
(2012) 03 SHI CK 0495

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 199 of 2003

State of Himachal Pradesh

APPELLANT

Vs

Baldev Raj and Sant Ram

RESPONDENT

Date of Decision : 27-03-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2012) 03 SHI CK 0495

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—This appeal by the State is directed against the judgment, dated 15.1.2003, delivered in Sessions Trial No. 14-S/7 of 2002, by the learned Sessions Judge, Solan, H.P., whereby he acquitted the accused persons of having committed offences punishable under Sections 302, 201 read with Section 34 of the IPC. The prosecution story in brief is that on the evening of 4.10.2001 accused Baldev Raj alongwith Jagdish Chand (since deceased) and the victim Tej Singh (deceased) consumed liquor in the residence of Jagdish Chand. During this drinking session, some altercation arose between them and Jagdish Chand and Baldev Raj used a G.I. pipe and beat Tej Singh mercilessly. Tej Singh went to the room of Sant Ram and lay down on the bed. When Sant Ram accused realized that Tej Singh had been beaten up, he went to the quarter of Jagdish Chand and asked him to bring back Tej Singh to his quarter. In the meantime, Tej Singh died and then all the three accused with the intention of giving an impression that the deceased had died an accidental death dragged his body to the stairs near the Rest House Arki and placed it on the stairs near the Arki Manjoo road.

2. Information in regard to the dead body being found was received in the Police Station Arki in the morning at 7.55 a.m. on 5.10.2001 when Shri D.P. Thakur, the then M.L.A. Arki, telephonically informed the police which information was duly recorded in the daily diary (Ext. PS). Thereafter, PW-20 S.I./SHO Ashok Kumar

proceeded to the spot and noticed a head injury on the person of Tej Singh. Blood stains were found on the stairs and a trail of blood led towards the residence of accused Sant Ram. Blood stains were also found on the floor of the house of accused Sant Ram. In the room of Sant Ram, a plastic tub containing a pant, shirt, pillow covers, white handkerchief, towel and bed sheet (Ext. P-1 to Ext. P-7) were found. These articles had been soaked in water and the water in the tub had turned blood red. A bundle of "bidis" Ext. P-4 was also found and there were some marks showing that a body had been dragged from the room of Sant Ram, Chowkidar, to the place where the dead body was found. Abrasions were also found on the dead body of the deceased. The broken leg of the chair having blood stains and human hair was found lying in the room of accused Sant Ram.

3. The room of Jagdish Chand accused was close to the room of Sant Ram and when this room was inspected, it was found that there were blood stains on the floor of the house. A pant of accused Jagdish Chand was also found in the bath room which had blood stains. A G.I. pipe was also found in the bath room, which had blood stains on it. On the basis of these facts, a Rukka Ext. PT was sent for the registration of a case under Sections 302, 201 read with Section 34 of the I.P.C. On the basis of this Rukka, FIR Ext. PU was registered. Thereafter, investigation was carried out, photographs were taken on the spot and even video film was made. The blood stains were taken from the stairs where the dead body was found. The police took into possession the various articles of clothing, bed sheet etc., which were blood stained, both from the room of Jagdish Chand and from the room of Sant Ram.

4. The dead body of the deceased was sent for postmortem, which was conducted by Dr. Sant Lal Sharma PW-16, who vide his postmortem report Ext. PP opined that the deceased died due to the head injury leading to intra cranial injuries and intracranial haemorrhage within six hours from sustaining the injuries and the head injuries could be caused by a blunt weapon. Thereafter, during investigation the police found that the deceased Tej Singh, accused Jagdish Chand (since deceased) and Baldev Raj had consumed liquor and thereafter, an altercation had taken place where Jagdish Chand bludgeoned the deceased to death. As far as accused Sant Ram is concerned, the only charge against him is that he had helped in destroying the evidence of murder by dragging the body and attempting to wash the clothes etc. The accused were challaned for having committed the offences. After trial, they have been acquitted and hence this appeal by the State.

5. Since Jagdish Chand accused has expired, we are only discussing the evidence as far as the other two accused are concerned and not qua Jagdish Chand.

6. There are no eye witnesses to the incident and the case is based on circumstantial evidence. In a case of circumstantial evidence, the law is well settled that the prosecution is bound to prove all the circumstances and link them in such a manner so as to form a chain which leads to the irresistible

conclusion that it is the accused alone who is guilty of the offence and also excludes any possibility of any other persons having committed the offence. If the chain is not linked in such a manner, no conviction can be made on the basis of the circumstantial evidence.

