
(2007) 06 SHI CK 0023
In the High Court Of Himachal Pradesh

Satish Kumar and Another	Vs	APPELLANT
State of H.P.		RESPONDENT

Date of Decision : 01-06-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2007) CriLJ 3935 : (2007) 3 ShimLC 142

Hon'ble Judges : Surjit Singh, J;Sanjay Karol, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Surjit Singh, J.—Initially, the appeal was filed by two appellants, i.e. Satish Kumar and Shakuntla Devi. Now Shakuntla Devi is dead.

2. Appellant Satish Kumar is aggrieved by the judgment of the trial Court (Sessions Court) whereby he has been convicted of offence u/s 302 read with Section 34, IPC and sentenced to undergo imprisonment for life and to pay fine of Rs. 5,000/- and further imprisonment for one year for offence u/s 201 read with Section 34, IPC. Appellant, along with his mother Shankutla Devi, was put on trial for murdering his father Shri Prem Chand on the night intervening 3rd and 4th April, 2002 at his (deceased's) house in village Karera, Telisil Khudian District Kangra, H.P.

3. Prosecution version, as per record, is as follows. Deceased Prem Chand had not been having cordial relations with his wife Shakuntla Devi. About 12-13 years back Shakuntla Devi along with her children, i.e. appellant Satish Kumar, another son Bhuru Singh alias Suresh and daughter Santosh Kumar had been turned out of the matrimonial home. The reason for acrimony was that the deceased had been keeping a lady, named Amro Devi, at his place and was having illicit relations with her. Shakuntla filed a petition, u/s 125, Cr. P.C. in the Court for Judicial Magistrate 1st Class, Dehra, against the deceased. On 3rd April, 2002, the petition was listed for hearing. Shankutla, deceased appellant, went to attend

the Court. The deceased (Prem Chand) also attended the Court proceedings. On the next day, i.e. 4th April, 2002, Prem Chand was found dead on a cot in his house. Bhuru alias Suresh, brother of appellant Satish Kumar, informed about the death of his father (deceased Prem Chand) to a lady named Kanta Devi (P.W. 4), who runs a shop at a place called Dalghatta. He gave this information sometime after 11 a.m. Kanta Devi (P.W. 4) had seen Jagan Singh, Balwant Singh, Om Parkash and Gurdas Ram boarding a bus at Dalghatta. Jagan Singh is one of the brothers of the deceased. The bus was bound for a place called Majheen. Therefore, Kanta Devi rang up an STD booth owner to inform Jagan Singh P.W. 3, a brother of Prem Chand, about his (Prem Chand's) death. The STD owner got her connected with P.W. 5 Balwant Singh, who along with other persons and Jagan Singh, had boarded the bus at Dalghatta. The lady informed Balwant Singh (P.W. 5) about the information passed on to her by Bhuru alias Suresh, one of the sons of the deceased. Balwant Singh informed P.W. 3 Jagan Singh. Thereafter, all the four, who travelled by the bus, namely P.W. 3 Jagan Singh, P.W. 5 Balwant Singh, P.W. 6 Gurdas Ram and Om Parkash, went to village Karera. On reaching the house of deceased, they found appellant Satish Kumar and deceased appellant Shakuntla Devi in the courtyard. Jagan Singh enquired from Shakuntla as to where the deceased was. She told him that he was asleep in the room. Jagan Singh accompanied by Gurdas Ram, Balwant Singh and Om Parkash then went inside the room. Prem Chand was lying on a cot covered with a bed sheet. On removing the bed sheet, Jagan Singh found that Prem Chand was dead. He then locked the room from outside and asked Shakuntla as to how Prem Chand had died. She and the present appellant told that they happened to commit the mistake and fell on the feet of Jagan Singh begging for being helped in escaping punishment. Jagan Singh then went to Village Bharoli where SHO, Police Station Jawalamukhi had gone to provide security to a visiting Minister. Jagan Singh informed the SHO about the incident. The SHO recorded the statement of Jagan Singh, u/s 154, Cr. P.C. (Ex. P.W. 3/A) and sent it to the Police Station for the formal registration of the case. Police then visited the spot. Inquest was conducted. Various injuries were noticed on the dead body. The injuries were entered in the inquest forms. Dead body was dispatched to the hospital for post-mortem examination. The doctor noticed the following injuries on the dead body:

1. Multiple abrasions on both knee joints antero lateral aspect of left thigh, left leg, and left side of abdominal wall.
2. Black staining on left eye.
3. Lacerated wound vertical on scalp in midline situated 6 cm above hair line 5 cm x 3 cm. Bone exposed.
4. Lacerated wound 5 cm x 3 cm. forming L with injury No. 3. Bone exposed.
5. Lacerated wound 6 cm x 3 cm. above right temporal bone exposed.
6. Lacerated wound 5 cm x 3 cm. posterior to injury No. 5. Bone exposed.

