
(2012) 07 SHI CK 0071
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 87 of 2007

State of Himachal Pradesh

APPELLANT

Vs

Balwant Singh Alias Mintu and Others

RESPONDENT

Date of Decision : 06-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 173, 313
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 302, 34, 380, 454

Citation : (2012) 3 ShimLC 1309

Hon'ble Judges : V.K. Sharma, J; R.B. Misra, J

Bench : Division Bench

Advocate : Rajinder Dogra, A.A.G. and Mr. J.S. Rana, Assistant A.G, for the Appellant; N.S. Chandel, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Sharma, J.—Aggrieved by acquittal of the respondents, who shall hereinafter be referred to as "the accused" and denoted as A-1 Balwant Singh @ Mintu, A-2 Suresh Kumar, A-3 Vijay Kumar and A-4 Joginder Singh/respectively, vide judgment dated 28.11.2006/ rendered by the learned Additional Sessions Judge-II, Kangra at Dharamsala, in Sessions Case No. 33-G/2002, u/s 302, read with Section 34 of the Indian Penal Code (for short "IPC"), the State is in appeal before this Court. Briefly stated/ case of the prosecution was as follows.

2. On 3.6.2002, at 11.40 p.m., on receipt of telephonic information from Medical Officer/ Community Health Centre (CHC), Jawalamukhi, to the effect that a seriously injured person had come to the hospital for treatment/police be sent for carrying out the requisite proceedings, Daily Diary Report (DDR) No. 29 Ex. PW-15/A of even date, was registered at Police Station/Jawalamukhi by Inspector/SHO Jagdish Chand (PW-20). Accordingly, a police party headed by HC Suresh Kumar (PW-15) was sent to the hospital to do the needful.

3. On reaching the hospital, PW-15 HC Suresh Kumar, moved application, Ex.

PW-1/A to the Medical Officer for conducting medical examination of injured Kanshi Ram and giving opinion, whether he was fit to make statement. However, the Medical Officer put his endorsement on the application to the effect that "The Pt was brought dead to hospital at around 12.00 P.M." Accordingly, PW-15 HC Suresh Kumar recorded statement of PW-4 Mast Ram (complainant), u/s 154 of the Code of Criminal Procedure (in short "Cr.P.C."), Ex.PW-4/A, which is in Hindi and when translated into English/ is to the following effect. Stated that I had retired as Subedar from Army in the year 1989. On 3.6.2002, I had gone to Hamirpur. My brother Kanshi Ram, who lives separately, had gone to the house of Shri Hoshiar Singh, son of Jagat Ram, Caste Lohar, resident of Kharota, during day time, to lay concrete in the on going construction of his house. I had come back home at 5 p.m. At about 9.30 p.m./Arun Kumar son of Hukam Chand (PW17) and Tilak Raj son of Purshottam Dass (given up being a witness of same sequence)/residents of Sudhangal/ came to me and told that Kanshi Ram had been beaten by Mintu and they had left him (Kanshi Ram) at his house. Then I ran to the house of Kanshi Ram, where his wife, daughter-in-law, Hoshiar Singh/ Tilak Raj/Joginder Singh etc. were also present Kanshi Ram, who was crying, was having injury marks on forehead, head and back. On my asking, my brother (Kanshi Ram) told that Mintu, Kukki son of Sukh Dev and Mannu son of Bhumi Chand, residents of Kunna and Kaithal and another person, had given beatings to him. Thereafter, I alongwith Tilak Raj, Hoshiar Singh etc. took him for treatment to the hospital at Nadaun. There, the Nurse gave two injections to him and told that as the case related to Police Station, Jawalamukhi, he should be taken there. Consequently, we took Kanshi Ram for treatment to the hospital at Jawalamukhi, where the doctor declared him dead and also informed the police telephonically. According to the complainant, the aforesaid persons had killed his brother by giving beatings with iron rods etc., owing to some grudge, who requested the police to act in the matter,

4. On the basis of the above statement, formal FIR, Ex.PW-20/A was recorded.

5. Investigation commenced. The dead body of the deceased was got photographed and sent for post mortem examination to Sub Divisional Hospital (SDH), Dehra, District Kangra, vide application, Ex. PW-2/A and Post Mortem Report (PMR), Ex.PW-2/D was obtained. The photographs are Ex. PW-15/ B to 15/ F and negatives thereof Exs. PW-15/G to 15/L. PW-2 Dr. Kulbhushan, who had conducted the autopsy, had recorded the following findings and opinion:

