
(2010) 01 SHI CK 0039
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 432 of 2007

Neki Ram and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 04-01-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2010) 01 SHI CK 0039

Hon'ble Judges : Surjit Singh, J; Surinder Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Surinder Singh, J.—In Sessions Trial No. 12-S/7 of 2007, [State v. Neki Ram and Ors.], the Appellants were convicted under Sections 302, 307 read with Section 34 of the Indian Penal Code and sentenced to rigorous imprisonment for life and to pay a fine of Rs. 10,000/- each and in default of payment of fine, to further undergo simple imprisonment for a period of six months each, u/s 302 read with Section 34 of the Indian Penal Code for committing the murder of Ram Singh and were also sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs. 5,000/- each and in default of payment of fine, to further undergo simple imprisonment for a period of six months u/s 307 read with Section 34 of the Indian Penal Code for attempt to commit murder of Parma Nand (PW18), whereas, accused Kaushalya Devi and Lata Devi were acquitted. The State has not challenged their acquittal, whereas, the Appellants have laid a challenge in this appeal to their conviction and sentence, passed by the learned trial Court.

2. Facts in brief, giving rise to the present appeal can be stated thus. Ram Singh (deceased) and Neki Ram (Appellant) are the real brothers. Ram Singh had filed a Civil Suit in the Court of Sub Judge, Arki, in the year 2003, for seeking the

relief of injunction with respect to the land comprised in Khasra Khatauni No. 2/2, Khasra No. 186/31, measuring 1 bigha 10 biasws, situated in Mauja Tal, Pargana Dhar, Tehsil Arki, District Solan, H.P. This lis created a bad-blood between both the parties.

3. On 26th March, 2006 at about 12.15 p.m. in village Tal, the Appellants alongwith their co-accused Kaushalya Devi wife of Appellant Neki Ram and Lata Devi wife of Jia Lal, in pursuance to their common intention, allegedly formed an unlawful assembly and forced entry into the house of complainant Parma Nand (PW18) where he was living with his father Ram Singh (deceased). Appellant Reena Devi wife of Kamal Sharma alias Babu Ram Appellant was carrying a darat, Lata Devi (acquitted accused) was having a sickle and other Appellants were armed with dandas. Appellant Kamal Sharma caught hold of Parma Nand aforesaid and dragged him whereas, Appellant Neki Ram dealt a danda blow on his forehead and arm, Smt. Reena Devi gave a blow of darat on his right arm. The complainant ran away to save his life, but he was chased by the Appellants, but they could not apprehend him. The Appellants were seen chasing the complainant and then returning to the house of complainant by PW20 Dropti and PW21 Nirmala Devi. Parma Nand straight-away went to Police Station Arki which was at a distance of 2 1/2 Km from the place of occurrence and lodged report Ex.PW12/A.

4. The Appellants and their co-accused when failed to apprehend the complainant, they returned back and assaulted Ram Singh mercilessly with their deadly weapons and left at his door crying for himself.

5. Report lodged by Parma Nand was recorded on 26.3.2006 at 2.10 p.m. in daily diary Ex.PW14/A in Police Station Arki, under Sections 452, 147, 148, 149, 323 and 506 of the Indian Penal Code. Thereafter, Parma Nand was sent to Civil Hospital, Arki, with Constable Naresh Kumar for his medical examination and the case was taken over to HC Ashwani Kumar, for investigation.

6. On the request of police, PW11 Dr. Atul Bhardwaj, medically examined Parma Nand, complainant at 2.25 p.m. and following injuries were noticed on his person:

(i) Deep gaping lacerated wound (4 x 2 x 1cm) with well defined margins on right occipital region with blood oozing out.

(ii) Curvilinear laceration on bridge of nose (4 cm) with bleeding and evulsions of sub-cutaneous tissue.

(iii) Lacerated wound (5 x 1cm) with well defined clean cut margins on right palm.

(iv) Swelling and tenderness with restricted movement of both elbows and haematoma (4 cm diameter) on lower one third of left arm.

