

(2010) 04 SHI CK 0013
In the High Court Of Himachal Pradesh
Case No : Criminal A. No. 206 of 1993

State of Himachal Pradesh

APPELLANT

Vs

China alias Balbir Singh and Others

RESPONDENT

Date of Decision : 28-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 161
Penal Code, 1860 (IPC) — Section 34, 392, 394

Citation : (2010) 04 SHI CK 0013

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—This appeal by the State is directed against the judgment of the learned Chief Judicial Magistrate, Kangra at Dharamshala, dated 29.10.1992 in Criminal Case No. 29-II of 1992 whereby the accused have been acquitted of having committed offences punishable under Sections 392 and 394 read with Section 34 of Indian Penal Code.

2. The prosecution story, in brief, is that on the night intervening 29.9.1991 and 30.9.1991 PW-5, Harjinder Singh was driver of Maruti Van No. PB-07-9428 in which the four accused were travelling. These four accused assaulted PW-5, threw him out of the taxi and took control of the taxi and managed to escape. Thereafter, PW-5 Harjinder Singh walked from village Sakoh, where the incident took place to village Chaitru. Then he went to Shahpur Police Station and lodged report Ex.PW-5/B in the form of statement recorded u/s 154 Code of Criminal Procedure In this initial complaint, he stated that he was employed as a driver on Maruti Van No. PB-07-9428 owned by Subhash Chand son of Madan Lal. On the previous day, i.e. 29.9.1991 four boys aged between 20-22 years met him at Hoshiarpur bus stand. Two of them were bearing patkas (meaning thereby that they were Sikhs) and the other two were clean shaved. They asked him to take them to Dharamshala. They also agreed to pay the fuel charges for the taxi and

agreed to pay the complainant Rs. 300/- per day. They left Hoshiarpur for Dharamshala at about 8.00 P.M.

3. When the taxi had gone beyond Gaggal near the temple of Shri Hanuman Ji, one of the four persons sitting in the taxi put a rope around the neck of PW-5. The other three started beating him. They threw him out of the taxi and took the taxi towards Gaggal. PW-5 then walked to Chaitru and then took a bus to Shahpur, where he lodged the report.

4. On the basis of this report, F.I.R. No. 337/1991 was lodged in Police Station, Shahpur. The complainant was got medically examined from Doctor Atul Mahajan (PW-3), who found simple injuries on the person of the complainant and one injury was a ligature mark on the neck.

5. It appears that though investigation was done, but the police achieved no success. In the meantime, Shri Subhash Chand and Suresh Kumar, owners of the taxi received a notice Ex.PW-12/A, dated 6.2.1992 addressed to them by PW-12, Shri P.K. Kamble, Advocate, Pune. In this notice, it was alleged that these two persons, i.e. Subhash Chand and Suresh Kumar had agreed to sell the Maruti Van No. PB-07-9428 to Shri Mehboob Abdul Razak Mulla (PW-11) for a sum of Rs. 90,000/- and the deal had been struck through their friend Jasvinder Singh Dharam Singh. As per this notice, out of the total amount of Rs. 90,000/-, Rs. 60,000/- had been paid to these two persons in cash and out of the remaining amount, Rs. 10,000/- had been paid to their friend Jasvinder Singh Dharam Singh. PW-11 had agreed to pay the balance amount subject to the condition that No Objection Certificate for the sale of Maruti Van be sent from Hoshiarpur. This notice was received by Shri Subhash Chand on 17.2.1992. Thereafter, PW-8 went to the police, who went to Pune and recovered the Van vide memo Ex.PW-6/A. Subhash Chand had gone to Pune with the police to get the vehicle released. The sale deed Ex.PW-11/A whereby the Van had been sold to PW-11 and affidavit Ex.PW-11/B, insurance documents etc. were also recovered by the police and taken into possession.

6. The police arrested accused Chinna alias Balbir Singh, Jassa alias Jasbir Singh and Satti alias Satpal Singh on 5.3.1992 and the 4th accused, Prince alias Amarjeet Singh alias Parvinder Singh was arrested on 9/10th March, 1992. It is alleged that accused Amarjeet Singh and Satpal Singh made a disclosure statement to the police and got recovered one rope and one knife from the place of occurrence. Harjinder Singh (PW-5) allegedly identified the accused Balbir Singh, Jasbir Singh and Satpal Singh during the course of test identification parade held on 9.3.1992 in the district jail, Dharamshala by the Judicial Magistrate. Accused Amarjeet Singh was also asked to join the test identification parade fixed for 11.3.1992. He refused to take part in the test identification parade as he was well known to complainant, Harjinder Singh. Even the other accused also made a statement to the Judicial Magistrate that they had already been seen by the accused.