7. Lacerated wound 5 cm x 3 cm, 2 cm. behind injury No. 6. Bone exposed.

8. Lacerated wound 8 cm x 5 cm. irregular in inter parietal region. Bone exposed. Bone pieces palpable through the wound.

9. Lacerated wound 5 cm x 3 cm, 2 cm. right of injury No. 6. Bone exposed.

Cause of death was opined to be shock due to injury to the brain and meninges. Post-mortem was conducted on 5-4-2002 at 10-30 a.m. The probable time lag between the death and post-mortem was opined to be 18 to 48 hours. No opinion was expressed about the time lag between the sustenance of the injuries and the death and the same was reported to be unascertainable. Appellant Satish Kumar was also got medically examined. Swelling and tenderness on the base of the left thumb on palmer aspect over an area 5 cm x 4 cm was noticed. Appellant complained of the pain in left knee but no external injury was found.

4. P.W. 9 Nirmala Devi, wife of P.W. 3 Jagan Singh, allegedly saw the incident. P.W. 11 Bhuru alias Suresh, a brother of the appellant, was also alleged to have seen the occurrence. Both of them, however, did not support the prosecution version during trial. Deceased appellant and appellant Satish were present in the courtyard of the deceased when P.W. 3 Jagan Singh, P.W. 5 Balwant Singh and P.W. 6 Gurdas Ram reached there on getting the information from P.W. 4, Kanta Devi about the death of Prem Chand. Appellant Satish Kumar, as also deceased appellant Shakuntla, made extra-judicial confession to P.W. 3 Jagan Singh in the presence of P.W. 5 Balwant Singh and P.W. 6 Gurdas Ram. Appellant's plea was that he had no knowledge about the death. He and his deceased mother Shakuntla pleaded that they were not in the house of the deceased on the relevant night as they having been turned out of the house some 14-15 years back, had been living at Shakuntla's brother's place, which is far away from the house of the deceased and thus they had no opportunity of committing the crime. They also pleaded that they could not have gained anything by killing the deceased nor did they have any motive to kill him.

5. Appellants have been convicted on the basis of circumstantial evidence. The circumstances, which have weighed with the trial Court to hold appellant Satish Kumar and his mother Shakuntla guilty are:

(a) appellants and the deceased on inimical terms,

(b) injury found below the thumb on the palmer aspect of the left hand of the accused.

(c) falsity of the plea as to the cause of the injury,

(d) appellants had been living with the deceased for the last three months,

(e) deceased appellant Shakuntla produced clothes of appellant Satish Kumar, which she had washed on the night of the incident and which, according to the report of the Forensic Science Laboratory, bore the stains of human blood,

(f) cries of Prem Chand were heard by P.W. 7 Vikaramjeet and soon thereafter the volume of the record player available in the house of the deceased rose.

6. It has been submitted by the learned Counsel for appellant Satish Kumar that neither the circumstances relied upon by the trial Court to convict the appellants are proved beyond reasonable doubt nor do they make a complete chain. He also submitted that the circumstances, if they be assumed to have been proved, do not lead to one and only one hypothesis that the appellant Satish Kumar and deceased appellant Shakuntla are responsible for causing the death of deceased Prem Chand.

7. First, we proceed to examine the submission whether circumstances relied upon by the trial Court stand fully established or not.

8. Trial Court has found that the appellants were on inimical terms with the deceased and thus there was a motive for the killing of the deceased by them. It has been held by the trial Court that deceased-appellant Shakuntla along with her children, i.e. appellant Satish Kumar, his brother and a sister, had been turned out of the matrimonial home about 13-14 years back and in place of deceased appellant Shakuntla, the deceased had brought another lady, named Amro Devi, whom he kept as his concubine. Another reason of enmity has been held to be the investment of some amount of money by the deceased in the name of a son of Gurdas Ram and this investment was allegedly made because of the deceased having illicit relations with the wife of Gurdas Ram.

