

(2015) 06 SHI CK 0103
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 298 of 2008

State of Himachal Pradesh

APPELLANT

Vs

O.M. Bahadur

RESPONDENT

Date of Decision : 04-06-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 173, 313
Penal Code, 1860 (IPC) — Section 302

Citation : (2015) 3 ShimLC 1247

Hon'ble Judges : Rajiv Sharma and Sureshwar Thakur, JJ.

Bench : Division Bench

Advocate : P.M. Negi, Deputy Advocate General, for the Appellant; Chaman Negi, Legal Aid Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J.—This appeal is directed against the judgment of acquittal rendered on 29.12.2007 by the learned Additional Sessions Judge, Shimla H.P. in Sessions Trial No. 1-S/7 of 2007 whereby the learned trial Court acquitted the respondent for his having committed offence punishable under Section 302 of the Indian Penal Code. The prosecution story, in brief, is that on 22.10.2006 at about 5 p.m. Ajeet Singh and Basant Lal alighted from a bus at Lambidhar. One Inder Singh met them there. There lived a Baba belonging to Punjab Area in a Kutuya at Lambidhar. By nature the Baba appears to be a religious kind of person. On the same day, the persons aforesaid went to the Baba's Kutuya, and knocked the door. On no response having been received therefrom, Ajeet Singh then entered the Kutuya and found that the Baba was lying under the quilt. He lifted the quilt from one side and noticed that there was blood on the bed. Foul smell started coming out. Thereafter he informed the police. The police arrived at the spot. SHO recorded the statement of Ajeet Singh under Section 154 of Cr.P.C. It was stated by Ajeet Singh that the Baba had disclosed him that he was under debt to the extent of Rs. 8 to 10 lacs. It was also stated that many people from Punjab area used to come to him. They used to distribute Prasad to the passengers of

the vehicle and used to collect offerings from them. He had last seen the Baba about 4 days before. The dead body was sent for postmortem examination to the Hospital. During the course of investigation, a ball pen, an axe (Kulhari), spectacles and two trunks with broken kundas lying in the kutiya were taken into possession. Axe was sent to Finger Prints Bureau for examination of prints, if any, on the wooden handle. The spectacles found in the Kutiya were identified by the witnesses as those belonged to the accused. The witnesses had seen the accused wearing those spectacles. During the course of investigation, it was revealed by the witnesses, that accused had been working with Baba on the basis of daily wages for distributing Prasad. Investigation revealed that accused left the Baba's job on the pretext that the Baba was not paying him his outstanding dues. The accused even after leaving the job had been coming to Lambidhar and asking prosecution witnesses to impress upon the Baba to pay his outstanding dues. As per evidence, so collected, one Amar Singh saw him distributing Prasad at Lambidhar on 20.10.2006. This not only show the presence of accused at Lambidhar on 20.10.2006 but also shows that on 20.10.2006 during day time the Baba was alive because work of distribution of Prasad was done by the accused for Baba and the offerings so made by the passengers, used to be given to Baba. Police has suspected that accused had committed the murder of Baba. The accused was arrested by the police. It was found during the course of investigation that accused had been working in Shimla and his attendance used to be marked by the security guards appointed in that building. The attendance register was taken into possession by the Police. As per attendance register and also as per statements of the security guards, the accused was absent from duty from 19.10.2006 to 25.10.2006, the time when the Baba was murdered. After completion of the investigation, challan, under Section 173 of the Cr.P.C. was prepared and filed in the Court. The trial Court charged the accused for his having committed offence punishable under Section 302 IPC to which he pleaded not guilty and claimed trial.

2. In order to prove its case, the prosecution examined as many as 18 witnesses. On closure of the prosecution evidence, the statement of the accused under Section 313 Cr.P.C. was recorded, in which he pleaded innocence. On closure of proceedings under Section 313 Cr.P.C. the accused was given an opportunity to adduce evidence in defence and he chose to lead evidence in defence.

3. On appraisal of the evidence on record, the learned trial Court returned findings of acquittal in favour of the accused/respondent.

4. The State of H.P. is aggrieved by the judgment of acquittal, recorded by the learned trial Court. Shri P.M. Negi, learned Deputy Advocate General, has concertedly and vigorously contended that the findings of acquittal, recorded by the learned trial Court, are not based on a proper appreciation of the evidence on record, rather, they are sequelled by gross mis-appreciation of the material on record. Hence, he contends that the findings of acquittal be reversed by this Court, in the exercise of its appellate jurisdiction and be replaced by findings of

conviction and concomitantly an appropriate sentence be imposed upon the accused/respondent.