(v) Severe tenderness over right lower ribs along infra-axillary line.

7. The injuries were x-rayed. Injury No. 2 on the nose of the complainant was found to be grievous and others were simple in nature.

8. The doctor opined that injuries No. 1 and 3 above were caused with sharp instrument, whereas injuries No. 2, 4 and 5 with the blunt weapon.

9. The probable duration of injuries was given between 1 to 6 hours from the time of its examination. To this effect, doctor issued MLC Ex.PW11/D.

10. PW9 HC Ashwani Kumar (Investigating Officer) on lodging the report of Parma Nand visited the spot and saw Ram Singh lying outside the door with serious injuries on his head and arm and his clothes were smeared with blood. He was crying, but was not in a position to talk. Ram Singh was immediately removed to civil Hospital, where he was medically examined at 3.30 p.m. by PW11 Dr. Atul Bhardwaj, on the request of police given in writing Ex.PW11/A. On his medical examination, doctor noticed following injuries:

(i) Incised wound (4 x 1 x 1/2 cm) along left occiput with ill-defined margins and fresh blood oozing from the wound.

(ii) Lacerated wound (3.5 x 1cm) on right parietal region, lateral to injury No. 1.

(iii) Incised wound with clear cut margins (3 x 1 x 1/2 cm) extending to the vault of skull on right parietal region.

(iv) Lacerated wound (3.5 x 1/2 cm) on occipital region.

(v) Depressed wound with bleeding on right arm lower 1/3 with severe tenderness.

(vi) Bleeding from wound with contusion extending from right wrist to right lower 1/3 radius with evidence of fracture lower end of right radius with avulsion of inferior radio-ulna joint.

(vii) Incised wound (3x3x1 cm) with break in continuity of ulna indicating fractures and bearing clear cut sharp margins.

11. Ram Singh was not found fit to make the statement, he was serious, thus referred to I.G.M.C., Shimla, but died on his way to the said hospital. The postmortem of his dead body was performed by PW15 Dr. Piyush Kapila in IGMC, Shimla on 27.3.2006. Section 302 of Indian Penal Code was added to the case.

12. On 26.3.2006, PW24 S.I./SHO Surinder Pal was present at Kunihar. On receiving the information from MHC, he also visited village Tal, the place of incident. He found HC Ashwani Kumar already present there conducting the investigation. He took over the investigation file from him and took the photographs Exts.P12 to P20 of the spot. He also prepared site plan Ex.PW24/A. He lifted the blood lying on the main gate with cotton and took it into possession alongwith blood stained soil. After making its three separate parcels, sealed it with seal impression "K", deposited with MHC alongwith a stone containing the blood lying there. He also found a blood stained "Parna" of deceased on the spot to which the deceased used to cover his head. It was also taken into possession vide memo Ex.PW3/C. Later, these items were sent for forensic examination.

13. Autopsy of the dead body of deceased Ram Singh was conducted by PW15 Dr. Piyush Kapila, Registrar of Forensic Medicines, IGMCI, Shimla on 27th March, 2006. He noticed the following ante-mortem injuries on the dead body of Ram Singh:

I. Head.

(i) 3cm x 1/2 cm x bone deep incised/chopped wound was noticed on the right parietal region, 4 cm above the right pinna of ear and 14 cms from right eyebrow. There was associated fracture below this injury on parietal bone with cut of sharp weapon on outer table of this bone. There were multiple radiations of fracture line from this point mainly to posterior side. The scalp was having clean cut margins with sharp cut on their bulbs. Dried clotted as well as fresh blood was present around it.

(ii) 4 x 1/2 x skin deep incised wound on left side of head, just above the left mastoid process. There was gross contusion on scalp and temporalis muscle under this injury. There was no fracture below this injury. Dried clotted mixed with fresh blood was present around this injury.

(iii) 3.8 x 0.6 cms x bone deep laceration was present on the right side of head, 4 cm above injury No. 1 with dried blood clots around and oozing of fresh blood from it. Fracture line was present below it.

