
(2012) 03 SHI CK 0404
In the High Court Of Himachal Pradesh
Case No : Criminal A. No. 129 of 2003

State of Himachal Pradesh

APPELLANT

Vs

Madan Lal, Maninder Singh and Pawan Kumar

RESPONDENT

Date of Decision : 12-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 378
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2012) 03 SHI CK 0404

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Justice V.K. Ahuja, J.—This is an appeal filed by State of Himachal Pradesh u/s 378 of the Cr.P.C. against the judgment, dated 3.1.2003, of the Court of learned Sessions Judge, Bilaspur, H.P., vide which the respondents were acquitted of the charge framed against them u/s 302 read with Section 34 IPC. The prosecution story in brief is that on 14.6.2001, at about 8 p.m., Leela Nand, now deceased, had left his house for Shimla and told that he would be back on 15.6.2001 in the evening or on 16.6.2001 in the morning. On 16.6.2001, at about 8/9.00 a.m., PW-1 Parma Nand and PW-11 Ravinder Kumar had been informed that a dead body was found near the house of PW-12 Dinesh Kumar in Village Palthin. On receipt of this information, PW-1 Parma Nand, elder brother of the deceased, and PW-11 Ravinder Kumar, son of the deceased, went to village Palthin and found the dead body of the deceased lying there. The police had also reached there. The Pradhan was also there and they lodged a report with the police on which a case was registered and after investigation, the challan was filed against the respondent before the Court of learned Additional Chief Judicial Magistrate, who committed the case to the Court of the learned Sessions Judge, who tried the respondents for the offences mentioned above leading to their acquittal.

2. The submissions made by the learned Deputy Advocate General are that there

is sufficient circumstantial evidence to connect the accused persons with the commission of the crime and as such the findings of the learned trial Court to the contrary are liable to be reversed.

3. On appraisal of the judgment passed by the learned trial Court, it is clear that the learned trial Court has made a reference to some circumstantial evidence, but the same has not been discussed separately by the learned trial Court including the evidence led to prove the said circumstances. However, a reference has been made to various circumstances connecting the accused persons with the commission of the crime.

4. PW-1 Parma Nand, brother of the deceased, and PW-11 Ravinder Kumar, son of the deceased, have stated in their statements u/s 161 Cr.P.C. about the involvement of the accused persons in the commission of the murder of the deceased. Their statements u/s 161 Cr.P.C. are not substantive evidence and, therefore, no reference was required to be made as to what they had stated in their statements u/s 161 Cr.P.C. PW-11 Ravinder Kumar has given his opinion that the accused persons had administered multiple injuries to the deceased. It is also in his evidence that the accused were arrested 10 days after the murder was detected, but no marks of violence were observed on their body by the Medical Officer.

5. It is also in evidence that the police had found some marks of blood in the body of the cabin of the truck and accordingly tried to link it with the murder of the deceased. The human blood found in the cabin of the truck was of Group A, but there is nothing on the record, including the statement of PW-11 Ravinder Kumar, son of the deceased, that the deceased was having blood of Group A. It is also in the evidence that the truck was impounded on 25.6.2001 and remained parked outside Police Station, Ghumarwin for four days and after four days, the police observed that there were marks of blood in the cabin of the truck. There is nothing in the statement of any of the witnesses that the deceased had been given beatings inside the truck and had been thrown thereafter so that an inference could be drawn that this blood was found to be that of the deceased. In the absence of any such evidence having been led by the prosecution, this circumstance cannot be linked with the accused.

6. There is also some evidence to show that in pursuance of the disclosure statement made by accused No. 1 on 25.6.2001 Ext.PW-13/H, recovery of one footwear, vide recovery memo Ext.PW-13/J, was made from the bushes near the Petrol Pump, Ghumarwin in presence of PW-13 Ram Parkash and PW-15 Parkash Chand. Another footwear Ext.P-81 was recovered from the place of the recovery of the dead body. It cannot be believed that after committing the murder at some distance from the Petrol Pump, which was away from the site from where the dead body of the deceased was recovered, the accused will make an attempt to conceal one footwear near the Petrol Pump and this circumstance cannot be used as against the accused persons in any manner to prove that this murder was committed by the accused persons.

7. There is also some evidence to show that the tyres of the truck in question had the impacts of marks of bricks and the police had noticed that a portion of the boundary wall of seri culture farm, Auhar had collapsed as a result of impact of tyres of a heavy vehicle. The police had noticed marks of bricks on the tyres of the truck and also noticed that there were marks of tyres of heavy vehicle on the bricks of the wall of seri culture farm. The police also took into possession some bricks containing marks of tyres of the truck and the chemical analysis report Ext.PP revealed that there were marks of tyres of truck which tallied with the bricks recovered from the boundary wall of seri culture, Auhar. There is statement of PW-1 Parma Nand having seen the truck moving in suspicious circumstances at a high speed on the night intervening 15.6.2001 and 16.6.2001 and it was sought to be argued by the learned Deputy Advocate General that the truck was being reversed which struck against the boundary wall of seri culture farm and accordingly, this was sought to be linked to the injury suffered by the deceased, which evidence is not reliable. The learned trial Court had also observed that the possibility that the deceased may have suffered injuries in an accident cannot be ruled out and the final conclusion drawn by the learned trial Court holding that the prosecution case was not proved cannot be termed as perverse calling for an interference by this Court. In view of above discussion, we hold that there is no merit in the appeal filed by the appellant, which is dismissed.