
(2016) 07 SHI CK 0029
In the High Court Of Himachal Pradesh
Case No : Cr. Appeal No. 195 of 2012

State of Himachal Pradesh

APPELLANT

Vs

Alamgir Alias Aalo

RESPONDENT

Date of Decision : 01-07-2016

Acts Referred:

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

Citation : (2016) 165 AIC 617 : (2016) 3 SimLC 1230

Hon'ble Judges : Mr. Sanjay Karol and Mr. Ajay Mohan Goel, JJ.

Bench : Division Bench

Advocate : Mr. V.S. Chauhan, Addl. Advocate General with Mr. Vikram Thakur, Dy. Advocate General, for the Appellant; Ms. Kanta Thakur, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Ajay Mohan Goel, J.—This appeal has been filed by the State against judgment passed by the Court of learned Additional Sessions Judge (II), Kangra at Dharamshala dated 06.01.2012 in Sessions Case No. 22-J/2011 vide which, learned trial Court has acquitted the accused for commission of offences under Sections 302 and 201 of the Indian Penal Code.

2. The case of the prosecution was that on 18.04.2011, Sounki Ram, husband of complainant Nakhro Devi, R/o Village Chukhyal had gone to a sawmill of one Rashpal, but he did not return back in the evening. In routine, Sounki Ram used to come from his work at around 8:00/8:30 p.m. and he also used to give telephonic information in the neighbourhood in case he was not able to come back. However, on 18.04.2011, no such information was received from Sounki Ram by the complainant.

3. On 19.04.2011, in the morning one Guddo Devi and her son Sunil were going to Chukhyal jungle to bring grass and on their way they saw the dead body of Sounki Ram with injuries on the face and head of the dead body. Guddo Devi

called Reena Devi, daughter of Sounki Ram, who told her mother Nakhro Devi and consequently, they went to the spot. In the meanwhile, Sunil had called Kuldeep Vice President of the Gram Panchayat, who informed the police. Nakhro Devi raised suspicion on the accused as in the past accused had beaten Nakhro Devi as well as her daughter and threatened to kill them. On the basis of the statement of Nakhro Devi recorded under Section 154 Cr.P.C., an FIR was lodged and the body of the deceased was sent for post mortem. From the spot, police took into possession sample of the soil, currency notes, mobile telephone, one diary, match box, cigarette packet, biddi bundle and two chappals.

4. During investigation, it transpired that on the evening of 18.04.2011 accused had given lift to one Kewal Krishan on motorcycle and they had met Sounki Ram, who was under the influence of liquor. Accused threatened and provoked Sounki Ram. Sounki Ram asked Kewal Krishan to leave him ahead of the house of Jeevan because Sounki Ram was afraid of the dog of Jeevan. Accused parked his motorcycle in the courtyard of Jeevan and Kanta Devi, wife of Jeevan, saw Sounki Ram going through the path adjacent to her house and she also saw accused following Sounki Ram. Investigation also revealed that one of the chappals recovered near the dead body of Sounki Ram belonged to the accused.

5. After completion of the investigation, challan was presented in the Court. As a prima facie case was found against the accused, he was charged for the commission of offences under Sections 302 and 201 of the Indian Penal Code, to which he pleaded not guilty and claimed to be tried.

6. On the basis of material placed on record by the prosecution, learned trial Court came to the conclusion that the prosecution had not been able to prove the liability of the accused for offences punishable under Sections 302 and 201 beyond the scope of reasonable doubt and accordingly, it acquitted the accused for commission of offences under Sections 302 and 201 of the Indian Penal Code.

7. We have heard the learned counsel for the parties and also perused the records of the case as well as the judgments passed by the learned trial Court.

8. The case of the prosecution is based on circumstantial evidence. There is no eye witness who has seen the accused committing the crime with which he has been charged.

