

(2021) 08 SHI CK 0145
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No.233 Of 2010

State Of Himachal Pradesh

APPELLANT

Vs

Jai Ram And Others

RESPONDENT

Date of Decision : 13-08-2021

Acts Referred:

Explosive Substance Act, 1908 — Section 3, 4, 7,
Indian Penal Code, 1860 — Section 109, 304A, 337, 338
Code Of Criminal Procedure, 1973 — Section 154, 313

Citation : (2021) 08 SHI CK 0145

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : Nand Lal Thakur, Ram Lal Thakur, Sunny Dhatwalia, Divya Raj Singh, Kiran Kanwar

Final Decision : Dismissed

Judgement

Anoop Chitkara, J

1. Challenging the acquittal of the accused for offences of causing death due to rash and negligent act by handing over gelatin for blasting, the State

has come up before this Court.

2. On 16.5.2006 at 11.45 a.m., the Police Post Thural, District Kangra received a telephonic information from an unknown person. The informant said

that in village Jas falling in Gram Panchayat Balakrupi, one labour has died due to blast and another has injured. The said information was reduced into

writing in Daily Diary Register, extracts of which are Ex.PW-17/A. Subsequently, the police team led towards the spot. On reaching the spot, the

police officials noticed a dead body lying there and palette signs of a blast at the digging site.

3. At the spot, the investigator recorded statement of Joginder Singh, PW/2 under Section 154 (PW17/B). The informant told the police officials that

on 16.5.2006, he alongwith the contractor Jai Ram (A/1) had reached the spot at 11.30 a.m.. The contractor was doing a contractual job of digging a

water tank on the banks of Neugal Creek (Khad). In the said work, apart from Joginder Singh PW/2, Pawan Kumar (PW/3), Ramesh Chand (PW/4)

and Bishamber were also working. After some time of his reaching at the site of work, contractor Jai Ram (A/1) reached there. He told the workers

to use gelatin with a view to weaken the rocks and expedite the digging work. Subsequently, Bishamber and Ramesh Chand (PW/4) started deploying

gelatin in the rock. The informant Joginder Singh alongwith contractor Jai Ram (A/1) and Pawan Kumar (PW/3) took shelter at a distant place. In the

meantime, a blast took place and they were afraid because Ramesh Chand and Bishamber had not taken any shelter. After that, they rushed to the

spot and noticed that face and skull of Bishamber had blasted and he had died. Ramesh Chand (PW/4) was lying there in an injured condition. After

that, all three of them took the injured to Sujampur Hospital. Informant Joginder Singh (PW/2) also stated that this incident had taken place due to rash

and negligent act of contractor Jai Ram (A-1). Based on this information, the police registered the FIR (EX.PW17/D) mentioned above.

4. During investigation, the investigator obtained post-mortem report of Bishamber (EX.PW5/A) and MLC of Ramesh Chand (EX.PW1/B).

5. After collecting the residues of the blast site, the same were sent for testing to Central Forensic Science Laboratory at Chandigarh. Vide report

EX.PA, the Laboratory noticed ions of potassium, nitrate, carbon, sulphate and ammonium from the residues. The doctors, who had conducted post-

mortem and examined the injured, has also opined the cause of death and injuries as gelatin, which was corroborated by the Laboratory. The

Investigator obtained sanction for prosecution under Section 7 of Explosive Substance Act, 1908 from District Magistrate Kangra vide sanction letter

EX.PW13/B. After completion of the investigation, the Officer Incharge of the Police Station, Lambagaon launched prosecution against accused Jai

Ram (A-1) and also Vinay Kumar (A-2) in whose names Irrigation and Public Health Department had awarded the tender for digging of tank.

6. Vide order dated 1st May 2009, learned Additional Sessions Judge framed charges against accused Jai Ram for commission of offences punishable

under Sections 3 and 4 of the Explosive Substance Act, 1908; 304-A and 336, 337 and 338 of IPC. Similarly, same charges were framed against

accused Vinay Kumar but those were read with Section 109 of IPC. The accused did not plead guilty and claimed trial.

7. During the trial, the prosecution examined all the spot witnesses and also the SDO of Irrigation and Public Health Department. In the statement

under Section 313 Cr.P.C, Jai Ram (A-1) denied all the circumstances against him. Vinay Kumar (A-2) also denied the evidence, however, offered

explanation that he had given a sub contract of the aforesaid work to Ramesh and Bishamber. However, the accused did not lead any evidence in

defence.

