

(2010) 05 SHI CK 0192
In the High Court Of Himachal Pradesh
Case No : Criminal A. No. 62 of 1997

State of Himachal Pradesh

APPELLANT

Vs

Kamal Raj and Others

RESPONDENT

Date of Decision : 27-05-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 378
Penal Code, 1860 (IPC) — Section 201, 302, 34, 342

Citation : (2010) 05 SHI CK 0192

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

V.K. Ahuja, J.—This is an appeal filed by the State of Himachal Pradesh u/s 378 of the Code of Criminal Procedure against the judgment of the court of learned Sessions Judge, Hamirpur, H.P., dated 29.8.1996, vide which the Respondents were acquitted of the charge framed against them under Sections 302, 342, 201 read with Section 34 of the Indian Penal Code.

2. Briefly stated the facts of the case are that on some telephonic message received by the police, a Police Officer arrived in the Village and recorded the statement of Sukh Ram u/s 154 of the Code of Criminal Procedure on 16.9.1995 at 5.15 p.m. In the said statement, he alleged that Kanshi Ram (now deceased) was serving in the Army and had come to the village. He had disinherited his wife and sons from his property for which the wife and the sons were living separately and they were inimical with him. It was alleged that on 14.9.1995, when the complainant was coming back to his house at about 6.30, Kamal Raj met him at Khalwara and told him that Banti Devi who is the wife of the deceased, her sons and daughter-in-law Asha Devi, had taken Kanshi Ram to their house. A quarrel took place in between them and it was alleged that the Respondents gave beatings to the deceased and took his dead body and had hidden the same in the bags in a portion of the house. The complainant was

going to lodge the report, when the police officer met him on the way and recorded his statement u/s 154 of the Code of Criminal Procedure. On this statement, a case was registered and after investigation, the challan was filed before the court of the learned Additional Chief Judicial Magistrate, Hamirpur. Thereafter, the case was committed to the learned trial Court, who tried the Respondents, leading to their acquittal.

3. We have heard the learned Deputy Advocate General for the State and the learned Counsel for the Respondents and have gone through the record of the case.

4. On appraisal of the evidence led by the prosecution, it is very much clear that there is no evidence consisting of the testimony of any of the witnesses, who may have seen the deceased being given beatings by the accused persons, who are three sons of the deceased, his wife and one daughter in law, namely, Asha Devi. The only evidence produced by the prosecution consisted of the testimony of some witnesses, who had allegedly seen the deceased being carried by the accused persons inside the house and the deceased who was still alive at that time was raising cries "Mar Diya Mar Diya". It has to be seen as to this much evidence is sufficient to prove the charge as against the Respondents.

5. The Medical Officer PW 6 Dr. Shushil Kumar had conducted the post mortem examination on the body of the deceased on 17.9.1996 at 1.35 p.m. and found the following injuries on the person of the deceased:

EXTERNAL INJURIES

1. There was a lacerated wound on right side of skull 6 cm above right eye-brow measuring 7 cm x 3.5 cm, placed abliquely, with everted edges, edematous with blood clot present in subcutaneous tissues and underlie bone was exposed and fractured (ante-mortem). I will be describing the other details of this injury under the heading cranium and spinal cord.

2. There was dark bluish area 8 cm above wrist joint 7 cm x 5 cm of the forearm with clotted blood in and under the subcutaneous tissues, underlying both bones fractured. It was an ante-mortem injury.

3. The right shoulder showed contusion 6 cm x 3 cm with clotted blood present in the underlying musculature. It was an ante-mortem injury.

4. The right wrist showed contusion 3 cm x 2 cm on

5. The right thigh showed contusion 6 cm x 3 cm, (antero medially) with clotted blood under the subcutaneous tissues and musculature. It was an ante-mortem injury.

6. Right knee joint showed contusion 6 cm x 3 cm. It was anteriorly placed with clotted blood under the musculature. It was an ante-mortem injury.

7. The left knee joint showed contusion measuring 2.5 cm x 1.5 cm with clotted

blood in the subcutaneous musculature. This injury was also ante-mortem injury.

CRANIUM AND SPINAL CORD

There was one lacerated wound on right side of skull 6 cm above right eye-brow measuring 7 cm x 3.5 cm placed obliquely, edges everted, adhaerent with blood clot present in subcutaneous tissues and underlying bone fractured (6 cm x 0.25 cm) and underlying brain lacerated (3 cm x 1 cm) with blood clot present on it. It was an ante-mortem injury.

In the opinion of the Medical Officer given in the post mortem report Ext.PY, he had opined that the deceased died as a result of cardio respiratory failure due to injury to the vital organ i.e. brain due to head injury. The probable time between the injury and the death was not specified, while the probable time between death and the post mortem was opined to be in between 3 to 7 days.

