

(2012) 09 SHI CK 0074

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 206 of 2004

State of H.P.

APPELLANT

Vs

Maiky Lal and Jai Lal

RESPONDENT

Date of Decision : 17-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2012) 09 SHI CK 0074

Hon'ble Judges : Rajiv Sharma, J;Deepak Gupta, J

Bench : Division Bench

Advocate : Vivek Thakur, A.A.G., with Mr. Rajesh Mandhotra, Deputy A.G, for the Appellant; Deepak Bhasin, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sharma, Judge

1. This appeal by the State is directed against the judgment, dated 30.01.2004, passed by the learned Additional Sessions Judge, Fast Track Court, Shimla, H.P. in Sessions Trial No. 19-S/7 of 2003, whereby the respondents, who were charged with and tried for offence punishable u/s 302 read with Section 34 of the Indian Penal Code, have been acquitted. Case of the prosecution, in a nut-shell, is that Mansukh was married to PW-1, Narpati. He had two daughters from his first wife. Mansukh has contracted second marriage, since he was not having any male issue. From the second marriage, he had three sons. Initially, Maiky Lal and other bradri members of his family had cordial relations with Mansukh (deceased), but when sons were born from the second marriage, they started bearing grudge against him. Maiky Lal and others had intention to grab his property. On 09.04.2003, at about 7:00 p.m., the deceased returned to his house from the fields. Accused Jai Lal alongwith Puran Lal (Juvenile Offender) called him on the pretext that their father, accused Maiky Lal had a work with him. Thereafter, Mansukh went to the house of Maiky Lal. When PW-1, Smt.

Narpati was waiting for her husband, her step daughter, PW-2, Smt. Shankamani also reached. She inquired about her father. She was told that Jai Lal and Puran Lal had taken him to their house. PW-1, Smt. Narpati and PW-2, Smt. Shankamani took their dinner and were waiting for Mansukh. At about 11:00 p.m., when Puran Lal came towards his house, PW-1, Smt. Narpati asked him about her husband. He told that they have made Mansukh to lie down on the ground (lamba dal diya hai). Thereafter, he returned to his house. They thought that they had made Mansukh to sleep in their house. When they were going to sleep, they heard the cries coming from the house of accused Maiky Lal. They came out of their house and ran towards the house of Maiky Lal. They saw that Mansukh was being given beatings by Maiky Lal, Jai Lal and Puran Lal with fist and kick blows in the Verandah of the house. The accused persons threw Mansukh from the Verandah and his face struck against a stone of the Khalyan and blood started oozing out. The accused persons had proclaimed that they had fulfilled their desire by killing Mansukh. Mansukh was taken to house where he was put on a cot. In the morning, when he regained consciousness, he told that accused had mercilessly beaten him. PW-2, Smt. Shankamani called Bal Chand and Gian Chand and told them about the incident. The arrangements were made to take Mansukh to the hospital. He died at 11:00 a.m. Thereafter, Inspector Manohar Lal, SHO, Police Station, Rohru reached the spot on 11.04.2003. He recorded the statement of the complainant, on the basis of which, FIR was registered. Inquest report was prepared. The clothes of the deceased were also taken into possession. The challan was put up after receiving the Chemical Examiner's report and after completing all the codal formalities.

2. The prosecution has examined 12 witnesses to prove its case. The statements of the accused were also recorded u/s 313 of the Criminal Procedure Code. They pleaded innocence and claimed trial. Learned trial Court has acquitted the accused on 30.01.2004. Hence, this appeal by the State.

3. Mr. Vivek Thakur, learned Additional Advocate General has strenuously argued that the learned trial Court has misread the evidence led by the prosecution. According to him, the prosecution has proved its case against the accused persons.

