
(2011) 07 SHI CK 0154
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 262 of 2002

State of H.P.

APPELLANT

Vs

Sarabjeet @ Sabhi and Others

RESPONDENT

Date of Decision : 07-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 25, 26
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2011) 07 SHI CK 0154

Hon'ble Judges : Sanjay Karol, J; R.B. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sanjay Karol, J.—For an offence, which is alleged to have been committed from 25.1.1999, accused were put to trial. In terms of judgment dated 4.2.2002 passed by Additional Sessions Judge, Una, H.P., in Case (RBT) No. 39 of 2000, titled as State of H.P. v. Sarabjeet @ Sabhi and Ors., accused stand acquitted of the charged offences.

2. It is the case of the prosecution that on 25.1.1999, Inspector Kashmir Singh, Police Station, Gagret, was informed by Sh. Kamal Kishore, Up-Pradhan, Gagret, that one Bihari Lal and Tarlochan had informed him of having seen a dead body lying in a "Dhank" below the Gagret-Hoshiarpur road. FIR No. 17 of 1999 (Ex.PW.2/B) dated 25.1.1999 was registered at Police Station, Gagret. Inquest report (Ex.PW.9/C) was prepared and body sent for postmortem to District Hospital, Una, where Dr. Praveen Bhardwaj (PW.9) conducted the postmortem and submitted report (Ex.PW.9/A).

3. During investigation, on 10.3.1999, an information was received from Head Constable Mohan Lal, Police Station Adampur, District Jalandhar (Punjab) that during the course of investigation of FIR No. 27 of 1999, dated 16.3.1999, registered at Police Station Adampur, accused Naveen Kumar had confessed of

having killed one Ajay Kumar, resident of Bisla, P.S. Banga, District Jalandhar (Punjab) and thereafter thrown his dead body in the area where one dead body was recovered by the police of Police Station, Gagret. SHO of Police Station, Gagret, visited Police Station at Adampur and gathered information with regard to the crime alleged to have been committed in the State of Himachal Pradesh. Investigation further revealed that accused Ravi Kumar had also made similar confession before SI Nirmal Singh (PW.13), Police Station, Adampur and accused Sarabjeet Singh had made confession with SI Dharam Pal (PW.12) SHO posted in Police Station, Bhojpur (Punjab). Investigation further revealed that real name of deceased Ajay Kumar was in fact Balkar Singh @ Baboo, son of Ajit Singh and was residing in village Bisla, District Nawanshahar (Punjab). He was working in Kuwait and had come to India on holiday. All the accused persons were known to him. The accused had hired a taxi from Santokh Singh (PW.8) for going to Delhi. Deceased was also present with them at that time. Gypsy No. PAW-1731 was hired by them. However instead of going to Delhi the vehicle was taken to Chintpurni on 20.1.1999 with the intention of robbing deceased Ajay Kumar of his money which he was carrying with himself. The accused persons, after killing him threw the dead body in the "Dhank" near Gagret. They also shared his clothes. Thereafter, they returned back and handed over the vehicle to its owner. During the course of investigation, accused Satwinder Singh, Naveen Kumar and Ravi Kumar made confessional statements (Ex.PW.10/A, Ex.PW.10/C, Ex.PW.10/B, respectively), before SHO Naresh Kumar (PW.6) admitting their guilt of having committed the crime. The accused persons also led the police to the place where they had kept the clothes of the deceased. The same were recovered by the police in the presence of independent witnesses. With the completion of investigation, challan was presented in the Court for trial.

4. The accused were charged for having committed offences punishable under Sections 302 read with Section 34 IPC, to which they did not plead guilty and claimed trial.

5. In order to prove its case, prosecution examined 17 witnesses and statements of the accused u/s 313 Code of Criminal Procedure were also recorded.

6. The Court below acquitted the accused of the charged offences, hence the present appeal.

7. The fact that body was recovered from near the "Dhank" on the Gagret-Hoshiarpur highway, falling within the territorial jurisdiction of the Police Station, Gagret is not in dispute. The fact that the body was identified by the close relatives of the deceased to be that of Ajay Kumar whose real name was Balkar Singh is also not in dispute. The fact that cause of the death was asphyxia due to strangulation as proved by Doctor Praveen Bhardwaj (PW.9) and postmortem report (Ex.PW.9/A), is also not in dispute.