Findings

(1) External appearance, wheatish colour 5"x6" long about 64 years, thin built male identified by Mast Ram brother of the deceased and Jagdish Chand Bhanja of the deceased. Body was in complete rigior mortis with faint post mortem staining on the back having 4 c.m. long wound on the left frontal area of the forehead and 6 c.m. long horizontally placed wound on the left temple/temporal region. A bruise on the left ear a bruise on the left elbow, a bruise on the right iliac crest. A bruise on the left knee cap with abraided surface. There are 6 pairs

of lineal bruises, each pair with in between width of 1.2 cm. placed on the left posterio lateral part of the chest, which is giving cropitus on palpation. Persons bears a wrist watch, a Slaty white check shirt, a white vest, a Slaty gray pent. External genitalia is normal, cornea are hazy and slightly soft.

(2) a 1 cm long lacerated wound at the oxipital protrubrence.

INTERNAL EXAMINATION

I opened up the skull and found the following findings

(1) Left frontal bone is abraided on the floor of the clean lacerated wound in the left frontal area. No fracture seen anywhere. Membranes are normal. No blood in the cavity. Brain is normal looking but pale. No area of bruise.

Now findings in the chest

7th, 8th and 9th rib on the left side round broken at the posterior angle. Overlying plura on the fractured rib is torn. Lower lateral part of the left lung is bruised with the inferior surface of the lung is torn having 3.5 cm. tear, right lung was normal.

Pericardium "Normal, heart Normal, Large vessels normal.

ABDOMEN

Wall is normal and symmetrical. On opening the abdomen cavilty was soiled with blood about 11/2 litre of blood found and removed, stomach had about 300 ml semi digest food, small and large intestine had faecal matter, liver was normal in size, consistency but had pale look, spleen of normal size surface torn at two places and tissue around soaked with blood, size of the tear 3 c.m. and 4 c.m. Left kidney torn in the middle horizontally and the tears passing through the pelvish of the kidney. Size of the tear is 2 cm. Urinary bladder was found empty and no blood was found. Internal organs of the generation were normal.

Muscle, bone and joints

As all injuries have already been described in the external appearance, sketch of the injuries prepared by me on the post mortem report Ex.PW-2/D is at circle A in red and depicts the exact form of injuries as noticed by me in well.

OPINION

The death in my opinion had occurred because of excessive bleeding which occurred due to spleen rupture, kidney rupture and the lung rupture on the left side, therefore, cause of death is hemorrhagic shock. Time between the injuries and death is 2 to 4 hours and between death and post mortem is 12 to 36 hours.

6. In the opinion of PW-2 Dr. Kulbhushan, (Ex.PW-2/E), the above injuries were possible with Dandas, Ex. P-5 and P-6.

7. The police also prepared inquest papers, Ex.PW-2/B and Ex.PW-2/C. Pursuant

to disclosure statements, Ex.PW-20/D of A-1 Balwant Singh @ Mintu, Ex.PW-20/E of A-2 Suresh Kumar and Ex.PW-20/F of A-3 Vijay Kumar @ Kukki, bamboo "Sarua", plastic torch, bamboo danda and plastic Chappal, were recovered by the police vide memos Ex. PW-9/H, Ex.PW-9/K and Ex.PW-9/M and Ex.PW-9/O, respectively. Newspaper clipping, Ex.PW-16/B, relating to this case and the revenue record of the place of occurrence (Ex. PW-11/A to Ex.PW-11/C), were also taken into possession by the police. The police also lifted clue materials, such as, blood stained mango leaves and stones, hair, a bundle of Bidis and plastic Chappal, from the place where the deceased was found lying in injured condition and a place located at a distance of about 200 feet from the same, vide memos Ex. PW-18/A, Ex.PW-19/A and PW-19/B and the same alongwith viscera of the deceased were sent to the Forensic Science Laboratory (FSL), Junga, for chemical examination and reports, Ex. PW-20/P and PW-20/Q, were procured. Ex. PW-20/C, Ex. PW-20/G, Ex. PW-20/H, Ex. PW-20/J and Ex. PW-20/K are the site plans of the place of occurrence and places of recoveries. Ex. PW-20/L, Ex. PW-20/M, Ex. PW-20/N and Ex. PW-20/O are the specimen seal impressions of the seals, used by the police during the proceedings.