4. Mr. Deepak Bhasin, Learned Counsel for the respondents has supported the judgment dated 30.01.2004.

5. We have heard the Learned Counsel for the parties and gone through the records carefully.

6. PW-1, Smt. Narpati has deposed that she was married to Mansukh about six years back. Her husband was a tailor. At about 6:00 p.m., her husband came back from the fields. Accused Maiky Lal has sent his children to call her husband Mansukh. Jai Lal and Puran had come to call Mansukh. Mansukh went to the house of accused. Her step daughter Shankamani (PW-2) had also come to her house. At about 12:00 mid night, Puran Lal came and told her to sleep peacefully

as her husband had been killed. When Puran Lal went away, she heard the cries of her husband coming from the house of accused Maiky Lal. She and Shankamani went towards the house of accused Maiky Lal, where they saw Mansukh being beaten up by Maiky Lal, Jai Lal and Puran Lal. According to her, they threw her husband into a Khalyan (field) where he struck against a stone. Maiky Lal stated that today they had fulfilled their desire by killing Mansukh. Mansukh was bleeding from mouth. She asked Mansukh as to what had happened to him. He told that he had been given an axe blow on the back and was stabbed with a knife on the neck by Jai Lal, Puran Lal and Maiky Lal. Thereafter, they took Mansukh to her house. According to her, since it was dark/night, they could not do anything. On the next morning, she went to Police Post (Chowki) and lodged a report. Her statement was recorded by the police vide Ex. -PA. She has admitted in her cross-examination that till the date of incident, Mansukh and Maiky Lal accused had been on visiting terms to the houses of each other. She has also admitted that their family had cordial relations with Maiky Lal and his family. She has denied the suggestion that Mansukh consumed liquor in his house and thereafter went to the house of Maiky Lal in order to consume more liquor. According to her, when she was told that her husband had been killed, she went to the house of Maiky Lal. She saw Maiky Lal, Jai Lal, Puran Lal and other family members standing in the Verandah. The accused persons were beating Mansukh in the Verandah. They kept on beating Mansukh in her presence and when she cried, they threw him down from the Verandah. She had seen Kulhara in the hand of Jai Lal, who put the same on the ground. She did not see accused Jai Lal giving axe blow to Mansukh. Neither Kulhara nor knife was shown to her in the Court.

7. PW-2, Smt. Shankamani has deposed that on 09.04.2003, she had come to the house of her father. She inquired from the Aunt Smt. Narpati about her father. She was told that Mansukh had been called to the house of Maiky Lal. At about 12:00 mid night, Puran Lal came and told that Mansukh had been made to lie down. Thereafter, they heard some cries. On hearing the cries, Narpati ran towards that direction and she also followed her. When they reached at the spot, they saw Maiky Lal, Jai Lal and Puran Lal giving beatings to Mansukh with fist and kick blows and thereafter, they threw him down into to the Khalyan. The blood started oozing out from the mouth and nose of Mansukh. They took him to their house. She called Gian Chand, Bablu and others and told them about the incident. Her Aunt went to lodge a report with the police. Police came on the spot at 6:00 p.m. In her cross-examination, she denied that they were on visiting terms to the house of Maiky Lal. She did not know that Mansukh had been consuming liquor or not. She denied the suggestion that earlier Mansukh had consumed liquor in his house and thereafter in the house of accused Maiky Lal. She also admitted that from the house of Mansukh, house of Maiky Lal was visible and from there, a voice could be heard. The house of Mansukh was on the upper side and that of Maiky Lal on the lower side. She did not know that her father, Mansukh had land which fell in his share by partition. She could not tell

the time when they heard the cries of Mansukh, but according to her, the same had been heard after some time when Puran Lal had went away after telling them that Mansukh had been made to lie. She has denied the suggestion that Mansukh had himself fallen down because he was not in a position to walk as he was heavily drunk.

8. PW-3, Gian Chand has deposed that he was told by Smt. Shankamani that accused persons Maiky Lal, Jai Lal and Puran Lal had beaten Mansukh. Police came on the spot and collected blood with the help of match stick from a stone and put the same in a match box. In his cross-examination, he has denied the suggestion that a dispute was going on between his family and that of Maiky Lal. He narrated that some minor dispute was there, but they were having social relations. According to him, they were regular visitor to the house of Maiky Lal, who is a tailor by profession and earns his livelihood by the same. He also admitted that Maiky Lal was in possession of his own land, Mansukh was in possession of his land and he was also in possession of his own land and there was no interference from any side. He has admitted in his cross-examination that about four months ago he had a quarrel with Maiky Lal.

