

Mohd. YasIn Vs. State of H.P.

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Court : Himachal Pradesh

Decided On : May-18-2007

Reported in : 2007CriLJ3923

Judge : Surjit Singh and; Sanjay Karol, JJ.

Appellant : Mohd. Yasin

Respondent : State of H.P.

Disposition : Appeal dismissed

Judgement :

Sanjay Karol, J.

1. This appeal is directed against the judgment dated 19-1-2006 passed by Presiding Officer, Fast Track Court, Mandi, District Mandi, H. P., whereby the appellant has been convicted of an offence under Section 302 of the Indian Penal Code (hereinafter referred to as 'IPC') and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/- and in default thereof further imprisonment for a period of one year. The case of the prosecution as borne out from the record is as under:

The incident is stated to have occurred on 1-9-2004 at about 11.10 a.m. at Chamda Mor, Kotrupi, (Police Station, Joginder Nagar) in the jungle below the

National Highway. Deceased Kishan Chand had gone to his field, below the road, near the forest to protect the crop from the monkeys. Durga Dutt (P.W. 1) at about 9.30 a.m. along with Lineman of Telephone Department had gone to Chamda Mor, Kotpuri, Police Station Joginder Nagar for repairing the telephone line. They were joined by Anil Kumar (P.W. 2) who is also commonly known as 'Pandit-Ji' in the village. P.W. 1 and P.W. 2 were helping the Lineman (Purshotam) in setting the telephone wire in order at the pole on the road near the Nallah and in vicinity of the place of occurrence of crime. At about 11.30 a.m. they heard cries from the jungle below the road as 'Pandit Ji Pandit Ji'. Upon hearing the cries, Durga Dutt (P.W. 1) and Anil Kumar (P.W. 2) proceeded towards the jungle from where the cries were coming and noticed that the accused was sitting on the chest of Kishan Chand; had put a string (Nara) around his neck and was strangulating him to death. After hearing the noise, Anil Kumar (P.W. 2), Durga Dutt (P.W. 1) and Bhagat Singh (P.W. 4) along with other persons came on the spot and saw the accused running away towards Joginder Nagar side but he was chased and nabbed by the aforesaid persons and was tied with the rope in the jungle. The accused was also given beatings by the local people. An information was received by the Police Station, Joginder Nagar that a dead body was lying in the Nallah near Kotripi which was duly recorded in the daily diary vide entry No. 14 dated 1-9-2004 (Ext. PN). Acting on the said information Dina Nath ASI (P.W. 13) proceeded to the spot along with MHC Jawala Ram.

2. ASI Dina Nath (P.W. 13) recorded the statement of Durga Dutt (P.W. 1) under Section 154, Cr. P.C. (Ext. PA). He sent the statement (Rukka) through Head Constable Jawala Ram for registration of the case to Police Station, Joginder Nagar and carried out the investigation at the spot by taking photographs Exts. P-22 to P-24 and filled in the inquest reports (Form No. 24.35 Ext. PG and Form No. 25.35(1B) Ext. PH). Narinder Kumar (P.W. 14) Station House Officer reached the spot and took over the investigation of the case. He carried out the personal search of the accused in the presence of the witnesses and prepared the recovery memos (Ext. PC and Ext. PE). The articles recovered were the clothes of the accused, registration and insurance policy of his motor cycle, 'syringe', small bottle of liquid, shoes and personal belongings. Soon thereafter, he went to Kotrupi Nallah on the main road where a parked motor cycle bearing registration No. CE-

03N-6456 along with its key and papers and other material was found. It was taken into possession vide seizure memo (Ext. PD). Since the accused had sustained injury due to the beatings given by the public, he was got medically examined at Community Health Centre, Joginder Nagar, FIR dated 1-9-2004 (Ext. PN) was registered.