9. The Hon^{ble} Supreme Court on circumstantial evidence in *Vijay Thakur v. State of Himachal Pradesh*, (2014) 14 Supreme Court Cases 609 has carved out the following salient points on the basis of which guilt of the accused can be brought home in the case of circumstantial evidence:

"(i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely ?may be? fully established;

(ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

- (iii) The circumstances should be of a conclusive nature and tendency;
- (iv) They should exclude every possible hypothesis except the one to be proved; and
- (v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

10. Further, the Hon'ble Supreme Court in *Manthuri Laxmi Narsaiah v. State of Andhra Pradesh*, (2011) 14 SCC 117 has held as under:

"6. It is by now well settled that in a case relating to circumstantial evidence the chain of circumstances has to be spelt out by the prosecution and if even one link in the chain is broken the accused must get the benefit thereof. We are of the opinion that the present is in fact a case of no evidence."

11. Where a case rests upon circumstantial evidence, such evidence in order to base conviction, must be complete and incapable of explanation of any other hypothesis than that of guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

12. In these circumstances because it is a case of circumstantial evidence, this Court has to satisfy its judicial conscience as to whether by way of circumstantial evidence produced on record by the prosecution, it has been able to link the commission of the offence with the accused or not.

13. Now, we will apply the above salient features to the facts of the present case in order to ascertain as to whether there is any infirmity or perversity with the judgment passed by the learned trial Court in the present case.

14. According to the appellant, the accused was having motive to do away with the deceased. As per the prosecution, dead body of Sounki Ram was recovered in the morning of 19.04.2011 by PW-10 Guddo Devi and her son PW-4 Sunil Kumar at 9:00 a.m. when they were going to Chukhyal jungle to bring grass and on their way, they saw the dead body of the deceased. Thereafter, PW-2 Reena Devi, daughter of the deceased was called. She also called her mother PW-1 Nakhro Devi and accordingly, they reached the spot. PW-5 Kuldeep Singh, Vice President of the Panchayat reached the spot on the basis of telephonic intimation given to him by Sunil Kumar.

15. It has come in the testimony of complainant Nakhro Devi that the accused was inimical towards her family. According to her, earlier also accused had beaten the complainant and her daughter and in this regard a criminal case was pending against the accused.

16. According to PW-2 Reena Devi, daughter of the deceased, this quarrel with the accused had taken place in the year, 2007.

17. There is no material placed on record by the prosecution nor there is any deposition by PW-2 that after 2007 also there was either any threatenings given or intimidation made to the deceased or his family members by the accused.

18. A perusal of the statement of PW-18 Inspector Parkash Chand demonstrates that in fact cases were filed and were pending both against accused Alamgir as well as deceased Sounki Ram for beating each other.

19. Keeping this aspect of the matter in view that the cases of alleged intimidation pertain as far back as in the year 2007 and Sounki Ram was killed on 19.04.2011, it cannot be concluded that the deceased was killed by the accused to take revenge of the criminal cases so pending against him pertaining to the year, 2007. In this view of the matter, the contention of the appellant that the accused was having a motive to do away with the deceased is not proved beyond reasonable doubt.

20. It has been further urged that another circumstance which links the accused with the commission of the offence is recovery of his chappal. According to the prosecution, this circumstance has been proved by PW-2 Reena Devi, PW-5 Kuldeep Singh and PW-6 Subash Chand.

21. PW-5 Kuldeep Singh has deposed that he runs a shop in the Village and accused had purchased Chappal Ex.-P9 from his shop 1? months back. In his cross-examination, he has stated that he brings 8/10 pairs of Chappal in his shop for sale. His answer to the Court question was that he remembers the names of all his customers because all of them are local. He has further stated that in 15 days, he sells about 5 to 8 pairs of chappals. He has also deposed that during those days, he sold 7 number chappal to Dinesh Kumar which was country made Eva Chappal and 6 number chappal to Balwinder. He has thereafter said that in those days, he had not sold Chappal to Alamgir. He has further stated that he sold 9 number Chappal to Alamgir about nine months back. He has also admitted it to be correct that he was a witness in a criminal case between the accused and the wife of the deceased. The deposition of this witness reveals that he has made contradictory statements in his examination-in-chief and in his cross-examination. While in Chief, he has stated that Ex. P9 was purchased by the accused from his shop about 1? months back, however in cross-examination, he has stated that he sold 9 number chappals about nine months back to Alamgir. Keeping in view the fact that he is an interested witness because he has admitted that he is a witness in a criminal case pending between the accused and the wife of the deceased, the possibility of the said witness not deposing the truth cannot be ruled out. Incidentally, a perusal of the judgment passed by the learned trial Court will demonstrate that the learned trial Court had disbelieved his testimony on the ground that whereas according to PW-5, the chappal was sold to Alamgir about 1? months back, the fact of the matter was that Ex. P9 was an old chappal and the size number of the same was also not decipherable.

