
Mehar Singh Vs State of H.P.

Cr. Appeal No. 11 of 2009

Court: High Court of Himachal Pradesh

Date of Decision: June 3, 2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 154, 313#Penal Code, 1860 (IPC) â€”
Section 302, 454

Hon'ble Judges: Sureshwar Thakur, J; Rajiv Sharma, J

Bench: Division Bench

Advocate: Vinay Thakur, Advocate for the Appellant; R.P. Singh, Assistant Advocate General,
Advocate for the Respondent

Final Decision: Allowed

Judgement

Rajiv Sharma, J.

This appeal is instituted against the judgment dated 24.12.2008 rendered by learned Additional Sessions Judge, Sirmaur

District at Nahan in Sessions Trial No. 25-N/7 of 2007, whereby the accused/appellant (hereinafter referred to as the ""accused""
for the sake of

convenience) was convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/- and in
default of payment of

fine to further undergo imprisonment for a period of one year u/s 302 of the Indian Penal Code and was acquitted u/s 454 of the
Indian Penal

Code. The co-accused were acquitted of the charges framed against them.

2. The case of the prosecution, in a nut-shell, is that PW4 Reena Devi is wife of the accused Vijay Singh, who was brother of the
accused Mehar

Singh. According to PW4 Reena Devi, on 10.5.2007 at about 4.30 P.M., when she was present in her house along with her child,
the accused

Mehar Singh entered her room by breaking the bolt of the door. She, apprehending that she might be molested by the accused,
ran out of the

room in order to save herself, leaving behind her baby as no other family member was present in the house. She went to the
house of Jeet Singh,

but no one was found there. Thereafter, she returned back to her house and found that her baby was missing from the house and the accused

Mehar Singh was also not there. The husband of PW4 Reena Devi came back to house from the field. She narrated the incident to him.

Thereafter, search was conducted for the baby and at some distance from the house, smoke was noticed. PW4 Reena Devi along with her

husband and some other villagers went there and saw that her baby was lying there in burnt condition. The baby was found dead. The baby was

buried by other co-accused in order to cause disappearance of the evidence of the murder. On the basis of statement of PW4 Reena Devi, Ext.

PW4/A, an FIR, Ext. PW10/A was registered at Police Station Pachhad on 11.5.2007. The police visited the spot and prepared the spot map,

Ext. PW14/B. The burnt leaves and ash were collected and sealed in a parcel with seal impression "S" vide memo, Ext. PW3/A. The dead body

was exhumed. The photographs of the dead body were taken. Inquest report was prepared. Sample of soil from the spot was also collected. The

post-mortem was conducted by PW6 Dr. Piyush Kapila on 13.5.2007 vide post-mortem report, Ext. PW6/B. According to his opinion, the

deceased died as a result of asphyxia secondary to manual strangulation and 100% burns on the body were postmortem in nature. The accused

was arrested. On 15.5.2007, on personal search of the accused, two gas lighters, Ext. P3 and Ext. P4 were recovered. The case property was

sent to FSL Junga on 29.5.2007. The investigation was completed and after completing all the codal formalities, the police filed the challan in the

Court.

3. The prosecution examined as many as fourteen witnesses in order to support its case. Statements of the accused u/s 313 Cr. P.C. were

recorded. They pleaded innocence and claimed trial. The accused examined one witness in their defence.

4. Learned Additional Sessions Judge sentenced and convicted the accused u/s 302 of the Indian Penal Code and acquitted him u/s 454 of the

Indian Penal Code, whereas other co-accused were acquitted of the charges framed against them vide judgment dated 24.12.2008, as stated

hereinabove. Hence, the appeal.

5. Mr. Vinay Thakur, learned Advocate, has vehemently argued that the prosecution has failed to prove its case against the accused.

6. Mr. R.P. Singh, learned Assistant Advocate General has supported the impugned judgment dated 24.12.2008.

7. We have heard learned counsel for the parties and have also gone through the impugned judgment and record carefully.

8. PW1, Vivek Chandel, deposed that he was posted as SDM, Rajgarh in the year 2007. On 12.5.2007, he received a wireless message from

Police Station, Sarahan (Pachhad) that a dead body of child was buried in village Adgoo, which was to be exhumed. He visited the spot along with

Medical Officer, Dr. Anadi Gupta. Some villagers were also present there. The body was exhumed with the help of villagers. The dead body was

of a female child, which was wrapped in a red striped towel. The baby was wearing orange coloured new suit. The dead body was taken into

possession in the presence of Kinnori Devi and Om Parkash vide memo Ext. PW1/A.

