
(2012) 10 SHI CK 0007
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 426 of 2004

State of Himachal Pradesh

APPELLANT

Vs

Bhupinder Singh and Others

RESPONDENT

Date of Decision : 03-10-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 313
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 147, 148, 149, 201, 302

Citation : (2012) 10 SHI CK 0007

Hon'ble Judges : Rajiv Sharma, J;Deepak Gupta, J

Bench : Division Bench

Advocate : Vivek Singh Thakur, A.A.G, for the Appellant; Jagdish Vats, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sharma, Judge

1. State has come in appeal against the judgment, dated 30.06.2004 of the learned Additional Sessions Judge, Fast Track Court, Shimla, H.P., rendered in Sessions Trial No. 13-S/7 of 2003/2002, whereby respondent No. 1, Bhupinder Singh, who was charged with and tried for offence punishable under Sections 147, 148, 201 and 302 read with Section 149 of the Indian Penal Code and respondents No. 2 to 6, namely Kewal Ram, Jeet Ram, Om Parkash, Bimla Devi and Savitri Devi, who were charged with and tried for offence punishable under Sections 147, 148 and 302 read with Section 149 of the Indian Penal Code, have been acquitted. Case of the prosecution, in a nutshell, is that on 19.06.2002, the complainant was going from his house towards Sadyana-Rahighat road. At about 6:30 p.m., when he reached near a place known as Bag, he saw Ramesh Heta being caught hold by accused persons, namely Jeet Ram, Kewal Ram and Om Parkash. Accused Savitri and Bimla were pelting stones. In the meantime, accused Bhupinder gave a Darat blow on the neck of Ramesh Heta from the back

side. Thereafter, accused Bhupinder ran away and co-accused also followed him. The blood started oozing out from the injury. The deceased Ramesh Heta has fallen on the ground. He was given support by the complainant and in the meantime, Sher Singh, resident of village Kanog also reached there alongwith many people from the village, who had seen the accused persons fleeing. When the deceased was being taken to hospital, he succumbed to his injuries. The inquest report was prepared. The post mortem was conducted in I.G.M.C., Shimla on 20.07.2002. According to the prosecution, accused Bhupinder has made a disclosure statement u/s 27 of the Indian Evidence Act about the concealment of a drat. Consequently, the drat was recovered from the store room. He also made a disclosure statement about his clothes. The blood stained shirt and pajama were recovered at the instance of accused Bhupinder Singh. Thereafter, the investigation was completed and the challan was put up after completing all the codal formalities.

2. The prosecution has examined as many as 21 witnesses. The statements of the accused were also recorded u/s 313 of the Criminal Procedure Code. In defence, the accused has examined DW-1, Dr. Pawan, DW-2, Dr. Anil Kumar and DW-3, Dr. Ashok Chauhan. The learned trial Court acquitted the accused on 30.06.2004. Hence, this appeal by the State.

3. We have heard the learned counsel for the parties and gone through the judgment and the records carefully.

4. PW-1, Mohan Lal has testified that on 19.07.2002 at about 6:30 p.m., he was going to Sharyana-Rahighat road. When he reached at place known as Bagh, he saw accused Jeet Ram, Om Parakash and Kewal Ram, catching hold of Ramesh. Accused Savitri and Bimla were pelting stone at the deceased. In the meantime, accused Bhupinder attacked Ramesh with a drat. He also threatened him to do away with his life. Ramesh started crying and on this, the accused persons ran away from the spot. In the meantime, witness Sher Singh also reached on the spot. Moti Ram was already present on the spot. The blood started oozing from the injury. When Ramesh Chand was taken to Theog hospital by him alongwith other villagers, on his way, he succumbed to his injuries. He lodged F.I.R. Ex.-PA. On 25.07.2002, the accused has produced a drat while in custody from a box inside his house and the same was taken into possession vide Ex.-PB. He signed the Fard, Ex.-PB. In his cross-examination, he has admitted that deceased Ramesh was his uncle's son. He was trying to intervene to save Ramesh by telling accused Jeet Ram and Kewal Ram orally. The accused caught hold of deceased Ramesh from arms from the back side. Accused persons Jeet Ram, Om Parkash and Kewal, who had caught hold of Ramesh, had not given him beatings. According to him, the accused had not inflicted any injury on witness Moti Ram. He has deposed in his cross-examination that Moti Ram was also requesting the accused orally not to harm the deceased. Moti Ram has just arrived when accused Bhupinder gave a drat blow on the neck of Ramesh.

