
(2011) 10 SHI CK 0088
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 772 of 2002

State of Himachal Pradesh

APPELLANT

Vs

Sanjay Kumar and Others

RESPONDENT

Date of Decision : 15-10-2011

Acts Referred:

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

Citation : (2012) 1 ShimLC 265

Hon'ble Judges : R.B. Misra, J;Dev Darshan Sood, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dev Darshan Sud, J.—The State prefers this appeal challenging the acquittal of the respondents u/s 302 read with Section 34, IPC. The prosecution case is that on 7.5.2001 at around 8 PM Shri Sunder Ram, complainant was present in his house. His son Rajesh Kumar, deceased (aged about 28 years) was also there. That is the first point of time, accused/ respondents are alleged to have been noticed by him near his house on National Highway No. 21. Out of them Sanjay Kumar Neelmani are alleged to have been familiar with Rajesh Kumar. Sunder Ram (PW2), complainant asked his son to meet the respondents, whereupon he took a torch from the house and proceeded to meet them. After some time Sunder Ram (PW2) saw that three persons were running on NH-21 and suspected that something was wrong and he proceeded to the place. To his utter surprise/ he found that his son Rajesh Kumar lying in a passage in a pool of blood with multiple stab wounds on his body. He picked up his son and rushed to NH-21 which was at a distance of about 30-40 feet. He signaled to the passing vehicles to stop so that he could rush his son to the hospital for medical aid, but no one responded to his pleas/signals and his son died because of lack of medical aid. Thereafter, he telephonically informed SHO, Police Station, Bilaspur about the crime and Ex.PBB daily diary report was recorded at 8.25 P.M. at police station Bilaspur.. On receipt of this telephonic information, PW23 Shri Siri Ram,

Inspector, SHO Police Station Bilaspur along with other police personnel rushed to the scene of crime. PW28, Shri Ishwar Dass, SI/Addl. S.H.O. had interrogated PW2 Shri Sunder Ram, father of the deceased and his statement Ex. PE u/s 154, Cr.P.C. was recorded. Ishwar Dass, PW28 forwarded this statement to the police Station for registration of the FIR, he picked up the blood stained stone and earth etc. from the spot. PW-23 Shri Siri Ram, Inspector /SHO collected chappals of the deceased from the spot and sent the body for postmortem. PW1 Dr. J. Goswami and Dr. A.K. Sharma performed the autopsy on the deceased on next day i.e. on 8.5.201 at 10.45 A.M. The postmortem report Ex. PD discloses that the deceased had died as a result of shock due to hemorrhage and injury to the heart. The probable time between injuries and death was a few minute and probable time between death and post mortem examination was within 12 to 24 hours. The medical Officers also took samples of viscera etc., which were sent for chemical analysis. Further the prosecution case is that on the statement Ex.PE, PW24 Shri Ranjha Ram, S.I. arrested accused Sanjay Kumar and Neel Mani, who discloses that they had murdered Rajesh in conspiracy with third respondent Krishan Kumar. They were armed with nakal dusters, Ex.P3, Ex.P4 and a knife Ex. P5 at the time of commission of offence. The case of the prosecution is that the deceased Rajesh was assaulted with knuckle dusters. The prosecution examined as many as 29 witnesses in support of its case.

2. Adverting to the evidence of the main witness on record, namely, PW2 Sunder Ram, who stated that on 7.5.2011 at around 8 PM he had noticed all the three accused persons near his house. Sanjay and Neelmani were known to the deceased. He had asked his son to meet respondents No. 1 and 2. After a few minutes he saw three boys were running on the NH-21 towards Ghaghas. He immediately rushed out and saw his son lying in a pool of blood with multiple injuries on his person. His plea for help to the passing motorists did not evoke any response. The prosecution case is that all the three respondents were motivated to murder Rajesh, as on 23.4.2001, when he (Rajesh) along with PW10, Smt. Prabhi Devi were on the way to a temple at Bilaspur in vehicle arranged by Prabhi Devi. PW6 Neelam, the daughter of the sister of PW10, Prabhi Devi also accompanied them in the same vehicle. The deceased was stated to have molested and outraged the modesty of Neelam when they were on the way from her house to Bilaspur. The first respondent is the brother of Neelam and two other respondents were also related to her. The learned trial Court acquitted all the respondent of the charge as it did not find the case establish against the accused/respondents.

3. Adverting to the first circumstance, the learned trial Court holds that in the report Ex. PBB, which was made by PW2 Sunder Ram on telephone to the police, he had stated that 2-3 boys had killed his son by assaulting him with a knife. The assailants were not known to this witness. The learned trial Court also holds that since the assailants were not known to/identified by this witness, therefore, their names were not mentioned in his statement. PW28, Ishwar Dass, Additional S.H.O. had questioned PW2 Sunder Ram in detail on 7.5.2001 and his statement

Ex. PE proved on record which again did not state names of accused but the fact that his son may have killed by one Raju, who was married to one Smt. Reena. Raju was not carrying on well with his wife Smt. Reena, who was interested in dissolution of her marriage. Reena and her parents wanted the matter to be settled in presence of and in the house of Rajesh deceased. It is also the prosecution case that deceased Rajesh had visited the house of her parents a number of times. On 7.5.2001 Reena was alleged to be on the way to the house of the deceased. In these circumstances, Raju might have committed the murder of Rajesh on account of inimical relations as Raju opposed the settlement with his wife. Again the trial Court notices that PW2 Sunder Ram nowhere states in Ex. PE about either knowing the identity of the respondents or the fact that they had committed the crime. When he appeared as a witness, he changed his entire statement and took a U-turn stating facts which were neither recorded nor mentioned in Ex. PBB and Ex. PE. A totally new story was made out in the Court. The learned trial Court holds that the evidence on record shows that the accused persons were related to the deceased. Respondent No. 1 Sanjay Kumar, according to PW10 Prabhi Devi is the son of his sister and deceased Rajesh is also son of another sister of her's. The learned trial Court then turns to the evidence of PW1 Dr. J. Goswami, who states that no injury was inflicted on the deceased with knuckle dusters, Ex. P2 and P3, which is otherwise the case of the prosecution. He has stated that the deceased had five stab wounds on his body.

