
(1989) 03 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 6 of 1986

State of Himachal Pradesh

APPELLANT

Vs

Anup Singh

RESPONDENT

Date of Decision : 23-03-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 360
Penal Code, 1860 (IPC) — Section 217, 302, 330, 34, 342

Citation : (1989) 2 ShimLC 34

Hon'ble Judges : Bhawani Singh, J

Bench : Single Bench

Advocate : T.R. Chandel, for the Appellant; L.S. Panta, D.A.G. for the Respondent No. 1 and A.K. Goel, for the Respondent No. 2, for the Respondent

Judgement

Bhawani Singh, J.—This judgment will dispose of Criminal Revision No. 90 of 1985 Sucha Singh and Anr. v. State of H.P. and Anr. and Criminal Appeal No. 6 of 1986 State of Himachal Pradesh v. Anup Singh, as both the cases arise out of the same subject-matter in the following circumstances.

2. The present case under Sections 348, 330 and 217 read with Section 34 of the Indian Penal Code was initiated against all of them. The learned Judicial Magistrate, Ist Class (3), Simla, in case No. 149 of 1976 in F.I.R. No. 88 of 1975 convicted all the accused vide judgment dated 28-7-1981 but gave them benefit by application of Section 360 of the Code of Criminal Procedure.

3. Out of this judgment, Criminal Appeal Nos. 33-S/10 of 1981, 15-S/10 of 1982 and 14-S/10 of 1985 Anup Singh v. State, 72-S/10 of 1981, 14-S/10 of 1982 and 13-S/10 of 1985, Sucha Singh and Anr. v. State, and Criminal Revision Nos. 59-S/10 of 1981, 3-S/10 of 1982 and 15-S/10 of 1985 Durga Singh v. Anup Singh and Ors. were filed in the Court of Additional Sessions Judge (II), Simla. All these matters were decided by a common judgment on 31-7-1985. By this judgment, appeal of Anup Singh was allowed whereas the appeal filed by Sucha Singh and Raghbir Singh was allowed relating to offence u/s 217 read with

Section 34 of the Indian Penal Code. The same was dismissed relating to offences under Sections 342/330 read with Section 34 of the Indian Penal Code and the order of the trial court was modified only to the extent that the benefit of Section 360 of the Code of Criminal Procedure extended to them was terminated and they were sentenced to imprisonment as under;

Sucha Singh:

1. For offence u/s 348 read with Section 34 I.P.C.:

Sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 500 in default of payment of fine sentenced to undergo rigorous imprisonment for another 3 months.

2. For offence u/s 330 I.P.C. read with Section 34 I.P.C.:

Sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 500 failing which to undergo rigorous imprisonment for a further period of 6 months.

Raghubir Singh:

1. For offence u/s 330 I.P.C. read with Section 34 I.P.C.:

Sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 500 failing which to undergo rigorous imprisonment for 6 months.

2. For offence u/s 348 I.P.C. read with Section 34 I.P.C.:

Sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 500 failing which to undergo rigorous imprisonment for a further period of 3 months.

4. The sentences awarded were made to run concurrently and the fine, on realisation, was ordered to be paid to Bhagwan Singh, father of the deceased whose revision was also allowed with the same result as mentioned above.

5. Now, there are two cases-Criminal Revision No. 90 of 1985 by Sucha Singh and Anr. against their conviction and Criminal Appeal No. 6 of 1986 filed by the State of Himachal Pradesh against the acquittal of Anup Singh.

6. The prosecution case, in brief, is that Shri Anup Singh was the Incharge/ Assistant Sub-Inspector whereas the other two accused, namely, Sucha Singh and Raghubir Singh, were police constables, all posted at Police Post Kasumpti. One Bhagwan Singh, S/o Durga Singh, of village Kawalog was wrongly confined by them during the period 30-8-1975 to 12-9-1975 in order to extort confession and other information leading to the recovery of stolen property in respect of a theft alleged to have been committed in the house of Devi Singh in village Shilla. Secondly, the accused also caused hurt to deceased Bhagwan Singh, when in wrongful confinement, during all this period. These facts, according to the prosecution, constituted offences under Sections 330 and 342 of the Indian Penal

Code and as all had the common intention to act in that manner, Section 34 of the Indian Penal Code was applicable. Besides, offence u/s 217 of the Indian Penal Code was also committed. It is further the case of the prosecution that the accused committed all these offences without registering the case of theft and as a consequence of these acts, said Bhagwan Singh died and his deadbody was found in a dilapidated house of one Shri Het Ram of Panthaghati on 17-9-1975. A case u/s 302 of the Indian Penal Code was registered when this deadbody was found but kept untraced.

