
(2015) 03 SHI CK 0059
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 552 of 2008

Pritam Chand and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 05-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313
Penal Code, 1860 (IPC) — Section 302, 323, 34

Citation : (2015) 2 ShimLC 737

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

Bench : Division Bench

Advocate : N.S. Chandel, for the Appellant; J.S. Guleria, Asstt. A.G., Advocates for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—This appeal is instituted against the judgment dated 18.8.2008, and consequent order dated 25.8.2008, rendered by the learned Addl. Sessions Judge (I), Kangra at Dharamshala, H.P. in Sessions Case No. 9-P/2006, whereby the appellants-accused (hereinafter referred to as the accused), who were charged with and tried for offences punishable under Sections 302/34 of the IPC, have been convicted and sentenced to undergo life imprisonment and to pay a fine of Rs. 25,000/- each for commission of the offence punishable under Section 302 IPC read with Section 34 IPC. In default of the payment of fine, the convicts were ordered to undergo simple imprisonment for a period of two years each, separately. Out of the amount, an amount of Rs. 40,000/- was ordered to be paid as compensation to the children of the deceased.

2. The case of the prosecution, in a nut shell, is that on 22.9.2005, the complainant Trilok Chand (PW-2) reached his house in Village Badehar at about 6:30 P.M. from Palampur. He saw the accused Pritam Chand digging a water channel with a view to divert the flow of water towards his house. He asked him not to do so. He also requested him to place the matter before the Local

Panchayat. On 23.2.2005, local Panchayat was convened at 8:00 AM. It comprised of Smt. Ishwari Devi (PW-3), Prem Chand (PW-4), Mehar Singh and Bhagi Rath. The accused persons also reached the spot. One Lalman (deceased) the elder brother of the complainant, his family members and the complainant were also present on the spot. The Panchayat persons impressed upon the parties to allow the water to pass as before, but the accused Pritam Chand did not agree to it and told the Panchayat that the water would go as per his wish. Lalman told Pritam Chand that he being elder in age is in a better position to tell as to how the water used to flow earlier. Thereafter, there was exchange of hot words in between Lalman and accused Pritam Chand. When the heated arguments were going on between them, the accused Santosh Kumar picked up a bamboo "danda" and gave 2/3 blows on the shoulder and back of Lalman. Accused Pritam Chand picked up a stone weighing about 2-2 1/2 kgs. and threw it on the chest of Lalman. Lalman collapsed on the spot. He was taken inside the house. The accused ran away from the spot. One Kehar Singh in between went to Police Post Panchrukhi. He got rapat No. 6 entered in rapat roznamcha vide Ext. PW-1/A. ASI Onkar Singh, HC Kushal Kumar, HC Subhash Chand, HHC Madan Singh, Trilok Raj and Const. Gopal Dass proceeded towards the spot. ASI Onkar Singh recorded the statement of the complainant Trilok Chand Ext. PW-2/A. It was sent to the Police Station Palampur and FIR Ext. PW-12/A was registered. Photographs of the spot were taken. The inquest papers were prepared. Site plan was also prepared. The post mortem examination of the dead body was got conducted. The report of post mortem is Ext. PW-5/C. The police also took into possession "danda" Ext. P-1 and stone Ext. P-3. The shoes Ext. P-2 of the deceased were found at the place of occurrence and the same were taken into possession by the police vide memo Ext. PW-2/C. The case property was sent to FSL Junga through HHC Tilak Raj vide RC No. 149/21. The chemical report is Ext. PW-14/B. The statements of 4 witnesses Ishwari Devi, Bhagi Rath, Mehar Chand and Prem Chand were recorded under Section 164 Cr.P.C. before the then ACJM, Palampur. On completion of the investigation, challan was put up after completing all the codal formalities.

3. The prosecution, in order to prove its case, has examined as many as 15 witnesses. The accused were also examined under Section 313 Cr.P.C. They have denied the prosecution case. The learned trial Court convicted and sentenced the accused, as noticed hereinabove. Hence, this appeal.

4. Mr. N.S. Chandel, Advocate for the accused has vehemently argued that the prosecution has failed to prove the case against the accused. On the other hand, Mr. J.S. Guleria, learned Asstt. Advocate General, appearing on behalf of the State, has supported the judgment of the learned trial Court dated 18.8.2008.

