

(1989) 05 SHI CK 0031

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 88 of 1986

Shri Naresh Kumar

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 15-05-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 201, 304, 34

Citation : (1989) 2 ShimLC 165

Hon'ble Judges : Bhawani Singh, J

Bench : Single Bench

Advocate : M.G. Chitkara, for the Appellant; M.S. Guleria, Asstt. A.G., for the Respondent

Judgement

Bhawani Singh, J.—These two appeals (Criminal Appeal No. 81 of 1986 Naresh Kumar v. State and Criminal Appeal No. 88 of 1986 Prem Dutt and Ors. v. State, arise out of the judgment of the Sessions Judge, Solan and Sirmaur districts in case No. 6-N/7 of 1986 decided on 30-9-1986 whereby accused Naresh Kumar and Madan Pal were convicted u/s 201/34 of the Indian Penal Code and Prem Dutt and Sukhdarshan Singh u/s 304-Part II read with Section 34 I.P.C. They were also convicted u/s 201/34 of the Indian Penal Code. In case of the Appellant Naresh Kumar and Madan Pal, the sentence awarded was one years rigorous imprisonment and a fine of Rs. 1,000 each and in default of payment of fine to undergo further imprisonment for six months. Appellants Prem Dutt and Sukhdarshan Singh were sentenced to undergo rigorous imprisonment for eight years and to pay a fine of Rs. 2,000 each and in default of payment of fine to undergo further imprisonment for one year. They were also to undergo rigorous imprisonment for one year and a fine of Rs. 1,000 each and in default of payment thereof to undergo six months" imprisonment u/s 201/34 of the Indian Penal Code. They feel aggrieved by this judgment. However, they have filed two appeals. Both these appeals are being taken up together for decision by a common judgment.

2. The prosecution case, in brief, is that Kumari Kamlesh (P. W. 2) is the sister of Prem Dutt and Sukhdarshan Singh accused. She had developed some intimacy with the deceased Lachhman Singh. This fact was known to these accused. On 1-2-1986 she had gone out of her house without telling anyone and her brothers apprehended that she had gone to see the deceased. They called the deceased to their house, a quarrel developed between them as to the whereabouts of Kumari Kamlesh during which these accused hit the deceased with an iron pipe and an axe. The deceased died at the spot and in order to terminate this evidence, these accused alongwith Naresh Kumar, Madan Pal Appellants and Maina Devi, Fulma Devi, Surma Devi and Sawnu Ram (Acquitted by the trial court) concealed the dead body. Therefore, they were charged for committing an offence u/s 304-Part-II/34 and Section 201/34 of the I.P.C. Accused Naresh Kumar and Madan Pal were charged u/s 201/34 of the Indian Penal Code. The defence of the accused is denial of the allegations. The accused have produced Khiali Ram (DW-1) in their defence.

3. Shri M. G. Chitkara, learned Counsel appearing for the accused has strenuously urged that the judgment of the trial court deserves to be set aside as the same is not based on legal evidence. Further it is contended that whatever evidence is on record of this case, the same is not worthy of credence besides being insufficient to record a finding of guilt against his clients. On the other hand, Sh. M. S. Guleria, Asstt. Advocate General, argued that the offence has been clearly established against the accused and the conviction is legally sustainable. In order to appreciate the rival contentions of the Counsel appearing for the parties, it is desirable to scan the evidence on the record.

4. Kumari Kamlesh (PW-2) knew the deceased. She states that the deceased was on visiting terms at their house. She was informed by someone that Lachhman Singh had been murdered by somebody. She further states that her parents and brothers never doubted that she had any illicit relations with Lachhman Singh. She used to consider the deceased as her brother and he was god brother of her real brother. Sh. Mehar Chand (PW-3) states that while he had gone to Bagthan for the purchase of hides he met Mata Din who has a cobbler's shop at Bagthan and Roshni Devi, a relation of Mata Din. They came across accused Prem Dutt on the way. Accused Prem Dutt invited them for tea at his house and they went there. At this time Prem Dutt, Sawnu Ram (his father) and Madan Pal were there. Another boy, he refers to Naresh Kumar Appellant, was also present there. Sawnu Ram informed that his daughter Kumari Kamlesh was missing. On this Prem Dutt and Naresh Kumar went in search of her. They come after some time and brought the deceased there. The deceased was asked to bring Kumari Kamlesh but the deceased denied having any knowledge about her. Prem Dutt then hit Lachhman Singh. Both grappled with each other and came into the compound. Prem Dutt called Sukhdarshan who came there with Phunkna (it is a sort of pipe used to inflame fire in the hearth). He gave a blow on the head of the deceased with this Phunkna as a result of which the deceased fell down. Prem Dutt took the Phunkna from Sukhdarshan and Sukhdarshan took up an axe

