
(2016) 04 SHI CK 0126
In the High Court Of Himachal Pradesh
Case No : Cr. Appeal No. 226 of 2013

State of Himachal Pradesh

APPELLANT

Vs

Shyam Lal

RESPONDENT

Date of Decision : 13-04-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302

Citation : (2016) ILRHP 1169

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

Bench : Division Bench

Advocate : Mr. M.A. Khan, Additional Advocate General, for the Appellant; Mr. Satyen Vaidya, Senior Advocate with Mr. Vivek Sharma, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J.—The instant appeal stands directed against the judgment of the learned Sessions Judge, Kinnaur Sessions Division at Rampur Bushehar, Himachal Pradesh, rendered on 22.01.2013, in Sessions Trial No.0100014/2011, whereby the learned trial Court acquitted the accused for committing offences punishable under Sections 302 and 201 IPC of the Indian Penal Code.

2. The facts relevant to adjudicate the instant appeal are that the complainant has his Dhaba at Lalori Jot where Om Parkash @ Pinku (herein-after for short referred to as "the deceased") was also running a Dhaba. On the night intervening 16/17th June, 2011, when the complainant was present in his Dhaba, allegedly the deceased was consuming liquor, along with Shyam Lal, Police Havaldar (herein-after for short referred to as "the accused"). It is alleged that at about 12.45 A.M. on 17.6.2011, the complainant heard a noise when he was sleeping in his Dhaba, upon which when he came out, he found accused and deceased quarrelling. In that process, the deceased hit the accused on his forehead with a stone resulting in an injury sustained by the accused from which

blood had started oozing out. It is further alleged that on having suffered such injury, on his forehead, the accused went towards his room. In the meantime, complainant and deceased also followed the accused in order to seek apology from him. At that time, the accused asked the deceased not to come to him. Upon his such asking, the deceased returned. It is further case of the prosecution that allegedly the complainant cleaned the wound of the accused and the accused had proclaimed to kill the deceased and not to spare him. The accused came downwards by taking out a knife kept underneath his pillow. On seeing the accused coming, the complainant went to the deceased while running and made him to run Banjar side. The accused while searching for the deceased came to the Dhaba of the complainant and asked him for the deceased. When the complainant feigned ignorance about the deceased, the accused sat on his cot. It is further alleged that at about 1.30 a.m., the deceased came to the Dhaba of the complainant where the accused was already sitting and the accused by catching hold of the deceased from his collar of his T-Shirt, made him to stand against the wall of Dhaba and stabbed him on the left side of chest and ran away. The complainant had put the deceased in injured condition in his car bearing registration No.HP-01K-1730 and also made Ghanshayam, who was in an inebriated condition, to board the car. Complainant also asked the accused to accompany them to Ani hospital, he refused to do so. In the meantime, the complainant had also telephonically informed the house of the deceased before taking him to CHC, Ani. At Khanag, Daulat Ram (father of the deceased), his uncle Gian Chand and Ramesh also met them. When they reached the hospital, the deceased was declared dead. Having received the information of the death of the deceased, the police reached the hospital and prepared inquest papers and the dead body of the deceased was sent to IGMC for conducting post mortem examination. The spot had been inspected and stood videographed. Consequently, site plan of the occurrence was prepared and statements of witnesses were recorded. The accused was arrested at about 7.30 p.m. on 17.6.2011 and was got medically examined. It is further alleged that while in custody the accused made a disclosure statement and got identified the place from where he had thrown the knife in a dense forest. Consequently, a search was made in order to find out the knife but to no avail. During investigation, it was also revealed that the clothes which the accused was wearing on the date of alleged occurrence were taken into possession and sent to FSL along with other samples/specimen which had also been taken at the time of post mortem examination of the dead body. On receipt of the report of the FSL, the deceased was found to have died as a result of ante mortem stab to lung and heart leading to gross hemorrhagic shock in a case of alcohol consumption and whose blood alcohol concentration was 222 mg% and urine alcohol concentration was 242.65 mg%.

3. On conclusion of investigations into the offences allegedly committed by the accused a report under Section 173 of the Code of Criminal Procedure stood prepared and presented in the competent Court.

