

(2012) 09 SHI CK 0076
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 112 of 2006

State of Himachal Pradesh	Vs	APPELLANT
Ram Chand, Harnam Singh, Sunil Kumar and Saroj Kumar		RESPONDENT

Date of Decision : 17-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 161
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2012) 09 SHI CK 0076

Hon'ble Judges : Rajiv Sharma, J;Deepak Gupta, J

Bench : Division Bench

Advocate : Rajesh Mandhotra, Deputy A.G, for the Appellant; Rajiv Rai, for the Respondent

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—This appeal by the State is directed against the judgment dated 26.09.2005, delivered by the learned Additional Sessions Judge, Fast Track Court, Kangra at Dharamshala, in Sessions Trial No. 12 of 2005, whereby he acquitted the accused persons of having committed offence punishable u/s 302 IPC read with Section 34 IPC. The prosecution story, in brief, is that on 10th March, 2003, marriage of one Shri Shakti Chand took place and the barat had gone to Village Andretta. Deceased Amar Nath and his nephew, Virender Kumar, had gone alongwith the barat, which reached Andretta at about 8.00-8.30 p.m. Arrangements for the stay of the barat were made in the Janjghar on the road side. Amar Nath (deceased) was the maternal uncle of the bridegroom. He had some altercation with father of accused-Ram Chand when they were sitting at the Janjghar around a log fire.

2. After this incident took place the members of the barat proceeded to the house of the parents of the bride where they had dinner. After dinner, deceased-Amar Nath accompanied by his nephew, PW-1, Virender Kumar, returned to the Janjghar. When they came back, they were followed by accused-Ram Chand and

the other three accused persons, namely, Harnam Singh, Sunil Kumar and Saroj Kumar. It is the prosecution case that the accused, Ram Chand, picked up a burning piece of wood and gave a blow with it on the head of deceased, Amar Nath, on account of which he suffered injuries and fell down. The other three accused gave beating to Amar Nath by giving him kicks and fist blows and, thereafter, all of them ran away from the spot.

3. PW-1, Virender Kumar, who was accompanying his uncle, Amar Nath, immediately took Amar Nath to the house of one Smt. Kamla Devi, who was living near by. Hot milk was given to Amar Nath and in the meantime, Virender Kumar telephoned his cousin, Ashwani Kumar, to arrange for a vehicle, so that the injured could be shifted to the hospital. PW-6, thereafter, arranged a vehicle and in the said vehicle, Amar Nath was shifted to the Hospital at Palampur, where they reached at about 10.30 p.m. Virender Kumar then went to the Police Station, which is situated just across the road from the Hospital. The Doctor also sent a written report intimating the police that an injured person had been admitted in the Hospital. The police swung into action and FIR was registered and investigation started. Since the injuries on the person of Amar Nath were senior, he was advised to be shifted to Christian Medical College, Ludhiana. Unfortunately, Amar Nath succumbed to his injuries and expired on 23rd March, 2003. Post mortem on the body of deceased was conducted. During the course of the investigation, police took into possession the piece of wood with which Amar Nath had been beaten, blood stained soil etc. and sent the same for chemical analysis to FSL Junga. On the basis of this material, the accused persons were charged with having committed the offences aforesaid. After trial, they have been acquitted. Hence, this appeal by the State.

4. The entire case rests on the statement of PW-1, Virender Kumar. Admittedly, deceased, Amar Nath as well as Gian Chand, father of accused-Ram Chand, were members of the barat. According to PW-1, Virender Kumar, Amar Nath had some altercation with Gian Chand and this was the motive for Ram Chand causing injuries to the deceased. It is not disputed that the deceased suffered injuries, was shifted to the Hospital at Palampur and then shifted to CMC Ludhiana, but died as a result of the injuries. The only question is whether the injuries were caused by the accused or not.

5. Since the main evidence is of PW-1, Virender Kumar, it would be pertinent to first refer to his statement, Ex. PW-1/A, recorded by the police at 10.30 a.m. next morning, i.e. 11.03.2003. In this statement, he stated that he alongwith his father Ram Krishan, uncle Amar Nath and other members had gone with the barat from Village Lamleher to Andretta. At about 9.00-9.30 p.m., the barat was in the dera where arrangements for their stay had been made and in the dera, an altercation took place between deceased, Amar Nath, and father of accused-Ram Chand. Thereafter, all of them proceeded to have dinner at the house of the bride. Next day, they had to make arrangements for the lunch (dhaam), which the boy side had to provide to the villagers. Therefore, he (Virender Kumar) and

his uncle came back alone to the dera/Janjghar. Ramu alongwith three-four persons came to the dera and picked up a burning piece of wood (pachar) from the log fire and gave a blow with that on the head and just below the right eye. Amar Nath fell down at the spot. Some persons accompanying Ram Chand were trying to separate the persons. He did not know the persons accompanying Ram Chand, but could recognize them by face. They all ran away from the spot. Thereafter, PW-1, Virender Kumar, took his uncle to a house close by and ranged up his co-villager and informed them about the occurrence. Then, his cousin, Ashwani Kumar, came with a vehicle and they then took Amar Nath to Palampur.

6. At the outset, we may mention that there is no explanation worth the name why the statement u/s 154 Cr.P.C. of Virender Kumar, was recorded next morning at 10.30 a.m. whereas he has gone to the Police Station between 10.30-11.00 p.m. the previous night. It is also in evidence that at about 1.15 a.m., the Doctor, vide his memo, Ex. PW-10/A, had informed the Incharge of Police Station Palampur that a person had been brought in an injured condition and had been beaten up and, therefore, the police may take action. Thereafter, the police came to the Hospital. MLC, Ex. PW-10/C, does not support the submission of Virender Kumar. Whereas according to Virender Kumar, they had reached the police station by about 11.00 p.m., in the MLC, the time of admission is shown to be 1.05 a.m. In the history, it is recorded "brought with alleged history of being beaten (history given by Virender Kumar)". The names of the assailants are not mentioned in this history. When Virender Kumar was giving the history, he would have mentioned the names of the assailants, if initially he had seen and recognized them.

