
(1979) 03 SHI CK 0014
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 11 of 1971

State of Himachal Pradesh

APPELLANT

Vs

Shri Ranjit Singh and Others

RESPONDENT

Date of Decision : 01-03-1979

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 342
Penal Code, 1860 (IPC) — Section 109, 304, 330, 331, 34

Citation : (1980) ShimLC 73

Hon'ble Judges : T.R. Handa, J;D.B. Lal, J

Bench : Division Bench

Advocate : M.G. Chitkara, General, for the Appellant; L.S. Panta, for the Respondent

Final Decision : Dismissed

Judgement

D.B. Lal, J.—This appeal is brought from the judgment of the Assistant Sessions Judge, Mahasu acquitting Ranjit Singh and six Ors. for the offences under Sections 330, 331, 348 and 109 of the I.P. Code. The prosecution case was that Ranjit Singh accused who happened to be S.H.O., Rampur and the other six, including Narsingh Dutt and Nika Ram, Constables, who were also Police Officials, all of them went for investigation concerning a case under Sections 380/457 of the I.P. Code relating to theft committed at the shop of one Gurnima in village Gharat Nala. On 20-6-1969 some times in the evening these accused-persons apprehended one Anu Lal and the deceased Jatti and started interrogating them at the shop of one Agya Ram in that village. This interrogation went on throughout the night between the 20th and 21st of June, 1969 and during the course of that interrogation it was alleged that both Anu Lal and Jatti were caused hurt for the purpose of extorting confession or information from them leading to the detection of the crime and also recovery of some property. It was stated that during the course of that night, one Kavi Bhargava, A.S.P., had also arrived and both Anu Lal and Jatti were produced before him and the A.S.P. also interrogated them. Thereafter these two persons were brought to the shop of

Gurnika and were made to enter through a hole in that shop as it was demonstrated as to whether these persons could enter through that hole and could at all commit the theft. Thereafter both Anu Lal and Jatti were brought back to the shop of Agya Ram and after some time some beating was administered to them. It was stated that thereafter they made confession. On the next morning on 21st June, 1969, Jatti was brought to Bathara where he resided. These accused accompanied Jatti, and while he was effecting recovery of Rs. 100 from his house he was again given some beating. Thereafter it was stated that Jatti felt exhaustion and sat on the ground and ultimately died. Due to the death of Jatti, objections were raised by his family members as well as by other persons, and some threats were extended to the police party. The information regarding death was sent to the Deputy Commissioner, Mahasu at the instance of Kalu Ram brother of the deceased. This information was sent on the same day, i.e. on 21-6-1969, and the Deputy Commissioner appointed the S.D.M., Kampur to make enquiries at the spot. Accordingly Shri Jit Ram, the S.D.M. made enquiries and submitted a report that Jatti was given a beating by the accused and the purpose was to extort the confession from him. As the offences under Sections 330, 331 as well as 348 were formulated, a formal F.I.R. was contemplated. It was even thought that the offence made out could be u/s 304, I.P. Code. Since Jatti fell down dead on 21-6-1969, his dead body was sent for post mortem examination which was performed by Dr. J.K. Jain and he found one lacerated wound, three contusions and a swelling on the right foot. Upon an internal examination, the doctor found rupture of the spleen which was apparently due to his striking by some blunt object.

2. With these allegations in short, the trial was held before the learned Assistant Sessions Judge for the aforesaid offences under Sections 330, 331, 348 and 109 of the I.P. Code.

3. The prosecution in all produced 32 witnesses and the defence 6. The Court also examined two witnesses. The important witnesses were: Anu Lal (PW. 2), Beli Ram (PW. 3), Prem Dass (PW. 5), Madho (PW. 11), Khimi Ram (PW. 9), Sadi Ram (PW. 21) and Kalu Ram (PW. 22) who came to state for the voluntary hurt caused to Jatti on 20-6-1969 during the course of night at the shop of Agya Ram. In that connection, the defence produced Krishan Gopal (DW. 1), Kartar Chand (DW. 2), Kavi Bhargava, A.S.P. (PW. 3), Saxmi Singh, Sub-Area Organizer (DW. 4) and Kailash Chand (DW. 5). The S.D.M. Jit Ram (PW. 29) gave his statement because he enquired about the death of Jatti. The other two witnesses were Kalu Ram (PW. 1) and Smt. Jipi (PW. 23), brother and widow of the deceased. They came to state for the incident of death which took place on 21-6-1969. Findu (PW. 24) was also important as he spoke against the beating said to be given on 21-6-1969. The two Court-witnesses were Main Ram (CW. 1) and Jai Ram (CW. 2).

