which First Information Report (Ex. P. W. 1/A) was recorded, was at his instance. On the day of occurrence, he had gone to unload the truck at village Pehughati and after unloading the same, car No. UTL-7551 came there. 5/6 persons were sitting in the car. He further states that 4 persons came out of the car and boarded the truck. They gave beatings to the driver and drove away the truck towards Kunihar. He states that: truck No. HPS-5676 is owned by Chet Ram and he had no other truck. He further states that he did not know as to who owned the truck HPS-5661 nor he knew anything about any litigation relating to this vehicle at Dehradun. According to him, Lekh Ram is of village Darla whereas Chet Ram belongs to village Nagaon.

7. Narain Dutt (P.W. 2) is the driver of the Road Roller. He has also narrated the incident that took place on this day. He also saw the beatings given to the occupants of the truck while the same was being taken by the accused forcibly. He also went to police station Arid and informed the police about this occurrence.

8. Mansha Ram (P.W. 3) states that he also came to know about the stealing of the vehicle in the month of October, 1984 at about 4 p.m. and that the same was apprehended by the police at Dharampur police station. He also reached there at 10.30 p.m. where he found Bhagat Ram, driver of the vehicle, with an injury on his head. Narpat was also there. The police brought persons from the jungle who were identified by Bhagat Ram and Narpat to be the persons who had stolen the vehicle. Two persons were brought by the Parwanoo police on the same night. The shirt of Bhagat Ram, which was stained with blood, was taken into possession by the police. Similarly, the truck was also seized vide seizure memo (P.W. 3/A) which bears his signatures. Shirt of Narpat Ram (Ex. P. 2) was also taken into possession by the police. He admits that truck No. HPS-5661 is owned by Lekh Ram but showed his ignorance about any litigation regarding the same.

9. Chet Ram (P.W. 4) was also joined in the investigation of this case. He states that dagger was taken into possession by the police from accused Kishan Chand.

10. Bhagat Ram (P.W. 5) is the driver of the vehicle. He states that he had carried bajri in that vehicle from Darlaghat to Pehughati. Hari Ram was the Conductor and Narpat Ram and Jia Lal were the labourers in the vehicle. At 3.30 or 4 P.M. Bajri was being unloaded from the same at Peoghal I. During this time, car No. U1L-7551 came there and stopped behind the truck. On being asked whether the car driver wanted passage for crossing, the driver of the car stated that he wanted a screw driver to set right the gear of the car which was locked. The same was given and the car driver started doing something under the car. Thereafter one of the occupants of the car came to him and inquired about the path leading to Bilaspur. The same was indicated to him and when the vehicle was

unloaded completely, the car driver took the car and parked it ahead of the truck. There were six persons in the car. Four persons came out of the car and stood on the two sides of the truck aiming revolver towards his seat. Accused Kishan gave him 2/3 slaps while Devinder and Talib Hussain aimed knives at him. Kishan took charge of the steering and started driving the truck. When it had gone some distance, labourers of the Public Works Department were found working there. He tried to stop the vehicle but Talib Hussain gave him a knife blow and the vehicle was taken away. At Kuhnipul, Kishan Chand came out of the truck and got him to the car. Thereafter the vehicle, was driven by a person other than the accused. At Dharampur, the Station House Officer signaled the vehicle to stop but it did not stop. He was made to come out of it along with others at Sanwara. He got head injury from the knife blow of Talib Hussain and blood started oozing cut and falling on his shirt (Ex. P. 1). It was taken into possession by the police. He remained at the police station (Dharampur) whereas others went to Kasauli and Parwanoo with the police. His injury was examined and dressed by the doctor at Dharampur. Medico-legal certificate was also obtained. The police recovered a knife from a pulli near Kunihar at the instance of accused Talib Hussain and he identified the same to be the knife (Ex. P. 3) with which Talib Hussain had given him the blow. In cross-examination he states that he did not know if any bargain was struck with accused Kishan Chand.