4. The accused/respondent stood charged by the learned trial Court for committing offences punishable under Sections 302 and 201 of the Indian Penal Code. In proof of the prosecution case, the prosecution examined 22 witnesses. On closure of the prosecution evidence, the statement of the accused under Section 313 Cr.P.C. stood recorded, in which he pleaded innocence. On closure of proceedings under Section 313 Cr.P.C. the accused was given an opportunity to adduce evidence in defence yet he chose not to lead any evidence in defence.
5. On an appraisal of the evidence on record, the learned trial Court, returned findings of acquittal in favour of the accused/respondent.
6. The appellant/State stands aggrieved by the judgment of acquittal recorded by the learned trial Court. The learned Additional Advocate General has concerted to vigorously contend qua the findings of acquittal recorded by the learned trial Court standing not based on a proper appreciation of evidence on record, rather, theirs standing sequelled by gross mis-appreciation of material on record. Hence, he contends qua the findings of acquittal being reversed by this Court in the exercise of its appellate jurisdiction and theirs being replaced by findings of conviction.
7. On the other hand, the learned counsel for the respondent has contended with considerable force and vigour qua the findings of acquittal recorded by the Court below being based on a mature and balanced appreciation of evidence on record and theirs not necessitating any interference, rather meriting vindication.
8. This Court with the able assistance of the learned counsel on either side, has, with studied care and incision, evaluated the entire evidence on record.
9. For clinching the guilt of the accused qua the offences allegedly committed by the latter, the prosecution had placed heavy reliance on the testimony of an ocular witness to the occurrence who stepped into the witness box as PW-10 wherein he rendered a vivid ocular account qua the ill fated occurrence. The testimony of the ocular witness to the occurrence would not stand discounted by this Court unless a close reading of his testimony besides an incisive scrutiny of other pieces of inculpatory evidence pressed into service by the prosecution in purported display of the guilt of the accused underline his testimony standing deprived of veracity.
10. In determining the veracity qua the ocular account of the occurrence rendered by PW-10, it is imperative to allude to the factum as recorded by him in his previous statement recorded in writing besides in his deposition comprised in his examination-in-chief wherein he has voiced the factum of the ill fated occurrence standing engendered by a motive nursed by the accused filliped by the factum of the accused preceding his stabbing the deceased with knife holding a wrangle with the deceased outside the Dhaba of the complainant (PW-10) in course whereof the deceased struck the forehead of the accused with a stone sequelling the oozing of blood there-from. On the accused standing inflicted with an injury on his forehead sequelled by his being struck thereon with a stone

pelted by the deceased, he proceeded to his room whereto he stood followed by the complainant and the deceased for seeking an apology from him. However, the accused then refused to meet the deceased which resulted in the latter returning to the premises of the complainant. PW-10 (the complainant) deposes of his cleaning the wound suffered by the accused whereat he deposes of the accused proclaiming to him of his intention to not spare the deceased. Some time later, PW-10 deposes of the accused while holding a knife lifted by him from underneath his pillow arriving at the place where the deceased stood stationed which sequelled the deceased to run towards Banjar side. PW-10 further deposes of the accused, in his endeavour to locate the deceased on the latter?s arriving at his Dhaba, his continuing to stay put there in wait for the deceased returning thereat. At about 1.30 A.M. on 17.6.2011 the deceased stands deposed by PW-10 to return to the Dhaba of the complainant where the deceased too was stationed. There exists a communication in the deposition in the examination-in-chief of PW-10 of the accused on sighting the deceased catching him from the collar of his T-Shirt making him stand against the wall of the Dhaba and stabbing him on the left side of the chest where after he left the sight of occurrence. The motive as stands ascribed by PW-10 to murder the deceased stands foisted upon the factum of his standing goaded by a vendetta nursed by the factum of his previously standing struck on his forehead by a stone pelted thereat by the deceased. However, the aforesaid motive ascribed to the accused to murder the deceased is unworthy of credence, with a concomitant effect of the initial genesis of the prosecution story suffering for the reasons herein-after, erosion, (a) the injury/wound purportedly suffered by the accused on his forehead in sequel to a stone flung thereat by the deceased gets no probative succour awakened by the factum of the investigating officer not getting the accused medically examined by a medical practitioner for facilitating him to display in the MLC of injuries occurring on the forehead of the accused nor obviously the prosecution adduced on record the apposite MLC of the accused with an apposite portrayal therein of the forehead of the accused sustaining a bruise or a wound (b) PW-10 though deposes of his cleaning with a cotton swab the wound suffered by the accused on his forehead yet the investigating officer not collecting at the instance of the complainant the cotton swab used by the latter to clean the wound suffered by the accused on his forehead in sequel to his standing struck thereat with a stone flung by the deceased, enfeebles the veracity of PW-10 of his cleaning the wound suffered by the accused on his forehead in sequel to a stone flung thereat by the deceased (c) T-Shirt Ext.PX-3, Pants Ext.PX-4 and coat Ext.PX-5 which the accused wore at the time contemporaneous to the ill fated occurrence not carrying any blood stains even when PW-10 deposes of blood copiously oozing from the wound suffered by the accused on his forehead in sequel to his standing struck thereat by a stone pelted by the deceased, evinces a conclusion from this Court of the complainant falsely deposing of the deceased striking the forehead of the accused with a stone, sequelling copious oozing of blood there-from. Even though, PW-10 has concerted to convey in his deposition in explication of the clothes of the accused not standing stained with blood, of the accused

