
(2009) 12 SHI CK 0026
In the High Court Of Himachal Pradesh

Shamsher Ali and Another	Vs	APPELLANT
State of Himachal Pradesh		RESPONDENT

Date of Decision : 14-12-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 279A, 302, 34

Citation : (2009) 12 SHI CK 0026

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

Bench : Division Bench

Judgement

Surjit Singh, J.—Appellants Shamsher Ali and Mohammad Ali, who are real brothers, have preferred this appeal against the judgment dated 30th May, 2009 of learned Additional Sessions Judge, Una, whereby they have been convicted of offence, u/s 302 read with Section 34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 20,000/- each; in default of payment of fine to undergo simple imprisonment for a further period of one year, each.

2. Prosecution case, which led to the trial of the appellants and ultimate conviction and sentence, as aforesaid, may be noticed. Whether reporters of local papers may be allowed to see the judgment? Appellants and another brother of theirs, named Hazrat Ali, are residents of village Takarla. Hazrat Ali, who was also challaned as an accused and tried for offence of murder alongwith the appellants, owned a truck No. HP-72-0579. He had employed deceased (Shukar Deen) to drive that truck.

3. On 23rd February, 2007, a dead body was found lying by the side of the road, in the area of village Brahmpur, falling within the jurisdiction of Police Station Gagret. Dead body was spotted by some residents of the village, who informed PW3 Suman Lata, a ward Panch, who in turn informed PW2 Ram Kumari, Pradhan of the Panchayat. Police was telephonically informed by PW2 Ram Kumari, Pradhan of the Panchayat.

4. ASI Ramesh Chand, Police Post Daulatpur Chowk, examined as PW4, reached the spot on getting telephonic information from PW2 Ram Kumari. He inspected the dead body and the spot. One bag containing one T-shirt and four shirts was found lying beside the dead body. One shoe was there on one of the feet of the dead body and the other was lying at some distance. PW4 ASI Ramesh Chand conducted inquest and filled-in inquest form Ex.PW4/A. Site plan was also prepared, which is Ex.PW4/D. The aforesaid articles, which were found lying on the spot, were taken into possession vide memo Ex.PW2/A.

5. PW4 ASI Ramesh Chand gathered the impression that the deceased had died in a vehicular accident. He drew up a report accordingly and sent the same to SHO, Police Station Gagret, for registration of a case u/s 279 and 304-A of the Indian Penal Code. That report is Ex.PW4/C and on its basis, a case was formally registered. Dead body was sent to zonal hospital, Una for postmortem examination alongwith application Ex.PW4/B. Postmortem was conducted by PW1 Dr. O.P. Ramdev. A number of injuries were found on the dead body. They were in the nature of abrasions, contusions, lacerated wounds. Fracture of ribs of both the sides was noticed. Cause of death was opined to be Haemothorax and Haemoperitonium leading to shock and death. Time lag between the injuries and death was opined to be instantaneous to within two hours and between death and postmortem within 24 hours. Postmortem was conducted on 23rd February, 2007 itself at 4 p.m.

6. Nobody came forward to claim the dead body. Its photographs were taken and made part of the record, for the purpose of identification of the dead body. On 11th March, 2007, Ajit Mohammad (PW7), a brother of the deceased went to the Police Station Amb and informed the police officials present there that his brother Shukar Deen had been missing for the last several days and that the last contact made by him with the deceased was on telephone, when he told him that he should be visiting the village as his matrimonial alliance was to be fixed after showing the girl to him. PW7 Ajit Mohammad was accompanied by his brother-in-law Ramzan Khan (PW10) as also of his brother Mukhtar Mohammad and several other persons. They were shown the photographs of the dead body and the shirts, which were recovered from the bag. Ajit Mohammad (PW7) identified from the photographs and the shirt that the deceased was his missing brother Shukar Deen.