(iv) 3.5 x 0.4 x bone deep laceration was present on the occiput, just above the occipital protuberance with clotted blood and fresh blood coming out of it.

II. Right Arm:

(i) 0.5 diameter puncture wound was present in the right forearm, 10cm above right elbow and cubital fossa. After excision, it was 3 cms deep reaching up to right humerus bone. Fresh blood was coming out of it after ward.

(ii) 0.5 cm diameter punctured wound was present on right forearm 13 cms above the right wrist joint reaching up to right radius bone, alongwith fracture of this bone, there was gross contusion in an area of 10 cms below the elbow joint with around 250 ml of blood.

III. Left Arm:

(i) 3cm x 0.8 cm x 3 cm deep upto bone, chop wound spindle shaped was present with sharp margins and edges, hair around were sharply cut 3 cm below the left elbow. There was a sharp cut mark present on the underlying bone left ulna which was cut fractured through and through. There was a gross contusion along this injury.

(ii) There was a 2x1/2 laceration on the base of dorsal aspect of middle and right fingers with clotted blood.

Other Injuries:

(i) There was a gross fracture of posterior cranial vault on occiput and a depressed fracture below injury No. 1 of head.

(ii) There was gross sub-dural and gross sub-arachnoids global haemorrhage.

(iii) Fracture of 4th rib on right side with contusion.

Old injuries:

There was an old healed fracture on right side of skull oval shaped depressed.

14. Viscera was sent for forensic examination, but no alcohol or poison was detected. In the opinion of the doctor, the deceased had died as a result of ante-mortem head injuries with combination or gross ante-mortem haemorrhage, leading to death homicidal in nature.

15. Appellants Neki Ram, Reena Devi and Kamal Sharma were arrested on 27.3.2006, whereas the other accused were arrested on 28.3.2006.

16. During interrogation, accused Kaushalya Devi made a disclosure statement Ex.PW2/L, pursuant to which, she got recovered danda stick Ex.P2 from the field.

17. Appellant Kamal Sharma @ Babu Ram, pursuant to his disclosure statement Ex.PW2/O, got recovered a danda of Banna tree, which was also kept concealed in a field.

18. Appellant Neki Ram made his disclosure statement Ex.PW2/N and got recovered blood stained danda of Banna tree.

19. Appellant Reena Devi made a disclosure statement Ex.PW2/P and got recovered darat Ex.P5 from her residential house, which were taken into possession vide memo Ex.PW2/A.

Accused Lata Devi also made a disclosure statement Ex.PW2/M and got recovered a sickle Ex.P4 from her house.

20. PW23 Dr. Gian Thakur, Scientific Officer of State Forensic Science Laboratory, on the examination of hair and the clothes of deceased Ram Singh found the human blood of Group-"A" thereon. Human blood was also detected on the dandas Exts.P13 and P15, but it was found insufficient for further examination. His reports regarding forensic examination are Exts.PW17/A and B respectively.

21. After completing the challan, case was presented in the Court, for the trial of the Appellants and their co-accused. The Appellants and their acquitted accused were charge-sheeted under Sections 302, 307, 452 read with Sections 148 and 149 of the Indian Penal Code. The Appellants and their co-accused pleaded not guilty and claimed trial.

22. To prove its case, prosecution examined the injured complainant Parma Nand as PW18 and two ladies the alleged eye witnesses namely PW20 Smt. Dropti Devi and PW21 Smt. Nirmala Devi, who were cutting grass in the Ghasni near

the house of Ram Singh (deceased) besides examining Investigating Officers and the witnesses of disclosure and recovery.

23. The Appellants and their co-accused were examined u/s 313 of the Code of Criminal Procedure. They simply denied the circumstances, which were found attendant upon them, but in the cross-examination of prosecution witnesses, their defence was that Parma Nand was insane and also vagabond type of person. He had been quarreling with his deceased father. On the day of alleged incident, there was a scuffle between both of them, in which the complainant and his father sustained injuries. The case was falsely foisted upon the Appellants and their other family members.