7. During the investigation of the case u/s 302 of the Indian Penal Code, the commission of the offences as detailed above, surfaced and on investigation by the Crime Branch of the State Police, it came out that in the last week of August, 1975, a theft took place in the house of Devi Singh in village Shilla. Two of his sons, namely, Suresh Kumar and Ram Swaroop reported the matter at this police post but accused Anup Singh, Assistant Sub-Inspector, Incharge of the Police Post, did not register the report. He asked these persons to intimate him about the whereabouts of late Bhagwan Singh if ever they came across him. On 30-8-1975, Shri Prem Singh, another son of Devi Singh, saw the deceased at a boxing match in Bishop Cotton School, Simla. He informed the police on telephone and constables, present Petitioners, reached the spot, being ordered by Anup Singh, accused, tied both the hands of said Bhagwan Singh with a rope, made available to them by an employee of the said School, and taken to the police post. On the next day, he was taken to the house of Devi Singh in village Shilla by accused Sucha Singh and Raghbir Singh where he was paraded and on denial he was given blows with a danda/stick by these constables. He was then taken to police post, Kasumpti, where he was spotted on 6-9-1975 and 12-9-1975 at this police post. It was on 17-9-1975 when his deadbody was found in the house as mentioned above. The postmortem examination, conducted on 18-9-1975, revealed that the deceased died of injuries to his vital organs like liver and spleen and the duration of the injuries and death was opined between 48 hours to 72 hours.

8. The defence of the accused has been simple denial.

9. The case can be examined under four heads in order to see whether the prosecution has been able to establish the commission of the offences against the accused. The first part relates to the presence of accused Sucha Singh and Raghbir Singh, constables, at Bishop Cotton School, Simla, and the arrest of the deceased and his taking away to the police post from that place by these constables and role of accused Anup Singh. The second part relates to the taking of deceased Bhagwan Singh to village Shilla in connection with the alleged theft case and causing of hurt. The third part deals with the confinement of the deceased at police post, Kasumpti, between his being brought from village Shilla and recovery of his deadbody on 17-9-1975 and the fourth is the death of the deceased, Shri Bhagwan Singh. The whole case pertains to the period 30-8-1975 to 12-9-1975.

Presence : at Bishop Cotton School, Simla:

10. It is in evidence that a theft had taken place in the house of Shri Devi Singh in village Shilla and his two sons, Suresh Kumar and Ram Swaroop, came to report the matter at this police post in the charge of accused Anup Singh, Assistant Sub-Inspector, under whom the other two accused Sucha Singh and Raghbir Singh were working. It is also in evidence that no case was registered and Suresh Kumar and Ram Swaroop were asked to look for the whereabouts of deceased Bhagwan Singh.

11. Shri Prem Singh, S/o Shri Devi Singh (P. W. 3), Ram Krishan (P. W. 7) and Shiv Ram (P. W. 9) state that on 30-8-1975 they had found deceased Bhagwan Singh in the premises of Bishop Cotton School, Simla, at about 8.45 p.m. Prem Singh (P.W. 3) states that he telephoned the police post by a nearby telephone about this presence of deceased Bhagwan Singh. To the same effect is the statement of Ram Krishan (P. W. 7). This fact has also been admitted by Shri Shiv Ram (P. W. 9) posted as Mohirrir Head Constable at Police Post, Kasumpti, having received such a telephone on 30-8-1975 at about 9 p. m. This witness (P.W. 9) further states that he informed accused Anup Singh, Assistant Sub-Inspector, but the latter did not depart any instructions and so nobody was deputed to apprehend the deceased. This witness was declared hostile having resiled from his earlier statement u/s 161 of the Code of Criminal Procedure wherein he had stated that constables Sucha Singh and Raghbir Singh (accused) were deputed to bring deceased Bhagwan Singh. But even if this witness has been declared hostile, it appears normal and reasonable that on receipt of telephone, he must have informed the Incharge of the Police Post, Anup Singh (accused), and as a consequence, he must have deputed the other two constables (accused in this case) to effect the arrest of deceased Bhagwan Singh. Naturally so, as there was an allegation of theft against him. There is no other contrary evidence on this aspect pointing out that the deceased was arrested in the manner other than this and from a place other than Bishop Cotton School, Simla.