4. The defence of the accused was evident from their statements under the then Section 342 of the Code of Criminal procedure and the suggestions made to

prosecution witnesses. The defence was that no doubt they went for investigation and interrogation of Anu Lal as well as of deceased Jatti took place inside the shop of Agya Ram at village Gharat Nala, but neither any hurt was caused nor any threat was extended to Jatti and no attempt was made to extort a confession or a statement from him. According to the accused, the interrogation lasted upto 10 p.m. on 20-6-1969 and thereafter they went to patrol duty inside the very same village. On the morning of 21-6-1969 Jatti was asked to appear before them at Bhathara. While he came there in a jeep, he fell down from the jeep as his shirt got entangled. He was also made to enter the hole inside the wall as directed by the A.S.P. Kavi Bhargava and it was suggested that he might have incurred injury at that time so that the spleen got ruptured. It was also stated that Jatti suffered from epilepsy fits and the death was due to that disease.

5. The learned Sessions Judge did not place reliance upon the prosecution witnesses and acquitted all the accused of the charges under Sections 330, 331, 348 and 109 of the I.P. Code. The State has felt aggrieved of the decision and has preferred this appeal.

6. Shri Panta, the learned representing the Respondent-accused, pointed out in the foremost with the assistance of Khedu Mohton and Others Vs. State of Bihar, that in an appeal against acquittal the High Court will be reluctant to interfere with the finding of acquittal unless the Court finds that the conclusions reached by the trial Judge were palpably wrong or were based on erroneous view of the law and as such the decision was likely to result in a grave injustice. We have, therefore, to keep in mind these observations of the Supreme Court, and hence we propose to deal with the evidence in detail and in case we are of opinion that the only reasonable conclusion to which the learned trial Judge could reach was one of conviction and not of acquittal, we shall be within our duty to interfere with the decision arrived at the trial stage. We are well aware of the requirement that we have to meet every reasoning adopted by the learned trial Judge for acquittal. But our difficulty in the present case is that the learned Judge has not been consistent in his finding, nor has he cared to place the evidence in its true perspective. Therefore, we had to ask the learned Advocate-General to lead as through the entire evidence.

7. The offence u/s 330 of which the aggravated form is Section 331 of the I.P. Code, obviously depends upon a finding that these accused or any of them voluntarily caused hurt for the purpose of extorting confession or any information leading to detection of an offence or leading to the restoration of any property. We have, therefore, to consider if any of the accused voluntarily caused hurt to Jatti, and in that connection we were taken through the statements of witnesses who deposed for the hurt caused to Jatti on the night between 20th and 21st of June, 1969 and subsequently on 21st June, 1969 while Jatti was taken to Bathara for recovery of Rs. 100 from his house. The witnesses who deposed about the beating given to Jatti are Anu Lal (PW. 2), Madho (PW. 11) and Sadi Ram (PW. 21). As regards Anu Lal (PW.(sic)), he did state that Prem Chand