5. On the other hand, the learned Counsel appearing for the respondent-accused, has, with considerable force and vigour, contended that the findings of acquittal, recorded by the Court below, are based on a mature and balanced appreciation of evidence on record and do not necessitate interference, rather merit vindication.

6. This Court with the able assistance of the learned Counsel on either side, has with studied care and incision, evaluated the entire evidence on record.

7. The instant case does not rest on any vivid eye witness account qua the occurrence rather rests on the circumstantial evidence. In a case resting on circumstantial evidence, each of the links in the chain of circumstances has to be invincibly proved by the prosecution to constrain this Court to reverse the findings of acquittal recorded by the learned trial Court. Besides, the motive which led or prodded the accused to commit the alleged offence is obviously an important link in the chain of circumstances. The motive attributed to the accused to murder the deceased Baba with whom he was employed, is constituted in the fact existing in the depositions of PW-1, PW-3, PW-4 and PW-5, wherein each has testified to the factum of the accused having approached each of them to intervene, to beseech the deceased Baba to release his pending outstanding wages/remuneration.

8. PW-1 deposes that the accused had twice or thrice over his telephone sought his intercession as well as beseeched him to prevail upon the deceased Baba for releasing his pending/outstanding dues. PW-3 has deposed that on 19.10.2006 the accused had met him at Mahasu Peak and entreated him to get his outstanding dues released from the Baba. Moreover, PW-4 and PW-5 have also deposed that the accused had met each of them on 16.10.2006 at Lambidhar and sought their intervention for getting his pending/outstanding dues, withheld by the Baba for theirs being released by the latter to him. The withholding of the outstanding dues of the accused by his employer, the deceased Baba, engineered or nourished the motive in the mind of the accused to murder the deceased. However, the factum of the deceased owing a sum of Rs. 270/- to the accused stands admitted by the accused in his statement recorded under Section 313 Cr.P.C. Nonetheless, PW-1 deposes that the accused while being employed by the Baba had been defrayed wages @ 70 per day whereas the accused was demanding Rs. 100 per day. On the other hand, PW-3 in contradiction thereto has deposed that the Baba was paying Rs. 100 per day, nonetheless a dispute arose inter se them qua the number of days for which the accused had rendered work and his being in commensuration thereof being entitled to wages. Now with a marked or stark contradiction inter-se the testimonies of PW-1 and PW-3 qua the core dispute inter-se the accused and the deceased, renders this Court to conclude that their testimonies while being ingrained with the vice of intra-se contradictions, each stands imbued with incredibility. Moreover, the testimony of

PW-1 of the accused nursing a motive which prompted him to commit the murder of the deceased, is to be construed to be incredible, on the further count of even though his being the informant yet his having omitted to, in his statement recorded under Section 154 Cr.P.C. unravel therein the factum of a core dispute inter-se the accused and the deceased existing over the quantum of outstanding wages or dues payable to the accused by the deceased Baba, rather his coming to depose the said fact only during the course of the recording of his deposition in Court, renders the motive reared by the accused arising from the deceased Baba, his employer withholding his admissible dues, to be an improvement and embellishment. In aftermath an embellished and improved version qua the germane factum of the purported motive nursed or nourished by the accused cannot hold sway nor it can hold probative clout. Even otherwise, given the admitted minimal outstanding dues of Rs. 270 withheld by the deceased obviously would not constrain this Court to conclude that the accused to obtain them committed the murder of the deceased, besides the testimonies of other prosecution witnesses in tandem to the deposition of PW-1 are to be construable to be incredible while being ingrained with the vice of embellishment and improvement especially when hence they stood engineered at the behest and at the instance of PW-1 in collusion with the Investigating Officer.

9. The post mortem report comprised in Ext. PW-9/E proven by PW-9 records the hereinafter extracted opinion:

"in our opinion, the deceased died of head injury, which was ante mortem in nature leading to cardiopulmonary arrest and death. The probable time between injury and death was instantaneous and between death and postmortem it was above 48 hours and less than four to five days."

