
(2009) 08 SHI CK 0054
In the High Court Of Himachal Pradesh

State of H.P.

APPELLANT

Vs

Balbir Singh and Another

RESPONDENT

Date of Decision : 24-08-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2009) 3 ShimLC 327

Hon'ble Judges : Surinder Singh, J;Deepak Gupta, J

Bench : Division Bench

Judgement

Surinder Singh, J.—In this appeal, the acquittal of the respondents, passed by the learned trial Court in Sessions Case No. 25-D/1993 decided on 19.1.1994, under Sections 302 read with Section 34 of the Indian penal Code, has been challenged by the State.

2. The factual matrix giving rise to this appeal can be stated thus. The accused-respondents, and Amrik Singh (deceased), were the residents of the same village named "Chabewal", Tehsil Hoshiarpur (Pb.).

Amrik Singh aforesaid was the son of PW-4 Harjit Singh. He was a student of 10th class.

On 14.2.1991 the deceased left for his school in the morning but did not return in the evening after the school hours. At that time Harjit Singh, father of the deceased was a driver, working at Delhi.

Satwant Singh (PW-1) his uncle searched for him every where but in vain.

On 16.2.1991 Karianil Singh (PW-3) informed Satwant Singh aforesaid that he saw the deceased on 14.2.1991 at Bus Stand Hoshiarpur in the company of the respondents and Surinder Singh, approver (PW-8).

Satwant Singh lodged the report Ext. P-I to ASI Harpal Singh, Incharge of Police-Post Chabewal (Punjab) which was converted into the FIR Ext. PW-17/E u/s 364 of the Indian Penal Code registered in Police Station Hoshiarpur (Punjab).

Whereabouts of deceased could not be found out despite search made by the police.

On 16.2.1991 at about 5 p.m., Pratap Chand (PW-9) was on his way to Dharamkot. He spotted a dead-body of a sikh boy near Dharamshala in District Kangra (H.P.) and informed the Incharge Police Post Foresyth Ganj telephonically.

PW-16 Shri Nathu Ram A.S.I. reached the spot and also informed PW-18 Gulab Singh, Inspector/SHO Police Station Dharamshala. Dy. S.P. and Inspector Gulab Singh, along with Photographer reached the spot.

ASI Nathu Ram prepared the inquest report Ext. P-5. Thereafter, the dead-body was sent for autopsy.

On 17.2.1991, PW-7 Hazura Singh, the grand-father of the deceased identified the dead-body of Amrik Singh at Dharamshala and lodged the FIR (Ext. P-18) in Police Station Dharamshala for the offence of murder.

3. During the investigation by Himachal Police, it came to light that the accused Surinder Singh (PW8) had made an extra-judicial-confession on 25.2.1991 in presence of PW-6 Mohan Sarpanch of his village and the respondents and said Surinder Singh surrendered themselves to him. He took them to Police Post Chabewal (Hoshiarpur) Punjab. The police arrested them.

4. During the interrogation by the Punjab Police in FIR No. 26/ 91 dated 16.2.1991 registered u/s 364 of the Indian Penal Code, respondent Pradeep made disclosure statement Ext. P-10 dated 5.3.1991 pursuant to which he got recovered gold-ring (M-2) from the brick of the wall of his house alleged to have been brought from the Gold-Smith at Dharamshala (H.P). Respondent Balbir Singh also made his disclosure statement Ext.P-11 on the same day and got recovered Muffler and identity card of the deceased from beneath the stones, under a Deodar tree on 7.3.1991 at Dharamshala. PW-9 Surinder Singh accused approver also got recovered Gold ring pursuant to his statement Ext. P-9 from the "Khurli" of his house.

5. As stated above, the case with respect to the deceased was already registered u/s 364 of the Indian Penal Code in Police Station Hoshiarpur (Pb.), therefore, FIR Ext. P-18 registered in Police Station Dharamshala u/s 302 of the Indian Penal Code was also transferred to Police Station Hoshiarpur. Thereafter a composite challan was presented before the learned Sessions Judge, Hoshiarpur under Sections 364, 302 read with Section 34 of the Indian Penal Code against the respondents, and Surinder Singh accused.