24. When called upon to enter into their defence, Appellants examined DW1 Sant Ram, to prove the plea of alibi of Neki Ram, which defence was taken only at the time of leading defence evidence. DW1 aforesaid stated that on 26th March, 2006, there was a religious function of "Ekadshi" in his village and Neki Ram Appellant remained present throughout w.e.f. 9 am to 3 p.m. and in the evening on 27th March, 2006, he came to know that he was arrested by the police.

25. The learned trial Court disbelieved the plea of alibi and also the defence raised by the Appellants, but while relying upon the statements of the complainant and alleged eye witnesses, convicted and sentenced the Appellants, whereas Kaushalya Devi and Lata Devi were acquitted.

26. Shri Vinay Thakur, learned Counsel for the Appellants vehemently argued that the alleged eye witnesses were liars of the first rate. There was no Ghasni nearer or in the front of the house of Ram Singh, where they were allegedly cutting grass. None of these witnesses have seen the occurrence and their testimonies with respect to alleged incident are absolutely unbelievable. He also forcefully argued that the conduct of complainant Parma Nand was not above board. There had been a scuffle between him and his father Ram Singh. When both of them sustained injuries and his father was serious, he left the place and falsely lodged a report in the police station and implicated the Appellants and their family members in a case of murder. He further ventilated that if the evidence of the prosecution is appreciated in the right perspective, it would reveal that the Appellants are not guilty of at least an offence of murder.

27. Shri Ramesh Thakur, learned Assistant Advocate General, while supporting the impugned judgment of conviction and sentence, ventilated that the prosecution case stood fully proved by PW18 complainant Parma Nand an injured witness and PW20 Dropti Devi and PW21 Nirmala Devi lent corroboration to his version. He has also referred to the statement of the doctors, who categorically proved that the injuries found on the persons of Parma Nand and his father Ram Singh were caused with sharp and blunt weapons and were grievous in nature. He also referred the earliest version made by Parma Nand to the police and argued that the Appellants had a motive to commit the crime as the parties had locked into litigation over a piece of land.

28. We have given our thoughtful consideration to the rival contentions of the parties and have carefully reappraised the evidence on record.

29. The earliest version of PW18 Parma Nand, was recorded by HC Ramesh Chand in daily diary Ex.PW14/A at 2.10 p.m. on 26th March, 2006, with respect to the incident, which took place at 12.15 p.m. He categorically stated therein that the Appellants and their family members Lata and Kaushalya, armed with dandas and darat, committed house trespass and attacked him and when his father tried to intervene, he was also given beatings with the said weapons, to which Appellants were carrying. He got himself relieved from their clutches and leaving behind his father. He was chased but could not apprehend him. He also stated that he did not know about the injuries sustained and condition of his father. He also stated that all the Appellants were saying that both of them (he and his deceased father) caused lot of trouble to them on account of dispute over the landed property, regarding which the suit was pending in the Court.

30. As PW18 Parma Nand, he testified his version to be correct and proved report Ex.PW12/A made to the police. He categorically stated that he was dragged by Kamal @ Babu Ram, Neki Ram gave danda blow on his hand and head whereas Appellant Reena dealt a darat blow which hit his right hand. He got himself relieved from their clutches and ran away to save his life and lodged the report. He was taken to hospital for medical examination and became unconscious. He had sustained injuries on various parts of his body and there was a fracture of the nasal bone. As per Ex.PW24, his injuries were opined to be dangerous to life because of head trauma and bleeding. He remained under treatment and came to know after about a month that his father had died. He stated that his father was also beaten by the Appellants and that they wanted to grab their land, regarding which the civil dispute was pending in the Court. He denied in his cross-examination that he was having strained relations with his father as he used to roam about aimlessly without any work. He denied the defence raised that on the date of alleged incident he picked up an altercation with his father and attacked him with a danda and darat and his father also inflicted injuries on him with dandas and by some sharp edged weapon.

