

(2016) 06 SHI CK 0112

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 699 of 2008.

State of Himachal Pradesh - Appellant @HASH Ramesh Sharma

Date of Decision : 17-06-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2016) 4 HimLR 2114 : (2016) ILRHP 2018 : (2016) LatestHLJ(HP) 918

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

Bench : Division Bench

Advocate : Mr. P.M. Negi, Deputy Advocate General, for the Appellant; Mr. Manoj Pathak, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Vivek Singh Thakur, J. - Aggrieved by acquittal of respondent-accused vide judgment dated 30.06.2008, passed by learned Additional Sessions Judge, Shimla in Sessions Trial No. 3-S/7 of 2008 acquitting the respondent-accused in FIR No. 225 dated 20.10.2007 under Section 302 of Indian Penal Code at Police Station Boileauganj, Shimla.

2. Mr. P.M. Negi, learned Deputy Advocate General for the appellant-State has advanced arguments that there is sufficient circumstantial evidence on record to prove guilt of respondent-accused under Section 302 of the Indian Penal Code and prayed for allowing appeal and to punish respondent-accused under Section 302 IPC whereas Mr. Manoj Pathak learned counsel for respondent-accused has vehemently submitted that prosecution has failed to prove the case beyond reasonable doubt and there is no circumstance incriminating respondent-accused and has sought dismissal of the appeal by affirming the judgment of Additional Sessions Judge, Shimla.

3. We have heard respective counsel and have also gone through the record.

4. Prosecution has examined 17 witnesses to prove guilt of respondent-accused. Statement of respondent-accused under Section 313 of Criminal Procedure Code

was recorded. No defence witness has been examined on behalf of respondent-accused.

5. Prosecution case is that PW-4 Anand Negi had purchased a vehicle on 04.10.2007 from Mahindra & Mahindra Company, Kachhi Ghati, Shimla. Respondent-accused driven new vehicle to Kinnaur accompanying PW-4 Anand Negi to obtain signature of deceased Sher Singh as guarantor of PW-4 Anand Negi in Kinnaur. During this visit, vehicle met with an accident on 05.10.2007 hitting parapet and deceased Sher Singh had slapped respondent-accused for this mistake and in response, respondent-accused had threatened deceased Sher Singh to see him at Shimla. On refusal to receive damaged vehicle by PW-4 Anand Negi, respondent-accused drove back vehicle to Shimla on next day. PW-4 Anand Negi had visited Shimla to receive his money back. He was asked to come with guarantor. PW-4 had returned back to home on 12.10.2007. It is alleged that respondent-accused had called deceased Sher Singh saying that amount paid by PW-4 Anand Negi will be returned only in presence of guarantor deceased Sher Singh and consequently deceased Sher Singh had gone to Shimla on 12.10.2007.

6. On 18.10.2007 missing report Ex. PW-1/D was lodged by PW-1 Dolma in Police Station Boileauganj, Shimla stating that her husband Sher Singh had left his house from Kinnaur on 12.10.2007 saying that he was going to office of Mahindra & Mahindra Company, Kachi Ghati, Shimla. Since her husband had not contacted her since 4-5 days therefore she along with her mother-in-law had come to Shimla in search of her husband and respondent-accused, an employee of Mahindra & Mahindra Company, Kachi Ghati, Shimla had informed that on 13.10.2007 her husband had accompanied him from Kachi Ghati to his house at Tara Devi, however, thereafter her husband had part with respondent at 7.00 PM by saying that he was returning home.

7. On 20.10.2007, at 12.20 PM, PW-1 Dolma has lodged FIR Ex. PW-1/C in Police Station, Boileauganj doubting detention or murder of her husband by respondent-accused.

8. Prosecution case is that on 20.10.2007 bag of deceased Sher Singh containing mobile, chips, bottle of liquor, bathing soap, woollen cap, mobile ear lead, a pen, a pocket diary and one open packet of Chips Lays was found in cow shed of respondent-accused and one mobile phone belonging to deceased Sher Singh was also produced by respondent-accused from his bed room stating that said mobile was found near his house on 13.10.2007. These articles were taken in possession vide seizure memo Ex. PW-1/A and Ex. PW-1/B.