12. The entry Ex. P. W. 15/B in the Daily Diary maintained in the police post, showing these constables on patrol duty at 9 p. m. in the Night intervening 30-8-1975 and 31-8-1975 does not inspire confidence in view of the two circumstances, namely, arrest of the deceased by these constables at Bishop Cotton School and the distance between the Bishop Cotton School and police post is hardly two kilometers. Moreover, it is not possible even otherwise to believe this entry and time keeping in view the fact that these two constables had been deployed to arrest the accused, who was in their custody and they were concerned in this issue in connection with this case. This entry, therefore, does not eliminate the arrest of deceased Bhagwan Singh by these constables and evidence on this aspect is quite cogent and sufficient to come to the conclusion that deceased Bhagwan Singh was arrested at Bishop Cotton School by these constables on the order of Anup Singh, Incharge Police Post, Kasumpti,

in the manner narrated by the witnesses. The variation in the statement of Prem Singh (P. W. 3) that he informed the police post on telephone (where there was no telephone) and then saying that he informed the police through telephone in the adjoining P. W. D. office cannot be considered to be a contradiction to make his statement unbelievable. The conclusions drawn by the learned Additional Sessions Judge on this aspect are, therefore, not correct.

Taking of deceased Bhagwan Singh to village Shilla in connection with the alleged theft case and causing of hurt:

13. When once the findings under point-1 are in the affirmative, it can be safely concluded that the deceased was kept at police post, Kasumpti, during the night 30-8-1975 and taken to village Shilla on 31-8-1975 by accused Sucha Singh and Raghbir Singh. Can it be said that these two constables were doing so of their own accord? Who was responsible for the running of the police post and acting in accordance with law as the Incharge of the police post? In answer to these questions, it can be safely said that Anup Singh (accused) was the Incharge of the police post. It was his duty to act in accordance with law and here it was his duty to record the First Information Record as soon as the information of the commission of a cognizable case of theft was reported to this police post. It was his duty to investigate the matter in accordance with law and deploy, in case it was not possible for him to investigate the matter himself, other personnel at the post to do so. But it is very clear that this police officer wanted to investigate the case without recording any F.I.R. and making any other entry in the relevant records of the police post as are kept there under law. Therefore, the arrest, confinement of the deceased and deployment of these constables (accused) to village Shilla on 31-8-1975 was also at his instance and it is in the evidence of Suresh Kumar (P. W. 2), Prem Singh (P. W. 3), Shiv Ram (P. W. 4), Bal Krishan (P. W. 6) and Ram Krishan (P. W. 7) that deceased Bhagwan Singh was brought to village Shilla by these constables on 31-8-1975 and whenever he would deny having committed the theft, he was given danda blows. The statements of these witnesses on the point of confinement, and beatings given to the deceased are absolutely straight, truthful and convincing and there is no reason to disbelieve them and to form an opinion that these statements are in any way partisan or false. An effort has been made to show that these constables did not take the deceased to the village but there is clear-cut evidence on this aspect. Besides, it is not difficult for the witnesses to know and remember these constables as the village of the witnesses is at a short distance from the police post and this village is under the jurisdiction of this police post and the place was generally visited by these constables. Besides, they have been specifically pointed out by these witnesses although all the witnesses do not exactly know their names which is not very material as knowing and remembering the names is not commonly an easy thing. The conclusions arrived at by the learned Sessions Judge on this aspect are, therefore, correct.

Confinement of the deceased at police post, Kasumpti

14. The next issue relates to the confinement of deceased Bhagwan Singh in police post, Kasumpti, after having been brought back from village Shilla. Here he is spotted on 6-9-1975 by Parma Nand (P. W. 12) and Gulab Singh (P. W. 13) where they found the deceased under the escort of constables. Besides, they found him there on 12-9-1975 lying on the floor covered by blankets between two cots inside the police post where they had gone to lodge a report against a contractor. There is nothing unusual in their statements. The same are natural and cannot be considered to be unbelievable as said by the learned Sessions Judge. It was not necessary that they should have brought this matter to the notice of his father as everyone in the village knew all about it; the deceased having been taken to the village on 31-8-1975. Further, simply because the witnesses on this aspect belong to the village of the deceased, it cannot be concluded that they are interested and their evidence on this aspect could not be believed. In my opinion, their statements are quite natural, truthful and straightforward and the conclusions of the learned Sessions Judge on this account are not correct.