accused beat Jatti and also threatened him. adopting a very harsh language which must have infuriated Jatti. The learned trial Judge did not believe the statement of Anu Lal (PW. 2) because the witness did not state about the beating before Shri Jit Ram, S.D.M. (PW. 29). Similarly the witness did not state about the beating before Kavi Bhargava, A.S.P. (DW. 3). One to appreciate the position in which Anu Lal was placed while he was produced before the A.S.P. and also before Jit Ram S.D.M. The A.S.P. was not even required to enter into any detail as to whether any beating was administered to Jatti or Anu Lal. He had to satisfy that they were willing to demonstrate by entering the hole inside the shop and for that purpose he may have asked them as to whether they were compelled to make that demonstration before him. At any rate, upto that stage it could not be known that Jatti would be given such a severe beating so that he might die during the next day. Therefore, the interrogation before the A.S.P. Kavi Bhargava was not material and both Anu Lal and Jatti having been produced by these accused before him, naturally an element of fear was present in the minds of Anu Lal and Jatti. In our opinion, they would not have stated before the A.S.P. that they were given any beating by the police personnel. As we have stated, the A.S.P. himself could not be very particular to probe into that question at that stage. Besides, Kavi Bhargava, A.S.P. having satisfied himself that the two persons were willing to give the demonstration, left the matter at. At any rate, the confession made before the police was not admissible evidence in the case. Whatever Kavi Bhargava stated was from memory because he did not keep record of the same with him. As regards Jit Ram (PW. 2), he himself did not believe Anu Lal (PW. 2) when he stated before him that no beating was administered to Jatti or to himself. Tee S.D.M. considered that the witness Anu Lal was afraid of the police as he was actually brought from police custody while he was examined before him. As such he did not take any heed to the refusal by Anu Lal (PW 2) to have stated about the beating, and from the evidence which he collected he could infer that the beating was actually administered upon Jatti which resulted in his death due to rupture of the spleen. Accordingly, Jit Ram (PW. 2) submitted his enquiry report which gave rise to this case against the accused. Therefore, the criticism of the learned trial Judge that Anu Lal (PW. 2) should not be believed simply because he did not state about the beating part before the A.S.P. or the S.D.M., appears to be without any foundation. In our opinion, Anu Lal (PW. 2) gave a coherent account and admittedly he was one of the persons apprehended along with Jatti. He was very much present when Jatti was being interrogated and according to him beating was administered by Prem Chand and a threat was also extended by this accused. Thereafter during the night, Jatti was made to sleep near this witness. He also stated that his condition was rather bad and he was crying with pain. The statement of Anu Lal (PW. 2), therefore, indicated that voluntary hurt was caused to Jatti by Prem Chand.

8. Besides Anu Lal (P.W. 2), the two other witnesses who state about the beating given by Prem Chand are Madho (P.W. 11) and Sadi Ram (P.W. 21). The latter witness also stated that Narsingh Dutt accused also gave beating to Jatti on the

night between 20th and 21st June, 1969. Both these witnesses had gone for some business and hence could not be considered to be chance witnesses. Madho had gone to get his grain grinded at the water-mill of Gharat Nala. According to Madho (P.W. 11), while he was present in the vicinity of the shop of Agya Ram at about midnight because the grinding of the grain had taken some time, he could see Prem Chand accused giving beating to Jatti. The learned Trial Judge has not placed reliance on this witness because before the S.D.M who made enquiry regarding this affair, he stated that he could not recognise that person who beat Jatti, and before the investigating officer the witness stated that the police people had kicked Jatti and did not specify the name of Prem Chand. It is admitted that Prem Chand was available along with other Constables and they were all in interrogating Jatti during the course of that night. The witness has also named Prem Chand as one of the persons who was present at that time. In our opinion, if he did not specify the name and preferred to state that police people had kicked Jatti, that should be considered sufficient and at any rate would not amount to any contradiction. As such Madho (P.W. 11) could be believed when he stated that Prem Chand was present and gave beating to Jatti. As regards Sadi Ram (P.W. 12), he had gone to that vicinity as he used to go to supply fuel wood to the S.S.B. It was about 7.30 p.m. on 20th June, 1969 and when he came to the shop of Agya Ram, he found that Prem Chand and Narsingh Dutt were both present and they slapped Jatti while extorting the confession from him. He has named Narsingh Dutt accused as also one of the persons who beat Jatti. The learned trial Judge has not believed this witness because the witness did not appear before the S.D.M. Dutt in our opinion that could not be reason for disbelieving him. It was for the S.D.M. to have chosen his list of witnesses. Thus Madho (P.W. 11) and Sadi Ram (P.W. 21) have both supported the case of the prosecution that Prem Chand and Narsingh Dutt have caused hurt to Jatti while extorting confession or incriminating information from him.