and both of them gave repeated blows of Phunkna and axe on the person of the deceased. Sukhdarshan Singh gave an axe blow on the back side of the head of the deceased who died at the spot. The injuries were bleeding. The dead body was taken from the place of occurrence towards Bagthan by Prem Dutt, Sukhdarshan Singh, Naresh Kumar and Madan Pal. In cross-examination he stated that he did not disclose to anyone that the murder had taken place in his presence and no reason can be assigned for this. He denied that the murder had not taken place in his presence. He further states that the axe blows were given from the blunt side of the same although he cannot tell the number of blows and the same were given on the head of the deceased and other parts of the body including legs. Blows of Phunkna were also given on the entire body. He did not raise any alarm due to fear. He went away from the place of occurrence out of fear. At the time they were going, the accused were talking about lifting the dead body from that place.

5. Mata Din (PW-4) is another witness cited by the prosecution. He has been declared hostile. He admits going to the house of the accused along-with Mehar Chand (PW-3) and Roshni Devi at the invitation of Prem Dutt. He supports PW-3, Mehar Chand, as to the presence of female members and the deceased in the house of the accused. He, however, denies the occurrence. On being cross-examined by the prosecution he first denies the suggestion of the prosecution about the quarrel having taken place between Prem Dutt and the deceased in his presence but states that the quarrel had just started when he left. Next morning he came to know that Lachhman Singh had died. He did not see the dead body nor he asked the accused as to what had happened. He further states that Mehar Chand (PW-3) had remained at the house of the accused for sometime even after his departure from that place. He further states that Mehar Chand did not tell him anything about the occurrence. He states that out of fear of the Police, he stated that Lachhman was killed by the accused Prem Dutt and Sukhdarshan Singh in his presence and his statement Ex. PW-4/A, although made to the Police, was due to fear. The statement he was giving in the Court was the correct one. He states that Prem Dutt and deceased Lachhman Singh were having cordial relations and Prem Dutt used to call the deceased his brother.

6. Sh. Meen Singh (PW-5) states that Sawnu Ram (father of the accused Prem Dutt and Sukhdarshan Singh) told him that some quarrel was taking place at his house and the deceased was beating his son and requested him to intervene but it was not disclosed that Lachhman Singh had been beaten to death (which he had stated u/s 161 Code of Criminal Procedure). This witness was also declared hostile and on cross-examination by the prosecution he states that Sawnu Ram came to him at about 8.30-9.00 at night and stated that his son and the deceased went towards the bridge while quarreling. He admits further that Sawnu Ram had told him that the deceased was lying at the bridge and asked him to accompany. He informed Sambhu Ram (PW-6) on telephone No. 20 that Sawnu Ram had informed him that Lachhman Singh Chaukidar was lying at the bridge and that this information be given to farm people. He also states that

Sawnu Ram informed him that the quarrel had taken place on account of his daughter.

7. Dr. Anil Kapur (PW-8) confirm? that he received message from Sambhu Ram (PW-6) that Lachhman had a quarrel at the bridge and he was lying there. He also informed that in case Lachhman Singh was not found at the bridge, Sawnu Ram be then contacted After receiving this message at 9.00 P. M. he alongwith Dr. Pardeep, Hoshiar Singh, Hira Singh and Bhim Bahadur went to the bridge. A Chappal and some blood was found in the centre of the bridge but Lachhman Singh was not there. On the way towards the house of Sawnu Ram. blood drops were noticed and enquired about Sawnu Ram. There Prem Dutt informed them that Sawnu Ram had gone to the house of one Love Parmar and that the deceased had not come there. They were also informed by him that his sister was missing since evening. They come to the house of Love Parmar where Meen Singh informed that Sawnu Ram had left by the side. While coming back from the house of Sawnu Ram when they searched for Lachhman Singh, his body was found in a Nallah. His head was covered with a Chaddar which had blood stains and it appeared that injuries were there on his head. Hoshiar Singh made a report to the Police.