11. Chet Ram (P.W. 6) is the owner of the vehicle. He states that at the time of occurrence he had gone to village Sam to in connection with the marriage of his relation and when he returned during night, he was told by Anoop, his Munshi, that the truck had been stolen and the matter had been reported at the police station. He was also told that the vehicle had been recovered by the police at Dharampur. He went to Dharampur and found the vehicle along with the accused there. He states that Bhagat Ram was his driver and Hari Ram was his Conductor. He found that Bhagat Ram had bandaged his head and his clothes were stained with blood. He states that he did not know Lekh Ram, owner of Truck No. HPS 5661. Similarly, he denies the suggestion that he had gone to Dehradun in connection with the bail of Lekh Ram in connection with truck No. HPS 5661.

12. Daulat Singh (P.W. 7) is a witness to the disclosure statement (Ex. P. W. 7/A) of accused Subash Chand and disclosure statement (Ex. P. W. 7/B) of accused Devinder Kaushik.

13. Amar Singh (P.W. 8) is one of the witnesses to the recovery memo. (Ex. P.W. 8/A) of revolver at the instance of accused Subash Chand and also to recovery memo (Ex. P.W. 8/B) of dagger by accused Devinder Kaushik. He proves the recovery memos and denies all the suggestions to the contrary during his cross-examination by the accused.

14. Ram Parkash (P.W. 10) is the Constable who had been deputed alongwith Constable Hukam Chand to locate the accused. He states that he found Rajinder Singh and Talib Hussain on the railway line. They were identified by Jia Lal and were taken to the police station, Parwanoo, and thereafter they were brought to

police station, Dharampur, by Head Constable Ram who had been deputed for the purpose. He denies the suggestion that the accused were arrested from Uttar Pradesh and not from the place stated by the prosecution witnesses.

15. Siri Ram (P.W. 12) also states about the apprehension of the truck and the accused persons, namely, Subhash Chand and Rajinder Singh from a jungle.

16. Tutsi Ram (P.W. 13) is a witness to the impounding of the car, taken into possession vide seizure memo. (Ex.P.W. 13/A) whereas Joginder Singh (P. W. 14) is a witness to the disclosure statement (Ex. P. W. 14/A) made by accused Kishan Chand and Talib Hussain (Ex. P.W. 14/B).

17. Ram Rattan (P.W. 15) is a witness to recovery memo. (Ex. P.W. 15/A) by which dagger (Ex. P. 7) was recovered at the instance of Kisrtan Chand accused.

18. Janki Dass (P.I W. 16) is a witness relating to the recovery of knife (Ex. P. 3) vide recovery memo. (Ex. P. W. 5/A).

19. Ravi Shankar (P. W. 17) is also witness of the recovery memo. (Ex. P.W. 5/A). He proves this recovery memo and also identifies the knife (Ex. P. 3) which was recovered at the instance of Talib Hussain. He is also a witness with Janki Dass about the sketch of knife (Ex. P. W. 16/A).

20. Dr. Sudha Parkash (P. W. 18) examined Bhagat Ram and issued medico-legal certificate (Ex.P.W. 18/A). According to the doctor, the following injuries were found:

1. 1.5 cmx0.3 cmx0.3cm deep wound over the left side of scalp just above left temporal region 3cm in front of left parietal prominence. Margins were clean cut and depth of the wound was ante ro posterior, base was fleshly and fresh bleeding was present on pressure during examination. Mild swelling present on surrounding area and clotted blood was present over the clothes, face and hands.

2. 1/2 cmx1/4 cm skin deep wound over the right first interdigital cleft. Margins were clean cut and no fresh bleeding was present.

Nature of injuries was simple.

Duration of injuries: up to 12 hours.

Kind of weapon: sharp.

21. Beant Lal (P.W. 22) stated that Karan Paul was employed as driver in his car UTL-7551. According to him, the car was taken by Karan Paul on 10/11 October, 1984 for the reason that some members in the family of his in-laws were ill and he was going there. The car was returned to him the next day. He has been subjected to cross-examination by the prosecution since he turned hostile and during this course, he stated that he had no knowledge as to whether the car returned after 3/4 days which had been taken by Karan Paul. He admits that he moved an application (Ex. P. W. 22/A) be for the Sub-Divisional Judicial Magistrate, Arki, for the release of the vehicle and the same was released in his

favour.

22. Phool Parkash (P.W. 23), Assistant Sub-Inspector of Police, was posted at police station, Dharampur, at the relevant time. He seized the truck HPS-5676 from a place near Dharampur vide seizure memo (Ex. P.W. 12-A). He also prepared site-plan (Ex. P.W. 23/A) of the place of the recovery of the truck and also arrested Subash Chand, Devinder Kaushik, Rajinder Singh and Talib Hussain. He also handed over the case property to the Station House Officer, Aaki. He identified the dagger (Ex. P. 6) which was recovered at the instance of Devinder Kaushik.