3. From the statement of the witnesses, it has come on record that at about 9-30 a.m. Durga Ram (P.W. 1) went to Chamda Mor where Lineman (Purshotam) met him and they were joined after some time by Anil Kumar (P.W. 2) who is also commonly known as 'Pandit Ji in the village. While the telephone line was being repaired, Durga Dutt and Anil Kumar at about 11.30 a.m. heard cries from the jungle situated below the National Highway. Both Durga Dutt and Anil Kumar went towards the jungle on the down hill and after covering a distance of about 30 mtrs, they found Kishan Chand (deceased) lying on the ground with face upward and accused sitting on his chest/body strangulating the deceased by putting a Nara string around the neck of the deceased. Having heard the cries, other persons including Bhagat Singh (P.W. 4) came near the site of incident. Having seen all of the said persons, the accused ran away from the site towards Joginder Nagar side and he was noticed wearing T-shirt bearing No. 36 on its back by witnesses. The aforesaid witnesses raised hue and cry and ran after the accused to catch him. The accused was nabbed by the witnesses and the other villagers, who tied him with the rope near the place of occurrence. The villagers also gave beatings to the accused.

4. From the post-mortem report (Ext. PJ), it is clear that on the body of the deceased there was a sloping ligature mark prominent over right side neck from the angle of mandible in front and extending posteriorly on neck. The Chemical Examiner Report (Ex. PL) concluded that the cotton drawstring (Nara) (Ext. P1) could have been used to make a noose for strangulation.

5. The appellant was challaned and after complying with the provisions of Section 207, Cr. P.C. was charged with the offence under Section 302, IPC. The accused did not plead guilty and was, therefore, put on trial. In all statements of 14 witnesses were recorded by the trial Court. The statement of accused under

Section 313, Cr. P.C. was also recorded. After considering the entire material on record, the Court below held the appellant guilty of offence under Section 302, IPC, and convicted and sentenced him accordingly.

6. Learned Counsel for the appellant has contended that the case of the prosecution is false and that the appellant has been wrongly convicted for the following reasons (i) Mohan Lal, informant as per daily diary report, Ext. PN, has not been associated with the investigation and is also not a witness; (ii) Bhagat Singh, (P.W. 4) who claims to be an eye-witness is contradicted by his statement made to the police under Section 161, Cr. P.C. in material particulars, therefore, much reliance cannot be placed on the same statement; (iii) Statement (Ext. PA) of Durga Dutt (P.W. 1) is not a statement under Section 154, Cr. P.C. but a statement under Section 161, Cr. P.C. (iv) Statements of witnesses are self-contradictory and contradictory to each other and, therefore, much credence cannot be given to them, thereby demolishing the case of the prosecution; (v) Contradictions are in the statements of Durga Dutt (P.W. 1), Anil Kumar (P.W. 2) and Bhagat Singh (P.W. 4) with regard to the occurrence of offence, the length of string with which the deceased was allegedly strangled and the distance of Nallah from the place of crime make the prosecution version highly doubtful; (vi) The witnesses do not support the case of the prosecution with regard to recovery of articles near the body; (vii) The behaviour of the witnesses is unnatural; (viii) The time and place of occurrence is doubtful; (ix) Withholding of Medico Legal Report of the accused; and (x) Non-examination of FSL expert.

7. Before we deal with the submissions made by the learned Counsel for the parties, we may notice the defence of the accused. In the statement recorded under Section 313, Cr. P.C. the accused has taken defence that he has been falsely implicated. He was on his way to Jammu and on the National Highway just about 35 kms. from Mandi, he stopped his motorcycle near the Nallah to ease himself as he was suffering from loose motions. The moment he stopped his bike and got down, people raised hue and cry saying 'Pakro-Pakro'. He was beaten mercilessly and he became unconscious. The case has not been properly investigated. The witnesses have falsely deposed being local and on account of community bias.

8. At this stage, it is relevant to point out that defence of the accused is falsified from the statement of Bhataku Ram (P.W. 3), who has stated that at about 6-30 a.m. on 1-9-2004 when he was going to the fields to protect the crop from the monkeys he had noticed the motorcycle standing by the side of the Nallah and a person wearing T-shirt having mark No. 36 on the back of shirt was roaming near the Nallah. At about 11.20 a.m. when he heard noise of people that some murder had been committed he rushed to the place from where noise was coming where several persons including some of the witnesses were already present and saying that murder had been committed by the accused. He found that the accused was the same person who was roaming around the nallah in the morning and whose bike he had also seen. Importantly there is no cross-examination on this point at all. Therefore, it is clear that the accused was seen around the place of occurrence at 6-30 a.m. on 1-9-2004 i.e. the date of offence and his presence near the scene of offence at least 6 hours before the crime is established.

