

(2016) 06 SHI CK 0130

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 373 of 2010.

State of Himachal Pradesh - Appellant @HASH Uttam Chand and Others

Date of Decision : 17-06-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, Section 367

Citation : (2016) 4 HimLR 2088 : (2016) ILRHP 2027

Hon'ble Judges : Rajiv Sharma and Chander Bhusan Barowalia, JJ.

Bench : Division Bench

Advocate : Mr. Parmod Thakur, Additional Advocate General, for the Appellant;
Mr. Sanjay Dutt Vasudeva, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Mr. Chander Bhusan Barowalia, J. - The present appeal is maintained by the appellant-State of Himachal Pradesh against the judgment of acquittal of the accused persons in a case under Section 367 read with Section 34 of the Indian Penal Code, passed by the learned Additional Sessions Judge-II, Kangra at Dharamshala dated 25.3.2010, in Session trial No. 7/09,

2. Briefly stating facts giving rise to the present appeal, as per the prosecution story, are that the complainant and his other family members, namely, Dharmi Devi, Sumna Devi, Relma and Prem Singh were doing the labour work under one Munna Thakur at Kholi. Those persons were residing in the building of Panchayat Bhawan. On 11th or 12th June, 2005, one more relative of those persons, namely, Shesh Ram also came to meet them. All of them were taking lunch on 15.6.2005 at about 12:00 noon, when accused Uttam Chand came along with co-accused at their residence. Accused Uttam Chand asked the complainant and his mother Dharmi Devi to pay back the costs of "Karyana" articles, which he had supplied nearly 2? years back to them and the value of which was Rs. 6,200/-. When Uttam Chand supplied the articles to the complainant and others, they were working under the contractor, Shri Sanjeev. They were under the impression that the entire payment had already been made by the said contractor. Accused Uttam Chand told them that said debt has not been cleared.

Then, Dharmi Devi and complainant asked him to give some time, so that the money can be arranged. However, accused Uttam Chand insisted on making the payment at the same time otherwise he threatened them with dire consequences. Then the complainant went on foot to Nagrota Bagwan to take money from Munna Thakur. In the meanwhile, accused Uttam Chand with the help of other co-accused forcibly took all of them except Shesh Ram in a Jeep bearing No. HP-39-7182 to Kandi. When accused along with abducted persons reached at Kandi, Pardhan of the Panchayat, Jatinder Kumar was intimidated about this. Jatinder Kumar arranged a room in the house of Vimla Devi, Ward Panch, where Dharmi Devi, Sumna Devi, Relma and Prem Singh were kept in confinement. In the meanwhile, complainant could not contact Munna Thakur and therefore, he returned back to Kholi, where he was told by Shesh Ram that accused had forcibly taken away his family members in a vehicle. Then, the complainant went to Police Station, Kangra, to report the matter and on the way he met Inspector Sanjiv Chauhan to whom he gave complaint Ex.PW7/A. On the basis of which, FIR Ex.PW8/F was registered against the accused. Police along with complainant went to Kholi and from there they associated Shesh Ram and went to Kandi, from the house of Vimla Devi and family members of complainant were recovered. Memo Ex.PW6/A was prepared to that effect in the presence of Vimla Devi and Jatinder Kumar and these persons were handed over to complainant. Map of the said place is Ex.PW8/B. Site plan of the place from where the family members of the complainant were abducted is Ex.PW8/A. Jeep bearing No. HP-39-7182 along with Registration Certificate and Driving licence was taken into possession vide memo Ex.PW4/B, in the presence of Jatinder Kumar and HHC Ramesh Chand. Similarly, scooter on which accused Uttam Chand came was also taken into possession vide memo Ex.PW4/A, in the presence of Jatinder Kumar and HHC Ramesh Chand. After the completion of investigation, police came to the conclusion that accused in furtherance of their common intention, have abducted Dharmi Devi, Sumna Devi, Relma and Prem Singh with a view to subject them to slavery or knowing that such act is likely to subject them to slavery.

3. The prosecution in order to prove its case has examined as many as 08 witnesses. Statement of accused persons were recorded under Section 313 Cr.P.C, wherein accused persons denied the prosecution case and claimed innocence. No defence evidence was led by the accused persons.

4. Heard.

5. PW-1, PW-2 and PW-7 admitted that accused persons have supplied them "Karyana" articles and there was a debt of Rs. 6200/-. PW-7 also admitted that he purchased "Karyana" articles from accused Uttam Chand about 2? years back on credit basis. PW-2, PW-3 and PW-7 further admitted that accused Uttam Chand asked to pay back the costs of the articles. This was the cause, which led to forcibly taking away PW-1, Dharmi Devi, PW-2, Sumna Devi and Prem Singh from their residence because money was not paid back to accused Uttam Chand.

As per PW-7, when accused Uttam Chand insisted on paying back the said amount in any circumstance on 15.6.2005, he went on foot to Nagrota Bagwan to meet Munna Thakur, contractor and when he returned back in the evening, he found his family members missing and then it was told by PW-3 that accused forcibly took them away. When accused came at the residence of abducted persons, which include PW-1 and PW-2 also, PW-3 and PW-7 were present there. However, all these four persons have different thing to say as how many persons came at Kholi.

