

(2015) 05 SHI CK 0012

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 495 of 2007

State of Himachal Pradesh

APPELLANT

Vs

Durgu Ram and Others

RESPONDENT

Date of Decision : 05-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 313, 417, 418, 423
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2015) 05 SHI CK 0012

Hon'ble Judges : Sanjay Karol, J;Piar Singh Rana, J

Bench : Division Bench

Advocate : Ashok Chaudhary, Additional Advocate General and J.S. Guleria, Assistant Advocate General, for the Appellant; Javed Khan and Kanta Thakur, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Sanjay Karol, J.—State has appealed against the judgment dated 6.9.2007 of the Presiding Officer, Fast Track Court, Mandi, Himachal Pradesh, passed in Sessions Trial No. 4/2007, titled as State of Himachal Pradesh v. Durgu Ram and another, challenging the acquittal of respondents Durgu Ram and Mukti Ram (hereinafter referred to as the accused), who stand charged for having committed an offence punishable under the provisions of Section 302 read with Section 34 of the Indian Penal Code.

2. It is the case of prosecution that on 8.9.2006, Puran Chand (deceased) left his wife Geeta Devi (PW-1) for buying certain articles from the shop of Kaltu Ram (P.W.4). Since he did not return home, following day she asked her Devar Raj Kumar to search for him. She also went to the shop of Kaltu Ram and made inquiries. On way, she found dead body of her husband lying alongside the path near the Temple of Sehali Dev. Information was given by her to Smt. Bimla Devi, Pradhan of the Panchayat, who, in turn, informed the police. SHO Kapoor Chand (PW-18), upon receiving telephonic information, rushed to the spot, where he

prepared inquest report (Ex. PW-18/C), after taking photographs (Ex. PW-8/A1 to PW-8/A4). He sent the dead body for postmortem. Statement of Geeta Devi (Ex. PW-1/A), under the provisions of Section 154 of the Code of Criminal Procedure, was also recorded, on the basis of which FIR No. 219/06, dated 9.9.2006 (Ex. PW-14/B), under the provisions of Section 302 of the Indian Penal Code, was registered at Police Station, Joginder Nagar, District Mandi, Himachal Pradesh. Postmortem was conducted by Dr. Vishwajeet (PW-8), who opined the cause of death to be injury to the vital organ of brain.

3. Investigation revealed that on 8.9.2006, deceased Puran Chand had consumed chicken and liquor in the company of Prem Lal (PW-2), Bhupinder and Raj Kumar. This was at about 8 p.m. After some time, accused Mukti Ram joined them, who in the company of the deceased left to the house of Dharam Chand (PW-3), from whom they purchased illicit liquor and after consuming the same left together. Investigation further revealed that the accused persons harboured animosity, as a result of which they killed Puran Chand with an axe. Thereafter, accused Yadav Singh (juvenile) and Durgu Ram confessed of having committed the crime with Kaltu Ram. During the course of investigation, accused Durgu Ram and Yadav Singh made disclosure statements, on the basis of which they got recovered weapon of offence (Ex. P-3), in the presence of Mahinder Singh (PW-7) and Tej Singh (not examined). Reports of the Forensic Science Laboratory, Junga (Ex. PW-18/N and PW-18/O) were obtained and taken on record. With the completion of investigation, which prima facie revealed complicity of the accused in the alleged crime, challan was presented in the Court for trial.

4. Both the accused persons were charged for having committed an offence punishable under the provisions of Section 302/34 of the Indian Penal Code, to which they did not plead guilty and claimed trial.

5. In order to establish its case, prosecution examined as many as 18 witnesses and statements of the accused persons, under the provisions of Section 313 of the Code of Criminal Procedure, were also recorded, in which they pleaded innocence and false implication.

6. Based on the testimonies of witnesses and the material on record, trial Court acquitted both the accused of the charged offence. Hence, the present appeal by the State.

7. We have heard Mr. Ashok Chaudhary, learned Additional Advocate General, on behalf of the State as also Mr. Javed Khan and Ms Kanta Thakur, Advocates, on behalf of the accused. We have also minutely examined the testimonies of the witnesses and other documentary evidence so placed on record by the prosecution. Having done so, we are of the considered view that no case for interference is made out at all. We find that the judgment rendered by the trial Court is based on complete, correct and proper appreciation of evidence (documentary and ocular) so placed on record. There is neither any illegality/

infirmity nor any perversity with the same, resulting into miscarriage of justice.

8. It is a settled principle of law that acquittal leads to presumption of innocence in favour of an accused. To dislodge the same, onus heavily lies upon the prosecution. Having considered the material on record, we are of the considered view that prosecution has failed to establish the essential ingredients so required to constitute the charged offence.