10. He in his examination in chief has deposed that the injuries observed by him to be existing on the body of the deceased and which sequelled the demise of the deceased are sequelable with the user of knife. He, in his deposition has further voiced the fact that the probable time between injury and death was instantaneous and between death and post mortem was above 48 hours and less than 4 to 5 days. The aforesaid communication, in his deposition provides aid and assistance to this Court in timing the demise of the deceased Baba. Now given the fact that the prosecution witnesses PW-1 and PW-2 have deposed that on 22.10.2006 they detected the body of the deceased in his "kutiya" obviously then with PW-9 having in his deposition unveiled the fact that the duration or the time inter-se the death and postmortem was less than 4-5 days. Consequently, if the demise of the deceased is to be construable to have occurred less than 4-5 days from the day when PW-9 conducted the postmortem on the body of the deceased in as much as, from 23.10.2006, in sequel, the demise of the deceased is to be concluded to be 4-5 days hitherto in as much as it has to be concluded to be 19.10.2006.

11. Now with this Court having timed the date on which the demise of the deceased Baba occurred, it has to be discerned on a keen evaluation of the

evidence on record whether the accused was in the vicinity of the site of occurrence, in proximity to the day when the deceased Baba was put to death. The oral evidence on record qua the accused having been noticed in proximity or in the vicinity of the site of occurrence is comprised in the testimony of PW-3, who has deposed that the accused had met him at "Mahasu Peak" and entreated him or beseeched him to prevail upon the Baba to release his outstanding dues. Moreover, both PWs 4 and 5, have also deposed that accused met each of them on 16.10.2006 at Lambidhar with a similar request. Nonetheless the presence of the accused in the vicinity of site of occurrence for accomplishing his motive or for pursuing his demand against the deceased Baba for obtaining his outstanding/ pending wages/remuneration from the latter which purportedly constituted the motive or goaded the accused to commit the murder of the deceased Baba, stands dispelled and discounted especially when the prime fact of motive as attributed to the accused to proceed to commit the murder of the deceased stands on a fragile and shaky foundation. Consequently, for reiteration, when the purported motive attributed to the accused by the prosecution witnesses, stands dispelled, the concomitant inference is that the oral evidence of the prosecution witnesses, that the accused met each of them in the vicinity of the site of occurrence to seek their intervention for prevailing upon the deceased Baba to release his outstanding dues also ought to be discredited.

12. Even otherwise, PW-1 has relied upon Ex. P-4 to connote that it was a diary maintained by the deceased Baba to mark the presence of the accused. However, the factum of the deceased having maintained a diary or the entries therein having been scribed by the Baba would, gain credit only in the event it having been proved by best evidence comprised in the report of Handwriting Expert conveying therein the factum of the entries recorded therein being in the hands of deceased Baba. However, absence of the aforesaid best evidence warrants/ necessitates an obvious conclusion that neither Ex. P-4 was maintained by the Baba nor the entries recorded therein purportedly displaying the presence of the accused by the deceased, were scribed by the Baba. Even otherwise, the aforesaid diary was recovered from the subsequent employer of the accused, which recovery from the subsequent employer of the accused, tells upon the veracity of the deposition of PW-1 qua the fact of it having been maintained by the deceased with a concomitant effect of it impinging upon the veracity of his deposition in its entirety. It appears that PW-1 is, with the utmost perseverance and importunacy cultivating an ultra interested version qua the inculpatory role of the accused. Fortifying vigour to the inference aforesaid is acquired by the fact that Ex. P-4 recovered from the subsequent employer of the accused, with the prosecution not having led into the witness box the Security guard appointed by the subsequent employer of the accused to prove that during the period when the accused remained absent from the duties, he had not proceeded to dera rather had proceeded to elsewhere, obviously concomitantly then it has to be concluded that as proved by Ex. DX he was at the relevant time or at the time contemporaneous to the time of murder of Baba at Dera.

