
(2013) 08 SHI CK 0005

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 743 of 2008

Mehar Chand and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 21-08-2013

Acts Referred:

Citation : (2013) 3 ShimLC 1557

Hon'ble Judges : Dharam Chand Chaudhary, J;Dev Darshan Sood, J

Bench : Division Bench

Advocate : K.B. Khajuria, for the Appellant; B.S. Parmar, Additional Advocate General with Mr. V.S. Chauhan, Additional Advocate General and Mr. Vikram Thakur, D.A.G., for the Respondent

Judgement

Dev Darshan Sood, J.—The appellants have challenged the judgment of the learned Additional Sessions Judge, Fast Track Court, Kangra at Dharamshala convicting them for offence u/s 302 read with Section 34 IPC to undergo life imprisonment and fine of Rs. 20,000/- for each of the appellants and in default of payment of fine, to further undergo simple imprisonment for two years each. They were also sentenced to undergo simple imprisonment for three years each and fine of Rs. 5000/- for offence u/s 452 read with Section 34 IPC. All sentences to run concurrently. The prosecution case, in brief, is that all four accused-appellants were arraigned for offences under Sections 452 and 302 read with Section 34 IPC on the allegations that on 9.12.2004 at around 8.30 PM Dayalu deceased with his wife Kamlesh Kumari was at his home at village Bussal and were taking dinner in their kitchen. The accused were inimical to Dayalu. They entered the kitchen armed with deadly weapons, caught hold Dayalu and dragged him out to the compound of the house where Mehar Chand and Reshma caught hold of him while Sharwan Kumar assaulted Dayalu with a darat (sickle) and Ajay Kumar hit the deceased with an axe. As a result, Dayalu died on the spot from the injuries which he sustained in the attack. Kamlesh Kumari raised a hue and cry when the Pardhan of the Gram Panchayat reached the spot who immediately informed the police about the incident. The statement of PW1

Kamlesh Kumari Ext. PW1/A was recorded, on the basis of which FIR Ext. PW12/A was registered. All the four accused were arrested. Accused Sharwan Kumar is alleged to have made a disclosure statement Ext. PW3/E on the basis of which darat used in the offence was recovered. Ajay Kumar also made a disclosure statement Ext. PW3/H u/s 27 of the Indian Evidence Act. The police took into possession the clothes of all four accused as also the deceased. The prosecution examined 14 witnesses in support of its case, while one defence witness DW1 Purshotam Chand was examined by the accused. On the conclusion of the evidence, the learned trial Court convicted all the accused and sentenced them, as noticed by us supra.

2. The learned trial Court relied upon the statement of PW1 Kamlesh Kumari who states that deceased was her husband. On 9.12.2004 her father-in-law and mother-in-law were not at home and had gone to attend some function and she and her deceased husband were in the kitchen. She states that Reshma and Mehar Chand accused dragged her husband from the kitchen, as a result his chappal fell in the Ukhli. Ajay was armed with an axe and Sharwan @ Sonu was armed with a darat. They attacked her husband and cut his neck. She states that there was some land dispute between the deceased and the accused. At the time when the deceased was being beaten up and attacked, the accused were abusing him. She states that when the deceased was dragged the gate broke. Mehar Chand and Reshma caught, dragged the deceased and held him during the attack. Her husband died as a result of this assault. She proved on record her statement Ext. PW1/A which was recorded by the police. She says that at 3-4 A.M. she had made an additional statement to the police during night. She identified axe Ext. P2, darat Ext. P3 as the same weapons which were used by the appellants. She also states that two ladies from the neighbourhood had witnessed the occurrence who had come to attend some marriage function. She was cross examined by the defence. She denied that her husband was addicted to liquor and admits that no case was pending between her husband and the appellants about land. She admits that she was asked by the police to affix her signatures on a register at 3-4 A.M. when Pardhan, Numberdar etc. were present. She also admits that she was made to sign on 3-4 papers of the register. Out of these documents, some were written and some were blank. She states that police reached at around 11.30 P.M. when statements of Pardhan and Numberdar namely Mehar Chand and Piar Chand were recorded. She denied that she had not seen Ajay and Sonu killing her husband with axe and darat and that a false case has been registered against the accused.

3. PW2 Asha Devi states that she had gone to village Bussal to attend the marriage of the brother-in-law of the daughter of her Taai (aunt). On the fateful day there was Dham (wedding feast) for which she went to the house of Mehar Chand, accused, who are relatives to Soma (her paternal aunt). All the accused were present in the house on that day. She took tea there and after some time she heard some noise and went outside and found all the four accused standing and Dayalu lying dead on the ground. It was a dark night. One of them was

armed with an axe but she could not see as to which of the accused was holding a kulhari (axe). She was declared hostile. In cross examination by the public prosecutor, she states that she was frightened and went away from the place of occurrence and did not say anything to anyone fearing that she may be involved in the case. She denied that Mehar Chand and Reshma went inside the kitchen and dragged out the deceased to the Courtyard where he was assaulted by Sharwan @ Sonu with an axe and Ajay Kumar with a darat. She denied the suggestion that everything was visible because there was light in the verandah of the house of Mehar Chand.