7. The circumstances relied upon by the prosecution in the present case are as follows:-

1. Last seen with the accused;
2. Presence of Baldev Raj in the house of accused Jagdish;
3. Blood stains found in the house of Sant Ram and Jagdish accused persons;
4. Injuries on the persons of accused Jagdish and Baldev Raj;
5. Recovery of blood stained rod Ext. P-11 and other blood stained articles from the house of Jagdish;
6. Recoveries of blood stained clothes and other articles from the quarter of Sant Ram accused.
7. The conduct of Baldev Raj accused while accompanying Punish Sharma (PW-4) his codriver and the recovery of the blood stained pant.
8. Before discussing the circumstances, it would be pertinent to mention that there is no motive behind the crime since there is no previous enmity. Even according to the prosecution, all the accused and the deceased had been drinking together. The prosecution case is that during this course, some altercation took place, which led to a fight between these three drunken persons.

Circumstance No. 1:

Last seen with the accused:

9. The prosecution has examined three witnesses to prove this circumstance. PW-5 Roop Lal is the Chowkidar in the PWD Rest House, Arki. According to him, members of an audit party, which had come from Shimla, were staying in the Rest House. Sant Ram was also working as a Chowkdiar in the Rest House. This witness states that Sant Ram had cooked some non-vegetarian food, which was lying in the kitchen. The deceased Tej Singh came to the Rest House at 5.30 p.m. and demanded non-vegetarian food from Sant Ram, who per chance was in the kitchen. Sant Ram put some food in a bowl and thereafter left the place. Sant Ram, had consumed liquor with the persons belonging to the audit party and at about 7.30 p.m., Roop Lal took Sant Ram to his room and made him to sleep there. This witness also states that the rooms of Sant Ram and Jagdish Chand were near to each other and when he had gone to drop Sant Ram, the door of the room of Jagdish Chand was closed, but light was on inside. He had heard Jagdish Chand's conversing with some person. He clearly stated that he did not see Tej Singh after 5.30 p.m.

10. PW-6 Man Singh is a shopkeeper running a shop near the Rest House. According to him, on 4.10.2001 a person came to his shop and told him that Jagdish Chand had asked for 2 Kg. Atta and a bundle of "bidis". At about 6.00 p.m., both these articles were taken by him to the room of accused Jagdish Chand. When he went there, Jagdish Chand was standing outside his room. Further according to this witness, at about 8.30 p.m., Jagdish asked for another bundle of "bidis" and a matchbox and he took these articles to the room of Jagdish Chand. At that time, Jagdish Chand was wearing only under garments and someone was sleeping on his bed. He did not see the face of the person and could not recognize him.

11. The third witness examined in this behalf is PW-15 Nasim Mohd., who is working as a sweeper in the Rest House. According to him, at about 5.00 p.m., he saw Jagdish and Baldev in front of the quarter of Jagdish Chand. Jagdish Chand took ` 110/- from Baldev accused and handed over the money to this witness and asked him to bring two bottles of country liquor. The witness purchased two pouches of country liquor and some bananas and he handed over these articles to Jagdish Chand, who was standing on the door of his house. He did not enter the room.

12. This is the entire evidence as far as this circumstance is concerned. At best what is proved, is that Tej Singh was lastly seen in the kitchen of the Rest House by Roop Lal when Sant Ram was present. Roop Lal never saw him with Jagdish Chand or with Baldev Raj and in fact, according to him, even Sant Ram had taken liquor with the members of the audit party and thereafter Roop Lal had taken Sant Ram to his quarter where he went to sleep. Therefore, this circumstance is not proved.

Circumstance No. 2:

Presence of Baldev Raj in the house of accused Jagdish:

13. As far as the second circumstance is concerned, the same evidence has to be taken into consideration. At best what is proved is that at about 5.30 p.m., Baldev Raj and Jagdish were standing near his room. There is no evidence with regard to the time up to when Baldev Raj stayed in the room of Jagdish. Most importantly, according to PW-6 Man Singh, when he came to deliver a bundle of "bidis" and matchbox at about 8.30 p.m., there was a person sleeping on the bed in the room. Therefore, there was only one person. It is not explained whether this person was Baldev Raj or deceased Tej Singh. Obviously, Jagdish Chand would not have called for the shopkeeper, if the fight had already taken place. PW-6 also did not notice any blood or any other circumstances showing that a fight had already taken place. Therefore, it is obvious that when PW-6 went to the room of Jagdish at 8.30 p.m., the fight had not taken place and took place thereafter. The fact that only one person was lying on the bed indicates that Baldev Raj had left the place and this possibility cannot be ruled out. Therefore, this circumstance is only proved to the extent that Baldev Raj was

present till 6.00 p.m.