9. It is true that deceased appellant Shakuntla Devi and her children had been thrown out of the matrimonial home and she along with her children started living at her brother's place. The fact is proved not only by the evidence adduced by the prosecution but is also stated by the appellants in their statements, u/s 313, Cr.P.C., in answer to Question No. 29. However, this in our considered view could not have been a motive for the killing of the deceased by the appellants. Appellants had been turned out of the matrimonial home long back, i.e. 14-15 years prior to the incident. Therefore, this cannot be said to be a reason for killing the deceased. Not only this, it has been stated by a witness of the prosecution itself, namely P.W. 3 Jagan Singh, that on the day preceding the day on which deceased was found dead, he had seen the deceased and his son Satish walking side by side and talking to each other in a nice manner. This suggests that despite the appellants having been turned out by the deceased from his house their relations were not so bitter that the appellants would have thought of killing him. Furthermore, deceased appellant Shakuntla had filed a petition for claiming maintenance against the deceased and by killing or getting him killed she could not have gained anything. Rather with the death of the deceased she would have lost the chances of getting maintenance from him.

10. Amro Devi was allegedly brought in as a keep by the deceased at the time when Shakuntla, deceased appellant, was turned out. According to the prosecution's own version, at the time when the incident took place Amro Devi

had ceased to reside in the deceased's house and had shifted to her old house situated close to the house of the deceased, per testimony of P.W. 3 Jagan Singh and also P.W. 7 Vikramjeet, a son-in-law of Amro Devi. Now, when Amro Devi had ceased to live in the house of the deceased, the appellants were supposed to have rather Cooled down even if they were angry at some point of time. Thus, the keeping of Amro Devi in his house by the deceased (in the past) could also not have been a motive for the killing of the deceased by the appellants. This could have been a motive at the time when Amro Devi was actually residing at the deceased's place and not when she had ceased to reside there.

11. It was also submitted that deceased Prem Chand deposited certain amount of money and nominated a son of P.W. 6 Gurdas Ram as the person entitled to receive that money and this he did because he was having illicit relations with the wife of P.W. 6 Gurdas Ram. The submission that the deceased was having illicit relations with Gurdas Ram's wife is not borne out from the evidence on record. However, Gurdas Ram has admitted that the deceased had deposited some amount of money and his son was appointed as nominee to receive that money. The proof of this fact alone is not sufficient to prove the allegation that this was the motive for killing the deceased by the appellants. In fact, there is no evidence on record suggesting that the appellants were aware that the deceased had deposited any amount of money and nominated the son of P.W. 6 Gurdas Ram as the person who would be receiving the money in the case of his dying before the maturity of deposit. Thus, it cannot be said that the appellants had any motive to kill the deceased or they were on inimical terms with him.

12. It stands proved by the testimony of P.W. 2 Dr. K. K. Rattan, who conducted medico legal examination of appellant Satish Kumar, on the application Ex. P.W. 2/A submitted by the SHO that this appellant was having swelling and tenderness on the base of the left thumb on the palmer aspect in an area 5 cm x 4 cm with no colour change in the skin and that appellant Satish Kumar told the doctor that he had received the injury in a quarrel with his father. The duration of the injuries, according to P.W. 2 Dr. K. K. Rattan, was within two days. The medical examination was conducted on 5-4-2002 at 6.05 p.m. The incident is alleged to have taken place on the night intervening 3rd and 4th April, 2002 around 11 p.m. Explanation offered by appellant Satish Kumar for the injury, in his statement u/s 313, Cr. P.C. is that he was beaten up by the police and then got medically examined. The doctor on being asked by the prosecution whether the injury could have been sustained by appellant Satish Kumar while hitting someone with a Danda in his hand, stated that it could have been. Learned Additional Advocate General submitted that the doctor's opinion proves that appellant Satish Kumar sustained the injury on the palmer side of the base of the thumb of the left hand while giving beating to his father with a Danda. In the cross-examination, the doctor admitted that the injury could have been sustained as a result of striking with a Danda on the palm. The admission of this suggestion when seen in the light of the explanation of appellant Satish Kumar, as noticed above, indicates that the injury might have been sustained by him on

being beaten up by the Police while in custody. This is particularly so when the injury was only on the palmer side of the left hand and not on any part of the palmer side of the right hand, though the people are generally right-hander. Thus, circumstance (b) does not stand established to the hilt.

