

(1973) 08 SHI CK 0005
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 50 of 1972

Shri Ghambo alias Ghanshyam

APPELLANT

Vs

The State of Himachal Pradesh

RESPONDENT

Date of Decision : 09-08-1973

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 162
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 302

Citation : (1973) 2 ILR HP 721

Hon'ble Judges : H.C.P. Tripathi, J; D.B. Lal, J

Bench : Division Bench

Advocate : M.G. Chitkara, for the Appellant; B. Sita Ram, General, for the Respondent

Final Decision : Allowed

Judgement

H.C.P. Tripathi, J.—Appellant Ghambo alias Ghanshyam has been convicted by the learned Additional Sessions Judge, Kangra Sessions Division at Dharamsala, of an offence u/s 302 I.P.C. and sentenced to undergo imprisonment for life and to pay a fine of Rs. 500. In default of payment of fine Appellant has been directed to undergo simple imprisonment for one month only. Ghambo has come up in appeal against his conviction and sentence.

2. The prosecution story in brief is as follows:

The victim Ganga Dhar, a carpenter by profession was a resident of village Kaunsal. His wife had pre-deceased him. His only son Milkhi Ram (PW. 11) was residing at Kulu where he was running a furniture shop. Ganga Dhar was living alone in his house. He was to celebrate the marriage of his son on the 3rd of Baisakh which corresponds to 16th or 17th of April, 1971. On 5th February, 1971, Shri Prabhdyal came to the house of Ganga Dhar in village Konsal to find out if he had prepared the windows and ventilators wanted by him. He called for Ganga Dhar but there was no response. Prabhdyal noticed someone lying on a

cot inside the house. He suspected foul play and informed Saran Dass a relation of Ganga Dhar. Saran Dass accompanied Prabhdayat to the house of Ganga Dhar and they found him lying dead in a pool of blood with multiple injuries on his person. Saran Dass sent a telephonic message to Milkhi Ram and a telegram to Balam Ram informing them about the incident. After waiting for their arrival for sometime, Saran Dass handed over a written report to Sub-Inspector Bakshi Ram to the effect that the dead-body of Ganga Dhar was lying in his house with multiple injuries on his person. On the basis of this report a case was registered and investigation followed.

3. Sub-Inspector Bakshi Ram (PW-13) sent the report to Police Station, Palampur for the registration of the case and arrived in the village in the evening of 5th February, 1971. He found the dead body of Ganga Dhar lying on a cot in a room of his house and after preparing the inquest report on 6-2-1972 sent the dead-body for post-mortem examination. On the same day, he handed over the investigation of the case to Sub-Inspector Janki Dass.

4. The post-mortem examination on the dead-body of Ganga Dhar was conducted by Dr. R. Chandra, Lady Medical Officer, Civil Hospital, Palampur on 7th February, 1971. The dead-body was identified by Balam Ram, brother of the victim. Twenty-three external injuries having been caused by blunt and sharp weapons were found on the dead-body. On internal examination brain and spinal cord were found congested at the occipital region. Third rib on the left and 9th and 10th in front and the pleurae were found fractured. In medical opinion death was due to the injuries on the chest, neck and skull and its probable duration was 30 to 40 hours.

5. Sub-Inspector Janki Dass inspected the spol and prepared the site plan. He found blood splashed on the earth near the dead-body and took sample of the same. He arrested Ghambo on 13th March, 1971. (Although the Sessions Judge has erroneously mentioned the date as 14-3-1971). On 27th March, 1971 he recorded the statement of the Appellant u/s 27 of the Evidence Act in which Appellant is alleged to have agreed to recover certain items of the stolen property which he had kept concealed. Accordingly on the same day, according to the prosecution at the instance of the Appellant two pieces of silver ornaments, namely, a silver Chakk and a pair of pajaib were recovered from a pallia which had been kept concealed in the eastern corner of the Bohr of the rice husking machine of one Sukh Ram in village Mandhol which is the residential village of the Appellant and which is at a distance about half a mile from the village Kaunsal. Milkhi Ram the son of the deceased and Sant Ram (PW 18) were accompanying Sub-Inspector Janki Dass at the time of the recovery of the aforesaid articles. Milkhi Ram identified at the spot the recovered ornaments as belonging to his father which had been stolen away from his house and Sant Ram stated that the palila belonged to him which had been borrowed by the Appellant sometime before with a promise to return. It may be noticed here that in the report lodged by Saran Dass (PW 3) there was no mention of any stolen

property from the house of the deceased. However, Milkhi Ram in his statement has deposed that when he came to his house he found one golden balu, a pair of silver lokas, a pair of silver pajaibs and a silver chakk and one tawi had been stolen from his house. According to him a sum of Rs. 7,000 had also been removed and he had furnished a list Ex. PW-II/A of the aforesaid articles and the cash to the investigating officer. Ex. PW-11/A does not bear any date and neither Milkhi Ram nor anyone of the two Sub-Inspectors has stated as to on what date this list was submitted by Milkhi Ram to anyone of them.

