
(2010) 11 SHI CK 0345

High Court of Himachal Pradesh

Case No: Criminal Appeal No. 223 of 1999

State of H.P.

APPELLANT

Vs

Mool Raj and Others

RESPONDENT

Date of Decision: Nov. 12, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 154, 161
- Penal Code, 1860 (IPC) - Section 302, 34

Hon'ble Judges: Sanjay Karol, J; Deepak Gupta, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Deepak Gupta, J.

This appeal is directed against the Judgment of the learned Additional Sessions Judge, Kangra at Dharamshala in Sessions Case No. 3-D/97 decided on 26.2.1999 whereby the accused were acquitted of having committed an offence punishable u/s 302 read with Section 34 IPC.

2. The respondent No. 1 is the father of the other two accused. The prosecution case is that they in furtherance of their common intention murdered Lekh Raj S/o Sita Ram resident of Khaniara on 13.2.1997 at about 7.00 p.m. It would be pertinent to mention that deceased Lekh Raj is none else, but the younger brother of accused No. 1 and the uncle of accused No. 2 and 3. There are no eye witness to the occurrence and the case against the accused is based on circumstantial evidence. The circumstances relied upon by the prosecution are:

1. That there was deep rooted enmity between the deceased and the accused and there were frequent fights over money between them and as such accused had a strong motive to commit the offence.

2. That the accused were last seen on 13.2.1997 at about 8.00 p.m alone on the road going towards their house.

3. That as per the disclosure statement Ext.PW6/D the weapon of offence which was a sickle (Darat) Ext.P-8 and blood stained shoes Ext.P-18 were recovered at the instance of Punish Padha, accused.

4. The prosecution also relied upon the recovery of various incriminating articles from the house of the accused.

5. Lastly, the prosecution relied upon the medical evidence to connect the accused.

3. The prosecution story is that on 14.2.1997 at about 7.00 a.m PW-2 Jagdish Chand noticed a dead body lying at a distance of 50 yards from the house of PW-4 Bipan Kumar. This body was lying by the side of a foot- path (Pacdandi). There were a number of cut injuries inflicted by a sharp edged weapon on the dead body. Immediately, on noticing the injuries Jagdish Chand called Bipan Kumar and they identified the body to be that of Lekh Raj. Thereafter, these two persons went to the house of Rajni Devi PW-6, who was the Pradhan of Gram Panchayat Khaniara. She in turn informed the police station about the fact that the dead body had been found at the spot. On the basis of this information given by Rajni Devi police recorded daily diary report Ext.PW-2/15/A. Thereafter, PW-26 Hira Singh Thakur informed the Additional Superintendent of Police PW-17 Upender Thakur. Hira Singh Thakur proceeded to the spot and recorded the statement of PW-2 Jagdish Chand u/s 154 Code of Criminal Procedure (Ext.PW-2/A). In this statement PW-2 also allegedly stated that deceased Lekh Raj had a disputed with accused No. 1 and his family members regarding slate quarries and other family properties and this dispute was a long standing dispute. In this statement PW-2 also stated that on 13.2.1997 the deceased Lekh Raj had a fight with accused No. 1 Mool Raj at the slate godown. After recording the statement PW-26 sent the same to the Police Station, Dharamshala for registration of the F.I.R. The police case is that thereafter the services of a sniffer dog alongwith handler PW-25 head constable Budhi Singh were taken and the sniffer dog proceeded to the house of the accused and sat near the cot inside the room of the accused. Other formalities were completed at the spot and the body of the deceased was sent for postmortem. Police also connect the accused with the offence on account of shoes Ext.P-12 which the accused No. 2 was allegedly wearing at the time of the occurrence and shirt Ext.P-10 and jacket Ext.P-13 which were alleged to be blood stained.

4. Postmortem on the body of the deceased was conducted and it was found that he had suffered a large number of grievous injuries with a sharp edge weapon and there is no doubt that he had been murdered.

5. PW-17 Upender Thakur, Addl. S.P. took over the investigation and it is alleged that accused No. 3 made a disclosure statement stating that he had kept concealed a Darat and shoes in the fodder in the upper portion of the cow-shed. Pursuant to this statement,

the aforesaid articles i.e. Darat Ext.P-8 and shoes Ext.P-18 were got recovered. On the basis of this material challan was filed against the accused. The committing magistrate committed the case to the Court of Sessions. The accused was charged with having committed offence punishable u/s 302 read with Section 34 I.P.C. They pleaded not guilty and claimed trial. The prosecution examined 26 witnesses in all. After trial, the accused have been acquitted. Hence, the present appeal.