6. PW-8 Surinder Singh accused sent an application Ext.P19 dated 16.6.1991 to the learned Additional Sessions Judge, Hoshiarpur through jail to become approver in the case to secure his acquittal as stated by him vide his statement Ext.P24. His request was allowed. He turned approver and he was accorded pardon by the learned Sessions Judge Hoshiarpur.

7. Learned Sessions Judge discharged the respondents for the offence u/s 364 of the Indian Penal Code but the case for the offence punishable u/s 302 of the Indian Penal Code was transferred to learned Chief Judicial Magistrate Dharamshala as having taken place within his jurisdiction. In turn, learned Chief Judicial Magistrate committed it to the Court of Sessions at Dharamshala.

8. The prosecution relied upon the statement of approver and the motive attributed to the respondents was that the respondents wanted to commit theft of the gold-rings from the deceased. Thus, the deceased was taken to Dharamshala where Balbir Singh was doing tailoring work with one Sh. Arun. The respondents along with approver (PW-8) allegedly strangled him in the nearby jungle, which caused his death and the respondents decamped with the gold-rings.

9. Finding a prima facie case against the accused persons they were accordingly charge sheeted for the offence of murder committed in furtherance of their common intention by the learned Additional Sessions Judge (II) Kangra at Dharamshala.

10. On pleading not guilty and claiming trial the prosecution examined its witnesses to prove the charges. The learned trial Court on the question of granting pardon to the approver Surinder Singh by the learned Additional Sessions Judge, Hoshiarpur re-considered the matter and held it to be valid one, for the purpose of this trial vide his detailed order passed on 11.5.1993, thus Surinder Singh accused was examined as PW-8, as a witness for the prosecution. However, he did not support the prosecution case and backed out from his earliest statement on the basis of which he was granted pardon.

11. The respondents were also examined u/s 313 of the Code of Criminal Procedure. Their case was denial simplicitor.

12. When the respondents were called upon to enter into their defence, they did not lead any evidence in defence.

13. After concluding the arguments, before the learned trial Court, on 14.1.1994, the learned prosecutor failed a Certificate u/s 308 of the Code of Criminal Procedure requiring it to proceed against the approver as he was alleged to have willfully concealed the true facts and defied the conditions on which pardon was granted to him.

14. At the end of the trial respondents were acquitted. The Approver was also released.

15. In this appeal, Shri Ram Mutri Bish, learned Additional Advocate General has forcefully argued that although there is no direct evidence regarding the murder of the deceased but the circumstantial evidence completes the chain pointing out towards the guilt of the accused, which admits no other hypothesis. To make his point clear, he took us through the entire evidence and urged that the trial Court judgment is perverse. He further ventilated that the approver did not comply

with the conditions of pardon and despite the certificate filed by the learned Prosecutor as required u/s 308 of the Code of Criminal Procedure neither the learned trial Court made any enquiry nor recorded any finding for and against the approver. Therefore, prayed for the acceptance of the State appeal.

16. Contra Shri Ajay Sharma, learned Counsel for the respondent No. 1 and also appointed as amicus curie for the State by this Court vide order dated 20.7.2009 while supporting the impugned judgment of acquittal argued with vehemence that circumstances put forth are not conclusive in nature and worth inspiring confidence. According to him said Surinder Singh co-accused was forced to become an approver by the police by turtoring him to depose against the respondents to secure his acquittal and implicate the respondents, which fact has been stated by him during the trial as PW-8. Therefore, the acquittal of the respondents is proper which calls for no interference.

17. The whole case hinges upon the statement of approver u/s 306 Cr.P.C. and the circumstantial evidence.

18. In fact Section 306 of the Code of Criminal Procedure is not the only legal method of obtaining the evidence against the co-accused. The statement of approver has to satisfy a double test. His evidence must show that he is a reliable witness, if this test is satisfied, the second would be that his statement must receive sufficient corroboration.

19. Before analyzing the factual aspects of the matter, it may be stated that for a crime to be proved, it is not necessary that the crime must be seen to have been committed and must, in all circumstances be proved by the direct ocular evidence by examining before the Court those persons, who had seen its commission.