9. PW2, Anadi Gupta, deposed that on 12.5.2007, on the direction of Medical Officer, Incharge, Civil Hospital, Sarahan, he visited village Adgoo

to conduct the exhumation of the dead body of a female child. Vivek Chandel, SDM, Bhagmal Thakur, SDPO Rajgarh, and other villagers were

present. The dead body of a female baby was exhumed, which was wrapped in a red striped towel. The baby was wearing orange coloured new

dress. The dead body was referred to Sarahan Hospital for conducting postmortem. The dead body was further referred to IGMC, Shimla

because the post-mortem could not be conducted at Sarahan Hospital.

10. PW3, Om Parkash, deposed that on 10.5.2007, he had gone to village Bhadot. On 11.5.2007, when he came back to his house, Kishan

Singh, Lambardar, informed him that the accused had burnt the child of Vijay Kumar and her body was buried in the village. He telephonically

informed the police at about 9.30/10.00 P.M.. The police visited the village at about 11.30 A.M. and recorded statement of Reena Devi on

12.5.2007. The police visited the spot in the presence of SDM, Doctor and SDPO. The police took into possession burnt leaves of pine from the

spot vide seizure memo, Ext. PW3/A. Police took into possession dead body of a female child vide seizure memo Ext. PW1/A. Police also took

into possession some soil near the place of burial vide seizure memo, Ext. PW3/B. Photographs of the spot were got clicked. In cross-

examination, he deposed that he had not seen the baby prior to her exhumation from the grave. He had given telephonic message to the police

from the house of Kulbhushan, resident of village Dharo, where all the accused were also present. Kulbhushan was also present there. No enquiry

was conducted from Kulbhushan by the police in his presence. He did not tell the police from whose house, he made a telephonic call.

11. PW4, Reena Devi, deposed that she delivered a female child on 13.4.2007. According to her, perhaps it was 11.5.2007, she was giving bath

to her baby. It was about 4.35 P.M.. She had bolted the door from inside. Mehar Singh, who was her brother-in-law, forced his entry in the room

by breaking the door. She ran outside the room in order to save herself because she was apprehending that he might molest her. At that time, no

family member was present in the house. She went to the house of Jeet Singh, who was related to her. However, no one was present in the house.

When she came back, she did not find her baby in the room. After some time, her husband came back from the field. She informed about the

incident. He started searching for the baby. Smoke was seen at some distance from her house, where she along with her husband and some other

villagers went. They noticed that the baby was lying there in a burnt condition and was dead. Next day police visited her house and recorded her

statement. She did not know the manner in which her baby was cremated. She also did not know that who had buried her child. She was declared

hostile. In cross-examination conducted by the learned Public Prosecutor she deposed that when the baby was found in burnt condition, her

clothes were also burnt. She did not know who had changed her clothes. She volunteered that she had become unconscious after seeing the dead

body of her baby. In cross-examination conducted by learned counsel for the accused, she admitted that she had not gone to the place where the

baby was alleged to have been buried. They had joint family and the accused Mehar Singh, Inder Singh, Vijay Singh and Sher Singh also used to

live in their family. She denied the suggestion that the bathroom was situated inside the kitchen of the house. However, the bathroom was adjoining

to the kitchen of the house. She had not gone to the field with her husband. She admitted that the baby was not taken away by the accused Mehar

Singh in her presence.

12. PW5, Leela Devi, deposed that she had sold two gas lighters for Rs. 20/- to the accused Mehar Singh. He had purchased the lighters about a

year ago. Police had shown her two lighters, out of which, she identified one lighter, which she had sold to accused Mehar Singh. It was of black

colour. She did not know that the police had sealed the lighters in the parcel. She was also declared hostile. In cross-examination conducted by the

learned Public Prosecutor, she denied that she had sold two lighters, which were shown to her by the police. She volunteered that she had sold

only one lighter to the accused, which was of blue colour. In cross-examination conducted by the learned counsel for the accused, she admitted

that the police procured her signature on the blank paper, Ext. PW5/A. Her shop was closed on 10.5.2007 as her husband was out of station and

she had not opened the shop. She admitted that such type of lighters were easily available in other shops also. She also admitted that in those days

the baby of Balwant Singh also expired and the dead body was buried.