8. Sh. Hoshiar Singh (PW-9) also confirms the statement of Dr Anil Kapur (PW-8).

9. Sh. Sirmoor Singh (PW-10) is a recovery witness to a small knife (Ex. P-8) with blood stains found in the pocket of the deceased (Memo. Ex. P-H). Two blood stained stones were taken into possession (vide Memo Ex. P-J) from the place where the dead body was lying. The stones are Ex. P-9 and Ex. P-10. Chappal (Ex. P-11) was taken into possession vide memo Ex. P-K. He further states that some blood stains were there on the bridge also. The Police party went to the house of Sawnu Ram where they noticed that the compound of the house of the accused had been covered with a layer of fresh cow dung. Some blood stains were also seen on the compound. The blood stained earth was taken into possession by the Police vide Memo Ex. P.L and the same is Ex P-12. The axe with some light blood stains was taken into possession from the house vide recovery memo Ex. P-M and the same was sketched and sealed (Ex. P-1). Some maize and wheat lying in the compound was also taken into possession vide Memo Ex. P-N. All these articles were sealed and handed over to him.

10. The other witness of recovery with him was Ranbir Singh (not examined). He further states that he was witness to the recovery of shirt, Pajama, Phunkna and Chappal in pursuance of the statement of Sukhdarshan Singh (Ex. P-O). Statement was given by Prem Dutt under Police custody which led to the recovery of Shirt, Pajama and torch in his residential house. He was witness to other recoveries made by the Police during the course of the investigation. He further states that the deceased had a reputation of picking up quarrels although he never saw him quarreling with anybody. The deceased had some quarrel with Pratap Singh who was working in the from about which he had heard.

11. Dr. Mohinder Kumar Sharma (PW-1) conducted the post-mortem examination on 3-2-1986 at 11.00 a.m. and notice the following injuries;-

I. External Appearance. Condition of Subject: Stout rigor mortis well developed Post-mortem lividity well developed on back. Cornea hazy and sunken. Pupils well dilated and fixed, clothes torn at places and soiled with blood and mud. A piece of white glass and some glass particles are present inside underwear (Katchha).

Wounds, bruises, (1) A lacerated wound 2-1/2" X 1/2" situ- Position, size, nature. ated 5" above left ear on the scalp outer flap of scalp separated 1-1/2" in breadth from skull.

(2) A bruise brownish in colour just above the outer and of right eye brow size 2" X 1-1/2" and an abrasion 1" x 1/3" situated in the middle of bruise.

(3) A bruise 2-1/2 " x 2" situated just below and lateral to the outer angle of right eye.

(4) Two lacerated wounds 1/2" apart each, other outer one 1" x 1/4" in size and inner 2" x 1/3" in the size situated on upper lid and adjoining skin at the outer angle of right eye.

(5) A bruise 2" x 1-1/2" brownish in colour situated at the anterior surface of the right shoulder.

(6) A bruise 5" x 4" situated in the middle of chest on anterior aspect 2" below nipple level.

(7) An abrasion 1/2" x 1/2" situated at the prominence of anterior superior iliac spine.

(8) Multiple small abrasion in the left Iliac region. (9) Multiple small abrasion and bruises on the back.

