

**(2010) 05 SHI CK 0210**  
**In the High Court Of Himachal Pradesh**

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| State of Himachal Pradesh  | Vs | APPELLANT  |
| Bhupinder Singh and Others |    | RESPONDENT |

**Date of Decision :** 05-05-2010

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313  
Penal Code, 1860 (IPC) — Section 120B, 201, 302, 364, 392

**Citation :** (2010) 05 SHI CK 0210

**Hon'ble Judges :** V.K. Sharma, J; Surjit Singh, J

**Bench :** Division Bench

**Final Decision :** Dismissed

## Judgement

V.K. Sharma, J.—The State is in appeal against the judgment of acquittal dated 4.8.1997, of the learned Sessions Judge, Solan, H.P., whereby, the respondents herein, who were accused before the learned trial Court and shall here-in-after be referred to as such, were tried for the offences under Sections 364, 302, 201, 392 and 120B of the penal code (IPC) and were ultimately acquitted.

2. Whereas, A-1 Bhupinder Singh, A-2 Kuldeep Singh and A-3 Sarvjeet Singh, were charged under Sections 364, 302, 201, 392 and 120B IPC, the remaining accused, namely, A-4 Harbans Kaur, A-5 Gurmail Singh and A-6 Gurjit Singh, were facing charge u/s 120B read with Sections 364 and 392 IPC.

3. To be precise, the prosecution case was that Rajesh (deceased), son of Shri Sainu Ram (PW-16), was employed as driver on Maruti Van No. HP02-3566, which was being plied as a taxi, belonging to PW-1 Shri Rakesh Kumar and PW-4 Shri Suresh Kumar. On 22.8.1995, at Kandaghat, A-1 Bhupinder Singh and A-3 Sarvjeet Singh, hired the aforesaid taxi for Poanta Sahib. On way at 7.30 PM they took meals at the Dhaba of PW-5 Shri Ram Lal at Dedgharat and thereafter in the Dhaba of PW-12 Shri Tikka Ram at Dharampur at around 10.30 PM. However, thereafter the deceased did not come back along with the van upto 24.8.1995.

4. It was against the above backdrop that some people were sent in search of the deceased, but, without any success. It was in such circumstances that report Ex.PW-1/B was lodged by PW-1 Shri Rakesh Kumar about missing of the deceased along with the taxi. On 27.8.1995, Dy.S.P. Shri Virender Singh Kanwar (PW-9) recorded statement Ex.PW-1/A of Shri Rakesh Kumar, on the basis of which formal FIR Ex.PW-11/A was registered by PW-11 ASI Shri Zamita Ram.

5. The further case of the prosecution was that during investigation ASI Rach Paul Singh (PW-19) pursuant to secret information, raided the house of A-3 Sarvjeet Singh in village Kotli Khaki Wala near Phagwara (Punjab), in the presence of PW-4 Shri Suresh Kumar, who identified the said accused to be the person who had hired his taxi as aforesaid at Kandaghat, on 22.8.1995. On being interrogated, A-3 Sarvjeet Singh disclosed complicity of Bhupinder Singh (A-1) of village Beni Khurd, District Karnal (Haryana), in the crime, who was also subsequently taken into custody with the help of Haryana police on 14.9.1996. While in custody of the police, A-1 Bhupinder Singh, made disclosure statement Ex.PW-8/A with regard to hiding of shoes Ex.P-3 belonging to the deceased near Nahan on Kala Amb Road, which he got recovered vide memo Ex.PW-8/B. It was also alleged that A-1 Bhupinder Singh had burnt the aforesaid van at Nangal Chaudhri, District Mohindergarh (Haryana), which was recovered at his instance vide memo Ex.PW-7/B, pursuant to disclosure statement Ex.PW-7/A.

6. Thus, in nutshell, the allegations against the accused were that they in criminal conspiracy with each other kidnapped the deceased, murdered him, committed robbery and destroyed the evidence by setting the van on fire. Accordingly, they were arrested, charge-sheeted and sent up to face trial. On being charged, they pleaded not guilty and claimed to be tried. The prosecution evidence followed. It examined as many as 19 witnesses.

7. On close of the prosecution evidence the accused were examined u/s 313 of the Code of Criminal Procedure (?the Code?). Their case in defence was that of denial simpliciter, innocence and false implication. Additionally, A-1 Bhupinder Singh stated that the police of Butana took away his Maruti Van No. HR10-0248 from his house. Similarly, A-5 Gurmail Singh also alleged that his Maruti Van was taken away by Butana police. A-6 Gurjit Singh also alleged complicity of Butana police to falsely implicate him in this case. However, they did not lead any evidence in defence.

