

(2009) 07 SHI CK 0008
In the High Court Of Himachal Pradesh

State of Himachal Pradesh

APPELLANT

Vs

Govind Singh and Others

RESPONDENT

Date of Decision : 23-07-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 323

Citation : (2009) 3 ShimLC 27

Hon'ble Judges : Surinder Singh, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Surinder Singh, J.—The present appeal has been directed by the State, against the acquittal of the respondents, u/s 302 of the Indian Penal Code for causing the murder of Ram Lal by an iron rod Ex.P-2 and u/s 323 I.P.C. for causing injuries to Ram Bahadur, with a danda Ex.P-1 by the respondents, in furtherance of their common intention.

2. The prosecution case in nut-shell can be stated thus. On 2.3.1993 at about 8.30 p.m., Ram Bahadur and Ram Lal along with their families were watching the video film in the Video Hall of Manohar Lal. Around 10.30 p.m., Ram Bahadur came out from the Video Hall to have a sleep at his residence, but hardly could he cover about 25 meters, the respondents met him on the way. The respondent Govind asked him as to where he was going. He told them that he was going to sleep, but asked them the reason for asking such type of questions from him. The respondents got offended and gave beatings to him. It is the case of the prosecution that Ram Bahadur received simple injuries, he returned to the Video-Hall and narrated the entire incident to Ram Lal. Thereafter, Ram Lal, Ram Bahadur and their other family members came outside. At some distance, they found the respondents standing on the road. Ram Lal asked them the reason about causing the injuries to Ram Bahadur unnecessarily. On this, the respondents objected to the tone and tenure of such questions. It is alleged that Govind Singh respondent hit Ram Lal with iron rod Ex. P-2 and respondent

Partap Singh dealt a danda blow. The other respondents fisticuffed and gave kick blows to him. Consequently he fell down, from where Ram Bahadur lifted him to the shop of Manohar Lal, where he was provided water. Thereafter he took him to his quarter. Same night, when his condition deteriorated, he was taken to hospital at Rampur.

3. The matter was reported to the police by Ram Bahadur.

4. PW1 Dr. Rajan Visht had initially examined Ram Lal in the hospital and he found one abrasion on the left cheek and lacerated wound on the scalp. X-ray was also taken, but there was no evidence of fracture. He found both these injuries simple in nature but further opined that the injured might have closed the head injury, which was grievous in nature and issued MLC Ex.PW1/C. Ram Lal expired during the same night.

5. PW6 Dr. Sarita Sharma after the death of Ram Lal at the police request, performed the autopsy. According to her, Ram Lal died due to "intracranial hemorrhage". The time between death and the post-mortem was not more than 24 to 26 hours. She opined that the iron rod Ex. P-2 and the danda Ex. P-1 could cause such type of injury, which led only to localize lacerated wound, but she also advanced the possibility of such type of injury by a fall on a hard surface.

6. The learned trial Court charge-sheeted the respondents to which they denied and claimed trial. The Prosecution examined its witnesses and the respondents were also examined u/s 313 of the Code of Criminal Procedure. They denied the circumstances put to them and alleged false implication in the case. When called upon to lead their defence, they did not examine any witness in defence. At the end of trial, they were acquitted.

7. We have heard the learned Counsel for the parties and have examined and reappraised the evidence on record.

8. It is made out from the evidence on record that neither the complainant nor any other witness of the prosecution knew the respondents earlier to the alleged incident, nor they had any enmity with the accused persons. It is also made out from the record that the alleged incident had taken place outside in the open place where there was complete darkness and the assailants could not be identified.

9. PW7 Ram Bahadur stated in his cross-examination that he had come in the area recently along with Ram Lal to do manual work and also did not know if Ram Lal and his wife were well acquainted with the respondents. He further stated that the wife of Ram Lal did not disclose the names of the accused person. He admitted that where the quarrel took place, there was complete darkness. He also did not know the names of the accused persons, but their names were disclosed by Ganesh (PW10) Sher Singh (PW15) and Kishan (not examined).