5. We have heard learned counsel for both the sides and gone through the records of the case carefully.

6. PW-1 Kalyan Chand has proved the rapat roznamcha dated 23.9.2005 vide memo Ext. PW-1/A.

7. PW-2 Trilok Chand, is the brother of the deceased. He reached the house at about 6:30 PM. He had gone back to his house from Palampur. When he reached his house, he saw Pritam Chand accused digging a water channel with a view to divert the water towards his house. He asked him not to do so. He had requested him that they will ask local Panchayat to assemble on the next day so that the matter could be resolved. On 23.9.2005, the local Panchayat assembled at 8:00 AM consisting of Ishwari Devi, Prem Chand, Mehar Singh and Bhagi Rath. Both the accused Pritam Chand and Santosh Kumar were also present on the spot. His elder brother Lalman, his family members were all present on the spot. The Panchayat had insisted that the water should be allowed to pass through as before but the accused Pritam Chand told the Panchayat that he would allow the water to pass through as per his wish. His elder brother Lalman told the accused Pritam Chand that he knew it better as to how the water used to go earlier being elder in age. There was exchange of hot arguments between accused Pritam Chand and his elder brother Lalman. When the arguments were going on between them, by that time accused Santosh picked up a bamboo "danda" and gave its 2/3 blows on shoulder and back of his brother Lalman. Accused Pritam Chand picked up a stone weighing about 2 1/2 kg and gave its blow to his brother Lalman on his chest. His brother collapsed. He was taken inside the house. The accused ran away. The police visited the spot. The police recorded his statement Ext. PW-2/A. He recognized "danda" Ext. P-1 and stone Ext. P-3. In his cross-examination, he admitted that Kehar Singh (PW-10) is his real brother.

8. PW-3 Ishwari Devi is ward Panch of Ward No. 4. According to her, on 23.9.2005, she had been called for spot inspection by Trilok Chand. Bhagi Rath, Mehar Chand and Prem Chand were also with her for the spot inspection. They reached the spot at 8:00 A.M. There was dispute about the passage of the water. Trilok Chand, Kehar Singh, Lalman, Pritam and Santosh were present on the spot. The daughters of Lalman were standing in the courtyard. They impressed upon the parties that the water should be allowed to go as before but Pritam Chand did not agree. On this, Lalman who was standing behind told Pritam Chand that the water was going through the passage and he knew it very well being elder in age. Accused Santosh picked up danda from there and gave its blows to Lalman on his shoulder. Accused Pritam Chand picked up the stone from there and gave its blow to Lalman on his chest on the left side. Lalman collapsed at the spot. The persons present on the spot started rescuing Lalman. In his cross-examination, he admitted that her statement was recorded before the Judicial Magistrate on 27.9.2005. She also admitted that blood had not oozed from the injury but the spot had become red. She denied the suggestion that Lalman was patient of high blood pressure and had fallen on the spot due to this reason.

9. PW-4 Prem Chand also deposed that he was present on the spot alongwith Mehar Singh, Bhagi Rath and Ishwari Devi. The parties were disputing the flow of water. They made them to understand that the flow of water should be allowed as earlier. Lalman told that water to both the parties should be allowed to go as

before and he knew better how the water had been flowing being elder in age. The accused did not agree to the views expressed by Lalman. Accused Santosh picked up a danda and gave its 2-3 blows to Lalman. One stone was also lying at the spot which was picked up by accused Pritam and he threw it on Lalman which hit him on the chest. The accused ran away from the spot. His statement was also recorded before the Magistrate, vide memo Ext. PW-4/A. He denied the suggestion in his cross-examination that there were only scratches because of the stone. Volunteered that there was distinct mark on the deceased.