6. As far as first circumstance is concerned, it would be pertinent to mention that PW-2 did not support the prosecution version. He while appearing in the witness box stated that the accused had cordial relations with deceased Lekh Raj. He was cross-examined and confronted with his statement Ext.PW-2/A but denied having made the same. PW-3 Subhash Chand was working as a Munshi with the deceased. Both the deceased and the accused were slate quarries contractor at Khaniara. This witness stated that the relations between the deceased Lekh Raj and the accused were strained for about 5-6 months prior to his death. He also stated that once the accused had beaten Lekh Raj near the slate godown, another time near the house of the accused and once in the fields. According to him these occurrences took place 2-3 months prior to the death of the deceased. PW-5 Mohinder Kumar Awasthi is a shop keeper. He knew both the parties and he was a tenant in the house of Lekh Raj. He also did not support the prosecution and according to him he never made a statement to the police that a quarrel had taken place between the deceased and the accused on 13.12.1996. He also denied the fact that he had ever made a statement to the police that accused Mool Raj had threatened Lekh Raj that he would be killed in case he touches the slates belonging to Mool Raj.

7. PW-6 Rajni is the Pradhan of the Gram Panchayat Khaniara. According to her deceased Lekh Raj had filed applications with her to resolve the dispute between him (the deceased) and the accused. She further stated that later Lekh Raj told her not to take any action on these applications and he had only sent the same for information of the Panchayat. PW-7 Kapoor Singh is also a slate quarry contractor. According to him on 13.2.1997 he alongwith one Harbans Rana was standing near the slate godown of Lekh Raj and was loading slates into a tempo from the godown of Lekh Raj. Then accused Mool Raj came there and both Mool Raj and deceased Lekh Raj quarreled over the ownership of the slates. Mool Raj pushed Lekh Raj and blood came out of the mouth of Lekh Raj. In cross-examination this witness admitted he had contested the elections to the H.P. Legislative Assembly against accused Mool Raj. PW-8 Harbans Singh Rana has given a similar version. This witness admitted that Mool Raj had earlier been Pradhan of the Panchayat. He also admitted that there was litigation between Mool Raj and him, which went upto High Court. It is apparent from his statement that the relations between him and accused Mool Raj were strained.

8. PW-9 Sunil Kumar has also made a statement that on 13.2.1997 an altercation took place between Mool Raj and Lekh Raj though according to him no physical fight took place. He also denied the fact that he ever made a statement to the police that Mool Raj had threatened to kill the deceased. PW-21 Nirmla Sharma is the sister of deceased Lekh

Raj and accused Mool Raj. According to her, her husband died in January 1977 and thereafter Lekh Raj deceased used to look after her. She has proved certain documents which are in the writing of the deceased. It is pertinent to mention that the witness who is the sister has not stated a word about any fight between two brothers.

9. This is the entire evidence on the first circumstance. The evidence does not lead to the irresistible conclusion that the relations between the brothers were so strained that accused Mool Raj and his sons would have killed the deceased. At best, it appears that the relations between two brothers were strained over the ownership of some slates which had been quarried from the slate mines. No doubt, some of the witnesses stated that some physical altercation between the two brothers took place on the afternoon of the fateful day but these witnesses by their own showing are not well disposed towards the accused and in fact their relations with the accused are inimical. As far as the other witnesses about the alleged occurrence are concerned they only talk about a verbal altercation having taken place with regard to the ownership of the slates but they denied that any physical fight took place. Therefore, the first circumstance to my mind has not been proved satisfactorily.

10. No doubt, there is some material on record to show that the deceased had been making complaints against the accused persons but this by itself would not be sufficient to show that the accused murdered the deceased. Even if, it is assumed that the relations between the parties were strained and there was some dispute between them, there is no material to show that the relations were so bad that the accused could have murdered their brother/uncle. In this behalf it is pertinent to mention that two of the documents relied upon by the prosecution are the applications Ext.PW-3/C and Ext.PW-3/D allegedly made to the Gram Panchayat by the deceased on 29.9.1996 and 28.10.1996. The prosecution sent these documents to the examiner of questioned documents alongwith admitted handwriting of the deceased but the examiner of questioned documents came to the conclusion that the material was not sufficient to compare the disputed handwriting and therefore, the prosecution has failed to prove that these two applications were in fact written by the deceased.