4. Soma Devi was given up on 19.4.2006 having been won over by the accused. PW3 Mehar Chand Pardhan of Gram Panchayat Bussal states that on 9.12.2004 at around 9.15 P.M. he was in his house. Mehar Chand, Reshma, Sharwan and Ajay Kumar came to him and Mehar Chand told that his sons Sharwan and Ajay had committed murder of their uncle Dayalu and the dead body was lying in the Courtyard. He says that this occurrence took place on account of dispute over some land. Both accused Sharwan @ Sonu and Ajay Kumar stated that they had committed the murder with Kulhari and darat. He telephoned the police at around 11 P.M. and says that the Deputy Commissioner also reached there. Inquest reports Ext. PW3/A and Ext. PW3/B were prepared which bear his signatures. He says that the deceased was lying in the Courtyard in the pool of blood. He then denies the suggestion that Mehar Chand had told him that all of them have committed the murder. He then states that Mehar Chand had stated that his two sons had committed the murder. The extract of the suggestion is:--

...Yeh galat hai ki Mehar chand ne mujhe bataya ki sabhi ne hatya kee hai. Khud kaha ki uske do ladkon ne hatya kee hai....

(Translation:-It is incorrect that Mehar Chand had told me that all of them had committed the murder. Self stated that his two sons had committed the murder.)

He was declared hostile and cross examined by the prosecution. He accepts the suggestion of the prosecution that on 12.12.2004 while accused Sharwan @ Sonu was in police custody he stated in presence of this witness and Piar Chand that he had hidden the darat in a steel box and this was stained with blood. He also stated that except him none was aware about this. He proved on record Ext. PW3/E, statement of accused Sharwan @ Sonu, which is signed by him and the accused. He also says that it was recovered from the first floor (Bohad) of the house from where he took out the darat from inside the black steel box, which darat he had hidden it in some clothes. This darat was sealed and seal Ext. PW3/F was handed over to him. He proved the site plan Ext. PW3/G and also the statement Ext. PW3/H made by the other accused Ajay Kumar that he could get the Kulhari recovered which he had hidden in the box kept for storing wheat.

5. In cross examination by the defence, he states that Dayalu's grandmother Sita Devi had given a share in the land to the deceased and denies the suggestion that Dayalu was addicted to liquor. PW4 Vikram Singh was declared

hostile. He states that he had gone to village Dhanoya to participate in the marriage of sister-in-law of his niece. The father-in-law and mother-in-law of Kamlesh Kumari had also gone to attend the marriage. He states that Dayalu and his niece were not in the marriage. He had received a telephone call in village Dhanoya that husband of her niece Dayalu was seriously ill. He was declared hostile and then cross examined by the public prosecutor, but he stuck to his stand in his examination in chief.

6. PW5 Basant Ram, who was aged about 90 years, states that he had three sons Mehar Chand, Kashmir Singh and deceased Dayalu. He states that Kashmir Singh is working in Delhi. Earlier, all of them were living together and thereafter Mehar Chand constructed a separate house and started living separate. On the date of occurrence, he along with his wife had gone to village Dhanoya to participate in the marriage while Dayalu and his wife at their own house. He was putting up with his son Dayalu, who was joint with Kashmir Singh. He states that Mehar Chand used to quarrel and beat up Dayalu and did not like him. He says that he was not on talking terms with the accused. He states that Mehar Chand used to tell this witness that Dayalu should not be given any land and this was the basic cause for his murder. At around 2 AM, he received a telephonic message to reach home as Dayalu's wife was serious and her parents had also reached there. He found the dead body in the Courtyard of Mehar Chand. He says that Mehar Chand had beaten up Dayalu on a number of times. In cross examination, he says that since dead body of Dayalu was found in the verandah of Mehar Chand, the people and police were suspecting that Dayalu had been murdered by the accused, but he apprehended that accused may commit his murder also.

7. Learned Counsel appearing for the appellant urges that the star witness in this case, PW2 Kamlesh Kumari, does not state the actual/factual position. He has referred extensively to her evidence to point out that her statement is inconsistent and offence which is of serious nature u/s 302 IPC, evidence has to be scrutinized with great care and caution by not only considering the fact that she was the wife of the deceased and such an interested witness but also for the inconsistency in her evidence.

8. We advert to her cross examination relied upon by the accused. She states that she had no children from the marriage with Dayalu and she had been married to him for five years. The deceased used to work as labourer on daily wages. She denied the suggestion that he used to take liquor and admitted that no case regarding the land dispute was pending between the parties. She states that police asked her to affix her signatures on the register at 3-4 A.M. when Pardhan and Numberdar etc. were present. She affixed her signatures on 3-4 papers of the register. She denied that statements of Mehar Singh PW3 and Piar Singh (not examined) were recorded before her statement. She admits:

...Yeh sahi has ki police ne hamare ghar se aek sharab piye huae aadmi ko baahar nikala....