13. In view of the finding that the explanation offered by appellant Satish Kumar with regard to the injury found on the palmer aspect of his left hand, it cannot be said that his plea with regard to the cause of injury is false. Hence, circumstance (c) can also not be said to be fully established.

14. The evidence with respect to the allegation that the appellants, including deceased appellant Shakuntla, had been living with the deceased for the last three months, is doubtful. Some of the prosecution witnesses have stated that the appellants had been living with the deceased when the incident took place, some others have stated that they were living at deceased appellant's brother's place, which is at a considerable distance. P.W. 3 Jagan Singh, a brother of the deceased, no doubt stated that the appellants had been living at deceased's place when the incident took place, but at the same time he stated that the appellants had been living at Shakuntla Devi's parents' place. He stated that he had visited the village where the deceased lived on getting the information about the death of his brother Prem Chand, after about one and a half month. In view of this admission, it cannot be said that the witness has any personal knowledge that the appellants were residing at the house of the deceased at the time of the commission of the offence. P.W. 4 Kanta Devi categorically stated that deceased appellant Shakuntla Devi and her sons used to reside at her father's place. To the similar effect is the statement of P.W. 5 Balwant Singh. P.W. 6 Gurdas Ram though stated that at the time of the occurrence the appellants were residing with the deceased, at the same time he stated that he had his residence at a distance of 1 1/2 k.m. He is resident of village Dal whereas the deceased used to live in village Karena.

15. P.W. 7 Vikramjit Singh, a son-in-law, of Amro Devi with whom the deceased was having illicit relations, stated that on the evening of 3rd April, 2002 he went to village Karera where his mother-in-law lives. He further stated that while he was going to the house of his mother-in-law Amro Devi he passed by the house of deceased where Shakuntla, her daughter Santosh and son Satish (appellant) were present and that Shakuntla enquired about his well being and asked her to take tea. The statement of witness cannot be believed without corroboration for a number of reasons. First, he is the son-in-law of Amro Devi with whom deceased Prem Chand was having illicit relations and for maintaining and keeping which relations, deceased had turned deceased appellant Shakuntla out the matrimonial home. Secondly, the statement is self-contradictory. At one stage he says that the daughter of deceased appellant Shakuntla was also there, at another stage he stated that she was not there. Also, he was cross-examined with the leave of the Court by the prosecution, because he did not stick to the entire version given to the Police u/s 161, Cr. P.C. Then he is not a resident of

village Karera.

16. P.W. 8 Jagat Ram categorically stated that deceased appellant Shakuntla along with her children (including appellant Satish Kumar) had been living at her parents' house for the last so many years, because deceased Prem Chand had turned her out of the matrimonial home. There is no reason to disbelieve the testimony of the witness. P.W. 9 Nirmala Devi stated that for the last 12 years the appellants had been living at deceased appellant Shakuntla Devi's parents' place and not with deceased Prem Chand. No witness from village Karera has stated that deceased appellant Shakuntla and appellant Satish Kumar were there in village Karera on the night of 3rd and 4th April, 2002. Only a visitor to the village, who as demonstrated hereinabove, is not trustworthy, has stated that he saw deceased appellant Shakuntla and Satish Kumar appellant at the house of deceased Prem Chand on the evening of 3rd April, 2002. Thus, circumstance (d) can also not be stated to have been proved beyond reasonable doubt.

17. Prosecution examined two witnesses, namely P.W. 8 Jagat Ram and P.W. 22 Jagdish Chand, Inspector/SHO, to prove the production of a pant and a T-shirt, Ex. P-8 and Ex. P-9, respectively, by deceased appellant Shakuntla. P.W. 8 Jagat Ram stated that these clothes were produced by Shakuntla and taken into possession vide Memo. Ex. P.W. 8/B and that she stated that the clothes belonged to Satish and she had washed the same on the night intervening 3rd and 4th April, 2002 to remove the stains of blood. P.W. 22 Inspector Jagdish Chand stated that pant Ex. P-8 and shirt Ex. P-9 were produced by Shakuntla, deceased appellant, and she said that the same belonged to appellant Satish and she had washed them in the night intervening 3rd and 4th April, 2002, as they bore stains of blood. These clothes were sent to the Chemical Examiner, who vide report Ex. PA reported that the same had stains of human blood but on further testing the blood group could not be determined. Prosecution, however, did not lead any evidence to show that the pant Ex. P-8 and shirt Ex. P-9 in fact belong to appellant Satish Kumar. None of the witnesses examined by the prosecution has stated that appellant Satish Kumar was seen wearing the pant and the T-shirt, Ex. P-8 and Ex. P-9, respectively, at any point of time, leave alone on the evening of 3rd April, 2002. Even P.W. 7 Vikramjit, who claimed to have seen appellant Satish Kumar at the house of deceased Prem Chand around 6.30 p.m. on 3rd April, 2002, did not say that appellant Satish Kumar was wearing the aforesaid pant and shirt.