5. PW-2, Sh. Moti Ram is the father of deceased Ramesh. According to him at

about 6:30 p.m., he was going towards a newly constructed road. Accused Bhupinder had already lopped a khark tree. He was also erecting a wall on the stairs, which were being used as a passage. When he objected, he started arguing with him. On hearing the altercation being going on, his son Ramesh, who was watering the fields nearby also came on the spot. His son Ramesh removed the stones, which were used for raising dangra. On this, accused Bhupinder went towards his house and called his family members. Thereafter, accused Bimla, Sumitri, Kewal Ram, Jeet Ram and Om Parkash also reached on the spot alongwith Bhupinder, who was following them. He with folded hands requested the accused persons not to quarrel, but they did not pay any heed. Thereafter, accused persons, namely, Kewal Ram, Jeet Ram and Om Parkash caught hold of Ramesh. Lady accused Bimla Devi and Sumitri, who were having stones in their hands, started stoning him. In the meantime, accused Bhupinder gave a drat blow from the back side, which hit Ramesh on the neck and the blood started oozing with great pressure. When Ramesh was about to fall on the ground, he gave him support and in the meantime, Mohan Lal (PW-1) also reached on the spot as well as witness Sher Singh, whom he do not know that from where he came. In his cross-examination, he deposed that the accused persons, namely, Om Parkash, Jeet Ram and Kewal Ram caught hold of Ramesh from arms from the front side. The lady accused were pelting stones when Ramesh was facing them.

6. PW-3, Sh. Sher Singh has deposed that he was returning to his house after doing work on the road, which was under construction. At about 6:30 p.m., when he reached at a place known as Bag, he saw accused persons namely Jeet Ram, Om Parkash and Kewal Ram catching hold of late Ramesh. From the front side, accused Bimla and Savitri were pelting stones at Ramesh. In the meantime, accused Bhupinder, who was also present in the Court gave a drat blow from the back side on the neck of Ramesh and the blood started oozing from the injury. Moti Ram and Mohan Lal were already on the spot. They gave support to injured Ramesh. In his cross-examination, he has admitted that his sister has been married to Het Ram, brother of deceased Ramesh.

7. PW-4, Kumari Pushpa Thakur has deposed that the police has taken into possession the bloodstained soil and stone vide Ex.-PC and Ex.-PD. PW-5, Sh. Hem Raj has deposed that accused Bhupinder has made a disclosure statement that a drat had been concealed by him in his house in the store room, situated on the ground floor. His statement was reduced into writing vide Ex.-PE. He signed the same.

8. PW-8, Jagat Ram has deposed that accused Bhupinder has given a nishandehi of the place from where he got recovered the drat. The drat was recovered from the wooden box, which was taken into possession vide Fard Ex.-PB. He signed Ex.-PB. According to him, accused Bhupinder has also made a disclosure statement about his clothes, i.e., shirt and Pajama, which he had kept in a cupboard of the house.

9. PW-9, Sh. Partap Singh has deposed that on 19.07.2002, he was coming to his house from the place where a road was under construction. He heard a noise from a distance of about 200/250 metres. He went running towards the spot and found that Ramesh was lying unconscious and that his head was in lap of Mohan Lal. He saw Bhupinder, Jeet Ram, Kewal Ram, Om Parkash, Smt. Savitri and Bimla running towards their house.

10. PW-10, Negam Singh and PW-11, Mehar Singh are not very material witnesses, since they have only deposed about the path.

11. PW-12, Dr. Dalip Tekta, has medically examined Ramesh Chand on 20.07.2002. In his cross-examination, he has admitted that if a person of moderate height is caught hold by three other persons of the same height by arms, the body of that person would be obstructed including his neck. He has clarified that the degree of obstruction would depend upon many factors, such as distance and height and also built of two persons. He further admitted that if the heights of three persons are more than the person, who had been caught hold, in that event, there would be more obstruction. He has noticed the following injuries on the body of Ramesh Chand:

1. There was incised wound on the lateral side of the neck on left side size (4x3x1 cm) oblique in direction spindle shaped margin clean cut bawelled under line muscle cut blood clots present at the site of wound. Wound ante mortem in nature. It is 2" above the clavicle and 2" lateral of the sternoclavicular joint.

2. Punctured wound of the right side of the supraclavicular area 1/2" above the mid clavicle joint. Size 2x1 cm depth could not be made out exactly this wound is 1" below the incised wound. Bleedings from the wound is present alongwith the clots. Injury ante mortem in nature.