8. Admittedly, the prosecution case is based solely on circumstantial evidence. The circumstances pressed into service by the prosecution to bring home guilt against the accused were to the effect that (1) the deceased was last seen in the company of A-1 Bhupinder Singh and A-3 Sarvjeet Singh, (2) recovery of shoes Ex.P-3 belonging to the deceased at the instance of A-1 Bhupinder Singh and (3) recovery of the burnt van again at the instance of A-1 Bhupinder Singh. On appraisal of the evidence led by the prosecution, the learned trial court came to the conclusion that none of the circumstances stood established to fasten guilt against any of the accused and proceeded to acquit them.

9. We have heard the learned Assistant Advocate General for the appellant-State and learned Counsel for the respondents (accused) and perused the record.

10. Be it stated at the very outset that dead body of the deceased was not recovered.

11. The evidence with regard to first instance, that is, last seen theory comprises of the depositions of PW-2 Shri Rajesh Gupta and PW-4 Shri Suresh Garg, owners of the van, PW-3 Shri Krishan Gopal, a resident of Kandaghat, PW-5 Shri Ram Lal Gupta and PW-12 Shri Tikka Ram, owners of the Dhabas at Dedghrat and Dharampur, respectively. As per prosecution version they had seen A-1 Bhupinder Singh and A-3 Sarvjeet Singh for the first time on 22.8.1995. Whereas, all these witnesses belong to District Solan (H.P.), the accused belong to District Karnal (Haryana) and District Phagwara and District Patiala (Punjab). Thereafter some of the witnesses are stated to have seen the aforesaid accused during investigation and ultimately in the court in the year 1997, that is, after about 1 1/2 years from the alleged occurrence. Admittedly, no test identification parade was got conducted by the police to establish identity of the accused. In such circumstances and particularly the admission made by PW-3 Shri Krishan Gopal that he cannot identify the accused if they are made to stand amongst 10 to 12 persons of their built and physique and the fact that whereas in chief examination PW-12 Shri Tikka Ram has stated that one of the aforesaid accused was Sikh, in cross examination he has stated that on the day of his examination in the court none of the accused happened to be a Sikh. Even otherwise on a combined and harmonious reading of the depositions made by the aforesaid witnesses and on an over all view of the matter, there is no convincing and trustworthy evidence to establish the identity of any of the accused. It being so, it cannot be said that the last seen theory stood convincingly proved and established.

12. The evidence with regard to the second circumstance, that is, recovery of shoes Ex.P-3 pursuant to the disclosure statement Ex.PW-8/B, made by A-1 Bhupinder Singh has also not been found to be reliable by the learned trial court for the reasons that out of the two marginal witnesses to the disclosure statement Ex.W-8/A, namely, Shri Narain Singh and PW-8 Shri Ram Lal, only the latter, a Home Guard, was examined. He has stated that one shoe was found in the open at a distance of 40 meters from the road and the other at a distance of 100 meters. Thus, the alleged recovery was made from open place(s). It was only thereafter that father of the deceased PW-16 Shri Sainu Ram had identified shoes Ex.P-3 as that of the deceased. Prior to that no evidence was gathered by the police regarding identity of the wearing apparels of the deceased including his shoes. Further more, since the recovery of shoes Ex.P-3 was made from open place(s) accessible to general public and that too after a period of more than one year from the alleged occurrence, the evidence with regard to identification of shoes Ex.P-3 by PW-16 Shri Sainu Ram does not inspire much confidence.

13. Lastly, as regards the third circumstance, that is, recovery of burnt van, it

would be seen that the occurrence relates to 22.8.1995. The alleged disclosure statement Ex.PW-7/A relating to burning of the aforesaid van was made by A-1 Bhupinder Singh on 16.9.1996, that is, after lapse of more than a year. The testimony of PW-13 Shri Radhey Shyam with regard to burning of a Maruti Van at village Raipur Malik, District Mohindergarh (Haryana) during the night intervening 11/12.8.1996 at about 3.30 A.M, that is, again after about one year from the alleged occurrence, also does not inspire confidence for the reason that the recovered burnt van is not co-related to the van in question for want of chassis and engine numbers on the same.

14. Further more, no evidence worth the name was led by the prosecution to show complicity of A-2 Kuldeep Singh, A-4 Harbans Kaur, A-5 Gurmail Singh and A-6 Gurjit Singh, in the alleged crime.

15. For the reasons stated above, we do not find any infirmity in the impugned judgment of acquittal dated 4.8.1997. Consequently, the appeal is dismissed.