10. PW-5 Dr. Vinay Mahajan, has conducted the post mortem examination. He issued report Ext. PW-5/C. He noticed abrasion reddish brown in colour shape measuring 4 cm in length and 1.5 cm wide at the point of maximum width, on left side of front of chest at the level of left nipple 5 x 5 c.m., middle to left nipple. On dissection sub-cutaneous blood was present at the margins and underneath. He also noticed abrasion reddish brown in colour 1.5 x 1 c.m. in size on the lateral aspect of middle right forearm. On dissection subcutaneous, blood was present. According to his opinion, the death has occurred due to shock. He also deposed that due to striking of the stone on the chest, it could lead to shock which could further lead to death. In his cross-examination, he admitted that he has mentioned only two injuries in his post mortem report. These injuries were present which were due to rubbing of upper part of skin. He has not noticed any other damage. The abrasions were simple injuries. He also deposed that the stone shown to him Ext. P-3 weighing 2 1/2 kg and if it is hit with force it can cause extensive injury. He also admitted that while giving his opinion on 17.12.2005 vide Ext. PW-5/D, he has opined that injury on the chest mentioned in the post mortem report could be caused by the "danda"/stone produced in front of them by the police. However, they cannot comment that the "danda"/stone could have caused the death in this case.

11. PW-6 Ved Prakash has taken the photographs vide Ext. PW-6/A to Ext. PW-6/G.

12. PW-7 Anirudh Patwari has prepared the jamabandi Ext. PW-7/A and tatima Ext. PW-7/B.

13. PW-8 HHC Tarlok Raj deposed that on 23.9.2005, the doctor conducted the post mortem of the deceased and handed over one sealed parcel containing viscera which was sealed with seven seals of CHP. He deposited these articles with MHC PS Palampur in the same condition. On 26.9.2005, MHC PS Palampur had handed over all these articles to him vide RC No. 149/21 for depositing the same in FSL, Junga. He deposited all these articles at FSL, Junga on 27.9.2005.

14. PW-9 Sumna Devi is the daughter of the deceased. She deposed that on 23.9.2005, at 8:00 AM her uncle Trilok Chand had summoned Panchayat to resolve the water dispute. She alongwith her uncle Trilok Chand, her sister Sudershna Devi, both the accused persons, Kehar Singh etc. were also present at the spot. The Panchayat members were impressing upon the accused persons

regarding the flow of water. The accused persons were saying that the water would go as per their will. However, her father was objecting to it. Thereafter, the accused persons started arguments with her father. Accused Santosh Kumar gave four "danda" blows on the back of her father. The "danda" was of bamboo. Accused Pritam picked up a stone of about 2 1/2 kg. and threw it on her father which had struck him on his chest. His father became unconscious. He was picked up and taken inside the room. In her cross-examination, she admitted that the entire occurrence has taken place in presence of Kehar Singh. According to her, Kehar Singh after about half an hour had gone to police to give information.

15. PW-10 Kehar Singh is the brother of the deceased. According to him, his brother Trilok Chand had summoned the Panchayat on 23.9.2005. Panchayat members Bhagi Rath, Prem Chand, Mehar Singh and Ishwari Devi had reached their house at 8:00 A.M. The Panchayat had been summoned to settle the dispute of water channel. He alongwith Lalman, Trilok and accused persons were present on the spot alongwith the Panchayat members. Lalman impressed upon all of them that he being elder in age knew how the water was flowing earlier. The accused did not agree to his request. Trilok Chand and his wife started digging adjacent to the channel. The wife of accused Pritam Chand objected to it. She sustained injury on her hand. Accused Santosh had not done anything. He did not know what accused Pritam had done. His brother Lalman was standing on one side and they were standing on the other side and his brother had a fall and thereafter he was sent to call for the doctor. He was declared hostile. In his cross-examination by the learned Public Prosecutor, he has admitted his signatures on the rapat. He also admitted that Lalman deceased was his real bother and the accused were sons of his Uncle. He has further admitted the suggestion that the deceased had fallen down with his chest on the ground. It was possible that Lalman might have sustained injury on his chest due to the small stones lying on the ground.

16. PW-12 HC Kehar Singh deposed that on 23.9.2005, rukka Ext. PW-2/A was brought at PS Palampur. He recorded the FIR Ext. PW-12/A. The viscera and envelope were sent by him to FSL Junga by HHC Trilok Chand vide RC No. 149/21 dated 26.9.2005.