3. There is a small lacerated wound continuous and joining the two wound size 1/2 x 1/2 cm reddish in colour.

4. Contusion on the left side of the fore arm brownish in colour size 3x1 cm irregular in shape

12. PW-13, Dr. H.S. Sekhon, has conducted the post mortem on the dead body of deceased Ramesh Chand. According to him, Ramesh Chand died due to ante mortem injury over neck causing severing of a major vein and puncturing left lung causing hemorrhagic shock and death. According to him, the time between injury and death was around 30 minutes and between the death and post mortem was around 18 hours. According to him, probably the deceased was struck from behind as is evident from the injuries as incised wound on posterior side and punctured wound anteriorly was probably by a drat. According to him, the injuries found on the neck of the deceased could be caused by a drat, Ex.-P2.

13. PW-14, Head Constable Yashwant Singh has deposed that A.S.I. Om Raj deposited two sealed parcels with seal "O" containing blood stained stones and soil. SHO, Trilochan Dutt Sharma has also deposited one sealed parcel with seal

"B" containing sample of stones and soil. According to him, on 22.07.2002, Constable Karam Chand deposited a viscera, Jar and blood sample of deceased Ramesh. On 25.07.2002, SHO Trilochan Dutt deposited a sealed sample containing clothes and sample was sealed with seal "B". On the same day, another sample sealed with seal "B" had also been deposited by Trilochan containing drat. On 24.07.2002, he sent parcels of stones and soil, clothes of deceased Ramesh, viscera jar and bottle containing blood of deceased through Constable Sudhir Kumar to F.S.L., Bharari for analysis. He also sent two parcels containing drat and clothes through Constable Sudhir to F.S.L. Bharari for analysis. On 29.07.2002, he sent one parcel containing blood of Bhupinder Singh through Constable Sudhir to F.S.L., Bharari.

14. PW-18-A, ASI Biri Singh has deposed that he has recorded the statement of Jeet Ram, who was an accused in another case F.I.R. No. 97/2002, Police Station, Theog under Sections 302, 147, 148 and 149 of the Indian Penal Code. Jeet Ram also stated that on 19.07.2002 during night time when he was coming towards Shimla, he was stopped by 15/20 persons who came in a Tata Mobile Vehicle at Mashobra and they broke the glasses of the Vehicle in which he was coming towards Shimla. According to him, at that time, Jeet Ram was accompanied by his wife Smt. Bimla Devi and Nephew Kishan. From Mashobra, Jeet Ram and others were taken to Police Station, Dhalli. S.H.O. T.D. Sharma, Police Station, Theog, arrested them as they were wanted in case No. 97/2002. He also recorded the statement of Jeet Ram u/s 154, Cr. P.C. and sent it to Police Station, Dhalli.

15. PW-19, ASI Om Raj has deposed that he partly undertaken the investigation. He took the photographs of blood which was found on the spot and also other photographs at the site vide Ex.-P10 to Ex.-P17 with his official Camera, the negatives of which are Ex.-P18 to Ex.-P24. He also collected the blood stained stones and soil, which were sealed in a parcel with seal "O" and the same were taken into possession vide memo Ex.-PC. The seal was handed over the Rajinder Singh. He has also taken the samples of stones and soil, which were put into another parcel sealed with seal "M", which was taken into possession vide memo Ex.-PD. The seal was handed over to Smt. Pushpa Thakur. In his cross-examination, he has not seen injuries on the person of accused Bhupinder, Jeet Ram and Smt. Bimla. He did not know whether these persons were medically examined and to this effect, M.L. Cs. were obtained during investigation.

16. PW-20, SI Trilochan Sharma has deposed that he has prepared the inquest report Ex.-PR. He has also made application to the Medical Officer, Civil Hospital Theog for conducting the post mortem examination of the dead body. On 25.07.2002, accused Bhupinder Singh while in custody, took the police to village Sharayana. Two witnesses Jagat Ram and Narain Singh were also associated by him and in their presence, accused Bhupinder Singh gave the nishandehi of the place where he has concealed the drat, in pursuance of his statement, Ex. PB. The drat was recovered at the instance of accused Bhupinder from a box, which