9. In *Prandas Vs. The State*, AIR 1954 SC 36, Constitution Bench of the apex Court, has held as under:

"(6) It must be observed at the very outset that we cannot support the view which has been expressed in several cases that the High Court has no power under S. 417, Criminal P.C., to reverse a judgment of acquittal, unless the judgment is perverse or the subordinate Court has in some way or other misdirected itself so as to produce a miscarriage of justice. In our opinion, the true position in regard to the jurisdiction of the High Court under S. 417, Criminal P.C. in an appeal from an order of acquittal has been stated in - *Sheo Swarup and Others vs. The King-Emperor* AIR 1934 227 (Privy Council), in these words:

"Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognized in the administration of justice."

10. Undisputedly, there is no eye-witness to the occurrence of the incident. Hence, the present case is based on circumstantial evidence.

11. Law with regard to circumstantial evidence is now well settled. It is a settled proposition of law that when there is no direct evidence of crime, the guilt of the accused can be proved by circumstantial evidence, but then the circumstances from which the conclusion of guilt is to be drawn, should be fully proved and such circumstances must be conclusive in nature, to fully connect the accused with the crime. All the links in the chain of circumstances must be established beyond reasonable doubt, and the proved circumstances should be consistent, only with the hypothesis of guilt of the accused, being totally inconsistent with

his innocence. While appreciating the circumstantial evidence, the Court must adopt a very cautious approach and great caution must be taken to evaluate the circumstantial evidence. [See: Pudhu Raja and Another Vs. State, rep. by Inspector of Police, (2012) 4 JCC 2751 : (2012) 9 JT 252 : (2012) 9 SCALE 177 : (2012) 11 SCC 196 ; Madhu Vs. State of Kerala, AIR 2012 SC 664 : (2012) CriLJ 1230 : (2012) 1 Crimes 148 : (2012) 1 JCC 620 : (2012) 1 JT 181 : (2012) 1 SCALE 226 : (2012) 2 SCC 399 : (2012) AIRSCW 782 : (2012) 1 Supreme 342 ; Dilip Singh Moti Singh Vs. State of Gujarat, (2002) 8 JT 497 , Mulakh Raj, etc. Vs. Satish Kumar and others, AIR 1992 SC 1175 : (1992) CriLJ 1529 : (1992) 2 Crimes 130 : (1992) 2 JT 554 : (1992) 1 SCALE 804 : (1992) 3 SCC 43 : (1992) 2 SCR 484 ; and Sharad Birdhichand Sarda Vs. State of Maharashtra, AIR 1984 SC 1622 : (1984) CriLJ 1738 : (1984) 2 SCALE 445 : (1984) 4 SCC 116 : (1985) 1 SCR 88 .

12. Also, apex Court in Padala Veera Reddy Vs. State of Andhra Pradesh and others, AIR 1990 SC 79 : (1989) 4 JT 223 : (1989) 2 SCALE 906 : (1989) 2 SCC 706 Supp : (1990) 1 UJ 137 , Court held that when a case rests upon circumstantial evidence, following tests must be satisfied:

"(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

(Also see: Ramreddy Rajeshkhanna Reddy and Another Vs. State of Andhra Pradesh, AIR 2006 SC 1656 : (2006) 4 JT 16 : (2006) 3 SCALE 452 : (2006) 10 SCC 172 : (2006) AIRSCW 1602 : (2006) 3 Supreme 175 ; Balwinder Singh Vs. State of Punjab, AIR 1996 SC 607 : AIR 1995 SC 607 : (1996) CriLJ 883 : (1995) 8 JT 81 : (1995) 6 SCALE 261 : (1995) 4 SCC 259 Supp : (1995) 5 SCR 10 Supp ; and Harishchandra Ladaku Thange Vs. State of Maharashtra, AIR 2007 SC 2957 : (2007) 10 JT 496 : (2007) 10 SCALE 464 : (2007) 11 SCC 436 : (2007) 9 SCR 562 : (2007) AIRSCW 6247 : (2007) AIRSCW 5394 : (2007) 6 Supreme 232 ."

13. Each case has to be considered on its own merit. Court cannot presume suspicion to be a legal proof. In the absence of an important link in the chain, or the chain of circumstances getting snapped, guilt of the accused cannot be assumed, based on mere conjectures.

14. The apex Court in *State of U.P. Vs. Ashok Kumar Srivastava*, AIR 1992 SC 840 : (1992) 1 Crimes 576 : (1992) 1 JT 340 : (1992) 1 SCALE 149 : (1992) 2 SCC 86 : (1992) 1 SCR 37 , while cautioning the Courts in evaluating circumstantial evidence, held that if the evidence adduced by the prosecution is reasonable, capable of two inferences, the one in favour of the accused must be accepted. This of course must precede the factum of prosecution having proved its case, leading to the guilty of the accused.

