
(1991) 08 SHI CK 0019
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 342 of 1987

State of H.P.

APPELLANT

Vs

Fatch Mohammed alias Fatta alias Noor Mahi

RESPONDENT

Date of Decision : 02-08-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 16
Penal Code, 1860 (IPC) — Section 304I

Citation : (1992) 1 ShimLC 369

Hon'ble Judges : Bhawani Singh, J

Bench : Single Bench

Advocate : Ram Murti Bisht, Law Officer, for the Appellant; Anand Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Bhawani Singh, J.—It is decision of acquittal of accused Fateh Mohammed recorded by the Sessions Judge, Kangra Division, in Sessions Case No. 2 of 1986 decided on 25-4-1986 that has been challenged by the State through this appeal.

2. Briefly, the prosecution case is that accused Fateh Mohammed (35), son of Shri Noor Bakash, resident of Dahdu, Pargana Gudial, District Chamba has been prosecuted for commission of offence u/s 304-I, Indian Penal Code for having caused the death of Hoshiara Ram of village Paniyali, on November 6. 1985, when the deceased had gone to the place "Patre-di-Aan" to ask accused why he was cutting the grass there According to the prosecution, the incident happened between 10-00 to 11-00 a.m. when, after receiving a kick from the accused, the deceased rolled down the mountainous region and died instantaneously. The matter was reported to the Police by Bhagat Singh (PW 1), who handed over a writing (Ruka). First Information Report (Ext PA) was recorded on the same day at 4:30 p.m. The matter was investigated by Station House Officer Jagroop Singh (PW 18). He visited the spot at 9:30 p.m., inspected it and the dead body, prepared the inquest report (Ext. PJ) and took into possession three blood-

stained stones (Exts. P-5 to P-7) vide recovery memo. (Ext. PD) and put them into sealed parcels in the presence of witnesses. Site plan (Ext. PK.) was also prepared. Cut grass (Ext. P-8) lying at the spot, was taken and put into a gunny bag (Ext. P-9) and sealed with seal "T" which was then handed over to Moti Ram (PW-9). The dead-body was sent for post-mortem examination through application (Ext. PC) and Dr. C.S Rathore, Medical Officer at the District Hospital, Chamba (PW 2) conducted it on November 7, 1985 at 3:00 p.m. after the same was identified by the brOrs. of the deceased, namely, Basant Ram and Chano Ram. The Doctor found large number of injuries on various parts of the body of the deceased. However, he recorded the following major injuries specifically:

(1) A3 ? 5 cm. lacerated wound on right temporo-frontal region, right side. It is 5 cm. deep. Bone had been fractured in three pieces and lacerated the brain matter Blood present.

(2) Lacerated wound right iliac region just above supra pubic region 12 ? 8 cm. and 6 cm. deep, clotted blood and blood and dust particles present.

(3) There was fracture of right femur at upper 2/3rd and lower 1/3rd Wound was not open.

(4) There were three lacerated wounds at lower 1/3rd of left leg size 3?3 cm. 3?2 cm. and 4 ? 2 cm respectively. Through one wound i.e. 4 ? 2 cm. the broken end of the tibia was coming cut. Both tibia and fibula fractured at the site.

3. In the opinion of the Doctor, the deceased had died on account of the head injury, intra-cranial haemorrhage and shock The postmortem report (Ext. PB) was handed over to the Investigating Officer After recording the statements of witnesses in this case and collecting other evidence, the accused was challenged before the Trial Court, where he was charged for commission of offence u/s 304-I, Indian Penal Code to which he pleaded not guilty and claimed false implication.

4. The trial Court, after recording the evidence and hearing the parties, came to the conclusion that the prosecution had failed to prove that the accused assaulted the deceased as alleged by it. Therefore, no offence had been committed by the accused in this case and recorded his acquittal. Tersely speaking, the trial Court found that the identity of the accused had not been clearly and satisfactorily established. The prosecution witnesses had given contradictory and vague statements and most of them were the relation witnesses. It did not accept the extra judicial confession of the accused.

