
(2010) 10 SHI CK 0057

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 348 of 1997

State of Himachal Pradesh

APPELLANT

Vs

Surinder Singh and Others

RESPONDENT

Date of Decision : 04-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378(3)
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2010) 10 SHI CK 0057

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.B. Misra, J.—The present appeal has come up for consideration after leave to appeal has been granted u/s 378(3) Cr.P.C. in reference to the impugned judgment dated 04.02.1997, passed by the learned Sessions Judge, Una, H.P., in Sessions Case No. 36 of 1995, acquitting the accused-respondents for the offence under Sections 302/34 IPC, in reference to FIR No. 181/95, dated 13.5.1995 of Police Station, Una.

2. The prosecution case is that Jarnail Singh (deceased), aged about 35 years, a student of B.Sc., was also running a medical store in village Pubowal and had started a new shop, for that a tea party was arranged. After the function was over, Jarnail Singh came and told PW-1 Charan Kaur that Bakshish Singh had come in the function and had declined to take tea saying that Jarnail was a dangerous person and on that pretext a slap blow was given to Bakshish Singh. On the next day when the deceased was going to his shop to keep medicines, after return he told to his mother that Bakshish Singh, his son and 2-3 other persons were present in the Gurdwara and they were armed with swords. When the deceased crossed the Gurdwara all the persons gheroad him and had given beatings to him. Such occurrence was witnessed by PW-6 Pargan Singh, Ward Member and PW-9 Avtar Singh. After some time the accused persons quarrelled

with Jarnail Singh and on 12.5.1995 at about 5.00 PM the deceased left Heeran village to bring medicines, but did not return through out the day and on the next day there was a rumour that Jarnail Singh had been murdered at village Sahuwal Khud. In that respect FIR Ex.PW-16/A was recorded. After completion of investigation the accused were charged for the offences u/s 302 read with Section 34 IPC and the case was committed to the Court of Sessions.

3. In order to prove its case the prosecution has examined as many as 18 witnesses. Whereas the accused-respondents have denied the prosecution case.

4. On analysis of the prosecution witnesses and materials on record, we notice that the first occurrence took place prior to Baisakhi when the deceased performed the Mahurat of his shop and tea party was arranged and after function the deceased came and told his mother that Bakhshish had come in the function and had declined to take tea on the pretext that the deceased was a dangerous person and on that the deceased had given a slap blow to said Bakhshish Singh. On this aspect the prosecution had examined PW-6 Pargan Singh, who, however, was declared hostile. The second witness examined to corroborate the testimony of PW-1 Charan Kaur regarding the occurrence which took place on 11.4.1995 (two days prior to Baisakhi) is PW-9 Avtar Singh, who is brother of the deceased and as such he is an interested witness, who had corroborated the statement of his mother that Bakhshish Singh did not take tea and there was some quarrel between them. PW-1 Charan Kaur and PW-9 Avtar Singh have nowhere stated as to who was this Bakshish and how he was related to the accused persons and their statements have also not been corroborated by any other witness.

5. The next occurrence pointed out by PW-1 Charan Kaur was that on the next day of the first occurrence i.e. 12.4.1995, her son had gone to keep medicines in the shop and Subedar Bakhshish, his son and two other persons gave him beatings near Gurdwara. So much so, the third occurrence narrated by PW-1 Charan Kaur was that the accused persons gave beatings to her son in the bus after 10/15 days of the second incident i.e. 22.4.1995 or 27.4.1995. In that respect the prosecution had examined PW-7 Jhalmal Singh, driver of a private bus, who however, was also declared hostile, as he did not support the prosecution case. The fourth occurrence pointed out by PW-1 Charan Kaur was that on the same day i.e. of the previous occurrence the accused had quarreled with her son in the school and Jarnail went to Haroli and got the wounds stitched and when he had gone to Haroli he was again given beatings by all the accused persons. However, such incident was not reported to the police. PW-12 Dr. J.S Banyal, who had examined Jarnail Singh on 2.5.1995 and 10.5.1995, has noticed the following injuries on his person:

1. A lacerated wound 3 ? ? ?" in the frontal and right side of the fore-head.
2. Lacerated wound on the left side 1 ?" ? scalp deep.
3. Two lacerated wounds on the middle of shin of both tibias.

4. Left fore-arm was swollen and painful.
5. Small lacerated wounds on left side of frontal part of head.
6. Multiple contusions on the different parts of the body.
7. Painful swelling of left hand on the back.

All the injuries were simple, caused with blunt weapon and he issued MLC Ext. PR and has proved the discharge certificate Ext. PS vide which the patient was admitted for 2 days from 2.5.95 to 4.5.95.

6. On 10.5.1995 at 3.30 PM, PW-12 Dr. J.S. Banyal again examined Jarnail Singh and found the following injuries on his body:

1. An incised wound on the medial side of middle finger in the middle of left hand. It was extending on the back. It was deep up to bone.
2. Old injuries on his body.