8. It was revealed during investigation that the motive for commission of the offence by the accused was that on 16.5.2002, a theft, involving cash and ornaments, had taken place in the house of A-1 Balwant Singh @ Mintu, qua which FIR No. 62/2002, dated 17.5.2002, under Sections 454, 380/ 34 IPC (Ex.PW-14/A) was registered at Police Station, Jawalamukhi pursuant to which one Sethu @ Rakesh, resident of Karota, was arrested in that case and cash and ornaments, worth Rs. 11,000/-, were recovered. It was further revealed that deceased Kanshi Ram, being former Pradhan, had been going to the Court at Dehra to get the said accused bailed out in that case. It was also found that mother and brother of the said accused had also been visiting the house of the deceased to escape from the police. Since the entire stolen cash and ornaments could not be recovered, A-1 Balwant Singh @ Mintu was harbouring grudge against the deceased, who was instrumental in getting the aforesaid accused bailed out.

9. On completion of investigation, the accused were sent up to face trial. On being charged, they did not plead guilty and instead claimed trial. The prosecution evidence followed, which examined as many as 20 witnesses.

10. On close of the prosecution evidence, the accused were examined u/s 313 Cr.P.C., wherein they set up defence of total denial, innocence and false implication. In reply to question No. 37 of the respective statements, they have offered the following identical explanation:

I am innocent and have been involved in this case by Mast Ram PW being enimical and at the instance of police official of police station Jawali Mukhi against whom Balwant accused made complaint to the higher police officials and thus the police has made this case which is false and fabricated.

11. In defence, they have examined two witnesses, namely DW-1 Tilak Raj and DW-2 Kartar Singh.

12. On conclusion of the trial, all the accused were acquitted, as already noticed.

13. We have heard the learned Additional Advocate General for the appellant-State and the learned Counsel for the respondents-accused and perused the record.

14. In the absence of there being any ocular evidence as to the occurrence, leading to the death of the deceased, the case of the prosecution is based solely on circumstantial evidence. The law relating to appreciation of circumstantial evidence is, by now, fairly settled by a catena of authoritative pronouncements, rendered by the Hon''ble Supreme Court. One of the leading cases in this series is Sharad Birdhichand Sarda Vs. State of Maharashtra, wherein it has been held as under, vide para 153 of the report:

A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra, where the following observations were made (SCC para 19, p.807: SCC (Cri) p.1047.

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between "may be" and "must be" is long and divides vague conjectures from sure conclusions.

(2) 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.

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) 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.

15. In a recent judgment, reported as Madhu Vs. State of Kerala, the Hon''ble Apex Court has reiterated the above legal position, on appreciation of circumstantial evidence, in para 5 of the judgment as under:

The care and caution with which circumstantial evidence has to be evaluated stands recognized by judicial precedent. Only circumstantial evidence of a very high order can satisfy the test of proof in a criminal prosecution. In a case resting on circumstantial evidence, the prosecution must establish a complete unbroken chain of events leading to the determination that the inference being drawn from the evidence is the only inescapable conclusion. In the absence of convincing circumstantial evidence, an accused would be entitled to the benefit of doubt.

16. To the similar effect is the proposition of law annunciated by the Hon'ble Supreme Court in another recent judgment, reported as *Shanmughan v. State of Kerala*, (2012) 2 SCC 788, vide para 7 of the judgment, in the following terms:

We take up for consideration the last submission made by the learned Counsel for the appellant. We are inclined to agree that when a case is sought to be proved by the prosecution on the basis of circumstantial evidence, the burden on the prosecution is that it must prove each circumstance in such a way as to complete the chain and at the same time it should be consistent with the guilt of the accused. Any reasonable doubt in proving the circumstances must be resolved in favour of the accused. The accused must be given the benefit of any fact or circumstance which is consistent with his innocence, which is to be presumed, unless the contrary is proved by the chain of circumstances.

17. It is in evidence in the statement of PW-3 Smt. Pamboo Goma, Staff Nurse that Kanshi Ram (deceased), was initially taken for treatment to CHC, Nadaun. Thereafter, he was taken to CHC, Jawalamukhi, where PW-1 Dr. Vivek Sood, declared him "brought dead", vide endorsement, Ex.PW-1/A, appended on the application moved by the police for conducting his medical examination and opinion whether he was fit to make statement. PW-2 Dr. Kulbhushan, who had carried out autopsy on the dead body of the deceased vide PMR, Ex. PW-2/D, had opined that "the death has occurred because of excessive bleeding which occurred due to spleen rupture and lung rupture which caused hemorrhagic shock."