15. Prosecution case primarily rests upon five circumstances: (i) animosity between the accused and the deceased, (ii) accused lastly seen in the company of the deceased, (iii) confessional statement, (iv) disclosure statement leading to discovery of weapon of offence, (v) link evidence corroborating substantive evidence.

16. Genesis of the prosecution story of animosity inter se the parties, stands belied by prosecution witnesses themselves. Geeta Devi (PW-1), wife of the deceased, as also Prem Lal (PW-2), uncontrovertedly admit that there was no animosity between the deceased and the accused persons and more specifically accused Mukti. Apart from the testimony of these two witnesses, there is nothing on record to even remotely suggest that the accused was harbouring any animosity against the deceased. Motive of crime is missing in this case.

17. Even with regard to the circumstance of the deceased lastly seen in the company of accused Mukti, we do not find the prosecution witnesses to have supported the prosecution.

18. To begin with, Geeta Devi admits that after meeting her husband, accused Mukti went to his house. Prem Lal, simply states that on 8.9.2006, he, Puran Chand, Prem Lal (another person by the same name), Bhupinder and Raj Kumar had consumed chicken (which they had cooked along the road side) and liquor. After some time, accused Mukti Ram came from the side of Tinu Nalla. Puran Chand left with Mukti Ram for fetching Khaini and Beedi from the shop of Kaltu Ram. This is all, that the witness states.

19. Postmortem report as also testimony of Dr. Vishwajeet (PW-8) suggest that death took place much prior to the time of meeting of these persons. Be that as it may, Prem Lal admits that the deceased went with accused Mukti Ram of his own. It is not a case where the accused persons, after hatching conspiracy, enticed deceased Puran Chand to leave with Prem Lal or Mukti.

20. We find that even on the last seen circumstance, both Dharam Chand (PW-3) and Kaltu Ram (PW-4) have not supported the prosecution. They were declared hostile and despite extensive cross-examination by the Public Prosecutor, nothing fruitful could be elicited from their testimony. All that Prem Chand states is that at about 8 p.m., Mukti Ram came alongwith Puran Chand and purchased bottles of liquor. It appears that this witness himself was a suspect. In his uncontroverted testimony, he categorically states that the police had kept him in the Police Station for three hours and had also severely beaten him. That apart,

the witness also states that house of Mukti Ram is just at a distance of 30 metres from his house whereas house of Puran Chand is at a distance of 300 metres and that too in an opposite direction. He is categorical that from his shop both Mukti Ram and Puran Chand went to their respective houses. That apart, there is not even a whisper in the testimony of this witness with regard to presence of accused Yadav Singh and Durgu. Witness also states that Mukti Ram left his house first, implying that Puran Chand was still in the company of this witness. It is perhaps for this reason that the police suspected him. Prosecution has not been able to establish that after deceased Puran Chand and accused Mukti left the house of witness Dharam Singh, they were seen together in the night.

21. Thus, the witness clearly belies the prosecution story of the deceased being seen last in the company of accused Mukti Ram. If the accused and the deceased had left the house of Dharam Chand for their respective houses, which were in opposite directions, it cannot be said that the accused was lastly seen in the company of the deceased.

22. Kaltu Ram states that on 9.9.2006, accused Durgu Ram and Yadav Singh came to his shop and told him that "they have sent Puran Chand "Upper"(Abode of God)". After their visit, he learnt that dead body of Puran Chand was found near the temple of Sehali Dev. We find the witness to have been cross-examined by the Public Prosecutor, yet despite the same, there is nothing in his testimony, which would support the prosecution. He is categorical of not having understood the meaning of the words "Upper Bhej Diya". Crucially, witness admits not to have signed any statement or memo so recorded by the police. Now, "Upper Bhej Diya" cannot be construed to be an admission of guilt.

23. Prosecution wants the Court to believe that blood soiled clothes of the deceased as also the weapon of offence (Ex. P-3) were recovered from the house of Yadav Singh, in the presence of Mahinder Singh (PW-7).

24. It is not the case of prosecution that the accused persons had first killed the deceased in the jungle and then after carrying the dead body kept it on the road near the temple. Significantly, as has come in the testimony of the prosecution witnesses, dead body was found in the village itself. Now, had the deceased been killed by the accused with an axe, surely, someone would have heard the cries, which in fact is not the case of the prosecution. Also, Kaltu Ram is not able to remember as to whether such words were spoken by Durgu Ram or Yadav Singh. Significantly, these accused persons do not state that accused Mukti Ram was also involved in the crime. From the testimony of the witness, we also notice that the factum of confessional statement was so disclosed to the police, only after three-four days of the occurrence of the incident. It was not voluntary or prompt in nature. As such, it would be absolutely unsafe to give credence or weightage to such extra judicial confession.