was kept in a room on the ground floor. He also prepared sketch Ex.-PS of the drat. The drat was taken into possession on the basis of the disclosure statement made by accused Bhupinder Singh in the presence of witnesses Jagat Ram and Narain Singh. The clothes of accused Bhupinder were recovered from a room in the upper storey vide recovery memo Ex.-PM. In his cross-examination, he deposed that he knew that before the incident accused Bhupinder Singh was lopping a Kharak tree. He also deposed that the passage was being constructed in the land belonging to Kewal Ram and thereafter clarified that already there was a passage. He further stated that the land of Kewal Ram has its boundary with the land of Moti Ram. According to him, in case the passage had to be created/constructed in the land of Moti Ram, stairs up to a height of five feet were to be raised/ constructed. He has also admitted that the passage from the point where stairs had been constructed also leads through the land of Kewal Ram. On the upper side, there is field of Moti Ram and on the other side, there is land of Kewal Ram. He also admitted that if the stairs are constructed in the land of Moti Ram, the passage could lead through his land.

17. DW-1, Dr. Pawan has medically examined accused Jeet Ram on 20.07.2002. He has noticed the following injuries on his body:

1. Tenderness over right side of chest and right side of back.
2. Lacerated wound over occipital region on the right side. Reddish pink in colour. No clinical evidence of fracture of under line bone.
3. Crush injury over right little finger on distal aspect size was 1.5 x 0.5 x 0.3 cms. Reddish pink in colour with tenderness of under line bone. No other external injuries seen at present.

The duration of the injuries was within 24 hours. He has issued M.L.C. Ex.-DW-1/A. He also medically examined accused Bimla Devi on 20.07.2002 at Civil Hospital, Theog and has noticed the following injuries on her body:

Contusion on right side of leg on lower part redish pink in colour. No other external injuries were found.

According to him, if a person is caught hold by another from his neck with strong grip, the person can die within five minutes.

18. DW-2, Dr. Anil Kumar Verma has deposed that he has medically examined Bhupinder Singh on 05.08.2002. He has noticed the following injuries on his body:

1. Tenderness interscapular region, for which X-Ray of spine was advised.
2. There was healed linauous scar marks in the interscapular region towards left of C7 Vb. Colour of scarp mark is light pinkish. Its size was 1 1/2" X 3mm.
3. Healed scar mark left pina on anterior aspect which was pinkish in colour and its size was 1 cm x 2mm. It was also linear in shape.

According to him, injuries No. 1 and 2 were grievous in nature and the same could be caused if a person is hit with a big stone.

19. DW-3, Dr. Ashok Chauhan has deposed that he has examined Bhupinder Singh on 23.07.2002. He has noticed the following injuries on his body:

1. Lacerated wound middle of inner margin of ear size 2.5 cm. to 1.5 cm. reddish brown in colour.
2. Lacerated wound 2 cm. of from C7 with reddish brown scab at places sab not from the lateral aspect towards the middle line. Length 4 cm x 5 cm.
3. Superficial lacerated wound left from arm 1.5 cm x 1 cm dark brown in colour. 3 cm. from elbow joint.
4. Bruising by right inguinal region 3 cm from interior brown in colour. Size is 2 cm x 1 cm over inguinal area and 5 cm to 5 cm over. The kind of weapon is blind in colour.

20. Now, far as the case of accused Bhupinder Singh is concerned, he has taken the plea of self defence. According to him, he was chopping a khark tree when Moti Ram (PW-2) came there. He had an altercation with him. Thereafter, Ramesh Kumar, who was working nearby started pelting stones on him. He ran towards his house. He thought that Ramesh may have gone back and he came back to the spot. Ramesh attacked him and other co-accused with stones. He also threw a big stone on him which struck him on the back side near neck and he also kicked him twice and thrice. Thereafter, the deceased caught hold of co-accused Om Parkash from the neck and threw him on the ground. He threatened to kill him. He apprehending that Om Parkash might not be killed by the deceased, had to give a drat blow to save his life. If he had not done so, Ramesh would have killed Om Parkash, him as well as other co-accused. Accused Bhupinder Singh has been medically examined by DW-2, Dr. Anil Kumar on 05.08.2002. According to him, the injuries No. 1 and 2 were grievous in nature. He also testified that injuries No. 1 and 2 could be caused if a person is hit with a big stone. Accused Bhupinder Singh was also examined by DW-3, Dr. Ashok Chauhan. He has noticed four injuries on the body of accused Bhupinder Singh. However, surprisingly, these injuries were not noticed by PW-19 ASI Om Raj. He has also not seen any injury on the body of Jeet Ram and Bimla, though these accused were also medically examined and injuries were noticed on their bodies. The injuries received by Bhupinder Singh, Jeet Ram and Bimla have not been explained. The injuries No. 1 and 2 received by Bhupinder Singh were serious in nature. These injuries probablise the defence of Bhupinder Singh that he was hit by big stone by the deceased.