9. Durga Dutt (P.W. 1) has stated that after hearing cries 'Pandit Ji - Pandit Ji' from the jungle below the road, both he and Anil Kumar (P.W. 2) proceeded downhill towards the site and noticed accused sitting on the body/chest of the deceased. The deceased was lying with his face up and the accused had put string (Ext. P1) around his neck. They called Bhagat Singh (P.W. 4) by name who was grazing his cattle in the jungle nearby and the accused ran away towards the Joginder Nagar side. In order to catch him they ran after him and also raised alarm, as a result of which number of people came and the accused was nabbed. In the cross-examination he has stated that on the date of incident the accused was wearing T-Shirt.

10. Version of Anil Kumar P.W. 2 is to the same effect and he has further elaborated that T-shirt, which the accused was wearing had mark 36 No. on its back. Bhagat Singh P.W. 4, who was grazing his cattle nearby in the jungle, has stated that he heard noise that 'Khun Ho Gaya - Khun Ho Gaya Kishan Kumar Ko Mar Diya and the culprit was wearing shirt having mark No. 36 on the back of the shirt'. On hearing the noise he also make a loud cry and rushed to the place from where the noise was coming. He also tried to Gherao the culprit who was nabbed by certain persons. He with the help of other persons tied hands and feet of the

accused with a rope. He was told by Anil Kumar (P.W. 2) that the accused had put the string around the neck of the deceased, as a result of which he was strangulated to death. Sarvan Kumar (P.W. 5) has stated that after knowing about the death of Klshan Chand he went to the spot where accused had been caught by the people present. He is the witness of seizure of articles belonging to the accused including T-shirt Ext. P-2 taken into possession by the police vide seizure memo Ext. PB. He has testified that T-shirt Ext. P-2 is the same, which the accused was wearing on the day of incident and was taken into possession by the police. In the cross-examination, the witness has further clarified that T-shirt was taken from the accused, who wore other clothes thereafter, which the accused was carrying in his bag. From Ext. PB, it is clear that T-shirt was having No. 36 on its back portion. Therefore, the presence of the accused is also established at the site of occurrence of offence by this fact. Durga Dutt (P.W. 1) Anil Kumar (P.W. 2) and Bhagat Singh (P.W. 4) had also seen the accused at the time and place of occurrence. All the aforesaid witnesses have not only established the presence of the accused but also the fact that accused had run away from the place of occurrence and was caught and then tied with a rope. The police took him into custody as is clear from the statement of ASI Dina Nath (P.W. 13) and Narinder Kumar, SHO (P.W. 14).

11. Dr. Bharat Bhushan Katoch (P.W. 7) who conducted the post-mortem on the dead body of deceased Krishan Chand has opined the cause of death as asphyxia due to strangulation by a ligature and the ligature mark found on the body could have been caused by string like Ext. P1. There is no cross-examination on this point. An oblique suggestion has been put in the cross-examination to this witness as to whether it could be a case of suicide to which there is a denial. This witness has further stated that looking to the injury, the death could have resulted in less than five minutes. From the report of the State Forensic Science Laboratory (Ext. PL) where the string (Ext. P1) was sent for examination, it has been found that the length and the supporting capacity of the cotton drawstring was examined in the laboratory and it was concluded that it could be used to make a noose for strangulation. It has come on record that string was around the neck of the body of the deceased, which is evident from the statement of Durga Dutt (P.W. 1), Anil Kumar (P.W. 2), Bhagat Ram (P.W. 4), ASI Dina Nath Sharma (P.W. 13), SHO

Narender Kumar (P.W. 14) and also the post-mortem report. Thus, it is clear that deceased had died due to strangulation caused by cotton string Ext. P1.