6. Coming to the other evidence, PW-1 Sukh Ram, on whose statement the case has been registered by the police, in his statement he has stated that on 14.9.1995, at about 6.30 p.m., he was coming back to his village from his place of work. Respondent Kamal Raj met him and told him that he wants to have a talk with him. On his enquiry, he told him that his father is dead as he has sold the land and that he enquired regarding such sale from him, but he was not admitting it. It was further stated by him that thereafter they brought him to the house where accused Banti Devi was living and also they enquired from him about the sale. He further alleged that the accused Vinod Kumar picked up a bamboo danda and inflicted a blow on his head as a result of which Kanshi Ram died. He further stated that he enquired from him about the dead body. All this is hearsay evidence and thus is not relevant.

7. PW-2 Dev Raj has stated that his house is at a distance of about 40" from the house of the accused persons. On 12.9.1995 in the evening at about 7.00, he was in his house. He had seen all accused persons lifting Kanshi Ram from his house and bringing him to the house of Banti and Kamal Raj. The accused had bodily lifted Kanshi Ram. Kanshi Ram was wearing underwear only at that time. At that time, Kanshi Ram was raising the shrieks "Hai Maar Diya Maar Diya". All the accused carried Kanshi Ram inside the room where Banti Devi lives and the door was closed from inside. He further stated that on 14.9.1995, he visited the house of Ward Panch Sukh Ram, where other persons were present and there accused Kamal Raj disclosed that Kanshi Ram, has been killed by accused Vinod with a danda, which again is a hearsay evidence. His statement clearly shows that he had seen the deceased when he was alive being carried to the house of Banti by the Respondents in the evening at about 7.00 p.m. But being a co-villager, neither he went from his house to help Kanshi Ram nor he reported the matter at any time to the police or apprised the facts to the Pradhan or other respectable person(s) of the area. His statement only suggests that Kanshi Ram was being carried by the accused persons to the house of Banti Devi, but thereafter he took no steps to help Kanshi Ram or to enquire from the accused

persons as to what happened to Kanshi Ram.

8. PW-3 Gian Chand stated that his house is adjoining to the new house of Kamal Chand. He stated that on 12.9.1995, at about 6.45 p.m., when he came back to his house from the place of his work, he noticed that five accused persons were bodily lifting Kanshi Ram to their house. PW-2 has stated that he was being carried to the house of Banti Devi and it is in evidence that Banti Devi was living separately from other accused persons. He stated that Kanshi Ram was shouting "Maar Diya Maar DIYA" and he was carried by the accused persons to the new house and its door was closed from inside. He further stated that thereafter he had never seen Kanshi Ram. His conduct also looks to be unnatural since he did not report the incident to any person or the persons in authority or the police or took any steps to help his co-villager Kanshi Ram and, therefore, his statement cannot be relied upon. His statement only suggests that the Respondents were carrying Kanshi Ram (now deceased) to the house of Tej Ram and the evidence of the other witnesses show that he was being carried to the house of Banti Devi, which are located separately as per the evidence. This witness was also confronted with his statement given by him to the police where it was not recorded that Kanshi Ram was shouting "Maar Diya Maar Diya".

9. The statements of other witness, namely, PW-4 Sahuru Ram is to this effect that on 12.9.1995, at about 6.30-6.45 p.m., he came back to his house from his place of work. He noticed that all the accused persons were bodily lifting Kanshi Ram and were bringing him to the house of Banti Devi. At that time, Kanshi Ram was crying "Haye Maye Maar Diya Maar Diya". Thereafter, the accused persons shut the door from inside. He did not hear anything thereafter. He also did not see Kanshi Ram thereafter and he went to sleep in his house. His conduct is also unnatural like the previous witnesses and does not inspire confidence since he neither reported the matter to the police or Panchayat Pradhan/Member of Panchayat or took any steps to help Kanshi Ram.

10. The statements of all these witnesses do not lead to any inference that the accused persons were forcibly carrying Kanshi Ram to their house or inflicted blows upon his person for which there is no evidence on record. The statements of other witnesses examined are not very material and they do not lead to any inference and there is no circumstantial evidence or otherwise implicating the accused in the commission of the offence in question. The prosecution has examined two witnesses, namely, PW 7 Krishan Gopal, Superintendent, and PW 8 Goverdhan Singh to show that Kamal Chand, accused, was working in their office and his attendance register has been produced to show that he was not present in the office on the date of occurrence. PW 7 Krishan Gopal has admitted that accused Kamal Jit was not present in his office on 11.9.1995 and 12.9.1995 and was thereafter absent from duty and as per the evidence, he may have been present at the spot. The statements of other witnesses are not material and they do not substantiate the case of the prosecution in any manner.

11. From the above discussion of the evidence, it is very much clear that the

evidence led by the prosecution did not substantiate their case that it was the Respondents who committed the murder of the deceased or took steps to destroy the evidence since the evidence led is in regard to carrying of the deceased who was alive at that time and it cannot be treated as evidence u/s 201 of the IPC leading to the steps taken for the destruction of the evidence.

12. In view of the above discussion, the net result drawn by the learned trial Court, keeping in view the evidence, cannot be termed as perverse calling for interference by this Court. Therefore, we hold that there is no merit in the appeal filed by the Appellant, which is dismissed accordingly. The bail bonds furnished by the Respondents shall stand discharged.