20. In Arun Bhakta @ Thulu Vs. State of West Bengal, the Supreme Court observed that the offence can be proved by circumstantial evidence also. The apex Court observed that the principal fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans i.e. the evidentiary facts. To put it differently circumstantial evidence is not direct to the point in issue but consists of evidence or various other facts which are so closely associated with the facts in issue that taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed.

21. The apex Court constantly laid down that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person.

22. It is also well established by now that circumstances from which an inference as to the guilt: of the accused is drawn, have to be proved beyond a reasonable doubt and have to be shown to be closely connected with the principal fact

sought to be inferred from the circumstances. Further, where the case depends upon the conclusion drawn from circumstances, the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring offences home beyond any reasonable of doubt.

23. In *Sharad Birdhichand Sarda Vs. State of Maharashtra*, the apex Court while dealing with the circumstantial evidence held that onus is always on the prosecution to prove that the chain is complete and the infirmity or lacuna in prosecution cannot be cured by false defense or plea. The conditions precedent in the words of apex Court, before conviction could be based on circumstantial evidence, are as follows, which can be established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the used.

24. Applying the aforesaid settled law in the case in hand, we proceed to reconsider the whole issue, reappraise the evidence in order to come to a rightful conclusion. Whether the findings arrived at by the learned trial Court are against weight of the evidence on record or in other words perverse.

Circumstance No. 1:

25. The prosecution alleges that the respondents along with PW-8 Surinder Singh were seen together on 14.2.1991 at Bus Stand Hoshiarpur.

26. PW-1 Satwant Singh, uncle of the deceased stated that deceased did not return in the evening on 14.2.1991 and was also not found in the relations. On 16.2.1991 Karnail Singh (PW-3) is stated to have met him while passing by through a path. He asked the reason of his standing there. It was then he told him that his nephew was missing. Then PW-3 Karnail Singh revealed that on 14.1.1991 he had gone to Hoshiarpur and he saw the deceased along with respondents and Surinder Singh (PW8) at Bus Stand Hoshiarpur at 2 p.m.

27. Whereas PW-3 Karnail Singh stated that he had met the deceased at Bus Stand in the company of the respondents and PW-8 Surinder Singh while

returning from the market he had also asked them as to why they had come there. They revealed that they had come to see the movie. He further stated that on 16.2.1991 after working in the fields, he returned to his house. It was his wife who informed that Amrik Singh was missing. Therefore, he went to the house of Satwant Singh and he met him near his house (Haveli) and narrated him the above facts.

28. In his cross-examination, he (PW-3) stated that on 15.2.1991 he remained busy in the fields but he did not hear about the missing of Amrik Singh on that day. He further stated that the police met him on 16.2.1991 around 4.45 p.m. His statement Ext. -17/F was recorded by PW-17 Harpal Singh of the Punjab Police on 16.2.1991 u/s 161 of the Code of Criminal Procedure. When confronted with his statement wherein it was mentioned that he only heard the rumour on 16.2.1991 that deceased who was a resident of his village was missing denied this fact.

29. It is pertinent to mention that Karnail Singh is also from the village of the deceased. The entire village knew that the deceased was untraceable then how this fact was not known to him, is quite surprising. In our opinion, his conduct is quite unnatural and his testimony is not worth inspiring confidence and is also in a material contradiction as the witness has substantially improved his statement recorded in the Court.

30. Further PW-7 Hazura Singh was present on the spot where the dead-body was found at Dharamshala, on 17.2.1991, at the time of preparing the inquest report. According to him PW-1 Satwant informed him on 16.2.1991 at 9/10 a.m. that the deceased was in the company of accused persons on 14.2.1991 as disclosed by Karnail Singh. Whereas Karnail Singh is stated to have disclosed the above fact to Satwant Singh in the evening when he came to know from his wife. Thus this fact becomes irreconcilable. Significantly Satwant Singh did not disclose this fact to the police while lodging report that Karnail Singh had last seen the deceased in the company of the respondent at Bus Stand Hoshiarpur, as stated above makes his statement a suspect.