7. Police felt that it appeared to be a case of murder and that the murder had taken place in the area of Police Station Amb, but the dead body had been thrown in the area of village Brahmpur, falling within the jurisdiction of Police Station, Gagret. So a reference was made to the SHO, Police Station Amb to register a case, u/s 302 and 201 read with Section 34 of the Indian Penal Code. Accordingly, case was registered vide FIR Ex.PW23/A at Police Station, Amb. During the course of investigation, both the appellants and their brother Hazrat Ali, the owner of the truck with whom the deceased was employed, were arrested. Investigation indicated that the deceased was last seen with the

appellants and Hazrat Ali on 22nd February, 2007 by PW14 Ramesh Chand, who runs a Dhaba in village Takarla, where appellants and their brother Hazrat Ali had their residences. Appellant Shamsheer Ali made a disclosure statement leading to the discovery of a Danda Ex.P2. Mohammad Ali appellant made a disclosure statement, which led to the discovery of a Bicycle wheel Ex.P3. Hazrat Ali made a disclosure statement, which led to the discovery of ignition key of the truck, a mobile phone, driving licence and a note book. Appellant Shamsheer Ali also produced his shirt Ex.P19 (according to testimony of PW10 Ramzan Khan) and Ex.P18 (according to testimony of PW24 S.I. Om Parkash).

8. Truck, on which the deceased was employed as driver by Hazrat Ali, an accomplice of the appellants, was taken into possession on 13th March, 2007 and the covers of its seat were taken into possession on 17th March, 2007. Before taking into possession the seat covers of the truck, some blood stains were scrapped and taken into possession from the rain shelter, near the site where the dead body was found, by PW24 S.I. Om Parkash. This was done on 16th March, 2007.

9. Danda Ex.P2, Bicycle wheel Ex.P3, shirt of Shamsheer Ali Ex. P18 or P19, blood scrapped from rain shelter on 16th March, 2007 and the shirts of the deceased recovered from the bag, found lying near the dead body were sent to the Chemical Examiner, who vide report Ex.PW25/A found human blood of Group-B on two shirts of the deceased, as also the bag in which those shirts were contained, cycle wheel Ex.P3, shirt of Shamsheer Ali Ex.P18 or P19 and two seat covers of the truck Ex.P14. He also noticed stains of human blood on T-Shirt recovered from the bag lying near the dead body and the shoes of the deceased, but their blood group could not be ascertained.

10. Appellants and their brother Hazrat Ali were charged with offences under Sections 302 and 201 read with Section 34 of the Indian Penal Code. They pleaded not guilty and claimed trial. Therefore, they were tried.

11. Prosecution examined a large number of witnesses. Appellants and their brother Hazrat Ali, in their statements, u/s 313 of the Code of Criminal Procedure, denied that they had anything to do with the death of Shukar Deen. Shamsheer Ali and Mohammad Ali denied that they had made any disclosure statements during the investigation and got discovered the blood stained danda Ex.P2 and Bicycle wheel Ex.P3. Shamsheer Ali appellant denied that he produced his shirt or that the shirt on which the blood stains were found belongs to him.

12. Trial Court believed the prosecution evidence, convicted and sentenced the appellants, as aforesaid. Their brother Hazrat Ali, with whom the deceased was employed, was however acquitted. State has not filed any appeal against the acquittal of Hazrat Ali. However, appellants have challenged their conviction and sentence.

13. We have gone through the record and heard the learned Counsel for the appellants as also the learned Additional Advocate General, representing the

State/respondent.

14. PW14 Ramesh Chand, who according to the prosecution had last seen the deceased in the company of the appellants and their brother Hazrat Ali, did not support the prosecution version. He denied that he had seen the deceased in the company of the appellant on or about 22nd February, 2007. Therefore, the prosecution story that the deceased was last seen in the company of the appellants does not stand established.

15. As regards recovery of danda Ex.P2 and bicycle wheel Ex.P3 bearing stains of human blood of Group-B, which group is similar to the stains of blood found on the clothes of the deceased as also the blood scrapped from the rain shelter on 16th March, 2007, PW9 Suresh Kumar though testified that disclosure statements made by Shamsher Ali with respect to danda Ex.P2 and Mohammad Ali with respect to bicycle wheel Ex.P3, were reduced into writing vide memo Exts.PW9/A and PW9/B, respectively and his testimony to this effect was not subjected to cross-examination, yet the recovery of the aforesaid two objects at the instance of the appellants does not stand proved.