5. In his submissions before me, Shri Ram Murti Bisht, learned Counsel for the State, asserted that the prosecution has established the charge against the accused beyond all reasonable doubts. The accused has been affectively identified by the prosecution witnesses. The rejection of extra judicial confession by the trial Court has not been on reasonable and genuine basis, the learned Counsel contended. These submissions have been assailed by Shri Anand Sharma, learned Counsel for the accused. It was submitted by him that the trial

Court judgment is well reasoned and in the absence of perversity of approach in dealing with the evidence, the order of acquittal may not be disturbed. Finally, it was contended that the prosecution has failed to place before the Court proper evidence and such circumstances from which the only conclusion of guilt against the accused could be drawn. In support of his contentions, reliance was placed on decision of Supreme Court reported in *Kishore Chand Vs. State of Himachal Pradesh*, and *Ashok Kumar Vs. State of Rajasthan*,

6. In view of the rival submissions made by the learned Counsel for the parties, I proceed to examine the matter with reference to the case file.

7. The most important thing in this case is, whether the prosecution has been able to correctly identify the accused? In order to ascertain this question, reference to the statements of some of the prosecution witnesses is necessary. Bhagat Singh (PW 1) states that he not only saw the deceased falling down from "Patre-di-Aan", but also he saw a Gujjar running from a distance of about 300 yards. He could not identify the said person at that time. He rushed to that village from where alarm was raised on being asked about the whereabouts of this Gujjar, Shri Gamu (PW 6) told that it was Noor Mahi, the accused present in the Court. He was told by Smt. Malti (PW 3) that Noor Mahi alias Fateh Mohammed is the name of the present accused...Harbhajan Singh (PW 10) sent him to the Police Station with a Ruqa for lodging the report. He did so and handed over the Ruqa to the Police at the time of lodging the report. It contained a direction to lodge the report and not the narration of the incident. This witness did not identify the accused and his knowledge is based on the information conveyed to him by Gamu (PW 6).

8. Gamu (PW 6) has turned hostile to the prosecution. In his cross examination by the Public Prosecutor, he states that the accused is only called by the name of Fateh Mohammed and Noor Mahi is a different person. Thus, contradicted his version to the Police that Fateh Mohammed, son of Noor Bakash, resident of Dahdu is from his relation and is also called by the name of Noor Mahi. He has not supported any of the essentials of the prosecution case.

9. Bhagat Singh (PW 1) also says that a Gujjar was wearing black Salwar type clothe which could be "Lungi" and also says that he could not see exactly the clothes worn by him but they were of black colour. He appeared to be a young person, but he could not judge his age. He did not mention these facts in the First Information Report nor he stated there in that the mother of the deceased told him that Noor Mahi was also known as Fateh Mohammed, since he had forgotten this fact. The Ruqa was written after discussion about the incident by the persons present there. He had not enquired about the parentage or the place of residence of Noor Mahi. He did not tell the Police that Malti, Hodi and Nuddu were sitting near the dead-body.

10. Smt. Malti (PW 3) states that this occurrence was witnessed by Nuddu, Hodi, Chaino and Kalyano. She states that when Harbhajan Singh (PW 10) stated that

he could not identify whether it was Fatu or Noor Mahi, she told him that the assailant was known by the name of Fatu and also Noor Mahi. This kind of version has not been given by Harbhajan Singh (PW 10) who, as a matter of fact, says that villagers of Paniyali discussed about the cause of death of the deceased and the assailant but he was told only that a Gujjar had caused the death of Hoshiara. Neither the name nor the manner in which death was caused, was conveyed to him. None had named the persons who witnessed the occurrence to him at that time, as such, he did not write in the authority letter either the name of the assailant or the persons who witnessed the occurrence. The statement of Smt Malti Devi (PW 3) becomes all the more undependable when one refers to her statement that:

8 or 9 families of the "Gujjars" reside in village Dahdu I know Shri Noor Mahi son of Warsa of village Dahdu Said Noor Mahi and Fatu are of the same age. Both resemble each other, both wear same types of clothes and both are of the same statures. Accused present in the Court also hails from village Dahdu....I cannot admit or deny whether I had stated his name to be Fatu only to the police during investigation.

Hoddi (PW 4), though calls himself to be an eye-witness, cannot be believed when he states that many persons who had collected at the spot had been discussing the cause of the incident, but he could not name any one out of them and that he did not know the name of the assailant at the time of the fall of the deceased and he did not know his name till the arrival of the police at the place of occurrence. He did not know the accused even prior to the occurrence, as he had no dealings with him. He came to know of his name at the behest of the police during the investigation of this case. Then says, that the name of the accused person was not disclosed by any one present there.