proceeding to his room with his head facing the ground, nonetheless with no portrayal of any trail of blood as oozed from the wound suffered by the accused on his forehead standing detected from the place where the forehead of the accused was hit with a stone flung thereat by the deceased uptil the room whereto he proceeded to subsequently, erodes the effect of the explication purveyed by PW-10 of blood not hence besmearing the clothes of the accused besides gives a fillip to an inference of his prevaricating the genesis of the prosecution version of the accused striking the deceased on the left side of the chest with knife wielded by him in retribution or for wreaking a vendetta upon the deceased aroused by the factum of the latter precedingly striking his forehead with a stone sequelling injuries thereat wherefrom blood oozed copiously. In aftermath, the motive as stands ascribed by the ocular witness to the accused murdering the deceased subsides besides is rendered starkly unsubstantiated. Obviously, a pivotal link in the chain of circumstances gets severed.

11. Be that as it may, with PW-10 in his examination-in-chief deposing of the accused subsequent to his sustaining an injury on his forehead by a stone pelted thereat by the deceased lifting a knife kept underneath his pillow wielding whereof he proceeded to the place occupied by the deceased which sequelled the deceased to run towards Banjar side. However, PW-10 further deposes of the accused continuing to occupy his Dhaba in wait for the return of the accused thereat. He also deposes of the accused while occupying his Dhaba in wait for the deceased returning thereat, throughout the course of his occupying it holding a knife in his hand. However, even though the ill fated stabbing of the deceased by the accused occurred on the accused arriving thereat with 10-15 minutes standing elapsed since the accused standing stationed thereat in wait for the deceased returning there, yet given the existence of a communication in the deposition of PW-10 of both the accused and deceased carrying mobiles with them, the omission on the part of PW-10 to warn the deceased against his returning to his Dhaba given the accused waiting there for him for 10-15 minutes imperatively when the apposite warning if had emanated from PW-10 would have obviated the infliction of a stab injury by the accused upon the deceased, as a corollary the omission aforesaid bespeaks of a tinge of unnaturalness imbuing/staining his testimony predominantly when for reiteration it was naturally expected of him for forestalling the occurrence warn the deceased of the intentions of the accused to murder him by calling him over his cell phone (b) PW-10 deposes of the car of deceased standing parked at the site of occurrence and of the deceased holding its keys yet PW-10 counselling the deceased to proceed to sleep than to flee from the spot in his car besides the story espoused by PW-10 of the deceased running towards Banjar side, is magnificatory of the fact of the deceased despite his intoxication standing not deprived of his cognitive faculties for de-facilitating him to flee from the site of occurrence for obviating his standing stabbed with a knife by the accused, besides its loudly echoing of PW-10 grinding a false story qua the ill fated occurrence.