The nature of injuries was simple, caused by sharp edged weapon and MLC Ext. PT was issued by him. He has also proved the MLCs of four accused Ext. PU to PX vide which no injuries were found on the person of these persons.

7. These repeated injuries inflicted on the person of the deceased indicate that there was previous enmity of accused persons with deceased and as per the testimony of PW-1 Charan Kaur the accused persons had been giving repeated beatings on several occasions to Jarnail Singh. However, none of those occurrences have been substantiated by any cogent and reliable evidence to show that these beatings were given by accused persons to the deceased. The prosecution has also not been able to bring any cogent material or any prosecution witness on the basis of which it could be inferred that the same accused persons have given similar repeated beatings to the deceased. As per the testimony of PW-1 Charan Kaur, the dispute between the accused and deceased was only on account of the party given on the occasion of the opening of the shop and there was no other dispute amongst them. However, surprisingly, neither the owner of the shop nor any other person who may have attended the said party had been examined by the prosecution. In case a party had been arranged large number of persons must have participated. However, no independent witness was examined which may establish that the accused persons have only beaten the deceased. PW-1 Charan Kaur herself has admitted that her son Jarnail Singh (deceased) was facing a murder trial for having murdered his brother's wife. Another case was going on against the deceased at that time for having given beatings to one Rajesh. The Panchayat had also filed a complaint against the deceased for giving beatings to the villagers and creating nuisance. As per the testimony of PW-1, Jarnail Singh (deceased) was also involved in another criminal case 16 years ago and was also involved in a case of giving beatings to Member Panchayat of Pubowal.

8. It can be inferred from the above instances that Jarnail Singh (deceased) was

involved in several criminal cases, as such, it cannot be definitely inferred that the accused persons were having any motive to eliminate Jarnail Singh. PW-4 Gurmail Singh, the only eye witness examined had stated that on 12.5.95 at about 9.00 PM when he was coming from Hoshiarpur and had got down at Jaijon, from where he was going on foot towards his house and when he reached near a Khud at Sahuwal he heard an alarm in the Khud and heard a noise of quarrel, but he could not recognize the accused due to dark. PW-18 Kartar Singh, SI had recorded the statement of PW-1 Smt. Charan Kaur, Ext. PA, went to the spot and prepared the site plan Ext. PW-18/A. He also took into possession one bicycle, one pair of Hawai Chappal and one empty bottle lying near the dead body and blood stained earth, vide memo Ext. PB. All these articles were got recovered at the instance of the accused persons. Second disclosure statement was made by one Baljit Singh, Ext. PE, at whose instance one Lathi was recovered and was taken into possession vide memo Ex. PG. Third disclosure statement was allegedly made by accused Darshan Singh that he had concealed some stones in the bushes near the place of occurrence which were got recovered at his instance.

9. On analysis of the articles recovered at the instance of the accused persons, it appears that even the recovery of stones and stick etc. do not connect the accused persons with the commission of crime, as there is nothing on record to establish that these stones, sticks, pipes etc. were used by the accused persons in murdering Jarnail Singh. The report of FSL Shimla Ext. PO and PP shows that no poison was detected in the intestines etc. and only some of the clothes etc. were found having human blood and there were some blood marks on bamboo stick, but, these are not sufficient to connect the accused persons with the commission of the crime. PW-4 Gurmail Singh cannot be relied upon, because, as per his own testimony he had seen the accused persons giving beatings to the deceased and he is closely related to the deceased's family, but he did not make any statement to the police and his statement was recorded by the I.O after a considerable lapse of time. PW-1 Charan Kaur admitted that PW Nasib Singh is son of her maternal uncle and Gurmail Singh is son of said Nasib Singh. PW-4 Gurmail Singh had also admitted the relationship, which clearly shows that this witness was closely related to the deceased. In these circumstances, it was quite natural for him to have gone to the police or PW-1 Charan Kaur and should have informed as to who were the killers of Jarnail Singh, but he did not make any efforts and his statement was recorded by PW-18 Kartar Singh on 6.6.1995, which is Ext.PW-18/P/3. Thereafter, statement of PW-4 was recorded before the Judicial Magistrate PW-17 Jai Narain on 27.6.1995. This clearly shows that the occurrence had taken place on 12.5.95 and this witness though closely related to the deceased does not volunteer to make statement and his statement was recorded on 6.6.95 i.e. after about 24 days of the occurrence.

10. From the analysis of testimony of PW-4 Gurmail Singh, it appears that after 9-10 days of the occurrence he went to the police station and told about the occurrence.

11. In the facts and circumstances, the motive of the accused persons for murdering Jarnail Singh (deceased) is lacking and prosecution has not been able to prove its case beyond reasonable doubt. In view of the inconsistencies and contradictions and in the absence of any direct evidence or any motive, the learned Sessions Judge, has rightly arrived at the finding that the prosecution has not been able to bring home the guilt to the accused. Accordingly, the criminal appeal being devoid of any merit is dismissed.