31. Pertinently, in their statements u/s 313 of the Code of Criminal Procedure, the Appellants did not raise such a plea nor whispered even a single word that it was PW18 Parma Nand who had inflicted serious injuries on his father and his father had also caused the injuries to him.

32. PW20 Dropti Devi and PW21 Nirmala Devi both have lent corroboration to the statement of PW18 Parma Nand. According to them, they were present in the Ghasni in front of the house of Ram Singh. At about 12 p.m., they saw the Appellants going towards the house of Ram Singh. Thereafter, PW20 Dropti, heard the cries "bachao- bachao" from the house of Ram Singh and also saw Parma Nand coming out of the house being followed by the Appellants. Reena was having a darat and others were armed with dandas. When they could not catch hold of him (PW 18 Parma Nand), they returned back to the house of Ram

Singh. She (PW20) stated that she could not go to the house of Ram Singh as there was dense forest in between. However, she admitted that the Appellants and deceased were having strained relations. But strangely, the Appellants threw suggestion to both these witnesses that Parma Nand was a vagabond and mentally unsound to which they denied but did not put any such suggestion to Parma Nand. Both PWs 20 and 21 expressed their ignorance that the Appellants had received Rs. 6 lacs as compensation and on account of that they were biased against the Appellants. By putting this suggestion to them, it is not understood as to what could have been capitalized to the benefit of the Appellants and why they (PWs) should have a bias, if the Appellants were awarded compensation.

33. Although PW21 Nirmala Devi stated that she did not narrate the occurrence to anyone in the village, because the villagers knew about the said occurrence. She also stated that she contested the election of the ward member and accused persons did not support her, but it is insufficient to discard her testimony on this ground alone.

34. On culling the evidence, we do not find the version given by PW18 Parma Nand, an injured witness to be false, because immediately after the occurrence, he lodged the FIR with the police naming the Appellants and the role played by each of them. The doctor noticed the sharp edged and blunt injuries not only on the person of PW18 aforesaid, but also on the deceased. The evidence on record shows that the danda used by Neki Ram was blood stained which was got recovered by him pursuant to his disclosure statement proved by PW2 and the Investigating Officer.

35. Dr. Atul Bhardwaj (PW11), who initially examined deceased, is also corroborated by PW15 Dr. Piyush Kapila, with respect to the injuries found on him. The doctors testified that the sharp injuries could be caused with darat Ex.P5 to which Reena Devi Appellant got recovered pursuant to her disclosure statement recorded u/s 27 of the Indian Evidence Act, and the fact of recovery is also proved by the Investigating Officer and PW2 Sunder Lal. Other grievous injuries were found on the dead body were caused with the blunt weapons i.e. dandas Exts. P3 and P4 recovered by Appellant Kamal @ Babu Ram and Neki Ram. Danda recovered by Neki Ram. The recoveries aforesaid are of corroborative nature and support the case of the prosecution.

36. From the above circumstances, the intention of the Appellants to commit the offence of murder is writ large. They forced their entry into the house of the complainant committed house trespass and gave beatings to Parma Nand and his father Ram Singh. Ram Singh succumbed to his injuries while being taken to the IGMC, Shimla. The Appellants would have also caused the murder of Parma Nand, in view of the injuries found and sustained on his person, had he not been able to release himself from the clutches of the Appellants and run away.

37. The plea of alibi raised by Neki Ram Appellant is an after thought and not proved even by preponderance of probability. Thus, it was rightly rejected by the

learned trial Court.

38. In our considered opinion, the learned trial Court rightly believed the statement of PW18 Parma Nand, which is duly corroborated by PW20 Smt. Dropti Devi and PW21 Nirmala Devi. The recovery of weapons used by the Appellants further lend strength to it.

39. For the reasons aforesaid, we do not find anything which could impel us to upset the judgment of conviction and sentence passed by the learned trial Court. Accordingly, the appeal is dismissed.

40. Send down the records.