22. PW-6 Subhash Chand in his cross-examination has also corroborated what

PW-5 Kuldeep Singh has stated in his examination-in-chief and said that the chappal was purchased by the accused from the shop of Kuldeep Singh about 1? months back. In his cross-examination, he has admitted that Kuldeep is his real brother. Thus, if the testimony of PW-6 is to be believed, then the same is contrary to what his brother PW-5 Kuldeep Singh has stated in his cross-examination. The above mentioned contradiction in the statement of PW-5 has not been satisfactorily explained by the prosecution. In this view of the matter, the statement of PW-6 also does not inspire any confidence. As far as PW-2 Reena Devi is concerned, she obviously is an interested witness being the daughter of the deceased and it is not the case of the prosecution that she was present in the shop of PW-5 when the accused had purchased the chappal allegedly from the shop of PW-5. Therefore, in our considered view, the prosecution has not been able to prove this circumstance also against the accused beyond reasonable doubt. Therefore, it cannot be conclusively said that the chappal so recovered from the spot by the prosecution was that of the accused.

23. Now we will test the last seen theory propounded by the appellant as a link evidence connecting the accused with the commission of the crime. As per the prosecution, the accused was last seen in the company of the deceased in the evening of 18.04.2011 and this stood proved by PW-3. Om Nath and PW-17 Kanta Devi.

24. PW-3 has deposed in the Court that on 18.04.2011, he had gone to Tehsil Jawali and at 6:30 p.m. near Bateru accused met him on his motorcycle. He boarded the motorcycle of the accused and started proceeding towards Nana. On their way, Sounki Ram met them who was under the influence of liquor. Accused threatened and provoked Sounki by saying 'Oye Sounki?'. He further deposed that accused purchased some articles at Nana and thereafter they come to the house of Jeevan Kumar at around 7:00/7:15 p.m. Sounki also reached there and told him that dog of Jeevan bites, so he asked him (PW-3) to leave him ahead of the house of Jeevan. Alamgir parked his motorcycle in the courtyard of Jeevan. He inquired from the wife of Jeevan as to where was Jeevan. Alamgir consumed liquor. It was raining at that time. Thereafter, as per PW-3, he went to his house. He has further deposed that next day, he was to go to Jawali with some documents. He further deposed that Guddo Devi was calling wife of Sounki and she told that her husband was lying in the jungle. He has further deposed that he went to the spot where Pradhan and other persons had reached. In his cross-examination, he has stated that the house of Sounki was situated at a distance of 100-150 meters from his house.

25. One thing which is pertinent to be taken note is this that it is not proved on record by prosecution that accused followed Sounki Ram beyond the house of Jeevan. On the other hand, if the testimony of PW-3 is read harmoniously, then what emerges is that in fact the deceased was last seen not with the accused but with PW-3 because as per PW-3, Sounki Ram had requested him, i.e. PW-3 to

leave him ahead of the house of Jeevan.

26. PW-17 Kanta, wife of Jeevan has stated that on the fateful night, Sounki Ram had come to her house and inquired about her husband. At the relevant time, she was preparing food. It was raining and there was no electricity. Thereafter, Kewal came and went away. Thereafter, accused came on motorcycle and parked the same in their courtyard. He asked for water and glass. He consumed liquor in the court yard. She has further deposed that Sounki Ram was going ahead and Alamgir was following him. In her cross-examination, she has admitted it to be correct that Kewal helped Sounki to pass their house because of the dog. She has also stated that thereafter Kewal had also gone following Sounki. She also admitted it to be correct that through the said path many people were passing. She also admitted it to be correct that Alamgir had come after half an hour of the departure of the said two persons.

27. In our considered view, on the basis of the deposition of PW-17 read with deposition of PW-3, it cannot be said that the prosecution has conclusively proved this circumstance against the accused that he was last seen with the deceased. It is no one's case that path leading from the house of Jeevan to the house of the deceased was a desolated path and was not frequented by people generally. On the other hand, PW-17 has stated in her cross-examination that Kewal had helped the deceased to cross her house and had followed him. Thereafter, according to her, Alamgir had reached her house half an hour after the said two persons had passed. Therefore, in our considered view, prosecution has not been able to prove this circumstance against the accused.