6. On completion of investigation the Appellant was sent up for trial. At the trial Appellant pleaded not guilty and stated to have been falsely implicated in the case at the instance of the local police who bore enmity towards him. He denied to have had any connection with the murder of Ganga Dhar or that certain pieces of ornaments were recovered at his instance. He also denied to have made any statement to the police indicating that he was prepared to make discovery of the stolen articles. He examined three witnesses, namely, Hoshiar Singh, Sukh Ram and Sant Ram M.L.A. in his defence.

7. Hoshiar Singh (DW-1) stated that the police had come to the rice husking machine of Sukh Ram in the village accompanied by the accused but he had not seen any articles being recovered there. Similar is the statement of Sukh Ram who is the owner of the rice husking machine from where the stolen articles are alleged to have been recovered. Sant Ram (DVV-3) stated that Ghanshyam accused was known to him and his family was good.

8. The medical evidence in the case leaves no room for doubt that Ganga Dhar met his death by violence. There is, however, no eye-witness to the murder. The prosecution case against the Appellant is based entirely on circumstantial evidence.

9. Law relating to circumstantial evidence is well-settled. Firstly, the circumstances relied upon must be established by unimpeachable evidence. Secondly, the chain of incriminating circumstances should be so complete as to leave no room for doubt that it is the [accused and the accused alone who is responsible for the commission of the crime.

10. Having heard the learned Counsel for the Appellant and the State we are of the opinion that the prosecution story bristles with improbability, the evidence furnished in support of the same is wholly unreliable and the prosecution has failed to bring the charge home to the Appellant.

11. The prosecution evidence against the Appellant can be categorized as follows:

(1) Appellant was seen coming out of the house of the deceased at about 3.00 A.M. or 4.00 A.M. on the same date immediately prior to the discovery of his dead-body by the villagers. Tin's has been testified by Gian Chand (PW-4).

(2) Appellant was seen immediately prior to and after the discovery of the dead-body of the victim present in village Kaunsal. This has been testified by Duni

Chand (PW-5), Durga Parshad (PVV-7) and Marfan Lal (PW-12).

(3) At the instance of the Appellant a silver chakk and a pair of silver pajaibs which had been stolen from the house of the deceased were recovered from a palila kept concealed in the Bohr of the rice husking machine of one Sukh Ram in the residential village of (he Appellant. This has been testified by Man gat Ram (PW-8), Vijay Chand (PW-17) and Sub-Inspector Janki Dass (PVV-21). (1) Appellant had made a statement to the Sub-Inspector Janki Dass to discover the stolen properly as has been testified by him and Shri Om Parkash (PW-19) and Shri Lajpat Rai (PW-20).

12. We now proceed to critically examine the aofresaid evidence in serial order.

13. Gian Chand (PW-4) has testified that on 22nd of Magh which corresponds to 5th of February, 1971, he got up from the bed in the small hours of the morning at about 3 or 4 A.M. and saw Ghambo coining out from the house of the deceased. The witness flashed his torch on him and addressed him "Ghamboo Too Hai". But Ghambo did not respond and went downwards in haste. On the same day at about 6 or 7 A.M. when the witness had gone one furlong or half a furlong beyond his house he saw Ghambo accused hiding in a bush. Ghambo called him and enquired of the witness as to where he was going. The witness informed him that he was proceeding to attend a Jagra at the house of Ranu a resident of Sansai village. According to the witness Ghambo, at that time, had a Sota and again said, he had a Baint with him. If the testimony furnished by this witness is believed it no doubt provides an incriminating circumstance against the Appellant. But the story put forward by this witness is so fantastic that it is difficult to give any credence to it. It is difficult to believe that the Appellant after having committed the murder of the deceased and having been noticed coming out of his house by this witness would, instead of making himself scarce from the locality conceal himself in a bush nearby waiting for the witness to come in the day at 6.00 or 7.00 A.M. so that the Appellant may interrogate him. It is further incredible that if the Appellant was foolish enough to conceal himself in a nearby bush in the same village, he will himself attract the attention of that person who had seen him coming out of the house of the deceased immediately after his murder. There is intrinsic evidenced in the statement of this witness that he is not speaking the truth. It will be noticed that the witness was examined on 21-8-1972 and before him Dr. R. Chandra who had performed the post-mortem examination was examined as a witness on the same date. The doctor had stated that some of the injuries found on the person of the deceased could have been inflicted by a Baint (cane). This witness first stated that when Ghambo had accosted him from the bush he was carrying a Sota. The witness, however, corrected himself immediately thereafter that Ghambo did not have a Sota but had a Baint (cane) with him at that time. We have no doubt that the witness made this improvement in order to make his statement consistent with the medical evidence. We are satisfied that the testimony furnished by this witness is wholly untrue.