17. PW 13 Mehar Chand deposed that on 23.9.2005, Trilok Chand had invited him in connection with the dispute relating to flow of water. The other persons invited were Bhagi Rath, Ishwari Devi and Prem Chand. They went to the house of Trilok Chand. The accused were present on the spot alongwith Trilok Chand and Lalman. Kehar Singh was present, the daughters of Lalman were not present. They had impressed upon the parties to behave properly and let the water flow as earlier. The wife of Trilok Chand picked up a "kassi" and started digging the "chala" which was objected to by the wife of accused Pritam and in this process she sustained injury. Lalman and Kehar Singh were on the other side and the accused persons were standing on the other side. Both the parties did

not agree to their suggestion. The accused had not done anything to Lalman. He was declared hostile and cross-examined by the learned Public Prosecutor. He admitted in his cross-examination by the learned Public Prosecutor that Lalman became un-conscious on the spot. He was picked up and taken inside. He did not know that Lalman had sustained injuries on his chest and back and due to those injuries he had died. He admitted his statement recorded in the Court in Palampur vide Ext. PW-13/A.

18. PW-14 ASI Onkar Singh deposed that one Kehar Singh son of Jagranoo, had visited the Police Post Panchrukhi. Rapat Ext. PW-1/A was recorded. He went to the spot. He recorded the statement of PW-2 Trilok Chand vide Ext. PW-2/A. He prepared the inquest papers. The dead body was sent for post mortem examination. The "danda" and stone were taken into possession. The statement of four witnesses was got recorded under Section 164 Cr.P.C. He also admitted that as per his investigation, the wife of Pritam Chand accused had sustained injuries and her MLC was conducted. The case under Section 323 IPC was lodged on her complaint after medical examination.

19. PW-15 Yogesh Jaswal, ACJM Palampur, has recorded the statements of Ishwari Devi, Bhagi Rath, Mehar Chand and Prem Chand under Section 164 Cr.P.C.

20. What emerges from the facts enumerated hereinabove, is that on 22.9.2005, PW-2 Trilok Chand reached his home from Palampur. He saw Pritam Chand, his cousin digging water channel with a view to divert the flow of water. He requested him not to do so. He also requested him that the Panchayat should be convened to resolve the matter. On 23.9.2005, local Panchayat assembled on the spot at 8:00 AM. It consisted of Ishwari Devi (PW-3), Mehar Chand (PW-13), Prem Chand (PW-4) and Bhagi Rath. The parties were requested by the Panchayat to resolve the matter amicably. Lalman (deceased), elder brother of PW-2 Trilok Chand was also present on the spot. He requested the accused not to divert the flow of water and he being elder in age knew the earlier flow of water. There was exchange of hot words. Accused Santosh Kumar picked up the "danda" from the spot and gave blows on the shoulder of the deceased Lalman. Pritam Singh hit his chest with a stone weighing 2 1/2 kg. Lalman collapsed on the spot. He was taken inside. Thereafter the statement of PW-2 Trilok Chand was recorded vide memo Ext. PW-2/A. According to the contents of Ext. PW-2/A, when Lalman requested the parties to permit the flow of water as it was earlier, the arguments started.

21. PW-2 Trilok Chand has stated that when the arguments were going on between accused Pritam Chand and his elder brother Lalman, by that time, accused Santosh picked up a bamboo "danda" and gave its 2/3 blows on the shoulder and back of his brother Lalman. Accused Pritam Chand picked up a stone weighing about 2 1/2 kg and gave its blow to his brother Lalman on his chest. According to him, there was exchange of hot arguments between accused Pritam Chand and his elder brother Lalman. He has admitted in his cross-

