

(2010) 05 SHI CK 0047

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 711 of 1996

State of Himachal Pradesh

APPELLANT

Vs

Dilwara Singh and Others

RESPONDENT

Date of Decision : 12-05-2010

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 201, 202, 302, 34

Citation : (2011) 6 RCR(Criminal) 9 : (2010) 2 ShimLC 204

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

V.K. Sharma, J.—The State is in appeal against acquittal of the respondents, who shall here-in-after be referred to as "the accused", pursuant to their trial for the offences under Sections 302, 201, 202 read with Section 34 of the Penal Code and Section 27 of the Indian Arms Act, by the learned Sessions Judge, Solan, camp Court at Nalagarh, District Solan, H.P., vide the impugned judgment dated 17.7.1996.

2. The accused were charged as under:

A-1 Dilwara Singh

Sections 302, 201 read with Section 34 IPC and Section 27 of the Indian Arms Act.

A-2 Bhag Singh

Sections 302 and 201 read with Section 34 IPC.

A-3 Lekh Ram, A-4 Gita Ram and A-5 Harbans

Sections 201 read with 302 and 202 IPC.

Another accused Amar Nath, who was charged u/s 27 of the Indian Arms Act died during the trial.

3. Brief facts of the case may be stated thus. Shri Karam Chand, deceased was a resident of village Tirla. On 21.3.1992, he was present at his house along with his wife PW-1 Smt. Radha Devi, children and father PW-3 Shri Sunder Lal, when at about 10.30 p.m., he was called by A-1 Dilwara Singh and A-2 Bhag Singh, to accompany them to the nearby jungle for hunting. It was in such circumstances that it is alleged by the prosecution that the deceased accompanied the aforesaid two accused for hunting and thereafter, he did not return to the village alive. On the next day, that is,, 22.3.1992, the dead-body of the deceased was noticed lying near a water pond situate out skirts of village Tirla. The wife of the deceased who was informed about it, rushed to the spot and found her husband lying dead near the aforesaid pond. As the news about the dead-body of the deceased lying near the pond spread in the village, many people gathered on the spot. It was observed that blood had oozed out of the head of the deceased. Thereafter, the dead-body of the deceased was brought to his house on a cot. On hearing about the death of his son, father of the deceased is stated to have fell unconscious.

4. Against the above backdrop, initially no foul play was suspected with regard to the death of the deceased. Accordingly, he was cremated. Even as per the case of the prosecution all the accused participated in the cremation. It was thereafter that allegedly on the instigation of some persons that since the deceased had accompanied A-1 Dilwara Singh and A-2 Bhag Singh, for hunting in the nearby jungle, they could be responsible for his death, then the wife of the deceased, PW-1 Smt. Radha Devi, lodged report with the police on 25th March, 1992, on the basis of which a formal FIR Ex.PA was registered on that day.

5. The case was investigated by the police. During investigation, some earth stated to be stained with blood was lifted from the place where the dead-body of the deceased was found. Apart from that some pellets were also recovered from the cremation ground, where the deceased was cremated. These were sent for forensic examination to the laboratory at Shimla and reports dated 18.9.1992 (unexhibited) and Ex. PP dated 9.9.1992, were obtained, as per which blood was found on the aforesaid sample of earth, which was unfit for further tests. As regards, the pellets recovered from the cremation ground, it was stated that it was difficult to give opinion as to from which of the three guns allegedly being carried by A-1 Dilwara Singh and A-2 Bhag Singh, on the one hand and the deceased on the other, those pellets were fired.

6. As already observed since the dead-body of the deceased had already been cremated on 22nd March, 1992, the same was not subjected to any post-mortem examination. Thus, no expert evidence is available as to presence of injuries, if any, on the dead-body of the deceased when it was spotted in the aforesaid circumstances near the pond situate by the side of the village Tirla, on the one hand and on the other as to cause of death of the deceased.

7. On completion of investigation the accused were charged for the above offences to which they pleaded not guilty and claimed trial. The prosecution evidence followed. In all it examined ten witnesses.

8. 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. However, they did not lead any evidence in defence. On conclusion of the trial, all the accused Were acquitted of the respective charges.

9. We have heard the learned Additional Advocate General and the learned Counsel for the accused and perused the record.

10. It shall be pertinent to observe at the very outset that the prosecution case is based solely on circumstantial evidence. The principles governing appreciation of circumstantial evidence, as enunciated by the Hon"ble Apex Court as also by this Court, need not be restated. In the present case, the circumstances relied upon by the prosecution to bring home guilt against the accused were that (1) he was last seen in the company of A-1 Dilwara Singh and A-2 Bhag Singh and that all the three had gone for hunting and were carrying guns and only two of them, namely A-1 Dilwara Singh and A-2 Bhag Singh had come back from the jungle after hunting alive, the deceased was seen thereafter found lying dead with a bleeding head injury near the village pond, (2) blood was found at the place where the dead-body of the deceased was spotted and (3) pellets were recovered from the cremation ground, where the dead body of the deceased was cremated.