10. PW15 Sher Singh s/o Manohar Lal and PW10 Ganesh Chand did not support his (PW7) version and turned hostile to the prosecution.

11. According to PW10 Ganesh Chand s/o Manohar Lal Video hall owner, Ram Bahadur and Ram Lal along with their families were watching video-film. At about 10.00 p.m., Ram Bahadur left video hall to go to sleep in his quarter, but after some time he returned, had some talk with Ram Lal, thereafter both of them went out from the Video Hall along with their wives. Kishan was the incharge of the video film. Sher Singh was also watching the movie. Sher Singh too came out from the Video Hall. Kishan was present in the hotel where Ram Lal laid on the bench in an injured condition, but neither he nor Ram Bahadur disclosed as to how he sustained the injuries however, he is alleged to have stated that the accused persons were standing outside his hotel along with 8/10 persons, but no one disclosed as to who had given beatings to Ram Lal or Ram Bahadur.

12. PW11 Suram Lal was running a tea-stall near the Video hall. He too did not support the prosecution case.

13. According to PW13 Dil Bahadur, four persons had come to his Cigarette-Biri shop to meet Vijay Singh. They appeared to be local persons, but he could not recognize them, then stated that out of those, Govind and Partap accused were there. When asked to identify in the Court, he wrongly identified Bhagwan Pass accused as Govind. He further slated that after taking meals, all of them left to see the video film. Next day, around 11 a.m., he heard that there was quarrel at Nogli, but he did not know about the details.

14. On the close scrutiny of the aforesaid evidence on record, as already stated the accused persons were not known to the complainant and other prosecution witnesses prior to the alleged incident and the incident took place at a place where it was complete dark. None of the prosecution witnesses could identify the assailants. Ganesh Chand and Sher Singh (PWs) were examined in the Court from whom the details and the names of the respondents were alleged to have been disclosed to the complainant. None of them supported this fact during trial. The identification of the accused persons during the trial of the case is highly doubtful and is of no consequence in absence of a test identification parade (TIP).

15. Although TIP is not a substantive evidence but if conducted immediately after the occurrence, it affords the corroboration to the case of the prosecution, whereas in the instant case, the incident had taken place on 2nd March, 1993 the TIP was not conducted by the police during the investigation of the case and the statement of the witnesses were recorded exactly after one year in the Court. The respondents were under trial prisoners and the prosecution witnesses had the opportunity to see them continuously during the trial. Therefore, the identification of the accused persons for the first time conducted in the Court without prior TIP, is valueless.

16. Thus, the statement of prosecution witnesses is not worth inspiring confidence and cannot be acted upon.

17. There is another reason making the prosecution case a suspect. PW7 Ram

Bahadur, PW9 Parvati, wife of Ram Bhadaur and Ganesh Chand (PW10) have specifically stated that on the day of the alleged incident one Vijay Singh Gurkha was also present inside the video hall. The witnesses aforesaid admitted that from the date of alleged incident, he had been absconding. According to the defence version, Vijay Singh Gurkha was having enmity with Ram Bahadur and Ram Lal and the possibility of his involvement in the crime can not be ruled out and the case was falsely planted against the respondents on suspicion. On the scrutiny of prosecution evidence we cannot deny this possibility.

18. In view of the aforesaid standard of evidence and on its reappraisal, we find that the witnesses played upon their imagination to a certain extent. The connection of the respondents with the alleged offence was not established beyond a reasonable doubt. Their identification during the trial of the case is of no value. The circumstances do points out some connection of Vijay Singh Gurkha with the offence aforesaid as he had been absconding from the very day of the occurrence. The evidence of the prosecution against the respondents is not worth inspiring confidence to convert the acquittal in to conviction.

19. For the foregoing reasons, we find no perversity in the impugned judgment, passed by the learned trial Court, as such, the acquittal of the respondents, as recorded by the learned trial Court, is borne out from the record, thus maintained. Consequently, the appeal is devoid of any merit, as such dismissed.

20. The respondents are discharged of their bail bonds entered upon by them at any stage during the proceeding of the case.

Send down the records.