7 .On the basis of the investigation, the police came to the conclusion that after dispossessing the complainant of the taxi, the accused persons had taken the taxi to Pune, where two of them impersonated themselves as the original owners of the Van and sold the same to PW-11. The challan was accordingly filed against the accused, who pleaded not guilty and claimed trial. After trial, they have been acquitted. Hence, this appeal by the State.

8. The learned trial Court acquitted the accused mainly on three grounds. Firstly, that the statement of PW-5 Harjinder Singh does not inspire confidence since he has given three contradictory statements. Second, that the test identification parade was not held in accordance with law as the accused had already been seen by PW-5 Harjinder Singh and therefore, the test identification parade is meaningless. Lastly, that PW-12 P.S. Kamble, Advocate had identified the persons selling the van as being personally known to him and, therefore, the possibility of his being involved in the gang of stolen vehicle dealers cannot be ruled out.

9. So far as the statement of Harjinder Singh is concerned, we have already set out in detail the first version contained in Ex.PW-5/A. The second version of this witness is contained in statement recorded on 14.10.1991, Mark-X as well as affidavit of the same date. Harjinder Singh in his cross-examination admitted making the statement Mark-X, and therefore, it should have been actually exhibited and not only marked. He also admitted that he had furnished an affidavit. Other than admitting these two facts, he had admitted that both in the statement and the affidavit he had stated that the van in question was a private car and not a taxi. He had also specifically admitted that both in his statement mark-X and the affidavit, he had stated that on 29.9.1991 he was coming to Dharamshala to purchase medicines for himself. In this statement and affidavit he had stated that at Mangowal Barrier he met four persons who told him that their mother is ill in Dharamshala and requested him to give them lift. He did not charge any fare from them. He also stated that out of the two statements made by him, the statement made at Dharamshala was incorrect. He also stated that what had been stated in statement mark-X is incorrect.

10. While appearing in the Court, this witness made different a statement. Whereas, in the initial statement Ex.PW-5/A it was stated that one of the four persons sitting in the van put a noose around his neck and the other three persons beat him, while appearing in the Court, the witness specifically stated that the Sikh gentleman Amarjeet Singh, sitting on the back seat, put the rope around his neck. He also stated that accused Satpal Singh, who was sitting next to him, took out a knife and tried to kill him with the knife. Then the other Sikh gentleman sitting on the rear seat came to the driver seat and started driving the taxi and after driving the taxi for some distance, the witness was pushed out of the taxi and then beaten by the accused. This statement is totally contradictory to the statement of this witness recorded u/s 161 Code of Criminal Procedure and he was confronted with the statement recorded u/s 161 Code of Criminal

Procedure wherein there is no mention of the facts mentioned in Court.

11. her more, even in the initial statement, the witness had stated that two of the persons, who boarded the van, were Sikhs and two were clean shaved. While lodging this report even if he did not know the names of the persons, he could have clearly stated whether it was a Sikh gentleman or clean shaved person, who tied the rope around his neck. So far as the knife is concerned, there is no mention of a knife attack in the first statement. Thus, the learned trial Court was justified in not relying upon the statement of PW-5.

12. Coming to the next question as to the identification of the accused. Even as per PW-5, the accused were not known to him prior to the incident. He only identified them as two Sikhs and two clean shaved persons. He did not give in his statement made to the police any specific identification marks of any of the accused. According to the police, PW-5 identified the accused in the test identification parade held in district jail, Dharamshala in the presence of PW-15, Shri S.S. Garg. PW-15 admitted in his cross-examination that the three accused, Chinna, Jassi and Satti were produced before him on 6.3.1992 and he had granted judicial remand of five days. He also admitted that on 6th March, 1992 when the accused were produced before him their faces were not covered. He also admitted that on 11th March, 1992 when accused Amarjeet Singh alias Prince was produced before him, his face was also not covered. Unfortunately, PW-15 has not given any details as to how the test identification parade was conducted. While appearing as PW-15, he had not stated anything about the manner in which the test identification parade was conducted. It is only in Ex.PW-15/A and Ex.PW-15/B that there is mention of the manner in which the test identification parade was conducted. However, merely by exhibiting PW-15/A and Ex.PW-15/B, the contents there of have not been proved. It was for the witness to prove the contents of the document and the manner in which test identification parade was conducted.

13. Even if we accept the contents of Ex.PW-15/A and Ex.PW-15/B, it is apparent that the text identification parade was not conducted in a proper manner. Three accused were already standing alongwith seven other persons in one row. The police was already there and the Magistrate (PW-15) did not even deem it proper to change the position of the persons who had been made to stand in a row. Therefore, the possibility of the police having informed the PW-5 of the place(s) where the accused were standing, cannot be ruled out. In fact, it could have been better if three separate test identification parades had been conducted and if the test identification parade of the Sikh gentlemen was conducted by mixing only other Sikh persons.