14. Duni Chand has stated that on the 5th February, 1971 when he was going to village Sansai at about 8.00 A.M. or 8.30 A.M. and had proceeded about 400 or 500 yards beyond his house he saw Ghambo and one other person coming from the side of the village Mahakal towards Kaunsal village and when he returned home at about 8.00 P.M. he learnt about the murder of Ganga Dhar. According to this witness he saw Ghambo a day earlier in village Kaunsal at about 4.00 P.M. or 4.30 P.M. and again at about 9.00 P.M. or 10.00 P.M. but he had no talk with Ghambo. The witness added further that the residential village of Ghambo was at a distance of about half a mile from Kaunsal and due to the nearness of the said village people from the two villages frequently visit one another. Durga Parshad (PW-7) has testified that on 5th February, 1971 he had seen Ghambo at the shop of Madan Lal in village Kaunsal in the afternoon purchasing some grams, one packet of cigrattes, one match-box and one bundle of Bidies. Madan Lal (PW-12) has corroborated Durga Parshad and has added further that he had seen Ghambo in the village on the same day at about 8.00 or 9.00 A.M. These witnesses, in our opinion, have given false evidence. It is impossible to believe that a person who is a resident of another village, after having committed murder and theft during the night will parade himself near about the scene of the occurrence to be identified by the persons in the village who had already discovered the commission of the murder. We have no hesitation in rejecting the evidence furnished by these witnesses.

15. Mangat Ram (PW-8) and Vijay Chand (PW-17) have testified to the recovery of one silver Chakk, and a pair of silver Pajaibs from a Patila from the Bohr of the rice busking machine of one Sukh Ram in village Mandhol at the pointing out of the accused and that they had signed the recovery memo. Ex. PW-8/B. Mangat Ram has stated that Milkhi Ram son of Ganga Dhar deceased had identified the Chakk and Pajaibs as belonging to his father at that very time and Sant Ram had identified the Patila with Dakhan Ex. P-13 to be his. Sub-Inspector Janki Dass has also stated that the aforesaid articles were recovered at the pointing out of the accused and Shri Milkhi Ram immediately after the recovery of the Chakk and Pajaibs said that they were of his mother and Patila and Dhakan were identified by Sant Ram to be his. It is thus obvious that when Sub-Inspector Janki Dass managed to recover the aforesaid articles he was accompanied by Milkhi Ram son of the deceased and also by Sant Ram (PW-18). The presence of Milkhi Ram and Sant Ram at the time of the alleged recovery of the articles has its own talc to tell. How could Sant Ram, unless he was possessed of a power of clairvoyance, know that the Patila which he had lent to the accused sometime back would be recovered from the Bohr of the rice husking machine of Sukh Ram of village Mandhol and, therefore, he should be there to identify it. As regards the identification made by Milkhi Ram it had to be stated only to be rejected as wholly inadmissible in evidence being hit by Section 162 of the Code of Criminal Procedure.

16. The identification evidence furnished by Milkhi Ram in Court, does not inspire confidence on two grounds. Firstly, no identification test was held in respect of

these ornaments after mixing them with a number of similar ornaments and it was very easy, therefore, for Milkhi Ram to say that the ornaments belonged to him. Secondly, the list of the property stolen from the house does not bear any date and neither Milkhi Ram nor Sub-Inspector concerned state the date on which it was given to the police. There is force in the contention of the learned Counsel for the defence, that in all probability the list was furnished to the investigating officer not before the recovery of the ornaments but afterwards. Be that as it may, it is obvious that no importance can be attached to the identification of these ordinary pieces of silver ornaments which can be had in any home, by Milkhi Ram in the absence of a test identification parade which was not conducted in respect of them. The same criticism applies to the testimony of Sant Ram in respect of the Pallia. Moreover, the Patila had not been removed from the house of the victim. That being so, his evidence is wholly irrelevant for the purpose of this case.

17. To sum up, we find that none of the circumstances alleged against the Appellant has been established by cogent and reliable evidence.

18. In the result this appeal is allowed. The conviction and sentences of the Appellant are set aside. Appellant is in jail. He shall be released forthwith unless he is required in connection with some other case.

D.B. Lal, J.

19. I agree.