18. Thus, it is made out that the death of the deceased was homicidal.

19. The case of the prosecution that the deceased had disclosed the names of the accused as assailants, who had waylaid him and were responsible for giving beatings to him, which ultimately led to his death, has been supported only by PW-4 Mast Ram (complainant) and PW-5 Kamlesh Kumari, who are younger brother and daughter-in-law of the deceased, respectively. Rest of the material witnesses for the prosecution, namely PW-10 Hoshiar Singh, whose house was under construction, where the deceased is said to have gone to lay concrete and his brothers PW-7 Tilak Raj and PW-8 Joginder Singh, who were also stated to be taking part in the on going construction, did not support the prosecution case and were declared hostile. Though they were cross examined by the learned Public Prosecutor, but nothing material could be elicited out of them to show that

they were deposing falsely to suppress the truth.

20. Now while adverting to the deposition of PW-4 Mast Ram (complainant), it would be seen that while making statement, Ex.PW-4/A to the police u/s 154 Cr.P.C., he had stated that on 3.6.2002, at about 9.30 p.m., PW-17 Arun Kumar and Tilak Raj, son of Purshottam Dass, had come to his house and informed that Kanshi Ram (deceased) had been beaten by Mintu (A-I Balwant Singh @ Mintu) and they had left him (Kanshi Ram) at his house. However, whereas a perusal of the statement of PW-17 Arun Kumar would go to show that he has nowhere stated that he had told the complainant (PW-4) Mast Ram that A-1 Balwant Singh @ Mintu had given beatings to the deceased, Tilak Raj son of Purshottam Dass, was given up by the prosecution, being a witness of the same sequence.

21. At this juncture, it shall be appropriate to notice the deposition of PW-17 Arun Kumar, which is extracted below, in extenso:

Stated that I am agriculturist by profession. On 3.6.04 at about 9:00 P.M. my village child called me and said that Baba is crying and then I went on the spot. On the spot Pushpa Devi and Roshni were also present. On the spot I found that Ex. Pardhan Kanshi Ram was lying on the way on the ground, and he was crying. He was crying and he said that kindly took me to my house and called Hoshiar Singh. I brought cot from my house and I asked my sister in law to give telephonic call to Hoshiar Singh and Kanshi Ram is calling him. We put Kanshi Ram on the cot and took him to his house and thereafter I went to call Kanshi Ram brother Mast Ram. Thereafter we went the house of boatman to call boatman. By that time Hoshiar Singh and his brothers brought the injured Kanshi Ram to the Boat. After reaching other side I went toward post office and then bus stand to arrange some vehicle but when we came back injured was already taken by Hoshiar Singh and his brothers and Mast Ram.

XXX Cross examination by the Id. Defence csl.

I do not know that Hoshiar Singh was friend of Kanshi Ram or not. Balwant is known as Bintu. He is not Mintu.

22. A combined and harmonious reading of the above statement of PW-17 Arun Kumar would go to show that according to him, a child of his village had met him and informed that "Baba" (Kanshi Ram deceased) was crying and accordingly, he had gone to the spot, where Pushpa Devi and Roshni were also present, but those ladies were not cited as prosecution witnesses. On reaching the spot, PW-17 Arun Kumar had found that "Ex. Pardhan Kanshi Ram (deceased) was lying on the way on the-ground and he was crying. He was crying and he said that kindly took(sic take) me to my house and called (sic call) Hoshiar Singh." Thus, it is manifest that there is nothing in the statement of PW-17 Arun Kumar to show that the deceased had disclosed the names of the alleged assailants to him, much-less the names of the accused. In the natural course, it was but natural, either for injured Kanshi Ram (deceased) to have apprised PW-17 Arun Kumar about the facts and circumstances under which he had suffered injuries,

owing to which he was lying on the way and writhing in pain, or for the latter to have inquired these details from him, but the deposition of PW-17 Arun Kumar is absolutely lacking on these material aspects. Non-joining of the aforesaid Pushpa Devi and Roshni as witnesses for the prosecution, has also remained totally unexplained. Since they were stated to be already present on the spot, even prior to the arrival of PW-17 Arun Kumar there, it could also have shed some light on the facts and circumstances relating to this case. However, it was not done.

23. The testimonies of PW-4 Mast Ram (complainant) and PW-5 Kamlesh Kumari, daughter-in-law of the deceased, with regard to disclosure of the names of the accused as assailants by the deceased, are required to be considered against the foregoing background.