18. Moreover, the story regarding production of clothes by Shakuntla Devi does not inspire confidence. P.W. 8 Jagat Ram stated that Shakuntla Devi had produced the clothes of appellant Satish Kumar as also those of deceased Prem Chand and had stated that she had cleaned those clothes in the night. But, according to the statement of P.W. 21 ASI Jeet Singh, clothes of deceased Prem Chand, i.e. shirt Ex. P-12, Pyjama Ex. P-13, vest Ex. P-14 and underwear Ex. P. 15, had been produced by Suresh Kumar, another son of deceased appellant Shakuntla, on 7-4-2002, and he took the same into possession vide Memo. Ex.

P.W. 13/A. This contradiction makes the story regarding production of clothes, Ex. P-8 and Ex. P-9, by deceased appellant Shakuntla itself doubtful. For the foregoing reasons, circumstance (e) can also not be said to have been satisfactorily proved.

19. As regards circumstance (f), it is only P.W. 7 Vikramjit Singh, a chance witness (who claims to have been present in the house of Amro Devi on the relevant night), who testifies to have heard the cries of the deceased. As already demonstrated, the witness is not believable. Nobody else from the village has come forward to say that the cries of the deceased were heard. In any case, the hearing of the cries of the deceased by P.W. 7 Vikarmjit is not a circumstance connecting the appellants with the killing of deceased Prem Chand.

20. Learned Additional Advocate General submitted that appellant Satish Kumar and deceased appellant Shakuntla Devi had made extra-judicial confession to P.W. 3 Jagan Singh in the presence of P.W. 5 Balwant Singh and P.W. 6 Gurdas Ram. It is only P.W. 3 Jagan Singh, the brother of the deceased, who testified that Shakuntla and appellant Satish Kumar, on being asked as to how Prem Chand had died, stated that they happened to commit the mistake and that they fell on his feet and begged to be pardoned. Three other witnesses do not support him on the point. They have denied that anything of this type happened or that the appellants made any confession. Not only this, Jagan Singh is contradicted by the earliest version on this point. It may be recalled that it was he who made the statement, u/s 154, Cr. P.C. on the basis of which the case was formally registered. This statement was made by him after the appellants allegedly confessed to the commission of the murder. However, in the statement, which is Ex. P.W. not only that there is no mention of this alleged extra-judicial confession but an overall reading of the statement suggests that no such confession was made, because it is recorded in the statement that on enquiry from the villagers the lodger of the report came to know from Makhan Singh and Vikramjit Singh (P.W. 7) that on the previous night the cries (Bachao-Bachao) erupting from the house of Prem Chand were heard and that soon thereafter volume of tape-recorder, which was already playing, had increased. He was duly confronted with this statement, Ex. P.W. 3/A. He could offer no satisfactory explanation for the omission of this material particular in the said statement. Thus, he is contradicted by his own statement, i.e. the statement on which the FIR is founded. Trial Court has also not believed the prosecution plea of extra-judicial confession. For all these reasons, the submission of the learned Additional Advocate General that the appellants made extra-judicial confession is rejected.

21. As a result of the above discussion and findings, we hold that the charge against appellant Satish Kumar and deceased appellant Shakuntla Devi does not stand proved beyond reasonable doubt. Hence, the appeal is accepted, the judgment of the trial Court convicting and sentencing the appellants, including the deceased appellant Shakuntla Devi, for offence under Sections 302 and 201, read with Section 34, IPC, is set aside and the appellants are acquitted.

Appellant Satish Kumar, being in jail, is ordered to be set at liberty forthwith, if his detention is not required in any other case.

22. Appeal stands disposed of.