9. Besides these witnesses, there is another list of persons who heard the cries of Jam on that night and the said cries could be attributed to the beating given to him at the instance of the police officials. These witnesses are Prem Dass (P.W. 5), Khimi Ram (P.W. 19) and Kalu Ram (P.W. 22). About Khimi Ram (P.W. 19) and Kalu Ram (P.W. 22) it could, however, be stated that much reliance could not be placed on their testimony because P.W. 19 Khimi Ram is a tailor who happened to take up at about 3 a.m. on that night and heard some cries. He did not go to the shop of Agya Ram to ascertain as to who had cried out and what was the reason for those cries. Kalu Ram (P.W. 22) also heard similar cries of Jatti, and the two did not approach the shop of Agya Ram to ascertain as to what for the cries were being made. According to him those cries were "probably of Jatti". The witness is also somewhat inimical to Prem Chand accused as the latter had complained against his daughter. It also appears that Kalu Ram (P.W. 22) had no business to roam about in the bazar when all the lights were put off. At any rate, the remaining witness Prem Dass (P.W. 5), who is a fruit-seller, could be believed. He had a business to be present in the vicinity of the shop. He heard the cries of

Jatti when he was being beaten. He knew Jatti deceased from 20 years. Similarly he knew Prem Chand accused from before. We do not find any flaw in the statement of Prem Dass (P.W. 5) and as such he too corroborated Anu Lal (P.W. 2) and the other witnesses.

10. As against these witnesses, the defence chose to produce six witnesses including Krishan Gopal (D.W. 1), Kartar Chand (D.W. 2), Kavi Bhargava (D.W. 3) and Laxmi Singh (D.W. 4) the Sub-Area Organiser, S.S B. (D.W. 1) was produced to state that Khimi Ram (P.W. 19) and Prem Dass (P.W. 5) were not there on that night. We have gone through the statement of this witness and the said statement does not inspire confidence. He was examined by the defence to dislodge the effect of the statements of Khimi Ram (P.W. 19) and Prem Dass (P.W. 5). But, as we have stated before, besides these two witnesses there is enough evidence otherwise to indicate that voluntary hurt was caused to Jatti. Kartar Chand (D.W. 2) had to accept that Anu Lal (P.W. 2) was being interrogated for theft and that the accused persons were present. The Sub-Area Organizer (D.W. 4) came to state about the "gherao" that was made when Jatti died and the family members including members of the public objected and the police personnel were surrounded by them. In that connection, this witness was summoned and he came to state about it. The very fact that the "gherao" was committed indicates that there was a sense of grievance amongst the people and highhandedness on the part of the police officials was suspected. Kailash Chand (D.W. 5) was also examined, but he was good for nothing. He came to state about the demonstration performed by Jatti and Anu Lal while they were made to enter the hole inside the wall. Beli Ram (P.W. 3) is another witness of this series and he very much stated that Prem Chand accused did threaten to beat Jatti. Jatti also told him that Prem Chand actually beat him. No reasoning could be found why this witness should not be believed.

11. While we perused the record in this case, we came across yet another feature. Two of the Court-witnesses were brought in even while the prosecution list was not exhausted. The two Court-witnesses were ushered in at the request of the defence even though the said witnesses could as well be produced as prosecution witnesses. Out of these witnesses, (C.W.I) Main Ram could be referred to at this stage. This witness runs a hotel and was supposed to know everything that took place at the shop of Agya Ram. According to him, none told him that anybody was being beaten there. However, he stated that the people were complaining that the police officials had beaten Jatti and that the police officials were denying that fact. Main Ram (C.W. 1) also came along with the police party to village Bathara. The statement of Main Ram (C.W. 1) is also significant as he does not state about the fall of Jatti from the jeep due to his entanglement against some part of the jeep. This episode is, of course, stated by Jai Ram (C.W. 2) and it was for that purpose that he was produced as witness in Court. No suggestion of that sort was made to (C.W. 1) on behalf of the defence. The two witnesses Main Ram (C.W. 1) and Jai Ram (C.W. 2) were previously cited as prosecution witnesses, but they were given up and a request was made to the