11. The evidence with regard to the deceased having been last seen together with A-1 Dilwara Singh and A-2 Bhag Singh, comprises of the statements of his wife PW-1 Smt. Radha Devi, PW-2 Ranjeet Singh, PW-3 Shri Sunder Lal, who is father of the deceased and PW-5 Shri Prabhu Dayal, out of whom PW-2 Shri Ranjeet Singh, did not support the prosecution version and was declared hostile. In so far as the depositions of PW-1 Smt. Radha Devi and PW-3 Shri Sunder Lal, wife and father of the deceased, respectively, are concerned, the same do not inspire much confidence for the reasons that initially no foul play was suspected by them relating to the death of the deceased and it being so, he was cremated in the normal course. The alleged occurrence pertains to the night intervening 21st/22nd March, 1992. The dead-body of the deceased was found near the village pond in the following morning on 22.3.1992. It was cremated on that very day. It has already been observed that in the absence of any autopsy having been conducted, presence of injuries, if any, on the dead-body of the deceased and the cause of his death, remained absolutely unascertained. Against this background lodging of FIR on 25.3.1992, was" highly belated and casts a very serious doubt about the prosecution story.

12. Further more, according to PW-1 Smt. Radha Devi, the deceased who was working as Fitter in the water supply scheme at village Tirla Mahua had gone to

release the water on 21.3.1992. at 5.00 p.m. and had returned after sometime. He went again to close the supply of water at about 6.00 p.m. and thereafter he never returned. However, in the very next breath she has stated that he returned at 10.00 p.m., lied down on the cot and smoked bidi. Lights were on. In the meantime, she heard conversation of A-1 Dilwara Singh and A-2 Bhag Singh, when the latter shouted and called the deceased to accompany him. She further goes on to depose that the deceased left the house and she retired to bed.

13. PW-3, Shri Sunder Lal, deposed that the deceased was his son. He himself was Vice-President of the Gram Panchayat. A-1 Dilwara Singh and A-2 Bhag Singh, shouted for the deceased in the evening. The witness was sleeping at that time as he was suffering from stomach. He has further stated that both the accused took the deceased for hunting.

14. Thus, it is manifest that whereas, PW-1 Smt. Radha Devi, has stated that the deceased had accompanied A-1 Dilwara Singh and A-2 Bhag Singh after 10.00 p.m., according to PW-3 Sruksunder Lal, he had gone with them in the evening. There is lot of difference between evening and after 10.00 p.m. in the night. The initial version stated by PW-1 Smt. Radha Devi that when the deceased went out of the house again to close the supply of water at about 6.00 p.m., he never returned thereafter requires to be viewed in this context. Thus, this casts a serious doubt on the very genesis of the prosecution case. Further more, PW-1 Smt. Radha Devi, has not stated that the deceased was taken along by A-1 Dilwara Singh and A-2 Bhag Singh, for hunting. PW-3 Shri Sunder Lal, who according to his own version, was sleeping due to stomach, has stated that the two accused had taken the deceased for hunting. However, the fact remains that neither of the two had stated that they themselves had seen the deceased going with the two accused.

15. The testimony of PW-5 Shri Parbhu Dayal that during the night of the alleged occurrence at about 12.00 he had seen A-1 Dilwara Singh, A-2 Bhag Singh and the deceased in village Dunga Dora and all the three were carrying guns at that time and were going for hunting and had proceeded towards temple side, is also not worth credence for the reason that he had stated during cross-examination that on the third day from the death of the deceased, he had gone to the house of PW-3 Shri Sunder Lal, to express grief and at that time he did not tell anyone that the deceased along with A-1 Dilwara Singh and A-2 Bhag Singh had met him at Dunga Dora during the night of the alleged occurrence and at that time they were carrying guns.

16. In view of the above, the last seen theory does not stand established convincingly.

17. Now, while adverting to the second circumstance, it would be seen that it is in evidence that the dead-body of the deceased was found lying near the village pond, as stated by PW-1 Smt. Radha Devi, who had noticed blood on the head of the deceased on the back side. In such circumstances, presence of blood on the

spot would in no way connect the accused with the alleged crime for lack of other independent, cogent, reliable and trustworthy evidence. Similarly, presence of human blood of group "A" on the kameej and salwar of PW-1 Smt. Radha Devi, is also explainable even from her own testimony that she had placed the dead-body of the deceased in her lap. In such situation, the second circumstance is also of no help to advance the prosecution case.

18. Lastly, while coming to the third circumstance with regard to recovery of pellets from the cremation ground, where the dead body of the deceased was cremated, it would be seen that no conclusive opinion has been submitted as per FSL report Ex.PP to connect the recovered pellets with the guns examined under the said report.

19. For the above reasons, we are satisfied that the impugned judgment of acquittal dated 17.7.1996, does not call for any interference at the hands of this Court. Accordingly, the appeal is dismissed.