31. Further in the opinion of PW-2 Dr. V.P. Mahajan, the death was caused due to asphyxia caused by strangulation due to pressure applied on the neck. The time period between injury and death was estimated to be immediate and between death and post-mortem was opined to be less than five days, as indicated in the post-mortem Ext. P-6. Thus, the time of death could be anything between 13.2.1991 to 17.2.1991 when the post-mortem was conducted. Neither the Police obtain nor produced the school attendance of the deceased to show whether the deceased had attended the school even on 13.2.1991 i.e. the previous day of his missing.

32. As a matter of fact, last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead, is so small that possibility of any

person other than the accused being the author of the crime becomes impossible.

33. In Arun Bhagta's case (supra) the Supreme Court observed that it would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of other positive evidence to conclude that the accused and the deceased were last seen together it would be hazardous to come to a conclusion of guilt in those cases.

In the instant case, theory with respect to last seen is quite doubtful, which is unworthy of credence.

Circumstance No. II

34. It is also a settled principle of law that if the extra judicial confession is real and voluntary, it can be acted upon by the Court, even without corroboration. But it requires strict scrutiny.

35. The prosecution has relied upon the statement of PW-6 Mohan Singh. According to him, on 25.2.1991, when he was standing in his fields, the respondents along with accused Surinder Singh approver, came there and told him turn by turn how they had committed a big mistake by kidnapping Amrik Singh (deceased) from his village and took him to Dharamshala on 14.2.1991 and murdered him by strangulating him with a Muffler, by the side of a tree and removing the gold rings. The very narration of disclosing the story of doing away with the life of deceased, by each of them turn by turn is also unnatural, more specifically when they had arrived together in his house. He further stated that PW-8 Surinder Singh also revealed that the police had been visiting their house and he should be helped by Mohan Singh being Sarpanch by handing them over to the police but in turn he told them that he would talk to the police on their response he would tell them. Thus they should visit him again within a day or so. According to him next day i.e., 26.2.1991 he was out of Station in connection with some business and returned on 1st March, 1991. Then he inquired from his wife whether the accused persons had visited her in his absence but he was told that no one had come there. On 2nd March, 2009 he decided to disclose the fact to the police and found the police party which came in a Jeep in his village and narrated the entire incident to them. His statement was recorded. He also stated that on 5th March, 1991 respondents and accused Surinder Singh visited his house at 1.30 p.m. and he took them to the police post Chabewal and handed over to ASI Harpal Singh (PW-6).

36. On the close scrutiny of his statement, who is Sarpanch of Gram Panchayat Chabewal, we do not find that it is also worth inspiring confidence. The reason is obvious. He already knew that Amrik Singh was found murdered at Dharamshala and his dead-body was brought to the village on 17.2.1991 after post-mortem. It was a case of blind murder. He came to know only on 25.2.1991 as stated by him, with respect to the murder of the deceased by the respondents and accused Surinder Singh as stated by them. Whereas PW1 Satwant Singh was allegedly

informed by Karnail Singh on 16.2.1991 then how this fact could remain a secret in the village which had lost a young lad. Surprisingly, Sarpanch did not inform the police immediately but on the next day he chose to go out of Station conveniently in connection with his own work. Had the aforesaid fact been true, the witness would not have taken even a second to inform the police or his close relations. His wife was also not examined to lend strength to his version. We find his conduct quite unnatural also for another reason that he did not disclose about the extra judicial confession of the accused to any body else in the village as noted above. Therefore, in the aforesaid back-drop it is very difficult to accept his statement so as to base the conviction on his bald statement more specifically when it lacks corroboration.