7. Coming to the statement of Virender Kumar in Court, his statement in Court is totally contrary to his initial statement recorded u/s 154 Cr.P.C., Ex. PW-1/A. In his statement, Ex. PW/1A, there is no allegation that the persons other than Ram Chand gave any kicks or blows to Amar Nath. According to him, the police reached the Hospital after about one and a half hours. As mentioned above, he states that they reached the Hospital at about 11.00 p.m., which does not appear to be correct in view of the MLC. The version of PW-1, Virender Kumar, is that, thereafter, he alongwith Ashwani Kumar went to the Police Station and stayed there for about 30-45 minutes. According to him, they reported the matter to the police on 10.03.2003 at about 11.00 p.m. or 12.00 mid night.

8. If that be so, then why was his statement u/s 154 Cr.P.C. not recorded immediately. This raises a suspicion that the time was spent in trying to get information who were the assailants and the assailants were not known to Virender Kumar. He admits that when the MLC was prepared, he had not told the Doctor the names of the assailants. According to this witness, when he made statement to the police, he had given the names of the other three accused persons, namely, Harnam Singh, Sunil Kumar and Saroj Kumar. As discussed above, in his statement, Ex. PW-1/A, it is mentioned that he did not know the names of the persons, but could identify them by face. Therefore, this witness is

himself questioning the veracity of the statement, Ex. PW-1/A. The names of the other co-accused are only mentioned in the supplementary statement recorded u/s 161 Cr. P.C. but are not recorded in the first statement. When confronted with the statement that the persons accompanying accused-Ram Chand were rescuing his uncle, PW-1 stated that those persons were some other persons, but the accused, Harnam Singh, Sunil Kumar and Saroj Kumar, were not rescuing his uncle. This also cannot be believed since no such facts were stated in the first statement.

9. PW-2, Ravinder Kumar, is the real brother of Virender Kumar. He is not an eye witness, but was a member of the barat. According to him, when he came to know about the occurrence, he came to the place of occurrence and then met his brother and asked what had happened. Then Virender Kumar told him that Ramu had given a blow with a burning piece of wood to Amar Nath and the other accused had given kick blows. This witness admits that he was with his brother when Amar Nath was taken to the Hospital and that he remained in the Hospital till about 8.30 a.m. on the next day. His statement, however, was not recorded by the police till ten days after the occurrence. This itself casts a doubt on his statement.

10. PW-3, Beer Bhan, has not supported the prosecution case and according to him, Virender Kumar had only stated that a Fauji had given beating to Amar Nath, but had not disclosed name of any person. This witness was declared hostile and cross-examined by the learned Public Prosecutor. Though, he supported the prosecution on all other aspects about Amar Nath being injured, being taken to the house of Smt. Kamla Devi and then being taken to the Hospital, he denied that the names of the accused persons were disclosed on the said date.

11. PW-4, Babita Devi, who is the Pradhan of Gram Panchayat, Andretta, was the witness to the recovery of blood stained stone, but she also turned hostile and did not support the prosecution. Similar is the statement of PW-5, Urmila Devi, a ward member of the same panchayat. Interestingly, PW-5 denied that Virender Kumar told her that Ramu accused had beaten Amar Nath with a pachar.

12. Statement of PW-6, Ashwani Kumar, is only relevant to prove that he had arranged a vehicle and taken Amar Nath to the Hospital. According to him also, the statement of Virender Kumar was recorded at 10.30 p.m. If the statement of Virender Kumar was recorded at 10.30 p.m., then how was the statement, Ex. PW-1/A, recorded next day at 10.30 a.m. This either means that some statement has been withheld from the court or it means that the entire prosecution story is false.

13. PW-10, Dr. Viney Mahajan, clearly states that Virender had not told him the names of the assailants while giving the history. PW-16, SI Joginder Singh, states that on the basis of daily diary No. 35, dated 11.03.2003, he went to the Hospital. This entry is made at 10.30 a.m., which totally negatives the version of

Virender Kumar and others that they had reached the Hospital at 10.30 p.m. He admits in his cross-examination that he recorded the statement of Virender Kumar at 10.30 a.m. He also admitted that MLC was handed over to him by Dr. at 1.15 a.m. and had further denied that at that time, Virender Kumar, Ashwani Kumar and Ravinder Kumar were present. He denied that Virender and Ashwani Kumar met on 10.03.2003 at 10.00 or 10.30 p.m. at the police station.

14. In view of the above discussion, we are clearly of the view that the learned trial Court was right in not relying upon the statement of Virender Kumar, which has a lot of inconsistencies. In the first statement, only one accused was mentioned and this statement, Ex. PW-1/A, is stated to have been recorded at 10.30 a.m. next morning. There is no explanation why it was not recorded immediately in the police station itself. There are a lot of improvements in the statement of Virender Kumar as pointed out above and, therefore, it would be highly imprudent to rely upon his statement to convict the accused. It appears that he was not aware of the true assailants at the initial stage and the possibility of consultations having been taken place and the names of the accused being introduced after such consultations between the family members cannot be ruled out. We, therefore, find no merit in the appeal, which is accordingly dismissed. Bail bonds discharged.

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