21. According to PW-1, accused persons have caught hold of Ramesh from the arms from the back side. Accused Savitri and Bimla were pelting stones on the deceased. In the meantime, accused Bhupinder attacked Ramesh with a drat. In case Savitri and Bimla were pelting stones on the deceased, there was every

possibility of the stones hitting the accused persons, who have caught hold of the deceased. The version of the prosecution that the deceased was given a drat blow on the back side of the neck cannot be believed since the head/neck would have been obstructed in case the deceased was caught hold by the accused from the arms from the back side. This conclusion also finds support from the statement of PW-12, Dr. Dalip Tekta. According to him, if a person of moderate height is caught hold by three other persons of the same height by arms, the body and neck of that person would be obstructed.

22. PW-1, Sh. Mohan Lal has deposed that PW-2, Sh. Moti Ram was present on the spot. However, Moti Ram (PW-2) has deposed that when Ramesh fell on the ground, he gave him support and in the meantime, Mohan Lal also reached on the spot as well as Sher Singh.

23. There is also variation in the statements of PW-1, Mohan Lal, PW-2, Moti Ram and PW-3, Sher Singh, the manner in which the deceased was hit by accused Bhupinder Singh with the drat on the neck. PW-2 and PW-3 have deposed that Ramesh was caught hold from arms from the front side. If this version is believed, accused Bimla Devi and Savitri Devi could not hit the deceased. However, PW-1, Mohan Lal has deposed that Ramesh was caught hold by the accused from the arms from the back side. In this case, his neck would have been obstructed and he could not be hit on the neck from the back side. The presence of PW-3, Sh. Sher Singh on the spot is also doubtful. PW-2 in his examination-in-chief has deposed that he did not know from where Sher Singh came on the spot. PW-1, Sh. Mohan Lal is related to deceased. He was his uncle's son. Similarly, PW-3, Sher Singh was also related to Ramesh. His sister was married to Het Ram, brother of deceased Ramesh.

24. There are major contradictions in the statements of PW-1, PW-2 and PW-3, who according to the prosecution were eye witnesses, which have not been explained by the prosecution. No blood was found on the drat and on the shirt of accused Bhupinder Singh as per report Ex.-PX3. Though blood was found present on the pajama of accused Bhupinder Singh, but no final analysis could be arrived at with regard to blood group. To the similar effect is report Ex. PX1, as far as blood group is concerned. Neither PW-1 nor PW-2, who were present on the spot, according to the prosecution, have taken any steps to save deceased Ramesh. They had been orally requesting the accused not to harm Ramesh. They have not even raised any hue and cry when Ramesh was beaten up by the accused. In the statement of PW-1, recorded u/s 154 of the Criminal Procedure Code. When Ramesh was hit by a drat, he gave him support and thereafter PW-3, Sher Singh reached at the spot. However, PW-3, Sher Singh, in his statement deposed that he had seen Bhupinder Singh giving a drat blow on the back side of the neck of deceased Ramesh. The prosecution has not taken into possession the clothes of PW-1 and PW-2. According to these witnesses, they have given support to Ramesh, who was bleeding profusely. There ought to have been blood stains on their clothes, if they were supporting deceased Ramesh Heta. According to the

contents of F.I.R. Ex.-PA, many persons had assembled on the spot and they had seen accused fleeing. However, the prosecution has not examined any of these persons nor cited them as witnesses.

25. According to PW-2, Moti Ram, he was on the spot when his son was beaten up by the accused. However, in the FIR, it is not stated that PW-2, Moti Ram was also present on the spot. According to the contents of F.I.R., PW-1, Mohan Lal was giving support to Ramesh and in the meantime, PW-3, Sher Singh has also come on the spot.

26. It is true that the conviction can be recorded merely on the basis of the statements of related witnesses. However, in this case, there are major contradictions in the statements of PW-1, Mohan Lal, PW-2, Sh. Moti Ram, the manner in which the incident has taken place. It is not the case of the prosecution that the accused were armed when they came on the spot. Accused Bhupinder Singh was already lopping fodder leaves from a kharak trees and he was carrying a drat for that purpose. Thus, the prosecution has failed to prove that the accused have formed an unlawful assembly. The accused have not come armed with any weapon on the spot. The learned trial Court after considering the entire evidence, has rightly acquitted the accused. We, therefore, find no merit in this appeal, which is accordingly dismissed. Bail bonds are discharged.