Court to examine them as Court-witnesses. It was really a faulty procedure because the very prosecution who wanted to examine them as Court-witnesses had expressed a desire to give them up as witnesses on their behalf. In that contingency the prosecution had no right to solicit the Court to examine them as Court witnesses when previously they had given them up. It was for the trial Judge to decide if the evidence of such witnesses was required in the interest of justice, and that also he could do after the closer of the prosecution witnesses. Somehow, in between a request was made on behalf of the defence and the two witnesses were ushered in as Court-witnesses. We have gone through the statements of these two witnesses, and in our opinion they were not even necessary as Court-witnesses because nothing substantial was added or subtracted by these witnesses. In this manner, in our opinion, the beating part of the prosecution case was completely established by the aforesaid witnesses whose statements we have discussed. The only conclusion to which one can reach is that Prem Chand, Narsingh Dutt and the other police officials were interrogating Jatti and in that connection, as per statements of these witnesses, Prem Chand and Narsingh Dutt caused voluntary hurt to Jatti and the purpose was to extort confession or some incriminating information from him.

12. For the beating given to Jatti on 21st June, 1969, Kalu Ram (P.W. 1) and Smt. Jipi (P.W. 23) have stated. The first witness is the brother of the deceased, while the second one is his widow. P.W. 1 has stated that Nika Ram and Narsingh Dutt accused gave the beating to Jatti, while P.W. 23 stated that Prem Chand and Nika Ram accused gave him the beating. However, the statements of these two witnesses could not be conclusively relied upon, the reason being that Findu Ram (P.W. 24) another brother of the deceased categorically stated that no one gave a beating to Jatti on 21-6-1969. Therefore, no offence could be formulated against these accused, they could not be stated to have caused voluntary hurt to Jatti on 21-6-1969. But that would not exonerate them for the hurt caused on 20-6-1969.

13. Another corroborative factor to the prosecution case was the dying declaration made by Jatti to these witnesses. When asked, they stated that Jatti stated that he was belaboured by the accused. He had slept with Anu Lal (P.W. 2) during that night. Thus he could make a statement to that witness who also saw his condition as he was groaning in pain and could not get sleep in the night. Bell Ram (P.W. 3) is also a witness who witnessed the threat given by Prem Chand to Jatti during the course of interrogation. There was no reason why this witness could not be believed. He too stated about the dying declaration of Jatti made to the witness. The learned trial Judge appears to be of the opinion that unless the death caused to Jatti could be attributed to the beating given to him the offence u/s 330, I.P.C., could not be formulated. That is in fact an erroneous view, because Section 330 itself talks of only voluntarily causing hurt and it was immaterial if the death was as a result of that hurt caused to Jatti. In that connection, the defence made different suggestions and their case was highly inconsistent. It was stated by the accused in their own statements that Jatti fell from the jeep as he got entangled against a part of the jeep while getting down.

It was also stated on behalf of the defence that Jatti entered a hole inside the wall and probably got hurt by stone pieces. Finally it was suggested that Jatti suffered from some fits and due to those fits he fell down on 21-6-1969 and succumbed due to impact of some blunt object against his spleen. The statement of Dr. Jain who performed the post mortem examination was rather clear that the death was due to rupture of the spleen. As we have stated above, it is immaterial to attribute rupture of spleen to the voluntary hurt caused during the night between 20-6-1969 and 21-6-1969. Rupture of spleen may have been due to that beating or may have been due to any other intervening cause. As long as the beating part on 20-6-1969 is proved and Prem Chand and Narsingh Dutt accused could be stated to have caused voluntary hurt to Jatti for the purpose of extorting confession from him, that was an end of the matter. The offence u/s 330, I.P.C., was duly made out and the two accused could be prosecuted for that offence. It was, therefore, immaterial to enter into the controversy as to how the spleen got ruptured as obviously that was the immediate cause of death. The very fact that the defence was not consistent in their suggestion indicates that they were groping in the dark and somehow they were explaining the beating part in order to escape conviction.

14. It is abundantly clear from the statements of Kamal Narain (PW. 16), Overseer and Shanti (PW. 18) Mate, that Jatti used to work with them and was quite hale and hearty upto 20-6-1969 when he was apprehended by the accused. He was given the beating during the night between 20th and 21st June, 1969 and obviously he fell down dead on 21-6-1969 in the very presence of the accused, this would clearly indicate that the death, if at all, could be attributed either to the beating given during the course of the night or due to some other incident connected therewith.