13. PW6, Dr. Piyush Kapila, deposed that he conducted the post mortem on the body of the deceased. He issued report, Ext. PW6/B. According

to him, the deceased died as a result of asphyxia and secondary to manual strangulation. 100% burns were post-mortem in nature. He issued

postmortem report, Ext. PW6/B.

14. PW7, Bhagat Singh, deposed that on 15.5.2007, at the request of Police, he prepared Tatima of the place, Ext. PW7/A and Ext. PW7/B and

jamabandies, Ext. PW7/C and Ext. PW7/D.

15. PW8, Budh Ram, deposed that Patwari Bhagat Singh prepared Tatima of the spot in his presence. Thereafter, he along with police party went

to the shop of Hari Singh, where police showed two lighters to Hari Singh. Hari Singh informed the police that such type of lighters were available

in his shop, but he did not know from where these lighters were purchased by the accused. He was also declared hostile. In cross-examination

conducted by the learned counsel for the accused, he deposed that the lighters were recovered from the pocket of Mehar Singh by the police.

16. PW9, HC Choli Ram, deposed that on 12.5.2007, he at the request of SHO Pachhad visited the spot at Village Dharo. He took photographs

of the spot, where burnt bushes and leaves were present vide Ext. P17 and Ext. P18. He also took photographs of the broken door bolt, Ext. P19

and the place from where the dead body was excavated, Ext. P20 to Ext. P23. He also took photographs of the dead body vide Ext. P24 to Ext.

P26. He conducted the videography of the spot during the process vide Ext. P37. In cross-examination, he deposed that he did not know from

which side the photograph of the door was taken by him on the spot.

17. PW10, ASI Satveer Singh, deposed that on 12.5.2007, SI Shayam Lal deposited with him two packets, which were sealed with seal

impression ""S"" along with sample seal. On 29.5.2007 vide R.C. No. 6/07, dated 29.5.2007, he handed over the articles to Constable Khushal

Chand for being deposited at FSL Junga, who after depositing the same handed over the receipt to him.

18. PW11, Constable Khushal Chand, deposed that on 29.5.2007, MHC Satveer Singh vide R.C. No. 6/007 dated 29.5.2007 handed over to

him two sealed parcels with seal impression ""S"" and one sample seal for being deposited at FSL Junga for analysis. He after depositing the same at

FSL Junga handed over the receipt to the MHC.

19. PW12, Constable Virender Singh, proved Rapat No. 13 dated 11.5.2007 recorded at the instance of SHO Shayam Lal, vide Ext. PW12/A.

20. PW13, Moti Singh, deposed that he did not know about the death of baby of Vijay Kumar. He was also declared hostile. In cross-

examination conducted by the learned Public Prosecutor, he denied that on 11.5.2007, at about 8.00 A.M., he came to know about the death of

baby of Vijay Kumar, thereafter, he visited the place where the body of the baby was buried. In cross-examination conducted by learned counsel

for the accused, he deposed that he was not on visiting terms with the accused Inder Singh as well as his family members for the last about 9 and

10 years due to criminal and civil litigations between them.

21. PW14, Inspector Shayam Lal, deposed that on 11.5.2007, telephonic information was received at the Police Station from Om Parkash that

the accused Mehar Singh killed and burnt a baby in village Dharo. He along with other police personnel went to the spot and recorded the

statement of Reena Devi vide Ext. PW4/A, which was sent through HHC Shailender Kumar to Police Station for registration of the case. He

conducted the spot inspection of the house from where the baby was taken away by the accused. He prepared the spot maps Ext. PW14/A and

Ext. PW14/B. From the spot, burnt leaves and ash were taken into possession vide seizure memo, Ext. PW3/A. The dead body was taken into

possession vide seizure memo, Ext. PW1/A. Post mortem report was obtained. On 15.5.2007, two gas lighters, Ext. P3 and Ext. P4 were

recovered from the accused. During the investigation, he obtained Tatimas, Ext. PW7/A and Ext. PW7/B and Jamabandies, Ext. PW7/C and Ext.