23. Daya Ram (P.W. 24), Ahlmad in the court of Sub-Divisional Judicial Magistrate, Kandaghat, produced identification proceedings (Ex. P. W. 24/A) in respect of accused Karan Paul.

24. Sarup Singh (P.W. 25) is the Station House Officer who conducted the investigation of this case. This is the evidence of the prosecution.

25. The accused have given their versions in their explanation u/s 313 of the Code of Criminal Procedure. Kishan Chand states that he had purchased truck No. 5661 from Lekh Ram for Rs. 1,90,000 and had paid Rs. 84,000/- in cash and the remaining amount was to be paid to the United Commercial Bank, Darlaghat. Lekh Ram had stolen the vehicle from Dehradun. He lodged the First Information Report at Police Station, Sensepur, District Dehradun on 4/5-8-1984. He came to Arki along with police in search of truck in car No. UTL-7751 and went to Bilaspur also in that connection. He came to know from a Mechanic at Darlaghat that Lekh Ram had got the vehicle impounded and it was parked at police station, Arki. The Uttar Pradesh Police arrested Lekh Ram and took him to Dehradun. He further states that the case has been falsely initiated against him.

26. Defence of the other accused is as under:

Defence of Devinder Kaushik was that since Kishan Chand was his friend, so he was falsely involved in the case by Lekh Ram. Talib Hussain had stated that since Kishan Chand had rented a room near his shop and he was his neighbour, so a false case had been made against him. Karan Paul had stated that since he had accompanied Kishan in search of his vehicle, which had been stolen, so he had been falsely involved in the case. Subhash Chand had stated that he was Conductor of Kishan Chand on his truck at the relevant time and so being in his company false case had been made against him.

27. Accused had also examined one witness Sliri O.K. Kohli, Manager, United Commercial Bank, Darlaghat, as D. W I who had stated that truck No. HPS-5661 was financed in the name of Lekh Ram and its Guarantor was Chet Ram son of Gobind. Regarding record pertaining to truck No. HPS-5661, he stated that the concerned record had been sent to the High Court in a pending case.

28. From the kind of evidence that has come on their record of this case, it is impossible to accept the contention of Shri M. C. Mandhotra, counsel for the

accused, that there is; no evidence connecting the accused with the crime. The evidence is sufficient to conclusively prove the offence against the accused. The assessment of the same by the learned Sessions Judge is correct, so are his conclusions drawn on the basis of the same. There is no reason, therefore, to tinker with the conclusions drawn by the trial Judge.

29. Equally untenable is the next contention of Shri M.C. Mandhotra that there are various contradictions in the statements of the prosecution witnesses. I do not see any contradiction of the nature which grossly militate against the essential features of the prosecution case. It is well established that minor variations in the statements of truthful prosecution witnesses, that too after a lapse, are bound to be there. Examined on the basis of this view, the contention is thus rejected.

30. Finally, Shri M.C. Mandhotra, made compassionate submissions on the point of sentence. He contended that the accused may be given the benefit under the provisions of Probation of Offenders Act. Looking to the nature of offence and the fact how the accused grouped together to commit the same, it is not a fit case to allow any such benefit. However, looking to the fact that the offence was committed on 12-10-1984 and the Appellants had been facing the litigation all along, I feel that there is some justification to reduce the same. Accordingly, conviction under the aforesaid offences is confirmed. However the sentence u/s 395 of the Indian Penal Code is reduced to rigorous imprisonment for one year and a fine of Rs. 1000/- and in default of the payment of the same, the accused will suffer further rigorous imprisonment for six months. The sentence Under Sections 324/342 read with Section 34 of the Indian Penal Code, awarded by the trial court is maintained. All the sentences are directed to run concurrently and the accused will be entitled to set-off, for the period for which each of them remained in custody during investigation and trial (Section 428 of the Code of Criminal Procedure) against the sentences imposed against each of them. Subject to the above modification in the sentence, the appeal fails and is accordingly dismissed. Their bail bonds are cancelled to enable them to serve the sentence.