9. On 22.10.2007 at 5.25 PM dead body of deceased Sher Singh was found in Phyal Jungle Nalla which was taken into possession along with hair lying in water and was sent to I.G.M.C. Shimla for postmortem.

10. On 23.10.2007, at 12.35 PM, PW-15 Dr. Piyush Kapila had conducted Postmortem and as per postmortem report Ex. PW-15/B, deceased Sher Singh

had died as a result of multiple anti-mortem head injury causing immediate death and time gap between death and postmortem was around 7 to 10 days. After receipt of chemical examination's report, final opinion Ex. PW-15/C was rendered and it was opined that deceased had died as a result of ante-mortem injury in a case of alcohol consumption. As per chemical examiner's report Ex. PX-1 blood alcohol level of deceased was found 375.2 mg percent. As per opinion of the Doctor head injury was possible with a Lathi. In cross-examination this witness has stated that all injuries mentioned in postmortem report are possible with fall and alcohol contents found in the chemical examiner's report indicates stage of "coma".

11. It is further case of prosecution that respondent-accused was arrested on 20.10.2007 and was interrogated. on 26.10.2007, respondent-accused had made disclosure statement Ex. PW-3/A in presence of PW-3 Prem Chand and HC Ram Lal leading to recovery of buckle and leather strip of belt from Turburd Maidan, near ITBP Camp Shogi which were taken into possession vide seizure memo Ex. PW-3/B and one leather belt without buckle from his house which was taken into possession vide seizure memo Ex. PW-3/C.

12. After completion of investigation, challan was put up before the Court against respondent-accused. After conclusion of trial, respondent-accused has been acquitted by giving him benefit of doubt.

13. Present case of prosecution is based on circumstantial evidence. Prosecution has relied upon "last seen together theory", "motive", recovery of articles from house of respondent-accused at his instance and injuries found on body of deceased.

14. It is a settled law that in case of circumstantial evidence conviction should be recorded only if the chain pointing to the guilt of respondent-accused is firmly established linking accused with crime firmly and not only creating suspicion as suspicion however strong evidence itself may not take place of proof. All circumstances must be consistent only with hypothesis of guilt.

15. Though, murders are also committed even without any pre-emptive motive. In cases based on circumstantial evidence motive, however is an important factor and a strong circumstance.

16. Enmity arisen on account of slapping by deceased Sher Singh to respondent-accused followed by threatening by respondent-accused has been propounded as a cause to commit murder by respondent-accused. However, in the statement of PW-4 Anand Negi it has come that deceased Sher Singh and respondent-accused had gone Dubling and had brought a mechanic on spot for repairs of vehicle and thereafter accused had come back to Shimla. To prove the "motive", there is no other evidence on record. It is difficult to believe that for a single slap, relations had become so bitter so as to call deceased to Shimla to kill him by accused, particularly when on 05.10.2007 respondent and deceased were together and had arranged mechanic for repair of the vehicle without any quarrel amongst

them.

17. Another instance of quarrel has been tried to be propounded through PW-16 Amit Thakur purporting him an being eye witness to fight between deceased Sher Singh and respondent-accused on 13.10.2007. However, this witness has abstained lending support to prosecution story and had turned hostile. This witness was subjected to lengthy cross examination by Public Prosecutor, however, nothing incriminatory was elucidated against respondent-accused.

18. Another circumstance relied by prosecution is disclosure statement Ex. PW-3/A followed by recovery of articles vide seizure memo Ex. PW-3/B and Ex. PW-3/C in presence of PW-3 Prem Chand, HC Ram Lal and Smt. Tarawati. Only PW-3 Prem Chand has been examined. HC Ram Lal and Smt. Tarawati had not been examined by the prosecution. Best course available to prosecution was to examine witness in Court and cross examine in case of turning hostile.

19. PW Tarawati had been given up alleging that she had been won over by accused. It is beyond imagination to find out reasons and grounds on account of which PW Tarawati had been declared to be won over by accused as at the time of making such statement only her statement under Section 161 of the Criminal Procedure Code was there and she had not entered witness box and had not uttered a single word either in favour of or against respondent-accused or prosecution.

20. Examination of PW Ram Lal was necessary for corroboration of statement of PW-3 so as to prove disclosure statement Ex. PW-3/A and recovery memo Ex. PW-3/B. However PW Ram Lal was also given up on account of repetition.