16. PW10 Ramzan Khan, in whose presence the recoveries were allegedly effected, pursuant to the aforesaid statements Exts.PW9/A and PW9/B, testified that the accused (s) had taken the police and him (the witness) to their house and got recovered danda from the roof of a thatched cowshed. But he did not name, which particular accused (out of the three) got the danda, Ex.P2, recovered. Therefore, the recovery cannot be said to be at the instance of appellant Shamsher Ali nor is it connect with his disclosure statement Ex.PW9/A.

17. So far as the recovery of cycle wheel Ex.P3, is concerned, PW10 Ramzan Khan stated that this wheel was got recovered by Shamsher Ali. However, according to the prosecution story and the testimony of the Investigation Officer, namely PW24 S.I. Om Parkash, wheel Ex.P3 was got discovered by appellant Mohammad Ali, in accordance with his disclosure statement Ex.PW9/B. Thus, the recovery of danda Ex.P2 and wheel Ex.P3 cannot be said to have been effected at the instance of the appellants. Otherwise also, these two objects were recovered from the places, which were accessible to anybody. Cowshed did not have any boundary and the danda was recovered from its thatched roof and the rim was found lying by the side of a wall. The witness further stated that the danda and the rim had not been sealed on the spot and were taken to the Police Station unsealed.

18. So far as presence of human blood of "B" group on shirt of appellant Shamsher Ali is concerned, prosecution did not examine any witness to get it proved that shirt in fact belongs to appellant Shamsher Ali. None of the witnesses examined by the prosecution stated that appellant Shamsher Ali was seen wearing the shirt or that it belongs to him. It is not the case of the prosecution that the appellant was wearing the shirt at the time when he was arrested and he was made to remove the same. Also, there is a doubt about the

identity of the shirt that was allegedly produced by Shamsheer Ali, appellant. PW11 Vijay Kumar stated that shirt Ex.P19 had not been produced by appellant, but PW24 SI Om Parkash stated that it was Ex.P18.

19. Coming to the stains of human blood on the seat covers of the truck, it may stated the truck itself had been taken into possession on 13.3.2007 vide memo Ex.PW11/B alongwith its R.C., route permit, national permit, insurance certificate, log book and inspection note-book. There is a mention in the memo that on inspection of the cabin of the truck, some stains of blood were spotted on the back of driver's seat. This mention is apparently interpolated. First of all, this portion is written in Ex.PW11/B in a different ink. Ink is similar to the ink used in preparing another memo Ex.PW11/C which is dated 17.3.2007, by which the covers of the seat were removed and taken into possession. Ex.PW11/C was prepared a day after dried blood was scrapped and taken into possession from rain shelter, per report Ex.PW25/B prepared by team of forensic experts.

20. Now when the stains of blood had been spotted on the back of driver's seat in the cabin of the truck on 13th March, 2007 as mentioned in memo Ext.11/B, its covers should have been taken into possession and sealed on that very day. Non-seizure of covers on 13th March, 2007 and the fact of noticing the blood stains on the back of driver's seat having been interpolated in memo Ex.PW11/B, using the same pen and ink as was used in preparing the memo of seizure of seat cover Ex.PW11/C on 17th March, 2007, clearly establish that the police has done padding. Also, we have noticed that a team of forensic experts had examined the spot as also the truck and its cabin on 16th March, 2007. They prepared report Ex.PW25/B. The report has been proved by PW25 Gian Thakur, one of the members of the team. There is no mention in the report that any stains of blood were spotted on the covers of the seat, in the driver's cabin of the truck.

21. There is no other evidence adduced by the prosecution to connect the appellants with the crime.

22. In view of the above stated position, we are of the considered view that there is no evidence to link the appellants with the commission of the crime. Therefore, the appeal is accepted, judgment of the trial court dated 30th May, 2009, convicting and sentencing the appellants of offence of murder, u/s 302, read with Section 34 of the Indian Penal Code, is set-aside and the appellants are acquitted.

23. Appellants, being in jail, serving the sentence awarded by the trial Court, are ordered to be released, at once, in case their custody is not required in any other case.