8. Vide above captioned judgment, learned Sessions Court dismissed the prosecution and acquitted both the accused from all charges. Challenging the

said acquittal, the State has come up by way of an instant appeal.

ANALYSIS AND REASONINGS.

9. The prosecution has been able to prove that the cause of death of Bishamber was due to gelatin blast as Dr.Vinay Mahajan (PW-5), who had

conducted post-mortem proved this aspect. Similarly, Ramesh Chand (PW-4) had sustained injuries due to gelatin blast and this aspect was also

proved by Dr. Chaman Lal (PW-1). Furthermore, the evidence collected at the spot was sent to the Laboratory and the CFSL, Chandigarh vide report

Ex.PA found ammonium, potassium and nitrate ions in the residues collected from the site, which established blast of gelatin. It is also proved through

the evidence of injured Ramesh Chand (PW-4) and other labours Joginder Singh (PW2) and Pawan Kumar (PW-3) that gelatin was fixed by

Bishamber and Ramesh Chand and it did not go as planned and subsequently blasted killing Bishamber at the spot and injuring Ramesh Chand (PW-

4). The question before this Court is the role and involvement of accused in procurement and installation of the said gelatin and the consequent blast.

10. The Irrigation and Public Health Department had awarded the contract to dig a water tank at the banks of Neugal Creek (Khad). Shri Jaimal

Singh Bhatia (PW-11), who was posted as SDO in the IPH Department testified that he was monitoring the aforesaid construction work. He proved

the tendered document (EXPW11/A), per which the work was awarded to Vinay Kumar (A-2). He further testified that the Department had neither

handed over any explosive material to the contractor nor had authorized the contractor to use explosive in the work.

11. Shri Jaimal Singh, SDO (PW-11), in his cross examination stated that he was regularly visiting the site to supervise the work but Vinay Kumar (A-

2) never met him at the spot. He further stated that work was going on as per the specifications. He further explained that at the spot whenever he

would ask from the persons, who met him on the spot, about the contractor, then those persons told him that they had taken the work from contractor

on sub contract and such persons revealed their names as Bishamber and Ramesh.

12. There is specific admission by the Sub Divisional Officer who was supervising the work that Ramesh and Bishamber were working as sub

contractors of contractor Vinay Kumar (A-2). In the statement under Section 313 Cr.P.C explanation offered by Vinay Kumar (A-2) is also similar

that he had handed over the work on a sub contract to Ramesh and Bishamber.

13. PW-2 Joginder Singh did not support the case of the prosecution and was declared hostile. Even in the leading questions put by the prosecutor, he

did not support the case of the prosecution. In his cross examination, he testified that on the date of blast, he had reached at the spot at 11.30 a.m. and

contractor Jai Ram (A-1) had reached after an hour afterthat and by that time, blast had already taken place.

14. Another spot witness Pawan Kumar (PW-3) also did not support the case of the prosecution and was declared hostile. In his cross examination,

he stated that the blast had not taken place in his presence.

15. Injured Ramesh Chand (PW-4) supported the case of the prosecution. He also admitted that Bishamber had already made a hole in the stone on

the previous date. Thus, the steps to use gelatin were already taken by Bishamber and Ramesh on 15.5.2006, i.e, a day prior to the blast.

16. Given above, the plea of injured Ramesh Chand (PW-4) that they had resorted to the blasting at the instance of Jai Ram (A-1) is incorrect, even

on its face value and analysis of the entire evidence reveal that Bishamber (deceased) and Ramesh Chand, PW-4 (injured) had already taken steps to

use blasting material on 15.5.2006, i.e, a day prior to the blast. Statement of spot witness, Joginder Singh (PW-2) also reveals that Jai Ram (A-1) had

reached at the spot after the blast. Coupled with this, the statement of PW-11,

Jaimal Singh Bhatia, SDO of IPH further clarifies that the original contractor Vinay Kumar had given this work to Bishamber and Ramesh. Furthermore, the investigator did not conduct any investigation that who procured the gelatin and from whom. This is a material defect in the investigation, which also weakens the case of the prosecution. Thus, the prosecution has failed to prove beyond reasonable doubt the role and involvement of accused in the usage of blasting material, which led to the injuries and death.

17. I have gone through the impugned judgment of acquittal, which is well reasoned and does not call for any interference.

18. Given above, there is no merit in this appeal, which is dismissed. Bail bonds, if any, furnished by the accused are cancelled and discharged.

Pending application(s), if any, shall also stand disposed of.