15. The facts, circumstances and the evidence on record clearly indicate the commission of offences by the accused under Sections 330 and 342 of the Indian Penal Code read with Section 34 of the Indian Penal Code and the argument of Shri T. R. Chandel, learned Counsel appearing for the accused, that there is no evidence against Anup Singh, Assistant Sub-Inspector of Police, relating to offences under Sections 330 and 342 of the Indian Penal Code and against the constables Sucha Singh and Raghbir Singh is of no substance in view of the findings arrived at and so is the argument of the learned Counsel relating to the application of Section 34 of the Indian Penal Code that there is no common intention proved.

16. In this case, all the three had the common intention relating to the whole issue from the beginning to the end Maqsoodan and Others Vs. State of Uttar Pradesh,

Death of deceased Bhagwan Singh:

17. As a consequence of what has been stated above, the only inference which can be drawn as to the deadbody of the deceased found in the house of Het Ram in village Panthaghati on 17-9-1975 is that it is only the handy work of these three accused. The examination of his deadbody revealed serious injuries to vital organs like liver and spleen. When these constables could give bearings to the deceased in village Shilla in the presence of many villagers, it can be safely concluded that much more beatings were given to him while in police custody at police post Kasumpti which caused serious injuries with the result that the deceased died and in order to save their skin, these guardians of law placed his deadbody in the deserted house of Het Ram where it was found on 17-9-1975. But for the thorough and efficient handling and investigation of this case by Shri Gurbax Singh, Inspector, C.I.D., Incharge of the case, such a gruesome act on the part of these accused would have ended, in nothingness like the case of theft

as well as the case u/s 302 of the Indian Penal Code. I am thoroughly convinced by the statement of this witness examined as P. W. 16 on the record file.

18. My conclusion, therefore, is that offences against the accused are established under various parts of the case to which it has been divided for the facility of understanding and conclusions.

19. In view of the evidence on record and the submissions of the learned Counsel for the parties, commission of the offences by the accused is established and the conclusions to the contrary drawn by the learned Sessions Judge in the case of Anup Singh ordering his acquittal are grossly erroneous. It is a case where this Court cannot in my opinion justifiably shirk from setting aside the order of acquittal in exercise of its powers as an Appellate Court after review and re-appreciation of evidence qua this acquittal.

20. The result, therefore, is that Criminal Appeal No. 6 of 1986 filed by the State of Himachal Pradesh against the acquittal of Anup Singh is allowed and he is convicted of offences under Sections 330, 348 of the Indian Penal Code read with Section 34 of the Indian Penal Code and sentenced to imprisonment for two years and a fine of Rs. 500 and in default of payment of fine further to undergo rigorous imprisonment for six months u/s 330 of the Indian Penal Code read with Section 34 of the Indian Penal Code and further sentenced to rigorous imprisonment for one year and to pay a fine of Rs. 500 and in default of payment of fine further to undergo rigorous imprisonment for three months u/s 348 of the Indian Penal Code read with Section 34 of the Indian Penal Code. The sentences to run concurrently. The fine, on realisation, be paid to the father of the deceased Shri Bhagwan Singh. It is not, in my opinion, a fit case where any leniency can be shown to the accused in view of the seriousness of the charge against the accused who behaved and acted in a most reprehensible manner in the discharge of his duty as the Incharge of the police post. Brutalities by the police against citizens have become very common. As rightly pointed out and observed by Krishna Iyer, J., as he then was, in *Raghubir Singh Vs. State of Haryana*, when the learned Judge observed as under:

2. We are deeply disturbed by the diabolical recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new peril when the guardians of the law gore human rights to death. The vulnerability of human rights assumes a traumatic, torturous poignancy (when) the violent violation is perpetrated by the police arm of the State whose function is to protect the citizen and not to commit gruesome offences against them as has happened in this case. Police lock-up if reports in newspapers have a streak of credence, are becoming more and more awesome cells. This development is disastrous to our human rights awareness and humanist constitutional order.

3. The State, at the highest administrative and political levels, we hope, will organise special strategies to prevent and punish brutality by police

methodology. Otherwise, the credibility of the rule of law in our Republic vis-a-vis the people of the country will deteriorate.

4. We conclude with the disconcerting note sounded by Abraham Lincoln:

If you once forfeit the confidence of our fellow citizens you can never regain their respect and esteem. It is true that you can fool all the people some of the time, and some of the people all the time, but you cannot fool all the people all the time.

These observations have become necessary to impress upon the State police echelons the urgency of stamping out the vice of "third degree" from the investigative armoury of the police.

21. Criminal Revision No. 90 of 1985 filed by constables Sucha Singh and Raghubir Singh is dismissed in view of the findings given above.

22. The bail bonds of all the accused are hereby cancelled to serve the sentences.