11. The other circumstance relied upon by the prosecution is that the accused were seen on 13.2.1997 at about 8.15 p.m on the road near village Khaniara. The first witness examined in this behalf is PW-3 who in his examination-in-chief turned hostile and stated that he did not meet any of the accused in the evening of 13.2.1997. He was declared hostile and in cross-examination admitted that he had stated to the police that on 13.2.1997 at about 8.15 p.m when he was returning to his home he had met all the accused near the road. He wished the accused but they did not reply. It would be pertinent to mention that in cross-examination he admitted that the road in question is a public path which also leads to the house of the accused persons. PW-4 Shri Bipan Kumar did not support the prosecution at all in this regard and denied having seen the accused persons at about 8.00 p.m. on 13.2.1997. When confronted with his earlier statement he again admitted that he met the accused at about 8.15 p.m on the common

path being used by everybody. According to the prosecution the accused were last seen on the public path at about 8 - 8.15 p.m. The dead body of the deceased was found next morning at about 7.00 a.m. All the witnesses have admitted that the path in question is a public path which is used day and night. If that be so, there is no explanation as to why the dead body was not recovered soon after 8.15 p.m. There is no evidence worth the name to show that the deceased was last seen with the accused at any time approximate to his death. PW-1 Dr. D.P. Swami conducted the postmortem on the deceased.

According to him the time between death and postmortem was between 4 hours to 20 hours. The postmortem was conducted at 12.30 afternoon. Therefore, as per his version death could have occurred between 4.30 p.m on 13.2.1997 till 8.30 a.m on 14.2.1997. Death according to him was instantaneous and he had found some semi-digested food in the stomach of the deceased. There is no evidence as to when the deceased had a meal but the meal must have been 2 to 4 hours prior to his death. There is no material to show that the deceased and the accused were seen together at any time in the evening and therefore this circumstance also does not stand proved.

12. The next circumstance is the recovery of shoes and the conduct of the sniffer dog. According to PW-25, who is the handler of the dog, he reached the spot at about 9.15 a.m and a dead body was lying at the spot. There were blood stains and foot prints near the dead body. The dog was made to take a smell from that place and thereafter went towards and stopped in front of the house of accused Mool Raj which is about 1/2 kilometer from the spot. The door of the house was opened and the dog entered the house. The dog also went to the room of the son of the accused. According to him the dog was only made to smell the place near the dead body and not the dead body. He was confronted with his statement recorded u/s 161 Code of Criminal Procedure Ext.DB wherein it was recorded that the dog was made to smell the dead body. According to him PW-17 Addl. S.P. was not present but a number of other persons were present. He further stated that when he reached the house of the accused the Addl. S.P. was not present and reached the spot only thereafter. PW-2 was the person who saw the body at 7.00 in the morning. He then called Bipan Kumar and both of them went to the house of Rajni Devi who first tried to telephone the Police Station but since the telephone line was dead the police could not be informed telephonically and thereafter Rajni Devi went to the Police Station. According to PW-4 Bipan Kumar, Rajni Devi had phoned the police and thereafter the police reached the spot.

13. PW-9 Sunil Kumar denied that when the police came to the spot there was any dog with them or that the dog led the police to the house of the accused or thereafter went inside the house of the accused. According to PW-17 he reached the spot at about 9.30 a.m. and Hira Singh was already present at the spot. He clearly stated that Mool Raj accused was present on the spot. He further stated that he did not know whether accused Punish and Rajnish were present there since he did not recognize them. He is unclear as to whether three accused were arrested. This witness does not say a word about the sniffer dog. Even the other witnesses of the spot are totally silent about the sniffer dog.