12. Furthermore, PW-10 deposes of his lifting the deceased in his car whereat he stood accompanied by PW-11 (Ghanshyam). He deposes of his in the car of the deceased carrying him to hospital where treatment stood afforded to the deceased. Even though he has recorded in his deposition of his not purveying either first aid to the deceased nor cleaning his wounds. However, PW-1 recording in his deposition of his on sighting the body of the deceased noticing wounds occurring thereon to be completely cleaned, factum whereof stands corroborated by PW-17 (ASI Rattan Chand) rears an inference of PW-10 cleaning the wounds of the deceased. In sequel to PW-10 cleaning the wounds of the deceased no stains of blood occurred on the clothes worn by the complainant at the time contemporaneous to his lifting with the aid of PW-11 the body of the deceased in the latter's car for carrying him to hospital for treatment standing afforded thereat to him besides the car wherein the body of the deceased was carried by PW-10 to hospital did not carry any blood stains. With an inference standing formed of PW-10 cleaning the wounds of the deceased yet when neither the clothes worn by him at the time contemporaneous to his lifting with the aid of PW-11 the deceased in the latter's car for carrying him to hospital where treatment stood afforded to him, not gathering any blood stains nor the car wherein the deceased stood carried to hospital also not gathering any blood stains, the apt sequitur thereof is of its hence bespeaking of the former's unnatural conduct standing begotten by his malignant subterranean psyche or mindset goading him to suppress the truth qua the ill fated occurrence. The unnatural conduct of PW-10 as forthcoming from the aforesaid discussion when in its entirety is suppressive of a true unfoldment qua the ill fated occurrence, constrains this Court to conclude of the ocular account qua the occurrence rendered by him being bereft of any credence. Dehors the aforesaid unnatural conduct of PW-10 rendering his testimony to be disimputable to credence, the existence of a disclosure in the deposition of PW-11 of PW-10 omitting to unravel to him at Jalori of the deceased standing stabbed by the accused rather his making a disclosure of the accused stabbing the deceased to PW-11 on the arrival of the deceased at the hospital where he was declared dead is also connotative of a suppressive conduct of PW-10 manifestive of his camouflaging the truth qua the occurrence. Consequently, a suppressed, smothered or a camouflaged ocular or oral version qua the ill fated occurrence rendered by PW-10 cannot warrant acceptance by this Court nor it can thereupon conclude with aplomb of the accused committing the murder of the deceased.

13. Further inroads qua the veracity of the ocular account rendered qua the ill fated occurrence by PW-10 is derivable from the factum of PW-10 deposing qua the accused stabbing the deceased with a knife having a blade of four inches. He also deposes of a knife having a blade of four inches standing not normally used in household activities. His ocular account of the accused wielding a knife with a blade of four inches besides his deposition of the accused stabbing the accused with its user carries no legal efficacy for the reasons (a) his deposing of the accused after striking the deceased with the knife aforesaid concealing it inside

the back of his pocket. He further concedes to the factum of hence blood stains standing necessarily borne on the knife purportedly struck on the deceased by the accused besides blood also staining the inside of the pocket of the pant where the accused kept it after striking the deceased with it. However, with the report of the FSL comprised in Ext.PA omitting to divulge therein of the clothes the accused wore at the time contemporaneous to the occurrence not carrying any blood stains falsifies the deposition of PW-10 of the accused after striking the deceased with knife his keeping it inside the back of his pant (b) With Ext.PW-18/ A proven by PW-18 who conducted the post mortem examination on the body of the deceased unfolding therein of the ante mortem injuries found by him to be occurring on the body of the deceased on his subjecting his body to post mortem examination also necessarily entailed in sequel to the offender withdrawing the weapon from the wound the begetting of or occurrence of blood stains on the clothes of the offender whereas for reasons afore-stated with no blood stains occurring on the clothes of the accused, secures a firm conclusion from this Court of PW-10 in his deposition rendering therein a false espousal of the accused in his presence stabbing the deceased with a knife with a blade of four inches (c) With PW-18 deposing of the ante mortem injuries noticed by him to be occurring on the body of the deceased on his subjecting it to post mortem examination being sequelable with "Chhuri" used in Dhabas is palpably not in conjunction besides not in tandem with the testimony of PW-10 of the accused stabbing the deceased with a knife not usually used in household activities especially when PW-18 deposes of the knife purportedly wielded by the accused with user whereof he purportedly stabbed the deceased carrying a blade of four inches obviously constituted the latter to be a weapon other than a "Chhuri" the latter whereof stands deposed by PW-18 to beget the injuries noticed by him to be occurring on the body of the deceased subjected by him to post mortem examination. In sequitur, a blatant and stark discordance occurs intra-se the injuries noticed by PW-18 to be occurring on the body of the deceased on his subjecting it to post mortem examination standing deposed by him to stand inflicted with "Chhuri" vis-`-vis the ocular account rendered by PW-10 of the accused in his presence stabbing the deceased with knife carrying a blade of four inches user whereof stands dispelled by PW-18. In aftermath, with open discordance or rife/variance existing intra se the testimonies of PW-10 qua the nature of the weapon wielded and used by the accused to stab the deceased, accentuates an inference of the deposition of PW-10 suffering erosion besides losing its creditworthiness in its enunciating of the accused wielding a knife carrying a blade of four inches with user whereof he stabbed the deceased. Naturally the apt concomitant deduction there-from is of the ocular account qua its wielding and consequent user by the accused on the body of the deceased getting discounted (d) PW-17 deposing on oath of PW-10 (Jai Singh) complainant running a Dhaba whereas his on his visiting it his not locating any Chhuri therein bespeaks of its non occurrence therein being unnatural. The unnaturalness qua the non occurrence of a "Chhuri" in the Dhaba of PW-10 undermines the efficacy of his deposition of the accused at all wielding any weapon of offence at the

relevant time with user whereof he struck the deceased rather is a portrayal of PW-10 engineering and inventing a false story qua the ill fated occurrence. Consequently, his ocular account qua the occurrence is wholly unreliable.