PW7/D of the spot of the occurrence. In cross-examination, he deposed that he had not recovered the alleged bolt of the door on the spot nor he

prepared the seizure memo of the same. He had not shown bath room and toilet of Reena Devi in the site plan. He volunteered that there was no

bath room and toilet existing in the house of PW4 Reena Devi. He had called the villagers of village Dharoo for investigation. They were twenty

five in number, who said that the daughter of Vijay Singh and Reena Devi was missing from their house. He did not remember names of villagers,

who were called by him to the Police Station, Pachhad.

22. DW1, Daneshwar Singh, testified that Reena Devi is his uncle's daughter. Name of his uncle is Deep Ram. Reena Devi requested to him and

his uncle Deep Ram that her father-in-law Inder Singh did not give share of her husband Vijay Singh from the joint land as she and her husband

intended to reside separately from in-laws. He and his uncle, Deep Ram requested Inder Singh to give the share to Vijay Singh and Reena Devi

along with separate house, but he refused to do so and said that he had to solemnize the marriage of his other sons. According to him, on

15.5.2007, the police called the villagers in Police Station, Pachhad. He along with villagers visited the Police Station. They were about thirty in

number. They requested the SHO, Police Station Pachhad, to lodge the report as the daughter of Vijay Singh was missing. In cross-examination,

he deposed that Reena and her husband Vijay Singh were not having cordial relations with the members of their family including the accused.

23. According to FIR, Ext. PW10/A, the incident occurred on 10.5.2007. It was registered at the instance of PW4 Reena Devi. However, when

Reena Devi appeared in the witness box as PW4, she deposed that perhaps it was 11.5.2007, when she was giving bath to her baby. She had

bolted the door from inside. The accused forced his entry in the room by breaking bolt. She ran outside the room to save herself apprehending that

he might molest her. No family member was present in the house. She went to the house of one Jeet Singh. However, none was present in the

house of Jeet Singh. Thereafter, she came back to her room, but she found her baby missing. PW14, Inspector Shayam Lal, in cross-examination,

categorically stated that he had not recovered the bolt of the door on the spot nor he prepared the seizure memo to this effect. It is not expected

from a woman to leave behind her baby alone in such a situation. PW4 Reena Devi ran away apprehending that the accused might molest her. She

had not stated that the accused tried to molest her. In her cross-examination, she categorically admitted that baby was not taken by the accused in

her presence. The family was joint and even as per statement of PW4 Reena Devi, accused Mehar Singh, Inder Singh, Vijay Singh and Sher Singh

were members of her family. According to her, bath room was situated adjoining to the house. However, PW14 Inspector Shayam Lal, deposed

that he had not shown the bath room and toilet of Reena Devi in the site plan. He volunteered that no bath room and toilet existed in the house of

PW4 Reena Devi. It casts doubt on the site plan prepared by the police.

24. PW3, Om Parkash, Up-Pradhan, Gram Panchayat Dilman, deposed that he was told about the incident by Kishan Singh, Lamberdar. It was

merely a hearsay. Kishan Singh, Lamberdar, has not been examined by the prosecution. According to PW3 Om Parkash, he informed the police

telephonically at about 9.30/10.00 P.M.. from the house of Kulbhushan, where all the accused were present. Kulbhushan was also not examined.

It is highly improbable that PW3 Om Parkash would call the police in the presence of the accused.

25. There is another angle from where the matter is required to be looked into by us.

26. Statement of PW4, Reena Devi, was recorded u/s 154 Cr. P.C. vide Ext. PW4/A, on the basis of which FIR, Ext. PW10/A was recorded.

According to the contents of the FIR, PW4 Reena Devi stated that when she came back to house, she discovered that the accused Mehar Singh

had taken away her baby. She raised an alarm. Her husband and other villagers came to the house. Thereafter, she narrated the incident to them.