9. PW-4, Dr. Satish has conducted the post mortem on 13.04.2003. According to him, Mansukh died due to hamragic shock following rupture of lungs and the person was under the influence of liquor as per chemical examiner report. The duration between death and post mortem was one to ten days. He has preserved viscera and blood sample of dead body. He has issued post mortem report Ex. - PC. The doctor has noticed a bruise around left elbow joint and superficial laceration on right knee joint. He has admitted that the injuries sustained by fist and leg blows are different from the injuries sustained by a person hitting against hard object/hard surface. He has not noticed any injuries other than mentioned in the post mortem report. He has also admitted that the injuries which had been mentioned in the post mortem report, could be caused due to fall. According to him, as per the report of Chemical Examiner, the contents of Alcohol were 371.0 mg. and a person after consuming that much of alcohol can go in a state of unconsciousness and coma. He also admitted that 371.0 mg. was upper limit of intoxication. He has also admitted that after consuming that much of alcohol, person can not work properly because he loses control over his body. He also admitted that if a person with this extent of alcohol in his body falls, he can sustain the injuries, as mentioned in the post mortem report.

10. PW-9, Baldev Negi has proved the original application Ex. -PF. PW-12, Manohar Lal has carried out the investigation. He has prepared the inquest report Ex. -PN. He has sent the dead body to Civil Hospital, Rohru for post mortem. He has taken the photographs Ex. -P5 to Ex. P-7. He has recorded the statements of Mohan Singh and Nihal Singh. He has admitted in his cross-examination that nearby and around the place of alleged occurrence, there are other houses. He also admitted that all the witnesses in the present case, particularly Shankamani, Gian Chand, Nadru and Bablu were related to each

other and except them, no other independent witnesses from the locality were associated in the investigation. He has also admitted that the Verandah has a jungla (wooden) and from the place where Mansukh was alleged to have been pushed, jungla was not broken. According to him, the motive to kill Mansukh was to grab his land by the accused.

11. There is variance in the statement of PW-1, Smt. Narpati recorded vide Ex. - PA on 11.04.2003 and the statement made by her while appearing as PW-1. What has been stated in Ex. -PA is that her husband after regaining consciousness has told them that he was beaten up mercilessly by the accused. However, while appearing as PW-1, Narpati has deposed that her husband has told him that he has been given an axe blow on the back and stabbed with a knife on the neck. She has also deposed while appearing as PW-1 that she has seen Maiky Lal carrying a Kulhara, however, this fact has not been mentioned in Ex. -PA. PW-2, Smt. Shankamani has not stated that she has seen Kulhara in the hands of Maiky Lal. Neither the police has recovered any kulhara nor any knife during the course of investigation. According to PW-1, Narpati and PW-2, Shankamani, Mansukh had not consumed any liquor in his house and thereafter in the house of Maiky Lal. However, it has come in the chemical examination report that the contents of alcohol in the blood of deceased were 371.0 mg. and it was upper limit of intoxication. PW-4, Dr. Satish has categorically stated that a person after consuming that much of liquor could not walk properly. According to PW-1, Smt. Narpati and PW-2, Smt. Shankamani when they reached the spot, they saw accused giving Mansukh kicks and fist blows. However, the doctor has noticed only two injuries on the body of Mansukh. In these circumstances, the possibility of deceased falling from the Verandah, cannot be ruled out. It has come in the statement of PW-1 that the relations between the two families were cordial. To the similar effect is the statement of PW-3, Gian Chand.

12. Though PW-12 Inspector Manohar Lal has tried to prove that the motive for killing Mansukh was land dispute, but neither PW-1, Narpati nor PW-2, Smt. Shankamani have stated anything about this fact. Rather, PW-3, Gian Chand has deposed that he, Maiky Lal and deceased Mansukh were in possession of their respective lands and there was no interference from any side. It has come in the statement of PW-12 that many houses were situated near the house of Maiky Lal. However, the prosecution has not examined any independent witnesses. It has also come in the statement of PW-12 that only closely related persons were examined by the police. Why the independent witnesses, though available, were not examined, has not been explained by the prosecution. Consequently, the prosecution has miserably failed to prove the case against the accused persons. The learned trial Court after considering the entire evidence, has rightly acquitted the accused. We, therefore, find no merit in this appeal, which is accordingly dismissed. Bail bonds are discharged.