14. A dog when taken to the scene of the offence will not go to the house of the accused because the dog does not know who has murdered the deceased. The dog will have to be given an article to smell and then from that article, which he had smelt, he will take a trace of the smell and then to the person with whom he associates the smell. Admittedly, almost 100 persons had collected at the spot. As per PW-17 even the accused was present there. The dog handler has given two conflicting statements. Earlier he had stated that the dog was made to smell the body but later he stated that the dog was made to smell the area around the body. However, there is no evidence as to what was the material which led the dog to the house of the accused. More importantly, even after going to the house of the accused as per PW-25 no search was conducted immediately. If the dog had led the police to the house of the accused immediately a search would have been conducted. PW-26 the Investigating Officer at the relevant time stated that Additional S.P. PW-17 and dog handler Budhi Singh alongwith photographer reached the spot. Thereafter, the dog was made to take a smell to track the accused and led them to the house of the accused. Thereafter, they took into possession various articles lying on the spot. According to him later he was informed that the sniffer dog was near the house of Mool Raj. Then he went to the house of Mool Raj and found accused Mool Raj, Rajnish and wife of Mool Raj accused were at home. According to him he then searched the room and found accused Rajnish was wearing shoes Ext.P-12 which was taken into possession vide seizure memo Ext.PW-2/A and also took into possession shirt Ex.P-10 of accused Mool Raj because he saw some blood stains on the shirt and jacket Ex.P-13 which was lying underneath a cot having blood stains. The version of this witness is contrary to the version given by PW-17 and the dog handler. According to the dog handler when he reached the spot PW-17 was not even there and PW-17 is totally silent in this regard. However, PW-17 is clear that Mool Raj was present on the spot when he reached the spot. If that were true how did PW-26 find the accused inside the house. It also cannot be believed that the accused persons who are admittedly rich persons would keep on wearing the incriminating articles of clothing even when hundreds of persons had gathered near the body and everybody knew by that time that deceased Lekh Raj had been killed. In fact PW-4 Bipan Kumar and PW-6 Rajni Devi in addition to the Additional S.P. have stated that all the three accused were present on the spot when the police reached there. According to PW-26 these persons were not present on the spot and only two of them were found in the house. If these persons were present at the spot the sniffer dog should have led the police to them there and then or it is obvious that the sniffer dog did not associate them with the smell found near the body. This clearly shows that the entire story of the recovery of the shoes, shirt and jacket is totally false. In fact, it is not disputed that these seizure memos in respect of these articles were not prepared at the spot but in the Police Station at Dharamshala.

15. The other circumstance is the disclosure statement Ext.PW-6/D allegedly made by accused Punish Padha which led to the recovery of a Drat and shoes Ext.P-18. According to the prosecution, PW-17 Upender Thakur, Addl.S.P. took over investigation on 15.2.1997 and interrogated accused No. 3 in the presence of PW-6 Rajni Devi and PW-8

Harhans Singh Rana. During this investigation accused No. 3 made a disclosure statement that he had concealed a Darat and blood stained shoes in the fodder in the upper portion of his house. Thereafter he led the police to the spot and got recovered the said articles. PW-6 has not supported the prosecution version at all. According to her accused was not saying anything except that he was innocent. She also stated that Harbans Singh Rana was not present at the police station at that time. According to her no disclosure statement was made in her presence. However, she admits that when accused Punish and police reached in the house of the accused she also reached there and the accused brought out a Drat and shoes from the fodder kept in the upper story of the house but she states that they were not blood stained. PW-8 Harbans Singh Rana has also not supported the prosecution and he clearly stated that no disclosure statement was made in his presence.

16. Not only the disclosure statement has not been proved but the case of the prosecution obviously has no legs to stand upon. According to the prosecution on 14.2.1997 the sniffer dog had led them to the house of the accused and some articles were recovered at the instance of the accused. There is no explanation why the dog did not lead the police to the Drat and the shoes. Admittedly, the accused were arrested on 14.2.1997. Why was no effort made to search their house immediately? These questions have remained unanswered and unexplained. No doubt the deceased was murdered and the relations between the deceased and his brother were strained but this by itself is not sufficient to hold the accused guilty.

17. It is well settled law that in a case of circumstantial evidence the prosecution should prove all circumstances in such a manner that they should lead to only one inference i.e. the guilt of the accused and all the circumstances forming the chain should be established beyond reasonable doubt. Furthermore, the hypothesis of the guilt of the accused should be totally inconsistent with his innocence and there should be no chance of any other person being guilty. In the present case, it is not proved when exactly Lekh Raj was murdered. The body was found in the early hours of the morning. Except for a needle of suspicion there is no material to conclusively hold that it is the accused who committed the murder of Lekh Raj. Anybody would have committed the murder during the night. The accused have rightly been granted the benefit of doubt by the learned trial Court and we find no reason to set-aside the Judgment of the learned trial Court. The appeal is accordingly dismissed. The bail bonds furnished by the accused are ordered to be discharged.