Circumstance No. III:

37. Apart from above, the prosecution also relies upon the recoveries made by the respondents pursuant to their disclosure statements recorded u/s 27 of the Indian Evidence Act as indicated supra. The alleged recoveries were made by the Punjab Police in the case registered with them at Hoshiarpur u/s 364 of the Indian Penal Code. In this respect, prosecution examined PW-4 Harjeet Singh, father of the deceased, who was working as driver in Delhi to prove that the Gold rings recovered from them belonged to him. He stated that on hearing the news about the missing of his son, he came to the village on 16.2.1991 at 8 p.m. and found his two gold-rings were missing. He had also come to know that his deceased son had gone with the accused persons. According to him he had brought the gold rings having his initials (H.S.) imbedded thereon from Jordon in the year 1981. He identified both the rings Ext. M-2 and M-3 and also the separated part of one of the rings as Ext. M-4 which, according to him were of two and a half tolas. In his cross-examination, he was confronted with his statement recorded u/s 161 of the Code of Criminal Procedure about the fact of purchase and identification mark which was not found mentioned therein. Therefore, his statement before the Court has to be taken with a pinch of salt. He stated that he used to wear the rings occasionally and has been keeping them with him. He further stated that these rings used to remain in the custody of his wife. Since his wife was at home. She should be the one and first person who could have noticed that his rings were missing but this fact is not supported by any other evidence.

38. He also did not disclose as to when and by whom this impression of "H.S." was inscribed thereon. He failed to produce any proof showing its purchase from Jordon. Further the inscription of "H.S." on the rings also did not find mentioned in his earlier statement. The possibility of implicating the accused persons on the basis of the false recovery, cannot be ruled out.

39. Although PW-12 Dharam Pal Gold Smith had identified the parts of the golden rings M-3 and M-4 having been pledged with him by Vinod Kumar and Sadhu Ram, who were accompanying the police. He did not say that those persons were the respondents, then who were these Vinod Kumar and Sadhu

Ram accompanying the Punjab police, are not known. If those rings were belonged to him how it came into the possession of the respondents. If those persons were different from the respondents then the possibility of committing murder of Amrik Singh by them cannot be ruled out.

40. As far as the recovery of "Muffler" and "identity card" is concerned, according to PW-18, Gulab Singh, Inspector Punjab Police had visited the police Station Dharamshala at 8 p.m. on 7th March, 1991 and to this effect entry was stated to have been made in the Rojnamcha. PW-6 Mohan Singh stated that he had accompanied the Punjab Police to Dharamshala. Respondents and surinder Singh (PW8) were also with them whereas the Punjab police had already visits Dharamshala on 18.2.1991 for recovery of rings. Himachal Police started another round of recovery and according to PW6 respondent Balbir singh got recovered the "Muffler" Ext. M-1 and "Identity Card" Ext. P-8 from the bushes beneath the stone and produced before the police. It was taken into possession vide memo Ext. P-14. In cross-examination, he stated that when he came to Dharamshala along with Punjab Police, he did not go to the Police Station or Police Post, Macloadganj but went to the place of occurrence. Thereafter visited the police Station Dharamshala. During the visit to the Punjab police, Himachal Police was not with them. He stated that in the evening, respondents were taken by Punjab Police to L.M.G. ground Macloadganj but this fact is absolutely not borne out from the documents of recovery, as spoken by PW-18 Gulab Singh aforesaid.

41. Further PW-10 Surinder Singh son of Ram Singh, a witness to the recovery stated that the police came to Dharamkot at Dharamshala with two accused persons, out of one was sikh gentleman and other was clean shave. He was asked by the police to accompany them. Respondent Balbir thereafter took the police to the bushes from where the aforesaid recoveries were effected. This fact is totally contrary to the statements of PW-6 and PW-18 referred to above. On this type of conflicting evidence, no implicit reliance can be placed to pass the conviction against the respondents.

42. Thus on the close scrutiny of the aforesaid evidence, it is difficult for us to digest as to why "Muffler" (M-1) and "Identity Card" (Ext.P-8) were removed from the persons of the deceased by the respondents and then kept under beneath the stone at a different place, as alleged by the prosecution. Had these items been left intact with the dead-body itself, then it would not have implicated the respondents. Therefore, it appears to us that in order to create the evidence of a circumstantial in nature, the whole recovery was cooked up against the respondents.

43. As already stated above, the recoveries of the aforesaid articles against the factual back ground of this case also does not appeal to us and creates a grave doubt in view of its unnatural consequences and contradictions therefore, it cannot be accepted and acted upon.