28. Now, we will refer to the testimony of PW-16 Muhammad Ali, which has been heavily relied upon by the appellant-State to link the accused with the commission of the offence.

29. PW-16 Mohammad Ali has deposed that he is milk vendor and sells milk at Jawali. According to him, on 19.04.2011 at 7:30 a.m., he boarded Patiyal bus with milk and got down at Kehrian. There accused came along with his wife. There was a liquor vend adjacent and accused called him 3-4 times. PW-16 went to him when accused called him third time and there accused told him that he had killed his neighbour Sounki Ram. He has further deposed that his statement was recorded by the learned Judicial Magistrate, which is Ex. PW-16/A. In his cross-examination, he has deposed that after selling milk, he had come back to his house and when he reached his house, police was present in the village. He has also deposed that the police had been visiting the village continuously for 2/3 days. He has denied the suggestion that he has deposed falsely under pressure of the police to save himself. He has admitted it to be correct that on 19th, 20th and 21st April, 2011, no such statement of his was recorded by the police.

30. On the face of it, the testimony of the said witness does not seem to be inspiring confidence. In our considered view, it will not be the normal behaviour

of a person to confess commission of a murder in the mode and the manner as has been deposed by PW-16. Even otherwise, it is settled law that extra judicial confession which is made by the accused is admissible in evidence only as a corroborative piece of evidence. Hence in the absence of any substantive evidence against the accused which links him with the commission of the offence alleged against him, the said corroborative piece of evidence loses its significance and the same cannot be made the basis for convicting a person. According to PW-16, the confession was so made before him by the accused on 19.04.2011. It is a matter of record that his statement under Section 164 Cr.P.C. has been recorded on 21st May, 2011. It is also a matter of record that his statement under Section 161 Cr.P.C. has also been recorded by the police on the same date. No cogent explanation has come from the prosecution as to why the said witness remained quiet and did not reveal the alleged extra judicial confession made by the accused either to the police or any other person including members of the Gram Panchayat. In these circumstances, this possibility cannot be ruled out that PW-16 has deposed at the behest of the police and his statement is not true and whatever he has deposed has been stated to falsely implicate the accused. In view of the above, in our considered view, the said circumstances, i.e. extra judicial confession made by the accused in the presence of PW-16 has also not been proved beyond doubt by the prosecution and, hence prosecution has not been able to prove this circumstance against the accused.

31. The post mortem of the deceased was conducted by PW-7 Dr. Mukesh Bhardwaj. According to him, the cause of the death of deceased was due to right lung laceration with right massive haemothorax with splenic rupture with massive haemoperitonum leading to hypovolumic shock and death. It is evident from his testimony that as per the Chemical Examiner's report, the deceased had consumed alcohol. It has also come in the testimony of PW-3 Kewal Krishan that on the fateful night the deceased was under the influence of liquor. Incidentally, a perusal of the testimony of the wife of the deceased PW-1 Nakhro Devi reveals that her stand is that her husband never used to drink. In other words, the deposition of the said witness does not depict the true facts because she has concealed the factum of her husband being a consumer of alcohol.

32. Therefore, when we assess all these circumstances together and take into consideration the material produced on record by the prosecution to prove the circumstances against the accused to link him with the commission of offence, the only conclusion which can be drawn is that the prosecution has miserably failed to prove any of the circumstance on the basis of which the accused could be linked with the commission of the offence alleged against him.

33. A perusal of the judgment passed by the learned trial Court demonstrates that all these aspects of the matter have been minutely gone into by the learned trial Court. It is on the basis of the careful appreciation of the evidence on record that the learned trial Court has come to the conclusion that the prosecution has

not been able to prove beyond reasonable doubt that the accused was guilty of the offences charged against him. In our considered view, there is neither any perversity nor any infirmity with the judgment so passed by the learned trial Court. According to us also, the prosecution has miserably failed to prove beyond reasonable doubt that the accused is guilty of the offence with which he was charge. Therefore, we uphold the judgment passed by the learned trial Court and dismiss the present appeal being devoid of any merit.