4. Adverting to the motive of the crime that Rajesh deceased had tried to outrage the modesty of PW6 Neelam who was the daughter of the sister of PW-10 Prabhi Devi, the Court holds that PW2 Sunder Ram, complainant had nowhere stated that his son Rajesh had accompanied PW-10 Prabhi Devi and others to visit a temple in Bilaspur on 23.4.2001 and to render this motive even more improbable PW6, Neelam denied leaving her house in the vehicle on 23.4.2001. Rather, she had stated that she had not gone anywhere on that day. Even, PW-10 Smt. Prabhi Devi had stated that she had left her house for a temple but PW6, Neelam was not with her. It is in the entirety of this evidence coupled with the evidence of the Chemical Examiner, who did not find any human blood on the knuckle dusters Ex. P3 and P4 and the fact that the chemical examiner had not been able to determine blood group or its origin on the shirt of the accused, the learned trial Court holds that no offence is made out.

5. We have considered the evidence in detail, all what has transpired before the learned trial Court, need not be reiterated in reaffirmation but what we note is that PW2 Sunder Ram, who has been consistent in his statement Ex. PBB recorded in the first instance where he conveyed this information on telephone to the police and Ex. PE which was the statement made by him on questioning by PW28, Ishwar Dass, Additional S.H.O. and which forms the basis of the FIR, we find that both the statements have been made at the first instance and close in proximity of time after the incident, the identity of the assailants, motivation and participation of all the three respondents has not been disclosed by PW2 Sunder Ram, complainant. There was no impediment or justifiable reasons to have

withhold such information. We also note that he takes a U-turn when he stands up in the Court and makes a statement on oath of the entire incident in vivid detail but does not furnish explanation as to why in the first instance (or two occasions) he did not disclose the identity of the accused. On the motivation for commission of crime also, we find that the prosecution has been unable to establish the molestation as the trigger for the ensuing deadly assault on the deceased as this fact has been denied by PW6 Neelam and PW20 Prabhi Devi and further not disclosed by Sunder Ram, PW2 in any of his statements.

6. The principle of law established is that minor contradictions do not affect the prosecution case and it is only material contradictions which are to be considered by the Court. In *Vimal Suresh Kamble Vs. Chaluverapinake Apal S.P. and Another*, the Court holds:

16.....The evidence of this witness is of no significance and also appears to be untrue. He was confronted with his statement made before the police in the course of investigation, but this fact was not stated by him in his statement made before the police. It, therefore, appears that the only fact which was sought to be proved through this witness was not stated by him in his statement recorded in the course of investigation." (p. 181)

7. This principle finds reiteration in *Dr. Sunil Kumar Sambhudayal Gupta and Others Vs. State of Maharashtra*, the Court holds: 30. While appreciating the evidence, the Court has to take into consideration whether the contradictions/ omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The trial Court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate Court in normal course would not be justified in reviewing the same again without justifiable reasons. (*Vide State v. Sarvanan (2008) 17 SCC 587*)

31. Where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and other witness also makes material improvements before the Court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence. (*Vide (2009) 11 SCC 106*)

32. The discrepancies in the evidence of eye witnesses, if found to be not minor in nature, may be a ground for disbelieving and discrediting their evidence. In such circumstances, witnesses may not inspire confidence and if their evidence is found to be in conflict and contradiction with other evidence or with the statement already recorded, in such a case it cannot be held that the prosecution provided its case beyond reasonable doubt. *Mahendra Pratap Singh Vs. State of Uttar Pradesh*,

33. In case, the complainant in the FIR or the witness in his statement u/s 161 CrPC, has not disclosed certain facts but meets the prosecution case first time

before the Court, such version lacks credence and is liable to be discarded, (vide State represented by Inspector of Police, Tamil Nadu Vs. Sait @ Krishnakumar,

34. In State of Rajasthan Vs. Smt. Kalki and Another, while dealing with this issue, this Court observed as under; (SCC p.754, para 8)

8....In the depositions of witnesses there are always normal discrepancies however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal persons.

35. The Courts have to label the category to which a discrepancy belongs. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. (See Syed Ibrahim Vs. State of Andhra Pradesh, and Arumugam Vs. State rep. by Inspector of Police, Tamil Nadu,

36. In Bihari Nath Goswami Vs. Shiv Kumar Singh and Others, this Court examined the issue and held: (SCC P.192, para 9)

9. Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test the credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility.(p. 671-672)

The Chemical Examiner's report Ex. PEE also does not establish anything much less of the blood group or its origin whether human or animal on the shirt of the accused Sanjay Kumar. No blood was found on Ex. P1 and Ex. P2 the knife and the knuckle duster. Dr. J. Goswami (PW1), Medical Officer, District Hospital Bilaspur does not support the prosecution version that the deceased was assaulted with knuckle dusters. Looking at the case from any angle, we find that the prosecution has failed to establish its case beyond reasonable doubts. We, therefore, find no merit in this appeal, which is accordingly dismissed. Bail bonds furnished by the accused/respondents are discharged.