14. Another reason to doubt the identification is that the owner of the van has clearly admitted that on 6th March, 1992 when he came to Dharamshala for release of the van, the driver, PW-5 had accompanied him. PW-5 stated that he had not accompanied him. His statement cannot be believed in view of the specific stand of the owner, PW-8. Therefore, the possibility of the accused

persons having been seen in the Court by the witness is possible.

15. It is also apparent that though initially a case was made out that the vehicle was a taxi, probably realizing that it was not registered as a taxi, both the owner and driver of the vehicle have purposely come up with a new version that the vehicle was only used for private purpose. Here also, both driver and the owner have given contradictory versions.

16. Coming to the issue of the disclosure statement. It is more than apparent that this is padding at the behest of the police and nothing else. The incident took place in September, 1991 and the recovery of the rope and knife was made more than six months later on 11th March, 1992. Once the spot had been identified as far as back in September, 1991 after the accused had thrown the knife and rope, it was not difficult for the police to recover these.

17. There is another glaring lacuna in the prosecution case. As noticed by the learned trial Court, PW-12 Shri P.K. Kamble, Advocate did not know the accused or the owners of the van personally. He in the sale agreement, Ex. PW-11/A has mentioned as follows:

I know the parties.

Sd/- P.S. Kamble, Advocate.

18. Similarly in the affidavit also, he has identified Subhash Chand Dua and Suresh Kumar Dua. As per sale agreement Ex.PW-11/A these two persons purportedly sold the vehicle to PW-11. If PW-12 did not know these persons, he had no business of identifying them. Therefore, his testimony that the persons whom he identified were the accused cannot be accepted to be correct.

19. According to PW-11 when he purchased the van from Subhash Chand and Suresh Kumar, the accused posed as Subhash Chand and Suresh Kumar. This witness identified Satpal Singh and Amarjeet Singh as the accused who posed as Subhash Chand and Suresh Kumar. He also stated that even these two persons were identified by PW-12, Advocate P.S. Kamble. It will be pertinent to mention here that as per the registration certificate Ex.PW-11/D, the vehicle was owned by Subhash Chand, Suresh Kumar and Naresh sons of Madan Lal. It was, therefore, essential that at the time when the sale deed of the van was agreed to be executed, Naresh Kumar should have also been a party to the agreement. As such also, the possibility that P Ws.-11 and 12 were dealing in stolen vehicles cannot be ruled out.

20. Another interesting aspect of the matter is that according to the prosecution sometime around Diwali of the year 1991, these four accused lived with the uncle of accused Chinna, i.e. PW-10, Udham Singh at Pune. The police of Pune became suspicious of this Maruti Van which was bearing a Punjab number and the Maruti Van as well as the accused were taken to the police station at Pune. This has been stated by PW-16, Inspector Pradeep and PW-10, Udham Singh. However, both of them did not give number of the Maruti Van which was taken

into possession. Even more surprising is the fact that the PW-16 not only did not remember the number of Maruti Van, he also could not recollect the names and addresses of the persons who were in the vehicle and taken to the police station. According to this witness, the persons were kept in police custody for two days. This fact could have easily been proved by producing documentary evidence, but the same has not been produced. Therefore, the prosecution has miserably failed to prove that the accused are the same persons, who were arrested at Pune.

21. In view of the above discussion, there is no merit in this appeal and the same is dismissed qua Respondents No. 1 and 4. So far as Respondents No. 2 and 3 are concerned, despite repeated attempts having been made, the said accused have not been served. Therefore, they were declared to be proclaimed offenders, but the State is not in a position to locate the said accused-Respondents or their property.

22. It is apparent that the whereabouts of Respondents No. 2 and 3 are not known to the State and therefore, it is virtually not possible to take any coercive steps to procure the presence of accused-Respondents No. 2 and 3. It is not known whether the said Respondents are dead or alive. The State has been unable to find out any information with regard to these Respondents. In such a situation, no purpose shall be served to keep the appeal pending qua Respondents No. 2 and 3. The appeal is accordingly disposed of with liberty reserved to the State to apply for revival of the appeal in case they can procure the presence of accused No. 2 and 3. The appeal is ordered to be consigned. However, the record shall not be destroyed without specific order from the Court since we have given liberty to the State to apply for revival of the appeal.

23. While disposing of the appeal, we are following the orders passed by the Apex Court on 31st August, 2001 in Cr. Appeal No. 917 of 1997 titled State of H.P. v. Satish Kumar Cr. Appeal No. 917 of 1997.

24. In view of the above discussion, the appeal qua Respondents No. 1 and 4 is dismissed on merits, whereas qua Respondents No. 2 and 3 the appeal is ordered to be consigned to the record room in the aforesaid terms. Bail bonds furnished by the accused-Respondents No. 1 and 4 stand discharged.