(10) A lacerated wound 1/2" x 1/3" situated on chin.II. Cranium and Spinal Cord : Scalp and vertebrae : 1. Injures to scalp already described. 2. Communicated depressed fracture of parietal frontal and temporal bones left side 2" above left ear in area of 2" x 3". 3. Depressed fracture frontal bone Rt. side and fracture base of skull Rt. frontal bone involving cribriform plate. Membranes-Brain : Membranes torn at places due to injuries No. 2 and 3 to skull. Brain lacerated-Frontal lobe on right side and parietal lobe on left side. Spinal Cord: Not dissected III. Thorax : IV. Abdomen : V. Muscles, Bones, Joints : Injury; Nil Disease or Nil deformity : FRACTURE : Fracture zygomatic arch, Rt. side. Fracture Neck of mandible right side and separation of mandibles at symphysis Mandibuli.

Probable time that elapsed Time between injury to brain and death is between

(a) Between injury and 5 to 10 minutes death; (b) Between death and post 24 to 48 hours, mortem. VI. Opinion of the Medical Officer :

In my opinion death was due to laceration of brain leading to coma and death.

He further opined that the brain injuries found on the person of the deceased were sufficient in the ordinary course to cause the death.

12. The conclusion which can be arrived at from the examination and assessment of the evidence on record can be summarised thus:

The deceased is well known to the family. He knows Kumari Kamlesh (PW-2) very well. His relationship with her is doubted by her brothers. She is missing from her family's house. Everyone is worried. They suspect the involvement of the deceased. The presence of Mehar Chand (PW-3), Mata Din (PW-4), Naresh Kumar, Madan Pal, Sawnu Ram, Surma Devi, Phulma Devi and Maina Devi at the house is established. Presence of the deceased and the accused is also established. There is clear cut evidence as to the quarrel between Prem Dutt, Sukhdarshan Singh and the deceased wherein the deceased also appears to have played a part, The injuries caused to the deceased are established and have been opined by the Medical Officer to be sufficient in the ordinary course of nature to cause the death. However, all of them cannot be considered to be very serious and dangerous. Injuries No. 2 and 3 appear to have caused the death of the deceased. Looking to the nature of the injuries, it cannot be exactly said that the axe in question was used although the use of Phunkna cannot be eliminated. The accused, therefore, cannot, in these circumstances and on the evidence on the record, be held to have taken undue advantage of their being more in number as compared to the deceased. Only two brothers-Prem Dutt and Sukhdarshan Singh appear to have taken part while others did not help these two brothers in beating the deceased. The occasion for the quarrel cannot also be considered to be baseless. Therefore, in these circumstances, I confirm the conclusion of the learned trial court that an offence u/s 304 Part II has been committed by the accused Prem Dutt and Sukhdarshan Singh.

13. The other aspect of the case relates to the involvement of Naresh Kumar, Madan Pal (Appellants) and Maina Devi, Phulma Devi, Surma Devi and Sawnu Ram for offence u/s 201/34 IPC. Evidence on this aspect is quite weak and unconvincing. Their exact role has neither been defined nor established. Rather, the presence of Naresh Kumar and Madan Pal at the house of the accused is doubtful. The covering of blood stains on the floor with cow dung has been assumed. There is no exact evidence to indicate that this act was actually done by them with intention to conceal the evidence. The case of Sawnu Ram is also similar. I confirm the findings of the trial court insofar as they relate to Maina Devi, Surmi Devi, Phulma Devi and Sawnu Ram. However, the trial court has gone wrong regarding the involvement of Naresh Kumar and Madan Pal.

14. However, it is established that the deceased fell dead at the house of the accused due to beatings given to him and his body was taken to the Nallah through the bridge and participants in this act appear to be only Prem Dutt and Sukhdarshan Singh. Their conviction under Sections 304 Part-II/34 and Section

201/34 of the Indian Penal Code recorded by the trial Judge is right and is confirmed.

15. Now, I come to the question of sentence. In view of the facts and circumstances of the case discussed above, I feel that the sentence awarded by the trial court is very harsh. The accused were arrested on 3-2-1986. They are in custody since then. Therefore, they are in incarceration for more than 3 years. I think it is enough. I, therefore, reduce the sentence to the imprisonment already undergone by them under both the provisions of the Indian Penal Code and order that they be set at liberty forthwith.

16. Appellant Naresh Kumar and Madan Pal are acquitted of the charge. Their bail bonds and surety bonds are hereby discharged.