15. The learned Advocate-General sought for the aid of Section 34 of the I.P. Code and attempted to formulate a case on this of common intention against all the seven accused. In that connection, it may be stated that the evidence which has come on the record rather indicated that Prem Chand and Narsingh Dutt caused voluntary hurt to Jatti. The other accused may or may not be present, but it is clear that their common intention to cause that voluntary hurt could not be inferred merely due to their presence at the spot. Ranjit Singh S.H.O., along with Prem Chand, Head Constable, and the other five constables no doubt went for investigation and in that connection they interrogated Jatti. If Prem Chand Head Constable, and Narsingh Dutt, Constable exceeded their limit and belaboured Jatti, that was their individual act, and in our opinion no common intention could be attributed against Ranjit Singh, S.H.O., or the other constables. There is no evidence otherwise to indicate such common intention on the part of the other accused. In this view of the matter, we have no escape but to conclude that only Prem Chand and Narsingh Dutt accused were responsible for that action. The other accused could not be brought in with the assistance of Section 34 of the I.P. Code.

16. As regards the offence u/s 348, I.P. Code, the same was obviously committed by Prem Chand and Narsingh Dutt, accused. They had caused wrongful restraint and, thereby confinement, as Jatti was not required to be restrained or confined during the course of the entire night from 4 p.m. till next morning on 21-6-1969. It is, therefore, abundantly clear that the two accused were also responsible for wrongful confinement to extort confession or to compel restoration of property. The learned trial Judge seems to be of the opinion that a formal arrest of Jatti was a sine qua non to the offence. In our opinion that was not a legal requirement and since Jatti was prevented from proceeding beyond certain circumscribed limits, he could be stated to have been wrongfully restrained. Obviously he was prevented from proceeding to any direction of his choice and these accused kept watch on him. He was either confined at the shop of Agya Ram or was made to sleep at a place where they wanted him to retire for the night. Therefore, the offence u/s 348 was also formulated against the two accused.

17. Having found that the decision of the learned trial Judge was palpably wrong and that the only irresistible inference to which one can reach was of the guilt of Prem Chand and Narsingh Dutt accused under Sections 330 and 348 of the I.P. Code, we have to alter the finding of acquittal into one of conviction. Shri Panta, the learned Counsel representing these accused, contended in the last that so much time has elapsed since these offences were committed. Taking regard to that aspect, we intend taking a somewhat lenient view while awarding the sentence. It is, however, made clear that the police officials are no doubt required to perform their duties and in that connection if they interrogate accused in cases, they may prefer to make a show before them of mild chastisement, as the Court is aware that no criminal is readily willing to make a clean breast of what he has done. At the same time the police is not beyond the reach of law, and while performing their duties, they have to bear in mind that if they transgress their limit and embark upon a situation wherein an offence can be contemplated they have to suffer the consequences for the same. We do not propose to express that the investigating officers have not to perform their duties. But we have to make it clear that no person accused of an offence should be compelled to make inculpatory statement, nor extortion by police to the extent of causing voluntary hurt is permissible under law. Therefore, we take a strict view in this matter and wish to make it clear that such a course of conduct on the part of police officials who, by no means, perform important duties can be accepted merely on the reasoning that they have detect crime and some latitude has to be given to facilitate that task. We are constrained to observe that Prem Chand, Head Constable, and Narsingh Dutt, Constable, the two accused, have gone beyond their powers and have committed the offences under Sections 330 and 348 of the I.P. Code.

18. The State-appeal is, therefore, allowed so far as these two accused are concerned and they are convicted and their acquittal is set aside. Prem Chand, Head Constable, and Narsingh Duft, Constable, are convicted u/s 330 I.P. Code,

and sentenced each to two years" rigorous imprisonment. These two accused are further convicted u/s 348 of the I.P. Code and each is sentenced to one year"s rigorous imprisonment, However, the two terms of sentences are to run concurrently.

19. The State-appeal against the remaining five accused is dismissed.

20. Prem Chand and Narsingh Dutt accused are required to surrender forthwith to serve out their sentences.