Circumstance No. IV:

44. The next circumstance which is heavily relied upon by the prosecution is absconding of the respondents. There is a sole statement of ASI. Harpal Singh (PW17) that after registration of case on 14.2.1991 against them the respondents were not found till 5.3.1991. Surprisingly, PW6 Mohan Singh, Sarpanch of the village, did not know about this fact. According to him he only came to know from the respondents who informed him about it to him and requested him to negotiate with police for their surrender, appears to be unbelievable for various reasons. Firstly, the police takes the assistance of local respectable village while raiding the house of suspects, secondly; with respect to raids the entries are made in the daily diary which should be produced and proved during the trial to inspire confidence in its case; thirdly, some cogent evidence is required to be produced from the vicinity to lend corroboration by examining the witnesses that the accused were not seen in and around the village immediately after the commission of crime, to establish the fact of absconding. Had there been raids in the houses of respondents in the village PW6 Mohan Singh, Sarpanch would have definitely come to know about it. Therefore, the prosecution, in our considered opinion has failed to prove this circumstance beyond a reasonable doubt against the respondents. Otherwise also it is not a strong circumstance which could alone be held enough to convert acquittal into conviction.

Circumstance No. V:

45. The next is the statement of approver (PW8). The Challan against the respondents was presented in the Court of Sessions at Hoshiarpur where said Shri Surinder Singh accused was granted pardon by the Additional Sessions Judge as per the provisions of Section 307 of the Code of Criminal Procedure. During the trial in this case, the approver retracted from his earlier statement on which he was allegedly granted pardon. Although he admitted that he was arrested by the police in this case and made an application Ext. P-19 to the Additional Sessions Judge for becoming approver and having made his statement Ext.P20 and Ext.P21 to the Chief Judicial Magistrate but according to him he was threatened to be killed by the police. Significantly in his cross-examination he stated that the application Ext. P-19 was got prepared by A.S.I. Harjeet Singh and PW-6 Mohan Singh, Sarpanch. They had been threatening to kill his family members and burn his house. He also stated that the Jail Superintendent was aware of the fear of the police. Therefore, so as to escape from such consequences, he made the statement to oblige them. He further stated that he had been informing the learned Sessions Judge, Dharamshala in writing about it from Jail itself, where he was lodged.

46. He was also Cross-examined by the learned Public Prosecutor. He reiterated that he was forced to make such a statement.

47. Against the aforesaid background and considering his statement coupled with other evidence on record in its entirety, we do not find his statement of any use to prove the charge against the respondents.

48. Even if his earlier confessional statements are taken into consideration it is also not corroborated in material particulars on record. Once the evidence of the approver is found to be not reliable, the worth of his evidence is lost and such evidence, even by seeking corroboration, cannot be made the foundation of a conviction.

49. In the background of the aforesaid discussion, we do not find that the prosecution has been able to prove the case against the respondents beyond a reasonable doubt as it failed to establish the circumstances narrated above in accordance with law.

50. Therefore for the reasons aforesaid while applying the well settled principles of law we do not find any material to convert the acquittal into conviction as the circumstances above mentioned are not of a conclusive nature and tendency to link the respondents with the offence charged.

51. However, in so far as the certificate placed before the learned trial Court by the learned Public Prosecutor u/s 308 of the Code of Criminal Procedure to proceed against the approver is concerned, learned trial Court has not given any findings thereon. Thus while upholding the acquittal of the respondents, we dismiss the appeal of the State filed against their acquittal and direct the learned trial Court to issue a notice to the approver (PW-8) Surinder Singh and decide the matter after hearing him and dispose of the matter as per the provisions of Section 308 Cr.P.C. in accordance with law after affording an opportunity to him. The appeal stands accordingly disposed of.

52. The presence of respondents was procured by executing the non-bailable warrants in this appeal as he failed to furnish the bail thus he was sent to judicial custody. Since his acquittal in this case is upheld, as such he be released forthwith, if not required in any other case.

53. The Registry of this Court is hereby directed to issue his release warrants forthwith. The appeal stands disposed of.

Send down the records.