21. PWs Ram Lal and Tarawati were second witnesses to disclosure statement and seizure memo. Necessary evidence was kept behind which has prejudiced a fair trial.

22. Now, there is only one witness PW-3 Prem Chand examined to prove Ex. PW-3/A to Ex. PW-3/C. Veracity of story of prosecution is under cloud as in cross-examination, PW-3 Prem Chand has admitted that when he had entered in room of SI Chaman Lal, PW-3 was asked to accompany him to ITBP Camp. It indicates that disclosure statement and recovery in pursuance to said statement, was already managed and police was knowing about contents of disclosure statement as well as place of recovery of articles and PW-3 Prem Chand was only an instrument to complete codal formality to establish concocted story of prosecution. Therefore, disclosure statement Ex. PW-3/A and recovery memo Ex. PW-3/B and Ex. PW-3/C cannot be relied upon to convict respondent-accused.

23. Prosecution has also relied upon recovery of bag and mobile from the house and at the instance of respondent-accused vide memo Ex. PW-1/A and PW-1/B. Recovery of articles of deceased vide this memo is also not beyond doubt as PW-1 Dolma had stated that on 18.10.2007 after inquiring from respondent-accused about deceased Sher Singh missing report was lodged and before their

leaving Police Station sister of respondent-accused had come to Police Station and bag and mobile of deceased were recovered at her instance. It is evident from perusal of memo Ex. PW-1/A and PW-1/B that these memos are of 20th October, 2007 whereas PW-1 and her mother-in-law had inquired from respondent-accused on 18.10.2007 and had reported to police on the same day. Ex.PW-3/B and PW-3/C reflected that recovery of bag was done by police during investigation and Mobile was produced by respondent-accused. Therefore, reliance cannot be placed on memo Ex. PW-1/A and Ex. PW-1/B.

24. As per chemical examination report Ex. PX-1 hair sample of Sher Singh and hair lifted from spot were found similar with each other and ethyl alcohol was detected in Stomach, Small Intestines, Liver, Inner Spleen Kidneys and Bladder of deceased. Quantity of same in blood was 375.2 mg percent. No other poison was detected. PW-15 Dr. Piyush Kapila has unambiguously stated that all injuries found on the body of deceased were possible with fall and alcohol contents in blood 375.2 mgs percent is a stage of coma. Whereas PW-2 Lachhman Singh has stated that deceased Sher Singh never used to drink. He has also stated that deceased had drink at the time of marriage of this witness. Tone and tenor of statement of PW-1 Dolma no where suggests that deceased was tea-totaller and have used to have drinks. Further prosecution itself had tried to prove by examining PW-5 Ashwani Sharma, owner of a "dhaba" at Kachhi Ghatti that deceased Sher Singh and respondent had consumed liquor in his "dhaba". It is prosecution story that after taking liquor, both of them had gone towards house of respondent - Accused and on the way they quarrelled and on account of injuries caused by respondent, deceased Sher Singh had expired. It shakes the credibility of prosecution story.

25. Deposition of other witnesses including Investigating Officer PW-17 SI Chaman is of no help of prosecution.

26. There are material contradictions and improvements in testimonial of material witnesses indicating that true version has been withheld and witnesses have produced in a manner suitable to frame respondent-accused at any cost.

27. It is evident from the aforesaid discussion that Chain of circumstantial evidence to prove guilt of accused is not complete and prosecution evidence cannot be treated as cogent, reliable, credible and sufficient to prove guilt of accused-respondent beyond reasonable doubt.

28. Thus, having perused the testimonies of prosecution witnesses on record, it cannot be said that prosecution has been able to prove its case that respondent-accused has committed offence under Section 302 of the IPC. It cannot be said that learned trial court has not appreciated the evidence correctly and completely and acquittal of the accused has resulted into travesty of justice or has caused miscarriage of justice.

29. It is a settled principle of law that acquittal leads to presumption of innocence in favour of an accused. To dislodge the same, onus heavily lies upon

prosecution. The accused has been acquitted by trial Court. No case for interference is made out.

30. The present appeal, devoid of any merit, is dismissed, as also pending applications, if any. Bail bonds, if any, furnished by the accused are discharged. Records of the Court below be sent back immediately.