6. As per the evidence on record accused Uttam Chand and Ram Parshad came on a Scooter and two other persons came on foot. As per the statement of PW-1, all the persons, were present at the spot. PW-2 also stated on the similar line except that five persons came and one of them was accused Uttam Chand. PW-3 stated that accused Uttam Chand and one person came on a Scooter. He failed to identify those persons by face. As per PW-7, Uttam Chand and some other person who is Ram Parshad came at their residence. Therefore, all four persons have named at least one common person i.e. accused Uttam Chand. However, there are material contradictions in the statements of all the four witnesses regarding the names of persons who came at their residence. PW-2 has stated about coming of five persons. However, she could identify only Uttam Chand. No doubt, PW-1 has stated that all the accused were present there, but she has not stated anything against at least three persons. She stated that she was pushed into the jeep only by accused Uttam Chand. She has not stated anything that the remaining three persons have done any act in abducting them. PW-3 has identified only one person i.e. accused Uttam Chand. According to him, it is accused Uttam Chand, who had pushed Dharma Devi and Relma Devi in the vehicle. He totally exonerated the other persons by saying that no other person had taken any active step in this regard. Even, PW-2 has contradicted PW-1 by saying that Uttam Chand and other pushed them in the vehicle. The statement of PW-7 is limited to the extent, as who came to their residence at about 12:00 noon and when accused Uttam Chand asked him to pay back the money, he went to collect the same from Munna Thakur. Therefore, he was not present when PW-1 and PW-2 were allegedly abducted by the accused. However, he has also only named two persons i.e. Uttam Chand and Ram Parshad who had come to their residence. He could not identify other two persons. Hence, at the most it can be said that Ram Parshad also came, but from the statements of PW-1 to PW-3, it can be deduced that only Uttam Chand took an active role. PW-1 to PW-3 could not say as what was done by the other three persons. Not to speak of the fact that their identity has not been established, even PW-1 to PW-3 are also not certain as what exact role was played by accused Uttam Chand. They differed even on the point as who pushed Dharma Devi etc. into the vehicle, which took them to Kandi. Therefore, there are material contradictions in the statements of PW-1 to PW-3 and PW-7.

7. When PW-1 and PW-2 reached at Kandi, PW-5 and PW-6 are the persons, who arranged their lodging. However, it also not made clear as where those persons

were kept. In the site plan Ex.PW8/B, it is shown that those persons were kept in the house of PW-5. However, PW-6 stated that those persons came and sought his help for getting a room for their residence as they wanted to work at Kandi. He then got a room of "Janjghar" (community hall) which was under his control but the key was with PW-5. Therefore, he has totally denied that it was accused Uttam Chand, who brought those persons to him. Whatsoever, this witness has stated that those four persons were kept in the "Janjghar" while the case of prosecution is that they were forced to live in the house of PW-5. However, no question has been asked from PW-5, as who brought those persons. PW-5 is the most important witness because the place where labour was kept was under her control. However, no question has been asked from this witness as to whether they were kept under the supervision of anybody or the door was locked from outside. Due to this, an adverse inference is to be drawn against the prosecution and it can be said that they were not kept under the supervision of anybody or forced to live in the "Janjghar" or the house of this witness. This has become further clear from the statement of PW-6, who denied that Uttam Chand had brought some persons to him. On the other hand, he has stated that those persons approached him for some residence because they wanted to work at Kandi. Being Pardhan of the Panchayat, it can be presumed that labour may have contacted him. PW-6 has stuck to his stand despite the fact that he was declared hostile and cross-examined at length by the prosecution. Therefore, there is no evidence suggesting that PW-1, PW-2 and others were forcibly kept at the residence of Vimla Devi or "Janjghar" of the Panchayat.

8. PW-6 stated that those persons came and sought his help for getting a room for their residence, as they wanted to work at Kandi. He then got a room of "Janjghar" (marriage party hall), which was under his control. Therefore, he has totally denied that it was accused Uttam Chand, who brought those persons to him. There is nothing on record that those persons were kept under the supervision of anybody or under the custody of anyone. On the other hand, PW-6 has stated that those persons approached him for some residence, because they wanted to work at Kandi. He has not supported the prosecution case at all. PW-3 has admitted about the coming of many persons to the spot. He has further stated that names of the accused were told by the persons, who came there. No independent witness has been associated by the police in the investigation. The witnesses, which have been examined are interested in the manner that they as per their own admission, owe a sum of Rs. 6200/- to accused Uttam Chand, as they have purchased "Karyana" articles, which he has supplied about 2? years back on debt basis.

9. It has been held in *K. Prakashan v. P.K. Surenderan* (2008) 1 SCC 258, that when two views are possible, appellate Court should not reverse the judgment of acquittal merely because the other view was possible. When judgment of trial Court was neither perverse, nor suffered from any legal infirmity or non consideration/mis-appreciation of evidence on record, reversal thereof by High Court was not justified.

10. The Hon"ble Supreme Court in T. Subramanian v. State of Tamil Nadu (2006) 1 SCC 401, has held that where two views are reasonably possible from the very same evidence, prosecution cannot be said to have proved its case beyond reasonable doubt.

11. In view of the aforesaid decisions of the Hon"ble Supreme Court and discussion made above, we find no merit in this appeal and the same is accordingly dismissed. Bail bonds of accused are discharged.