14. Ext.PW-18/B proven by PW-18 underscores the factum of the latter conducting post mortem examination on the body of the deceased at 3.30 p.m. on 17.6.2011. It also underlines the factum of the time which elapsed inter se the death and injury being immediate and the time elapsing inter se death and post mortem being around 12 hours. The aforesaid communication in Ext.PW-18/B secures a conclusion from this Court of the demise of the deceased occurring at 3.30 a.m. on 17.6.2011 in striking repudiation to the fact propagated by PW-10 of the demise of deceased occurring on 17.6.2011 at 1.30 a.m. Therefore, the deposition of PW-10 of the demise of the deceased occurring at 1.30 a.m. on 17.6.2011 is discrepant besides unreliable with the resultant effect of his ocular account qua the ill fated occurrence being unworthy for acceptance by this Court.

15. Though the ill fated occurrence stood consummated at 1.30 a.m. yet as apparent from a reading of the testimony of PW-17 a disclosure qua it was made belatedly after elapse of 13 hours on 17.6.2011 at 2.30 p.m. The procrastinated reticence of the complainant is enigmatic especially when no explanation for the ill fated occurrence standing omitted to be promptly reported to the police agency concerned has emanated from PW-10. Obviously the highly procrastinated besides inordinate unexplained delay on the part of PW-10 in reporting the ill fated occurrence to the police authorities concerned begets an inference of PW-10 concocting a false and engineered story qua the occurrence besides an inference of his inventing a false story qua it for misdirecting the entire police investigations for reasons best known to him. The highly discrepant evidence of PW-10 cannot enjoy the confidence or trust of this Court for founding thereupon findings of conviction against the accused.

16. The weapon of offence stood not recovered. However, even in the face of its recovery standing not effectuated by the investigating officer at the instance of the accused, the prosecution relies upon Ext.PW-3/A proven by PW-10 comprising a disclosure statement recorded at the instance of the accused by the investigating officer with a display therein of his indicating the place whereat he had thrown the knife in pursuance whereof the accused led the investigating officer to the place whereat he had thrown the weapon of offence, in sequel whereto memos Ext.PW-3/D and Ext.PW8/A stood prepared. Nonetheless the efficacy thereof garners no evidentiary value in the face of nothing in pursuance thereto standing recovered. Depositions of PW-5 and PW-6 who had purportedly on 17.6.2011 at 8.30 a.m. sighted the accused washing and wiping the blood purportedly occurring on the road at Jalori on strength whereof the prosecution assays to clinch the incriminatory role attributed by it to the accused, nonetheless evidentiary strength if any which their depositions hold, is rendered feeble in the wake of PW-5 deposing of it raining when he had seen the accused washing the blood from the road, especially when the factum of occurrence of

rain at the time contemporaneous to the accused purportedly standing sighted by PW-5 washing blood from the road would rather have constrained the accused to not wash blood if any occurring on the road besides when both omitted to promptly report the said factum to the police or to the family members of the deceased reinforcingly coaxes this Court to conclude of both having invented and engineered the factum aforesaid.

17. The summom bonum of the above discussion is of the aforesaid discrepant evidence qua the guilt of the accused making pervasive and deep in roads qua the veracity of the prosecution version rendering it to be suspect. Consequently, benefit of doubt ought to go to the accused.

18. For the reasons which have been recorded herein above, this Court holds that the learned trial Court below has appraised the entire evidence on record in a wholesome and harmonious manner apart therefrom the analysis of the material on record by the learned trial Court does not suffer from any perversity or absurdity of mis-appreciation and non appreciation of evidence on record, rather it has aptly appreciated the material available on record.

19. In view of the above, we find no merit in this appeal which is accordingly dismissed. In sequel, the impugned judgement is affirmed and maintained. Record of the learned trial Court be sent back forthwith.