12. No motive has been attributed to the police officials for the alleged false implication of the appellant, which is also suggestive of the fact that the defence taken by the accused is not true. In fact the defence taken by the accused in his statement under Section 313, Cr. P.C. has not even been suggested to any of the witnesses. If the accused was only a passer-by on his way to Jammu then there was no reason for him to be in and around the place of occurrence between 6.30 a.m. and 11-30 a.m. the approximate time of occurrence of offence.

13. No doubt Ext. PN reflects that it was Mohan Lal, who telephonically informed the police that dead body was lying in the Nallah at Kotrupi and he has not been examined as a witness, but in view of the fact that there is unimpeachable overwhelming evidence on record pointing to the guilt of the accused, non-examination of Mohan Lal as a witness cannot be termed as a lapse fatal to the prosecution case. There is no cross-examination on the point as to why Mohan Lal was not involved in the investigation of the case. In fact in the cross-examination of Durga Dutt (P.W. 1) it has come that Mohan Singh of Village Masaum and Bhataku were present when the accused was nabbed along with others. Therefore, Mohan Lal was not the only witness present at the site. Bhataku Ram (P.W. 3) was also there. Therefore, there was no need to examine Mohan Lal also. There is ocular and circumstantial evidence to show the presence of the accused and commission of the offence by him.

14. Minor improvement in the statement of Bhagat Singh (P.W. 4) over the statement under Section 161, Cr. P.C. is not fatal to the case of the prosecution. Further there is no cross-examination about the alleged improvement and the witness has not been confronted with his previous statement (under Section 161, Cr. P.C).

15. The plea of the accused that the statement of Durga Dutt (P.W. 1) as recorded under Section 154, Cr. P.C. (Ext. PA) is actually a statement under Section 161, Cr. P.C. because of the recording of entry Ext. PN in the daily which amounts to first information of the commission of crime, is not acceptable for the reason that

daily diary report only records that there is a dead body lying in the Nallah at Kotrupi and a request for initiation of proceedings by visiting the spot has been made. It was only an initial report about the presence of dead body and did not suggest even remotely that since offence had been committed. It contained no details of the cause and circumstances of the death. The statement of Durga Dutt (P.W. 1), who was an eye-witness, was the first one recorded by ASI Dina Nath (P.W. 13) at the spot and on the basis of this statement formal FIR was registered.

16. Witnesses Sarvan Kumar (P.W. 5) and Mohan Singh (P.W. 6), who were the witnesses to recovery and seizure of the articles belonging to the accused have fully supported the case of the prosecution. Sarvan Kumar (P.W. 5) has stated that search of the accused was conducted by the police in his presence amongst others and on search articles belonging to the accused were seized vide memo Ext. PB. Similarly, Mohan Singh (P.W. 6) has also stated that he was associated in the investigation and the police inspected the motorcycle and took possession thereof along with belongings of the accused in his presence vide seizure memo Ext. PD. He has further stated that -another bag lying at some distance from the dead body at the place of occurrence was also seized vide seizure memo Ext. PE. Importantly, there is no cross-examination at all of the witnesses on these points. There is also no cross-examination on the point that witnesses did not see any article/bag near the body of the deceased. Therefore, it would not be correct to state that the witnesses have not supported the case of the prosecution with regard to the recovery of articles near the dead body.

17. An effort has been made to demolish the case of the prosecution on the ground that the version of the witnesses is neither credible nor possible. According to the accused the place of occurrence is at a distance of approximately 300-400 mts. from the pole on the highway where P.W. 1 and P.W. 2 heard the cries and proceeded below the road to that place. It was not possible for them either to see or hear the cries as Bhagat Singh, who was grazing his cattle nearby, did not either see or hear the cries of the deceased. This case has not been put to the witnesses in cross-examination. Further much depends on the topography of the area and in a hilly terrain, particularly, where there were nallahs and gorges it is quite likely that one may or may not hear the sound at a particular point and may

also not see even from a distance of 30 ft. There is no cross-examination on the point that road and the nallah as also the telephone pole are not visible from the place of occurrence, which was below the road level.

18. With regard to the non-examination of FSL expert, who has given his opinion vide Ext. PL, the provisions of Section 294, Cr. P.C. lays down the presumption with regard to the reports of the experts specified therein.