Her husband and villagers started searching the accused Mehar Singh and her baby. After some time, she saw fire at a place, which was 200

meters away from the village. They went there and found the dead body of her child. When Reena Devi appeared in the witness box as PW4, she

only stated that when she came back, she found her baby missing. Accused Mehar Singh had left the house. When her husband came from the

field, then she informed him about the incident. Thereafter, he started searching for the baby. This statement is at variance with the contents stated

in the FIR. In the FIR, it was specifically stated by PW4 Reena Devi that she raised an alarm and her husband and villagers came to the spot.

27. According to the site map, Ext. PW14/A, cowshed of Mitar Singh has been shown at point ""D"". House of Inder Singh has been shown at

point ""C"". House of Jeet Singh has been shown at point ""E"" and that of Moti Singh at point ""G"". Cowshed of Mitar Singh and houses of Jeet Singh

and Moti Singh were adjoining to the house of PW4 Reena Devi. PW4 Reena Devi deposed that she went to the house of Jeet Singh, but nobody

was present there. It is not believable that nobody was present in the village during day time. Moreover, when PW4 Reena Devi apprehended that

the accused might molest her, she would have gone to house of Moti Singh. Had she raised hue and cry, her husband, who was working in nearby

field and occupants of the houses adjacent to her house, would have attracted towards the spot. In her statement recorded u/s 154 Cr. P.C., Ext.

PW4/A, she deposed that when she came back from the house of Jeet Singh and found that her baby was missing, she raised alarm and thereafter,

her husband and villagers reached the spot. It is, thus, apparent that the husband of PW4 Reena Devi and co-villagers were in the vicinity of the

house and if she had raised the alarm when the door was broken, it would have definitely been heard by husband of PW4 Reena Devi and other

co-villagers. Thus, version of PW4 Reena Devi that the accused had entered the room forcibly and thereafter, she ran outside the house

apprehending that he would molest her is highly improbable.

28. DW1, Daneshwar Singh, testified on 15.5.2007, the police called the villagers at Police Station, Pachhad. He along with villagers visited the

Police Station. They were about thirty in number. They requested the SHO, Police Station Pachhad, to lodge the report as the daughter of Vijay

Singh was missing. His statement is duly corroborated by PW14 Inspector Shayam Lal, who deposed that he had called the villagers of village

Dharoo for investigation. They were twenty five in number, who said that the daughter of Vijay Singh and Reena Devi was missing from their

house. However, surprisingly, PW4 in her statement recorded u/s 154 Cr. P.C., Ext. PW4/A, she had not stated that the villagers had approached

the police that her baby was missing.

29. According to the prosecution case, the dead body of the baby was found at a distance of about 200 meters from the house of PW4 Reena

Devi. The dead body was dug up in the presence of PW1 Vivek Chandel, SDM, PW2 Dr. Anadi Gupta, PW3 Om Parkash, and PW9 HC Choli

Ram. 100% burns were found on the dead body. According to PW1 Vivek Chandel and PW2 Dr. Anadi Gupta, the baby was wearing orange

coloured new suit. PW4 Reena Devi, in cross-examination conducted by the learned Public Prosecutor, categorically stated that when the baby

was found in burnt condition, her clothes were also burnt. However, she did not know who had changed her clothes. Admittedly, the baby was

wearing orange coloured new suit when her dead body was exhumed. This could only be done by PW4 Reena Devi, her mother. Her explanation

was only that she had become unconscious after seeing dead body of her baby and she did not remember who had changed clothes of baby. This

also casts doubt on the prosecution version the manner in which the alleged offence has been committed.

30. After the close scrutiny of the evidence and record, it is not understandable why the accused would kill a new born baby, that too of her sister-

in-law (Bhabhi). The prosecution has failed to prove that the crime was committed by the accused and none else. The trial court has convicted the

accused on a mere superfluous approach without in-depth analysis of the relevant facts.

31. Accordingly, the appeal is allowed and the judgment of conviction and sentence dated 24.12.2008, u/s 302 of the Indian Penal Code, is set

aside. The accused is acquitted of the charges framed against him. The fine amount, if any deposited by him is ordered to be refunded to him.

Since the accused is in jail, he be released forthwith, if not required in any other case.

32. The Registry is directed to prepare the release warrant of the accused and send it to the Superintendent of the Jail concerned in conformity

with this judgment forthwith.