Translation: It is correct that the police took out one person from her house who was drunk.

He was not interrogated but police let him run away from the spot. This witness states that she was re-married and has children from this marriage.

9. Learned Counsel for the appellant submits that her statement coupled with that of DW1 Purshotam establishes the unnatural conduct of this witness. Learned Counsel emphasizes that there was one drunken person in the house of the deceased and this person, who ran away from there when the police arrived, no attempt was made to detain him for interrogation/inquiry. Learned Counsel submits that coupled with the statement of DW1 Purshotam Chand, Numberdar of the village, the conduct of this mysterious person assumes significance and casts a doubt in the manner in which the murder of the deceased has been committed. Purshotam Chand DW1 states that on the fateful day, he found Ward Panch Piar Chand accompanied by two constables at his house and he was informed that someone had been murdered in the village. This information has been conveyed to him since he was the Numberdar of the village. He then states that he went to the house of the deceased and switched on the light in the verandah of Mehar Chand and saw the body of Dayalu lying in the compound of the accused. As they were not present at home the police suspected that they had committed the murder and on this suspicion, they had taken the accused to the police station. He states that they were suspected for murdering the deceased since the body was found lying in their compound. The police collected blood stains from the spot on cloth and packed it in a polythene bag. It took about 45 minutes for this process. He also signed some papers on the spot. He then says that house of the deceased was locked from inside and when they knocked the door, it was not opened by anybody. It was opened by pushing it and then opening it from inside. They found that wife of the deceased was sleeping with one boy. Both were taken out but that boy fled away and despite efforts of the police, he could not be caught. On inquiry she informed that when they (PW1 Kamlesh and deceased Dayalu) were taking meals, Dayalu was taken out by his brother, sister-in-law and their two sons and thereafter they killed him. Firstly, she was not stating anything but on being questioned sternly by the police, she stated this fact, as the police told her that in case she did not state the truth, she would be implicated. In cross examination, this witness states that he does not know the name of PW1 Kamlesh. Deceased and Kamlesh were living normally. He states that the boy who was sleeping with her was about 11 years old and could be her brother. More importantly, he states-that he has stated these facts for the first time when he was appearing in Court. He did not disclose these facts to anyone before this.

10. We find it difficult to understand the case made out at the behest of the accused that murder was in fact committed by this unknown assailant, who was present in the house and was in a drunken state as alleged. The implication is that PW1 Kamlesh was in fact having some physical intimacy with this man. But

we find from the appreciation of evidence that no such case has been made out from the record that murder had in fact been committed by PW1 Kamlesh along with this unknown person. We are surprised that DW1 Purshotam Chand states all these facts for the first time in the Court but the unknown person becomes a boy of 11 years. If he knew about these facts, he should and ought to have informed the police immediately. PW1 Kamlesh has specifically stated that four accused, who are her brother-in-law, sister-in-law and their sons, were responsible for causing the death of the deceased. It is true that the evidence of a witness is to be read as a whole and its consistency be tested by other evidence which corroborates/negates it. It is in these circumstances, we need to turn to the evidence of other witnesses on record. We find that the statement of PW1 Kamlesh Kumari is corroborated by PW2 Asha Devi whose evidence we have considered supra to reiterate. She affirms that she was in the house of the accused, heard some noise, went outside and found all of the accused standing near Dayalu who was lying dead. She states that it was a dark night and as such she could not identify who was holding axe and darat. We note from this evidence that even applying the principle that the evidence of PW1 Kamlesh Kumar has to be scrutinized carefully, we find corroboration of this evidence from other witnesses more especially PW2 Asha Devi. On the doubt sought to be created that there was a drunk man inside the house who ran away, who according to the defence witness DW1 Purshotam was 11 years old boy who could be her brother, we find that this to be an allegation not supported by evidence. Nothing stopped the accused from calling for further investigation by the learned trial Court, if this was a fact which went to the root of the case. But we say nothing more save and except that we do not find any inconsistency in evidence of the witnesses.

11. We have noted the facts as submitted above and find that the defence put forth by the accused is not tenable. We note that PW1 Smt. Kamlesh Kumari is the wife of the deceased in which eventuality, she would be the only eye witness to the occurrence as she and the deceased. were alone having meals in the kitchen. Thus the defence set up by the accused that no independent witnesses have been examined cannot be accepted. We also note at this juncture that the testimony of PW2 Miss Asha Devi, is most natural without embellishment. Having considered the defence of the accused, we do not find that the prosecution has not proved its case beyond reasonable doubt. There is thus no merit in this appeal which is accordingly dismissed.