

(2012) 03 SHI CK 0423
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 53 of 2005

State of Himachal Pradesh	Vs	APPELLANT
Balbir Singh @ Vikram @ Golu, Rattan Singh, Satish Kumar @ Munna and Chaman Lal		RESPONDENT

Date of Decision : 07-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2012) 03 SHI CK 0423

Hon'ble Judges : Sanjay Karol, J; R.B. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sanjay Karol, Judge

1. For an offence, which is alleged to have been committed on 3rd September, 2003, accused persons were put to trial. In terms of judgment dated 30th September, 2004, passed by learned Additional Sessions Judge, Ghumarwin, in Sessions Trial No. 36/7 of 2004, titled as State of Himachal Pradesh versus Balbir Singh and others, accused persons stand acquitted of the charged offence. It is the case of the prosecution that Shri Pushotam Dass (PW-3) saw a dead body near the banks of Lindi Khad. This was at about 2.30 p.m. on 3rd September, 2003. He went to the village and informed the respondents of Sunhani Bazaar about this fact. Shri Chhota Ram (PW-4), who happened to be present, went with Shri Vijay Kumar (PW-2) to call for Shri Chaudhary Ram (PW-1). When Shri Chaudhary Ram reached the Bazaar, he was informed by Shri Chhota Ram that body of his son Ram Pal was seen on the banks of Lindi Khad. Thereafter, Shri Chaudhary Ram alongwith other inhabitants of the village sent to the spot where body was lying. The body was identified by Shri Chaudhary Ram, who lodged a complaint (Ex. PA) with the police, on the basis of which FIR No. 95/2003, dated 3rd September, 2003 (Ex. PW-23/B) was registered at Police Station Talai. ASI

Rai Singh (PW-21) commenced investigation. He visited the spot, prepared the inquest report. Dead body was sent for postmortem to the Community Health Centre, Ghumarwin, where Dr. N.K. Bhardwaj (PW-16) conducted postmortem and issued report (Ex. PW-16/A). Police collected certain incriminating material from the spot. Blood stained soil was collected alongwith the clothes worn by deceased Ram Pal, who was identified by Shri Chaudhary Ram. Police prepared the spot map and completed other investigation on the spot. Investigation revealed that accused persons had hired vehicle driven by Shri Ravinder Singh (PW-9), on the date of the alleged crime. Statement of Shri Ravinder Singh was recorded by the police u/s 161 of the Code of Criminal Procedure, which revealed that accused had travelled in his vehicle and had murdered deceased Ram Pal with a knife. Statement of Shri Ravinder Singh was also recorded before the Additional Judicial Magistrate. Based on the statement of Shri Ravinder Singh, police arrested the accused persons and on 9th September, 2003, accused Rattan Singh made disclosure statement (Ex. PW-21/E), in the presence of Shri Vijay Kumar (PW-2) and Shri Krishan Kumar (PW-11). Accused Rattan Singh led the police to village Behran, where he got recovered knife (Ex. P-4), which was hidden behind the bushes. Blood stained knife, sample of the soil collected by the police from the spot and the clothes of the deceased were sent for Chemical analysis to the Forensic Science Laboratory and report (Ex. PW-21/Z) was obtained by the police.

2. With the completion of the investigation, challan was presented in the Court for trial. Accused persons were charged for having committed an offence punishable u/s 302 read with Section 34 of the Indian Penal Code, to which they pleaded not guilty and claimed trial.

3. In order to prove its case prosecution examined as many as 24 witnesses and statements of the accused persons u/s 313 of the Code of Criminal Procedure were also recorded, in which they pleaded false implication. Accused Balbir Singh also took up the following defence:

I am innocent. I have not committed any offence. I have involved in a false case by the complainant party in league with the police on account of the old enmity of the complainant party with my family. My name is only Balbir. have never called Golu and the police has added my name as Golu wrongly. I am innocent and I have been falsely implicated.

4. We have heard Shri R. K. Sharma, learned Senior Additional Advocate General duly assisted by Shri J. S. Guleria, Assistant Advocate General on behalf of the State as also Shri Ramakant Sharma, Advocate, on behalf of the accused persons. We have also minutely examined the testimonies of the witnesses and other documentary evidence placed on record by the prosecution. Having minutely examined the record, we are of the considered view that no case for interference is made out at all. We find that the judgment rendered by the trial Court is well reasoned and is based on complete and proper appreciation of evidence (documentary and ocular) placed on record. There is neither any

illegality/infirmary nor any perversity in the same.

5. It is not in dispute that brother of accused Balbir Singh had been murdered sometime in the year 1991, in relation to which deceased Ram Pal and Shri Chaudhary Ram (PW-1) were tried as accused.

6. The fact that body of deceased Ram Pal was recovered by the police is not in dispute. Identity of the deceased is also not in dispute. Deceased died on account of the injuries sustained by him by a sharp-edged weapon is also not in dispute as it, in any event, stands proved by Dr. N.K. Bhardwaj (PW-16).

