

(2011) 06 SHI CK 0036
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 85 of 2002

State of Himachal Pradesh

APPELLANT

Vs

Rushtam Ali and Others

RESPONDENT

Date of Decision : 13-06-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 120B, 201, 302, 34

Citation : (2011) 2 ShimLC 291

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

V.K. Sharma, J.—The State is in appeal against the judgment dated 29.10.2001 passed by the learned Sessions Judge, Kinnaur Sessions Division at Rampur Bushahr, H.P., in Sessions Trial No. 42 of 2000, State v. Rushtam Ali and others, whereby the respondents herein, namely, Rushtam Ali, who has been declared as proclaimed offender by order of this Court, Surat Ram and Mani Devi, who shall hereinafter be referred to as "the accused" (denoted as A-1, A-2 and A-3, respectively), were tried for the offences under Sections 302, 120-B and 201 read with Section 34 of the Indian Penal Code and were ultimately acquitted.

2. It may also be noticed at this stage that the case against juvenile co-accused Daljit was sent for trial to the Children Court, at Una.

3. Briefly stated the case of the prosecution was that deceased Ripu Ram alias Kathu Ram, was married to A-3 Mani Devi. Two children including juvenile co-accused Daljit were born out of the wedlock. However, the relationship between deceased Ripu Ram and A-3 Mani Devi turned sore. Resultantly, A-3 Mani Devi along with children started living at the house of PW. 11 Kimat Ram, in the area of village Hulka-Padaya. Deceased Ripu Ram was working as truck driver. A-1, Rushtam Ali, was cleaner/conductor on that truck.

4. The allegations against the accused as noticed by the learned trial Court are that:

On 23.4.2000, at about 7.30 P.M., deceased Ripu, Ram visited the house of his cousin PW. 2 Roop Lal in village Padaya. Their houses are located at a distance of 200 yards from each other. A-1, Rushtam Ali and juvenile co-accused Daljit were also with him. PW.2, Roop Lal had seen A-1 Rushtam Ali and juvenile co-accused Daljit, accompanying deceased Ripu Ram to his house. Deceased Ripu Ram had taken liquor, on 23.4.2000, in the evening. When he had been under the influence of liquor, A-1, Rushtam Ali had allegedly murdered him. A-1, Rushtam Ali had administered one blow with hammer, Ex.P-22, on the left side of the head of deceased Ripu Ram. Hammer, Ex.P-22, was a lethal weapon. Such hammer was used for smashing rocks. The blow with hammer, Ex.P-22, had smashed the skull of deceased Ripu Ram and had led to his death. A-1 to A-3 and juvenile co-accused Daljit, had cleared the blood from the upper room of the house of deceased Ripu Ram. Nevertheless the traces of blood had been observed in the room on 25.4.2000 by PW.1 Sh.Tikam Bandhu, PW. 2 Sh. Roop Lal and the police. The blood had trickled down to the ground floor and had been so observed by the police and the witnesses. A-1 to A-3 and juvenile co-accused Daljit, had dumped the dead body in culvert in the area of village Hulka. A-1, Rushtam Ali, had got hammer, Ex.P-22, recovered on 26.4.2000. He was wearing shirt, Ex.P-13, and Pant, Ex.P-14, on 23.4.2000. PW. 2, Roop Lal, had seen A-1, Rushtam Ali putting on shirt, Ex.P-13, and Pant, Ex.P-14, on that day. Pant, Ex.P-14, of A-1 Rushtam Ali stood stained with human blood as reported by the Chemical Examiner. He was unable to explain the circumstances under which his Pant, Ex.P-14, stood stained with human blood. A-1, Rushtam Ali, had got hammer, Ex.P-22, recovered. The hammer was found stained with blood of group "A" as reported by the Chemical Examiner. The clothes of deceased Ripu Ram were got recovered by A-1, Rushtam Ali which also stood stained with blood of group "A". According to the prosecution this clearly established that hammer, Ex.P-22, had been used for commission of murder of deceased Ripu Ram. A-1, Rushtam Ali, having got the hammer, Ex.P-22, recovered was alleged to be clearly connected with the murder. He had not been able to take any exception to his disclosure statement, Ex.PW.1/J, and consequent recovery of items, Ex.P-13 to Ex.P-22, vide recovery memo, Ex.PW.1/K.

5. On conclusion of investigation, the accused were sent to face trial. On being charged, they did not plead guilty and claimed to be tried. The prosecution evidence followed. It has examined as many as 19 witnesses.

6. On close of the prosecution evidence, the accused were examined u/s 313 Cr.P.C, wherein they set up defence of denial simpliciter, innocence and false implication. However, they did not lead any evidence in their defence.

7. After hearing the parties, the learned trial Court acquitted all the three accused as already noticed.

8. We have heard the learned Senior Additional Advocate General, for the appellant-State and Mr. Abhishek Sood, Advocate, "who has been requested to assist the Court, as none has put in appearance on behalf of A-2 and A-3, who are though duly represented.