19. In our view, the following circumstances lead to one and only one hypothesis that the appellant is responsible for causing the death of Krishan Chand:

(i) Appellant was there at the spot for a period of about 5-6 hours commencing from 5.30 to 6.00 a.m.

(ii) The deceased was murdered during the aforesaid time of 5-6 hours when the appellant's presence was noticed on the spot.

(iii) Appellant has offered no explanation whatsoever for his presence on the spot for these 5-6 hours.

(iv) Appellant was spotted at the site of the crime around 11.00 a.m. and on noticing that he had been spotted, he tried to run away.

(v) Appellant was given a chase while trying to flee and was nabbed.

(vi) Defence plea, viz. the appellant happened to pass by the National Highway on his motorcycle and it was then that he was stopped by the police and taken into custody, is proved to be false.

20. Each of the circumstance is a link in the chain, which does not leave any reasonable ground consistent with the innocence of the accused or a hypothesis consistent with the innocence of the accused. Not only this the aforesaid circumstances lend an assurance to the ocular version given by Durga Dutt (P.W. 1), Anil Kumar (P.W. 2) and Bhagat Singh (P.W. 4) despite there being some contradictions in the testimony of eyewitnesses.

21. No doubt there are some variations/ contradictions in the statements of witnesses Durga Dutt (P.W. 1), Anil Kumar (P.W. 2) and Bhagat Singh (P.W. 4), but the same are minor and hence not fatal to the case of the prosecution. Durga Dutt says that after hearing the cries from the jungle he along with Anil Kumar rushed towards the site from where the cries was coming, Anil Kumar was first to proceed and he followed him 10 to 15 minutes later, whereas Anil Kumar in his statement says that he along with Durga Dutt proceeded towards site of occurrence. Durga Dutt says that he called Bhagat Singh by name, whereas Bhagat Singh says that he came after hearing loud cries. In our view these are not very serious contradictions. Perusal of the statements of all the three witnesses undoubtedly result into a common version (i) all three of them reached the place of occurrence (ii) Durga Dutt (P.W. 1) and Anil Kumar (P.W. 2) saw the accused sitting on the body/chest of the deceased and tightening the string around the neck of the deceased. All three of them saw the accused run from the place of occurrence and they all ran after him to nab him. In our view the behaviour of the witnesses is not abnormal or unnatural. In this view of the matter, the testimony of the witnesses is unimpeachable. The discrepancy does not discredit the testimony. There is no material contradiction to make the statements unworthy of credence.

22-23. The contradiction with regard to length of the string, however, in view of the statement of expert as already discussed hereinabove, is also minor. However, the contradiction is immaterial because even after identifying Ext. PA (cotton drawstring) the witnesses have referred to the same as 2 1/2 ft. In view of unimpeachable medical evidence, there is no doubt with regard to time and place of occurrence of the offence. Presence of the deceased prior to the commission of offence at the place of occurrence is also clear from the statements of Anil Kumar (P.W. 2) and Bhataku Ram (P.W. 3).

24. It was submitted by the learned Counsel for the appellant that the appellant had been got medically examined because he had certain injuries on his person, but Medico Legal Report has been withheld because it renders the prosecution version highly doubtful. It was submitted that the time lag between the receipt of the injuries and the Medico Legal examination was such that it indicated that the

injuries were received by the appellant in the manner claimed by him, viz. after he was stopped by the police on the spot around 1 p.m. and then beaten up by the policemen as also the people. The evidence which has been discussed hereinabove at length establishes beyond reasonable doubt that the aforesaid defence plea of the appellant is not correct.

25. Bhataku Ram (P.W. 3) has his land near the site of occurrence. The presence of this witness, therefore, amongst other witnesses is natural. Purshotam, lineman, died during trial, therefore, he could not be examined as a witness.

26. Perusal of cross-examination of the witnesses would reveal that there is nothing to infer that any of the witnesses were having any animosity with the accused or had any other motive to falsely implicate him. In fact the accused was not even known to any of the witnesses prior to the date of incident.

27. Therefore, the only irresistible conclusion which can be drawn is that Kishan Chand was killed by the accused by strangulating him with the string.

28. In view of the above discussion and findings, the appeal is dismissed.