7. It is also clear from the prosecution evidence that there is no eye-witness to the incident. Prosecution case primarily rests upon statements of Shri Chaudhary Ram (PW-1), Shri Vijay Kumar (PW-2), Shri Ravinder Singh (PW-9), Shri Krishan Kumar (PW-11) and Shri Rai Singh (PW-21). Through their testimonies, prosecution has sought to prove the following circumstances against the accused:

1. Accused had hired a vehicle and proclaimed "Khoon ka badla khoon" in the presence of Shri Ravinder Singh (PW-9).

2. They had travelled in the vehicle of Shri Ravinder Singh (PW-9) to the place where the body was found.

3. Accused Rattan Singh had made disclosure statement in the presence of Shri Vijay Kumar (PW-2) and Shri Krishan Kumar (PW11).

4. Recovery of knife (Ex.P-4) at the instance of accused Balbir Singh in the presence of Shri Amar Nath (PW-14) and Shri Pohlo Ram (PW-15).

8. The law on circumstantial evidence is well settled. To base a conviction on circumstantial evidence prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. Suspicion, howsoever grave, cannot be a substitute for a proof and the courts should take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence. Ramreddy Rajeshkhanna Reddy and Another Vs. State of Andhra Pradesh,

9. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with their innocence. Trimukh Maroti Kirkan Vs. State of Maharashtra, .

10. In so far as witnesses PW-2, PW-11, PW-14 and PW-15 are concerned, it is seen that they have not supported prosecution case at all. They were intensively

cross-examined by the Public Prosecutor, after being declared hostile. However, nothing fruitful could come out from their testimony.

11. To establish the circumstances, our attention has been invited to the statement of PW-9. Significantly, PW-21 states that the accused were arrested only on the basis of statement made by PW-9. Alleged offence took place on 3rd September, 2003, whereas statement of PW-9 was recorded on 7th September, 2003 and the statement of accused Rattan Singh was recorded on 9th September, 2003, before which date accused already stood arrested by the police.

12. Other than the statement of PW-9, there is nothing to link the accused to the alleged crime, except for their disclosure statement.

13. Now PW-9 has not supported the prosecution case at all. This witness was cross-examined by the learned Public Prosecutor and we find that there is un rebutted testimony of this witness, which shows that he was coerced, threatened and forced to make statement, falsely implicating the accused persons.

14. PW-9, no doubt, states that his statement was recorded twice, once by the police and second time before the Additional Chief Judicial Magistrate, Ghumarwin. Now, Additional Chief Judicial Magistrate, Ghumarwin, has not been examined in Court to prove the veracity/authenticity of such statement by this witness. In so far as statement made to the police is concerned, we find that the same has been made under coercion and pressure. In cross-examination, this witness categorically states that he was tutored by the police before he made any statement. Police had summoned him alongwith his vehicle to the Police Station on 5th September, 2003, where he was kept for 2-3 days and all along police gave him beatings and also threatened him of falsely implicating him in this case, lest he makes a statement implicating the accused. Police informed him of the names of the accused. At the time when his statement was being recorded before the Magistrate the police kept on standing outside the Court Room, keeping a vigil on him. Prior to the recording of his statement before the Magistrate, police had tutored and read the statement to him. He only made such statement, which he was asked to make. He admits that he made a false statement, implicating the accused, under apprehension that in case he did not make such a statement the police would falsely implicate him in a case of murder. Significantly, this part of his testimony remains un rebutted. Hence, to our mind the police had procured a statement against the accused for simply implicating them in the alleged crime.

15. Coming to the statement of the Investigating Officer (PW-21), we find that he has not come out with the whole truth. This witness admits presence of Deputy Superintendent of Police on the spot. Now, this Deputy Superintendent of Police has not been examined in Court. It appears that pressure on this witness to somehow solve the matter at the earliest even if someone was to be falsely implicated. This witness admits that he was present outside the Court Room, at

the time when statement of PW-9 was recorded before the Magistrate. This witness further admits that there is overwriting regarding the date on Ex. PW-14/B and Ex. PW-14/C, which in fact is the disclosure statement of accused Balbir Singh and the recovery Memo, pertaining to the weapon of offence i.e., knife (Ex. P-4).

16. Thus, from the evidence led by the prosecution, it is quite apparent that the chain of evidence, linking the accused to the crime, on the basis of circumstantial evidence, has not been established by the prosecution by leading clear, cogent, convincing and reliable piece of evidence.

17. For all the aforesaid reasons, we find no reason to interfere with the well reasoned judgment passed by the trial Court. The Court has fully appreciated the evidence placed on record by the parties. The accused have had the advantage of having been acquitted by the Court below. Keeping in view the ratio of law laid down by the Apex Court in Md. Ankoos and Others Vs. The Public Prosecutor, High Court of A.P., it cannot be said that the Court below has not correctly appreciated the evidence on record or that acquittal of the accused has resulted into travesty of justice. No ground for interference is called for. The present appeal is dismissed. Bail bonds, if any, furnished by the accused are discharged.