9. Be it stated, at the very out set, that in the absence of direct evidence, the case against accused persons is based solely on circumstantial evidence. While evaluating such evidence, the learned trial Court has placed reliance upon the law laid down by the Hon"ble Supreme Court in Sharad Birdhichand Sarda Vs. State of Maharashtra, wherein it has been laid down as under in para 152 of the report:

152.A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and must be or should" as was held by this Court in Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra, where the following observations were made:

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between "may be" is long and divides vague conjectures from sure conclusions.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

10. Reliance has also been placed on another judgment of the Hon"ble Apex Court in Padala Veera Reddy Vs. State of Andhra Pradesh and others,

11. The learned trial Court has concluded that the case against the accused was based more on suspicion than on any legally admissible evidence and that the possibility that the deceased, who was heavily drunk on or about the time of the alleged occurrence, had an accidental fall resulting in fatal head injury.

12. It is in evidence in the statement of PW.15, ASI Chander Singh, that on

23.4.2000, deceased Ripu Ram had taken liquor at Rampur. Thereafter, he had left for his home, where he took more liquor, in the evening of that day. The police had recovered an empty nip, Ex.P-23, of IMFL from his house. It was having traces of alcohol.

13. PW.17 Dr. J.N, Chauhan, M.D. (Forensic Medicine) had reported that deceased Ripu Ram was heavily drunk. Percentage of liquor in the sample of his urine was 327.8 miligram per cent (per 100 mililitre). According to the medical expert, such a person would not be able to balance himself and could fall down from height. The medical witness has further stated that injury on the head of deceased Ripu Ram could be caused due to fall in drunken state from hillside. Though the medical expert has stated that in such an eventuality there ought to be some other associated injury on the person of the deceased, yet the conclusion derived by the learned trial Court that in the absence of any evidence with regard to rolling down of the deceased after falling down, non existence of any associated injury is not of much consequence, can not be said to be irrational.

14. The prosecution had relied heavily on letter, Ex.PW.8/A, allegedly written by juvenile co-accused Daljit, to his uncle, PW.8, Tikkam Ram, sometime after the commission of the alleged crime wherein he is stated to have admitted his guilt. However, this piece of evidence has rightly been held not to establish the charge against any of the accused. It is in evidence that all the four accused were arrested by the police immediately after the occurrence. PW.8, Tikkam Ram, has categorically admitted that juvenile co-accused Daljit, had not been in correspondence with him. He could also not state if letter, Ex.PW.8/ A, had been written by juvenile co-accused Daljit or not. It is also pertinent to point out that letter, Ex.PW.8/ A, was not subjected to hand-writing examination so as to pinpoint and establish that the same was written by juvenile co-accused Daljit. Thus, letter, Ex.PW.8/A, has to be altogether excluded from consideration to fasten guilt against any of the accused including juvenile co-accused Daljit.

15. The prosecution has also tried to establish the gravamen of charge against the accused on the basis of disclosure statements allegedly made by them and consequent recoveries. However, such evidence not being conclusive in nature and coming up to the mark, has been rightly rejected by the learned trial Court and more so, when nothing incriminating was found in the same, as per FSL reports, Exts.P-X and P-Y. In so far as, alleged recovery of alleged weapon of offence "Ghan" (big hammer) is concerned, the same also appears to be suspect as the police had earlier extensively searched the house of deceased Ripu Ram, from where the same was recovered.

16. Though it was alleged by the prosecution that there was illicit intimacy and physical relationship between A-1, Rushtam Ali and A-3, Mani Devi and it was the motive for them to commit murder of deceased Ripu Ram, yet there is no evidence to this effect on record, as no witness has stated about any such relationship. In a case, based on circumstantial evidence, if motive itself fails the

very basis of the prosecution case crumbles.

17. According to PW.10, Prem Bhagwan, deceased Ripu Ram visited his shop at Nirmand, on 21.4.2000 and had purchased provisions. At that time, deceased Ripu Ram, had allegedly told him that he apprehended danger to his life from his wife, A-3 Mani Devi. He further disclosed that she could either murder him or manage his murder. In such circumstances, PW.10, Prem Bhagwan, had suspected, that A-3, Mani Devi, had committed murder of deceased Ripu Ram. However, the version stated by this witness has not found favour with the learned trial Court for the reason that such disclosure by deceased Ripu Ram to him about danger to his life from A-3 Mani Devi, was not disclosed by him to the police at the first available opportunity on 25.4.2000 and 26.4.2000 and instead he had stated about it to the police only as belatedly as 2.7.2000.

18. A-2, Surat Ram is real younger brother of A-3, Mani Devi. Nothing incriminating was recovered at his instance. His involvement in the alleged occurrence was only on the basis of his disclosure statement, Ex.PW.3/A, whereby he had allegedly demarcated the passage through which the dead body of deceased Ripu Ram had been taken from his house to the culvert in the area of village Hulka, where it was ultimately spotted. Such disclosure statement has been refuted by PW.3, Amar Chand, even in chief-examination. According to him, the police had already recorded-disclosure statement, Ex.PW.3/A and demarcation memo, Ex.PW.3/B, simultaneously and had obtained his signatures on the same. In cross-examination, he has stated that police had obtained the signatures of A-2, Surat Ram and A-3 Mani Devi, on these documents at one time and in one go.

19. On reappraisal of the evidence and materials on record, we are of the view that the evidence, led on behalf of the prosecution, was not sufficient in content and up to the mark to return a finding of guilt against them. It being so, their acquittal by the learned trial Court under the impugned judgment dated 29.10.2001, cannot be faulted. The appeal is accordingly dismissed.

20. We place on record a word of appreciation for Mr. Abhishek Sood, Advocate, who ably assisted the Court.