13. The fact which boosts an inference qua PW-3, PW-4 and PW-5 having, in their respective depositions mis-communicated the propagated fact of theirs having seen the accused in the vicinity of the deceased, is comprised in the factum of Ex. DX proven by DW-1 divulging the factum of the accused having visited the "Radhaswami Satsang Beas" from 17th October to 23rd October. Even though falsity is concerted to be lent to the aforesaid Ex. DX, in its purportedly propagating the factum of its constituting an alibi on the score of its author having been not led into the witness box besides the year of its issuance having been not mentioned therein, as such rendering easy its procurability. The factum of its purported authenticity as concerted to be torn apart by the learned PP stands dispelled by the fact that DW-1 has unequivocally in his deposition deposed that a large number of devotees throng the dera at Beas and perform voluntary service and issue slips to the pilgrims akin to Ex. DX whereas no counterfoil is maintained. Given his deposition that the volunteers in large number throng the Dera at Beas and issue receipts to the pilgrims, cannot portray the factum of the accused having not visited the Dera on 17th October to 23rd October, especially when no counterfoils thereof are maintained so as to facilitate the accused to identify any one amongst the many of the volunteers manning the crowd at Dera to be the author of Ex. DX. More so, when DW-1 has also omitted to convey that a regular staff was maintained by the Dera at Beas to issue slips to the pilgrims, for facilitating the identification of the signatures of the regular staff deployed at the Dera at Beas for manning the pilgrims. Concomitantly hence proof of the authorship of Ex. DX is to be concluded an insurmountable task. In sequel, it has to be held that the testimony of PW-1 has to be believed that one amongst many of the volunteers manning the gathering at Beas issued slips as such, identification of signatures of one of the many volunteers for proving its authorship was not possible. In face thereof when the authorship of Ex. DX has not been disproved by the prosecution besides even when year the succeeding 17th October to 23 October is omitted to be displayed in Ex. DX, the authenticity of the defence version qua the propagation of an alibi constituted by the factum of the accused being not at the site of occurrence rather at "Radha Swami Satsang Beas" is to be not either construed to have been whittled down or suffered erosion. Moreso the propellant motive which goaded the accused to commit the murder of deceased Baba and which purportedly led him to visit site of occurrence has stood for the reasons recorded hereinabove emasculation. In sequel, the alibi propagated by the defence on the anvil of Ex. DX is to be believed. Obviously then, the oral testimonies of the prosecution witnesses that theirs having noticed the accused in proximity to the site of occurrence also stands in the realm of incredibility. More so, for reiteration, when their testimonies qua the presence of the accused in the vicinity and in proximity of the deceased, on the score of his entreating them or beseeching them at Lambidhar to prevail upon the Baba to release his outstanding dues, for the reasons aforesaid are construed to be an invention or a concoction.

14. The further link in the chain of circumstances connecting the accused in the

commission of the offence has been concerted by the prosecution to be constituted by the recovery of axe Ex-P-1 by the Investigating Officer under recovery memo PW-1/C. The singular reason which enfeebls the recovery of Ex. P-1 under memo Ex. PW-1/C from the Kutiya of the deceased Baba and its being not attributable to the accused is of there being no previously recorded disclosure statement of the accused qua the place of its keeping and hiding, in sequel whereof its recovery was effected at his instance by the Investigating Officer. The said recovery of axe is an infirm link or a feeble link in the chain of circumstances especially when the Finger Prints Bureau, to whom it was transmitted to render an opinion whether its handle bore the finger impressions of the accused rather has underscored in his opinion comprised in PW-17/F the factum that it bore no finger prints, so as to on their comparison with the finger prints of the accused foster an apt conclusion that it was wielded by the accused for committing the murder of the deceased. Consequently, it has to be firmly concluded especially when the Finger Prints Bureau has emphatically recorded an opinion that no finger prints of the accused existed on the handle of the axe. In sequel it has to be concluded that its mere recovery is an engineered as well as a well devised machination on the part of the Investigating Officer to falsely implicate the accused. Further conclusion is that it was not used or wielded by the accused to inflict injuries on the deceased Baba. Moreover, the prosecution has tried to connect the accused in the commission of the offence of murder of the deceased on the score of Ex. P-5, the spectacles seen to be worn by the accused as deposed by PW-1, having been found or recovered from the Kutiya, wherefrom the body of the deceased was found. With PW-1 expressing inability that it bore any distinct insignia or carried an exceptional identification mark so as to relate it to the accused rather his deposing that Ex. P-5 is easily procurable from the market, renders his deposition to be shaky, nebulous and infirm qua the similarity or likeness of the spectacles worn by the accused with the one found in the kutiya of the deceased.

15. A wholesome analysis of the evidence on record portrays that the appreciation of evidence as done by the learned trial Court neither suffers from any perversity and absurdity nor it can be said that the learned trial Court in recording findings of acquittal has committed any legal misdemeanor, in as much, as, it having mis-appreciated the evidence on record or omitted to appreciate relevant and admissible evidence. In aftermath this Court does not deem it fit and appropriate that the findings of acquittal recorded by the learned trial Court merit inference. In view of the above discussion, we find no merit in this appeal, which is accordingly dismissed, and, the impugned judgment of the learned trial Court is maintained and affirmed. Record of the learned trial Court be sent back forthwith.