8. Undisputedly, there is no eye witness to the alleged incident. The dead body was recovered on 25.1.1999 and the police learnt of the complicity of the

accused in the alleged offence only on 11.3.1999, when accused Sarabjeet Singh allegedly made a disclosure statement to SI Dharampal, SHO Police Station, Bhojpur (Punjab) during the course of investigation of FIR No. 17 of 1999, registered at Police Station Bhojpur (Punjab) and also the disclosure statement by accused Ravi Kumar made to SI Nirmal Singh (PW.13), SHO Police Station, Bhojpur, District Jalandhar (Punjab).

9. It is a settled position of law that where prosecution case is wholly dependent upon circumstantial evidence, before recording conviction Court must be firmly satisfied; (a) that the circumstances from which the guilt is to be drawn, have been fully established by unimpeachable evidence beyond a shadow of doubt; (b) that the circumstances are of a determinative tendency unerringly only pointing towards the guilt of the accused; and (c) that the circumstances taken collectively are incapable of explanation of any reasonable hypothesis save that of the guilt sought to be proved against him.

10. In the instant case, the circumstances leading to the guilt of the accused, as have been urged by Sh.R.K. Sharma, learned Senior Additional Advocate General, are that the accused had hired a taxi from Sh. Santokh Singh (PW.8) and had taken it to Chintpurni. Also some of the accused made confessional statements with regard to their complicity in the alleged crime which in fact led to the discovery of the clothes belonging to the deceased.

11. From the testimony of Sh. Santokh Singh (PW.8), it is evident that a vehicle was hired by the accused persons for being taken to Delhi, but however, his testimony does not clearly substantiate the fact that at that time deceased was in fact present with them. That apart, this witness himself had been involved in terrorist activity at some point in time. Further, this witness could not prove that vehicle bearing No. PAW1731 hired by the accused, in fact, was registered as a taxi. He could not place on record the receipt for the payment received by him as hire charges. Undisputedly, deceased was not known to this witness from before. He was a total stranger to him. Even in Court, he could not describe the physical features / characteristics of the deceased. Admittedly, the photographs of the deceased were not shown to this witness by the police during investigation, hence how could this witness narrate that the deceased was present at the time when vehicle was taken on hire, is not evident from the record. This totally renders the genesis of the prosecution case to be doubtful.

12. Further, from the testimony of Sh. Balwant Singh (PW.7), an employee working at the Toll Tax Barrier, Banch-Di-Hatti, Gagret, it is evident that complete entry, with regard to the vehicle which had entered the State of Himachal Pradesh, was not made. No doubt the numerical number of the vehicle which had entered the territory of Himachal Pradesh, is similar to the vehicle allegedly hired by the accused, but however, alphabetical description, identifying the State in which the vehicle was registered, is not entered in the register. Consequently, prosecution has failed to conclusively prove that the vehicle in question was either hired by the accused or that the same had actually entered the State of

Himachal Pradesh at the relevant time.

13. With regard to the confessional statements made by the accused, in our considered view, they are hit by the provisions of Sections 25 and 26 of the Indian Evidence Act, for the reasons that the accused were already under interrogation after their arrest by the police. That apart, confessional statement is with regard to the place where dead body was allegedly thrown by them. Now prior the date of disclosure of this fact, the body already stood recovered, hence not much reliance can be made on these statements.

14. With regard to the recovery of clothes of the deceased, we are of the view that the statements of the relevant witnesses do not inspire confidence. Independent witness to recovery of clothes, Sh. Gurbachan Singh (PW.10) and Sh. Dilbag Singh (PW.4), had no occasion or reason to be present at the spot during investigation. They belong to far-off place. They were not called by anyone.

15. Hence in our considered view, there is no circumstance, which would even remotely suggest the complicity of the accused to the alleged crime. Suspicion alone cannot be basis for convicting the accused. Conviction has to be based only on material which is trustworthy, reliable and evidence which is consistent, cogent, clear and beyond doubt. Further police has not been able to establish the motive behind the murder. Prosecution has not shown as to whether the deceased was possessing Rs. 13,000/-with him at the relevant time. No recovery of money has been effected by the police. In fact, there is no investigation in that regard either.

16. Thus, for the aforesaid reasons we do not find any reasons to interfere with findings arrived at by the learned Additional Sessions Judge. We also find that the prosecution case cannot be said to have been established / proved, beyond reasonable doubt, by leading clear, cogent, convincing and reliable evidence. Keeping in view the ratio of law laid down in Mohammed Ankoos and Ors. v. Public Prosecutor, High Court of Md. Ankoos and Others Vs. The Public Prosecutor, High Court of A.P., it cannot be said that the Court below has not correctly appreciated the evidence on record or that acquittal of the person has resulted into travesty of justice. No ground for interference is called for. The present appeal is dismissed. Bail bonds, if any, furnished by the accused are discharged.