examination that Kehar Singh PW-10 is his real brother. PW-3 Ishwari Devi and PW-4 Prem Chand have deposed that accused Santosh Kumar had given "danda" blow on the shoulder of Lalman and accused Pritam Chand had hit Lalman on his chest on the left side with stone. According to PW-3 Ishwari Devi, no blood was oozing out of the injury. PW-9 Sumna Devi has supported the case of the prosecution. However, the case of the prosecution has not been supported by the brother of deceased Lalman i.e. PW-10 Kehar Singh. According to PW-10 Kehar Singh, his brother Lalman was standing on one side and they were standing on the other side and his brother had fallen down. Thereafter, he was sent to call for the doctor. Thus, he was on the spot as per the prosecution case. However, he has not seen the accused hitting the deceased Lalman. PW-13 Mehar Chand was also member of the Panchayat who was on the spot on 23.9.2005. According to him, they had impressed upon the parties to behave properly and let the water flow as before but the wife of Trilok Chand picked up a "kasssi" and started digging the "chala" which was objected to by the wife of accused Pritam and in this process, she sustained injury. Lalman and Kehar Singh were on the one side and the accused persons were standing on the other side. According to him, the accused had not done anything to Lalman. According to PW-10 Kehar Singh also, the wife of accused Pritam Chand had also sustained injury in her hand. PW-14 ASI Onkar Singh has also admitted in his cross-examination that as per his investigation, the wife of Pritam Chand accused had sustained injuries and her MLC was conducted. The case under Section 323 IPC was lodged on her complaint after medical examination. PW-10 Kehar Singh, being the brother of the deceased Lalman has not supported at all the case of the prosecution. He was present on the spot. Though, he was declared hostile but his statement cannot be brushed aside in entirety, he being the real brother of deceased Lalman. PW-10 Kehar Singh and PW-13 Mehar Singh have given all together new version, the manner in which the incident had taken place. PW-2 Trilok Chand, PW-3 Ishwari Devi, PW-4 Prem Chand and PW-9 Sumna Devi have supported the case of the prosecution.

22. The deceased has died as per the statement of PW-5 Dr. Vinay Mahajan, due to shock. He also noticed two injuries on the deceased. These injuries were abrasions which were due to rubbing of upper skin/portion of skin. He has made the following observations in the post mortem report Ext. PW-5/C:

23. The statement of PW-5 Dr. Vinay Mahajan is very material. We have already noticed that according to his opinion, the death was caused due to shock. According to him, the hitting of stone on chest could lead to shock which could further lead to death. He has not noticed anything significant in ribs and cartilages. Right lung and left lung, though pale, were otherwise normal. There was no penetrative injury on the chest wall. No fracture of ribs was noticed. There was no injury to lungs and heart. He has not noticed any wounds on the pulmonary artery. He has not noticed any internal bleeding from any of the vital organs in his report Ext. PW-5/C. According to the prosecution case, the parties were standing on the spot near the water channel. Pritam Chand has lifted the

stone weighing 2 1/2 kg. and thrown on the chest of the Lalman deceased. The distance between the deceased Lalman and the accused Pritam Chand has not been stated by the prosecution. The severe injury would be caused by a stone if it is hit from a distance with force/velocity. There would be minimal injury on the chest if persons are standing close by even if struck by the stone. It is, for this reason, that no injury except abrasions have been noticed on the chest of the deceased which were due to rubbing of upper skin/portion of the skin.

24. Mr. J.S. Guleria, learned Asstt. Advocate General has drawn the attention of the Court to the statements of three witnesses recorded under Section 164 Cr.P.C. The statements recorded under Section 164 Cr.P.C. are not substantive piece of evidence. The statements of the witnesses made in the Court are to be given more weightage.

25. It has come, as noticed hereinabove, in the evidence that hot words were exchanged between the deceased Lalman and the accused. It might have caused stress and excitement to Lalman. The temper was running high on the spot since Lalman was impressing upon the accused that he being elder, his advise should be given due weightage, the manner in which the water used to flow earlier. The stress and excitement could also result in shock leading to death of accused Lalman. It has come on record that the wife of the accused Pritam Chand had also received injuries and she was medically examined and MLC obtained. However, nothing has been placed on record about the outcome of this complaint by the wife of the accused Pritam Chand though case was registered under Section 323 IPC, as per the statement of PW-14 ASI Onkar Singh. The prosecution, thus, has failed to prove the case against the accused persons beyond reasonable doubt.

26. Accordingly, the appeal is allowed. Judgment of conviction and sentence dated 18.8.2008, rendered by the learned Addl. Sessions Judge (I), Kangra at Dharamshala, H.P., in Sessions case No. 9-P/2006, is set aside. The accused are acquitted of the charges framed under Sections 302/34 IPC, by giving them benefit of doubt. Since the sentence was suspended by this Court on 22.12.2008, bail bonds are discharged.