24. According to PW-4 Mast Ram (complainant), the deceased had disclosed that he was beaten by "Mintu alias Balwant (A-1), Kukki alias Vijay (A-3), Joginder alias Munnu (A-4) and fourth he could not recognize." It is further stated by him that one Journalist (PW-16 Raj Kumar Jain) had also met them at Nadaun, who had inquired from Kanshi Ram (deceased) as to what had happened, on which he had stated that "he has been beaten by Balwant Singh alias Mintu". It is further stated by him that the names of the accused were disclosed to him by the deceased "in such manner by naming with their father's name/ father's nick name that I can make out the accused. The father's name of Mintu was not told (sic to) me by my brother but he was described as Mintu Tractor Wala."

25. According to PW-5 Kamlesh Kumari, who is daughter-in-law of the deceased, names of all the accused were disclosed by the deceased to his wife as assailants, who were responsible for giving beatings to him, by coming out of bushes with Dandas and rod. Admittedly, this narration is stated to be earlier, in point of time, to the alleged disclosure of the names of the accused as assailants by the deceased to PW-4 Mast Ram (complainant). However, as already noticed, PW-4 Mast Ram has stated that while disclosing the names of the assailants, the deceased had named only three accused and had told that he could not recognize the fourth assailant. This is a material contradiction and cannot be lightly overlooked. It is further stated by PW-5 Kamlesh Kumari that "thereafter my father in law started crying because of injuries he has received and he said that those who are working in the hotel had beaten me". This part of her testimony does not reconcile with the two versions stated by her, firstly that the deceased had named "Mintu, Kukki, Munu and Suresh" as the assailants and secondly, he had stated that "those who are working in the hotel had beaten me". Still further, the statement of PW-5 Kamlesh Kumari, who is stated to be a material witness for the prosecution, was recorded by the police quite belatedly only on 6.6.2002, that is, after two days from the occurrence, when admittedly, the police had been coming to their house on 4.6.2002 and 5.6.2002, when she was present there.

26. From the above evidence of PW-4 Mast Ram and PW-5 Kamlesh Kumari, identity of the accused as the assailants, responsible for inflicting fatal injuries to

the deceased, cannot be pinpointed with exactitude and more so, when other circumstances, relied upon on behalf of the prosecution, do not at all stand established, as would be seen hereinafter.

27. A perusal of site plan, Ex.PW-20/C, would go to show that there are some houses at the place where the deceased was said to be lying in injured condition. However, no person from the vicinity was associated by the police, during investigation, to throw some light on the facts and circumstances under which the deceased was lying injured at that place.

28. As far as the motive for commission of the alleged offence by the accused, as noticed hereinabove while stating brief facts of the case, is concerned, there is no other convincing evidence to establish the same, except copy of FIR, Ex.PW-4/A, relating to the theft of cash and ornaments said to have taken place at the house of A-1 Balwant Singh alias Mintu and statement of PW-5 Kamlesh Kumari, in the last six lines of her chief-examination, which is also not of definitive nature.

29. The record (final report u/s 173 Cr.P.C.) reveals that whereas A-1 Balwant Singh @ Mintu and A-3 Vijay Kumar, were arrested by the police in this case on 4.6.2002, A-2 Suresh Kumar was arrested on 9.6.2002, but their disclosure statements u/s 27 of the Evidence Act Ex.PW-20/D, Ex.PW-20/E and Ex.PW-20/F, were recorded by the police quite belatedly only on 11.6.2002, pursuant to which the aforesaid recoveries are stated to have been effected at their instance. Further more, the fact remains that neither the disclosure statements nor the consequent recoveries thereunder stand proved, as the witnesses to the same, namely PW-9 Kehar Singh and PW-10 Hoshiair Singh, have not supported the prosecution case in that regard.

30. Newspaper clipping, Ex.PW-16/B, relating to this case, sent for publication by PW-16 Raj Kumar Jain, Correspondent, Panjab Kesari cannot be relied upon, for the reason that the incriminating portions thereof implicating the accused, are stated to have been incorporated therein by PW-16 Raj Kumar Jain "after due verification from the DSP and the public" and, thus, being mere heresay.

31. FSL reports, Ex.PW-20/P and Ex.PW-20/Q, whereby the viscera of the deceased, his clothes, watch and hair and the clue materials lifted by the police from the spot scene, were analysed, also do not go to incriminate the accused. For the above stated reasons, it can be safely concluded that the prosecution has not been able to establish any of the circumstances, pressed into service to bring home guilt against the accused. Accordingly, the impugned judgment dated 28.11.2006, acquitting the accused, does not call for any interference by this Court. Resultantly, the appeal is dismissed.