11. Nuddu Ram (PW 5) says that he saw the accused from a distance of 200 yards and could hear the talk between them. The deceased was his uncle and contradicts other witnesses when he says that Gujjars of Dahdu also cut grass on this land and admits that the accused lived at a distance of 8-9 kilometres from his house. According to him, there is only one Noor Mabi in village Dahdu and he is son of Noor Bakash and he did not know Noor Mahi, son of Warsa of village Dahdu. He contradicts the statements of other witnesses when he says that many persons including Panchayat Members reached the place where the dead-body was lying after about an hour of the incident. The said Panchayat visually inspected the dead-body, recorded the names of the witnesses and sent a report in writing to the police through Bhagat Singh (PW 1) of this incident. On court question he states that the report included the name of the assailant as Fateh Mohammed. He himself saw that writing and he has studied upto 5th class. Panchayat did ask the name of the assailant from Gamu (PW 6), though, he (witness) knew his name earlier. On being asked, Hoddi gave the name of the assailant Fateh Mohammed. This name was also given by Malti (PW 3).

12. Baggu (PW 7) has been declared hostile, but in his cross-examination by the

Public Prosecutor, he states that there is Anr. person named Noor Mahi son of Warsa in village Dahdu. He also says that the deceased was his uncle and he had stated to the police during interrogation by it that Fateh Mohammed is also known by the name of Noor Mahi. No such statement has been recorded by the police u/s 16, Criminal Procedure Code.

13. Court witnesses Chain Lal (CW 1) and Kalayan Singh (CW 2) also claim to be the eye-witnesses, but their statements does not in any way improve the case of the prosecution. Chain Lal (CW 1) saw the incident from a distance of 300 to 400 yards. He raised alarm but did not name the assailant while doing so He talked to Bhagat Ram (PW) about this incident and told him about the name of the assailant. He did not inform the police nor appeared before them at any time nor lodged any complaint to any other authority. He could not give the address of the accused present in the Court. He was wearing "Lungi" on that day, whereas Kalyan Singh says that the accused was wearing apparels of black colour. During the court proceedings, he was called upon to identify the assailant with respect to whom he had given the statement, but he failed to do so. Finally, he says that Chaino told him the name of that Gujjar as Fateh Mohammed. He did not know the name of the accused.

14. From the aforesaid discussion, it is clear that the prosecution witnesses have not been able to identify the assailant in this case correctly. They are not one on any of the important aspects of the prosecution case. They have given conflicting account of the same incident thereby making the prosecution case against the accused all the more doubtful.

15. Although it was argued that identification parade in this case was not necessary since the witnesses knew the accused very well, yet from the statements of these witnesses, it is apparent that they did not know the accused correctly and fully. The matter became all the more doubtful when two persons of same name exist in the same village. Smt. Malti has categorically stated that both these persons are of the same age, structure. wear same type of clothes and resemble each other. This has created a erious doubt whether the accused is a real assailant or the other person of he same name. No attempt has been made to clear this. In the peculiar facts of this case, it was necessary for the police to conduct the identification parade.

16. "The Ruqa on the basis of which the First Information Report was lodged, has not been produced. It has been stated by Nudhu Ram (PW 5) that it was written in Hindi and recorded the names of the witnesses and the name of the assailant. Why it has not been placed before the Court, has not been explained. It can, thus, be presumed that this Ruqa recorded something else than what the prosecution has now placed before the Court.

17. The prosecution has pressed into service the extra-judicial confession of the accused given to Durga (PW-8). Going through the statement of Durga (PW 8), it appears that he is a liar. Since Chain Lal (CW 1) and Kalyano (CW 2) have stated

that they witnessed the occurrence from the Kotha of Durga and Durga was at his house at that time Durga has said that he met the accused while he was coming to Paniyali. The accused was perturbed at that time and on his enquiry, he confessed having assaulted the deceased by giving kick blow due to which he fell into the Nallah and died. The extra judicial confession is thus absolutely undependable nor there is any corroboration of it.

18. The matter has been examined quite seriously by the trial Judge before the accused was acquitted in the case. I see no reason to differ with the view taken by the trial Judge, since my own assessment of the matter also is that the prosecution has failed to substantiate the charge against the accused. The accused cannot be held guilty on this kind of evidence.

19. The result that emerges out of the aforesaid discussion is that there is no merit in this appeal and the same is accordingly dismissed.