25. On the circumstance of recovery of incriminating articles, i.e. axe (P-3), we find the testimony of Mahinder Singh (PW-7) and the Investigating Officer

Kapoor Chand (PW-18) not to be inspiring in confidence at all. Even otherwise, they have contradicted each other. Mahinder Singh states that the incriminating articles, i.e. axe (Ex. P-3), shirt (Ex. P-4), pant (Ex. P-5) were recovered from the house of Yadav Singh. Significantly, witness states that he did not enter the house at the time when recovery was effected. He tries to explain the reason of the same being a caste factor. But then this is no recovery in the eyes of law. Recovery from the house of the accused had to be in presence of an independent witness. What is crucial is his admission that police was already present in the house of accused Yadav Singh, when he was called, alongwith other villagers, by the police. Now if police was already aware of the place where articles were hidden, then obviously recovery cannot be said to have been effected on the basis of disclosure statement (Ex. PW-7/A) so recorded by the police. Now, if this witness was socially not allowed to enter the house, then why is it that police did not associate any other person present on the spot? That apart, witness states that axe was lying outside on the floor of the courtyard. It was visible to all and not concealed. Investigating Officer as also other prosecution witnesses admit that prior to 17.9.2006, police had already visited the village, on a number of occasions, yet no recovery was effected at that point in time. This totally renders the prosecution case of having effected the recovery to be doubtful, if not false. Further prosecution wants the Court to believe that blood soiled Chappal of the deceased was also recovered by the police. Reports of the Forensic Science Laboratory (Ex. PW-18/N and 18/O) reveal that no blood was found on any of the articles recovered by the police, including the weapon of offence, i.e. axe (Ex. P-3).

26. We find that prosecution has also examined Sunu Ram (PW-5), Shukru Ram (PW-6) as also Sukh Ram (PW-10) to establish its case. Sukh Ram has not supported the prosecution and testimony of the remaining witnesses is only hearsay in nature, for they learnt about the incident after recovery of the dead body and during the course of investigation.

27. Version of police officials, namely HC Kushal Kumar (PW-13), ASI Jagroop Singh (PW-14) and SI Kapoor Chand (PW-18) also cannot be said to be inspiring in confidence. According to HC Kushal Kumar, he recorded statement of Geeta Devi, under the provisions of Section 154 of the Code of Criminal Procedure (Ex. PW-1/A), whereas Jagroop Singh states that after reaching the spot he recorded the statement of Geeta Devi. The said statement was sent to the Police Station and Constable Bhagat Ram registered the FIR, which was signed by him, whereas according to Bhagat Ram it was he who had scribed the statement (Ex. PW-1/A) and FIR was written by Milap Chand. Prem Lal (PW-2) states that photographs on the spot were taken by a private photographer. This version of his totally belies and contradicts the testimony of SI Kapoor Chand, according to whom photographs were taken by him from his personal camera.

28. There is yet another mitigating circumstance in favour of the accused. Undisputed case of the prosecution is that deceased was under heavy influence

of alcohol, which fact is evident from the report of the Forensic Science Laboratory and the doctors have not ruled out the possibility of vital injury to have been sustained on account of fall.

29. Hence, it cannot be said that prosecution has been able to prove its case, by leading clear, cogent, convincing and reliable piece of evidence so as to prove that the accused persons, in furtherance of their common intention, inflicted injury on the head of Puran Chand, resulting into his death.

30. From the material placed on record, prosecution has failed to establish that the accused are guilty of having committed the offence, they have been charged with. The circumstances cannot be said to have been proved by unbroken chain of unimpeachable testimony of the prosecution witnesses. The guilt of the accused does not stand proved beyond reasonable doubt to the hilt. The chain of events does not stand conclusively established, leading only to one conclusion, i.e. guilt of the accused. Circumstances when cumulatively considered do not fully establish completion of chain of events, indicating to the guilt of the accused and no other hypothesis other than the same.

31. For all the aforesaid reasons, we find no reason to interfere with the judgment passed by the trial Court. The Court has fully appreciated the evidence so placed on record by the parties.

32. The accused have had the advantage of having been acquitted by the Court below. Keeping in view the ratio of law laid down by the Apex Court in *Md. Ankoos and Others Vs. The Public Prosecutor, High Court of A.P.*, AIR 2010 SC 566 : (2010) CLT 222 : (2010) CriLJ 861 : (2009) 14 JT 6 : (2009) 13 SCALE 584 : (2010) 1 SCC 94 : (2009) 15 SCR 616 : (2009) 10 UJ 4781, it cannot be said that the Court below has not correctly appreciated the evidence on record or that acquittal of the accused has resulted into travesty of justice. No ground for interference is called for. The present appeal is dismissed. Bail bonds, if any, furnished by the accused are discharged.

Appeal stands disposed of, so also pending application(s), if any.