Circumstance No. 3: Blood stains found in the house of Sant Ram and Jagdish accused persons:

14. As already indicated by us above, we are not discussing the evidence with regard to the blood stains being found in the room of Jagdish Chand because he is no longer in the land of living. As far as the blood stains in the room of Sant Ram are concerned, these are explained by the prosecution story itself that after he was beaten in the room of Jagdish, Tej Singh (deceased) had staggered to the room of Sant Ram and slept on the bed. This explains the blood on the bed, the floor and the clothes. There is no charge against accused Sant Ram that he had caused those injuries. Therefore, no other inference can be drawn from this circumstance.

Circumstance No. 4:

Injuries on the persons of accused Jagdish and Baldev Raj:

15. Four injuries were found on the person of Baldev Raj by PW-21 Dr. Vandan Dev Karan. Out of these, two injuries were more than four days old. Baldev Raj was examined on 6.10.2001. Therefore, two of the injuries were prior to the murder of Tej Singh. The other two injuries which were found to have been caused, are just a congestion on the left eye and linear abrasions below knee joint and the Doctor has stated that these injuries can be caused due to fall. These are injuries which a person could suffer in normal circumstances and according to the accused he had suffered these injuries while doing some agricultural work. In any event, these injuries are not of such a nature that they could be caused only in a fight.

Circumstance No. 5:

Recovery of blood stained rod Ext. P-11 and other blood stained articles from the house of Jagdish:

16. It is not relevant to discuss the evidence, since it relates to Jagdish Chand accused.

Circumstance No. 6:

Recoveries of blood stained clothes and other articles from the quarter of Sant Ram accused:

17. The recoveries of blood stained clothes and other articles from the quarter of Sant Ram accused is explained like circumstance No. 3.

Circumstance No. 7:

The conduct of Baldev Raj accused while accompanying Punish Sharma (PW-4) his co-driver and the recovery of the blood stained pant:

18. The only two circumstances used against Baldev Raj accused are (i) the conduct of Baldev Raj accused while accompanying PW-4 his co-driver and (ii) the recovery of the blood stained pant.

19. As far as the first part of the circumstance is concerned, PW-4 Punish Sharma has not fully supported the prosecution case. Be that as it may, according to PW-3 Sher Singh, who was Senior Assistant in IPH Sub Division Arki, Baldev Raj was working as a driver and on the morning on 5.10.2001, accused Baldev Raj had come to him and told the witness that he was going to Shimla to get the log book filled up from Shri Bedi, Assistant Engineer, IPH. The case of the prosecution is that Baldev Raj actually did not go to Shimla and instead went up to Shalaghat alongwith PW-4, purchased a bottle of liquor and consumed this at Bathalang. PW-4 states that accused Baldev Raj accompanied him in a departmental jeep from Arki. The vehicle was going to Shimla, but accused Baldev Raj got down at Bathalang at a distance of 14 K.M. from Arki and did not get down at Shalaghat. There is no evidence to show that from where the accused purchased a bottle of liquor or who saw him consuming the liquor. Therefore, this part of the circumstance is not proved and no inference can be drawn on the conduct of accused Baldev Raj that he had committed a murder on the previous day.

20. As far as the second part of the circumstance with regard to the recovery of pant, which was blood stained from accused Baldev Raj is concerned, the prosecution had examined PW-10 Dharam Singh and PW-11 Sagar Chand. Both these witnesses stated that in their presence, the police had recovered a pant from the accused. However, when the parcel containing the pant was opened in the Court, they denied that this was the pant which was taken into possession by the police in their presence. Their version is that the pant which was taken into possession by the police was a khaki uniform pant, normally worn by drivers. On the other hand, the pant which was produced in the Court, was of a light brown colour. If the pant is different, then the whole case against accused Baldev Raj falls like a house of cards. It is important to note that when PW-10 stated that the pant is not the same, the Public Prosecutor did not even care to get him declared hostile and therefore his statement has been accepted as the truth. Therefore, this circumstance is not substantiated.

21. In view of the above discussion, we are of the considered view that the charge of murder against Baldev Raj has not been proved. Once the charge of murder against accused Baldev Raj falls, then no charge u/s 201 I.P.C. can survive against accused Sant Ram, because before a person can be charged for having committed an offence u/s 201 I.P.C., it must be proved that some substantive offence has been committed. In view of the above discussion, we find no merit in the appeal and the same is rejected. The bail bonds furnished by the accused persons shall stand discharged.