

State of Himachal Pradesh Vs. Devinder Singh and Others

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Court : Himachal Pradesh

Decided On : Jun-22-2011

Judge : Surinder Singh

Appeal No. : Cr. Appeal No. 593 of 2003

Appellant : State of Himachal Pradesh

Respondent : Devinder Singh and Others

Judgement :

SURINDER SINGH, J. (Oral)

1. The State felt aggrieved by the acquittal of the respondents, hereinafter to be referred as 'the accused persons', recorded by the learned trial Court, in Criminal Case No.15/2 of 2001, decided on 29th October, 2003, for the offences punishable under Sections 41, 42 of the Indian Forest Act and Sections 379 and 120-B of the Indian Penal Code, hence the State is in appeal before this Court.

2. In short, the prosecution story can be stated thus. During the intervening night of 5th/6th October, 1999, PW9 Sub Inspector Chura Mani had put a Naka at forest-check-post, Chandol, with the help of his subordinate police officials as well as the officials of the Forest Department, including PW11 Rajesh Kumar Block Officer. At about 3.40 am, a Maruti Car bearing registration No.DDD-5099 came from the side of village Sanaura. It was signaled to stop nearby forest

check post. It was slowed down, the driver gave 2/3 dippers to pass a signal to vehicle No.HPA-8686 which was behind it, but thereafter accelerated towards Salech. The occupants of the vehicle were allegedly identified by PW3 Albel Singh, Forest Guard as Ravinder Singh and Rajinder Kumar, respondents residents of Haripur Dhar. The Naka-party proceeded towards the truck which stopped at a distance of about 200 meters from them. On seeing Naqa party the occupants of the vehicle taking the benefit of darkness ran away. Out of them, accused Devinder Singh and Kuldip Singh were allegedly identified by PW11 Rajesh Kumar Block Officer. They were chased, but could not be apprehended. Thereafter the truck which was covered with Tarpaulin was checked. It was found having 70 scants of "Deodar" without any hammer mark. Its measurement was carried out. Photos Ext.P.1 to P.12 were also taken on next day. Case property was taken into possession alongwith the truck.

3. The police also prepared the site plan Ext.PW9/A. The truck along with the case property was taken to Rajgarh.

4. Ruqa Ext.PW2/A was sent for the registration of the case, which culminated into registration of FIR Ext.PW9/B.

5. On 7th October, 1999 proceedings under Section 52-A of the Forest Act were drawn. The truck and the slippers were handed over to Rattan Singh, Forest Guard on Sapurdari vide memo Ext.PW4/B.

6. On 10th January, 2000, Devinder Singh, Kuldip Singh, Mohinder Singh and Jahmohan were arrested. The other accused were also arrested by PW10 Sub Inspector Sangat Ram.

7. The challan after its completion was presented in the court against the accused persons for the offences aforesaid.

8. The driver of the truck namely, Vijay Kumar had absconded, as such he was declared Proclaimed Offender.

9. The accused persons were charge-sheeted. They abjured their guilt and claimed trial.

10. To prove its case, the prosecution examined its witnesses and the accused persons were also examined under Section 313 of the Code of Criminal Procedure whereby the circumstances which were found attendant upon against each of them were put. They denied the same and alleged their false implication in the case. However, no evidence in defence was led. The learned trial Court jettisoned the prosecution evidence and at the end of trial, they were acquitted, hence the present appeal by the State.

11. Shri A.K. Bansal, learned Additional Advocate General, vehemently argued that the learned trial Court read the evidence between the lines and had wrongly drawn the inference from the evidence for passing the acquittal of the accused persons. He further ventilated that PW11 Rajesh Kumar, Block Officer, has clearly stated that he had identified Devinder Singh and Kuldeep Singh while fleeing from the spot, which establishes the mental culpable state of said persons and at least the case stands proved against them. With respect to others, it is argued that Ravinder Singh and Rajinder Kumar were found to have escaped in the Maruti-van. They hatched conspiracy alongwith other co-accused persons, including Jagmohan, who are the local residents of the place where the alleged incident had taken place. Therefore, the offences charged stand clearly made out against each of the accused persons.

12. On the contrary S/Shri Varun Thakur, Amar Deep and Pawan Sharma, learned Counsel for the accused persons supported the impugned judgment of acquittal passed by the learned trial Court and further ventilated that the prosecution has failed to prove the case against the accused persons beyond reasonable doubt. Therefore, there is no ground to interfere with their acquittal.

13. I have given my thoughtful consideration to the rival contentions of the parties and have carefully and meticulously reappraised the evidence on record and in my opinion, the learned trial Court has rightly appreciated the prosecution evidence as it is not only contradictory, but is also discrepant, inconsistent and unreliable.

14. It is a settled law; however, strong the suspicion may be it cannot take the place of proof. The prosecution has to stand on its legs and is obliged to prove

its case beyond a reasonable doubt, to which it has failed in the instant case. PW9 Sub Inspector Chura Mani was heading Naka-party at the forest barrier. If his statement is seen as a whole, it reveals that it was pitch-dark at the relevant time. The Marutivan in which Ravinder Singh and Rajinder Kumar were allegedly sitting, was not having light inside when it did not stop on the spot and crossed them. Therefore, there was no occasion to identify them. Further, PW3 Albel Singh, Forest Guard, is also claimed to have identified them. In cross-examination, Albel Singh stated that when the car in question crossed the forest barrier its inner lights were off. It is not understood as to how he was able to identify them. Even if for the arguments sake they were identified, but what is their connection with the vehicle in which timber was found loaded, stands not established. Pertinently, Albel Singh stated that he did not notice the truck during the intervening night of 5th/6th October, 1999, which followed the said Car. But however, he saw the truck in the morning when it was being driven from Chandol by the police. He did not say anything about its checking during the night by the police.

15. Further, PW2 Head Constable Raghubir Singh, PW6 Constable Rajinder Kumar, PW7 Roshan Lal, Forest Guard, PW8 Tapinder Pal, Forest Guard and PW9 SI Chura Mani are concerned, all of them categorically stated that when they reached near the truck which was at a distance of about 200-300 meters from the forest check-post they saw that the persons on seeing the Naka-party ran away. It was pitch-dark. However, according to them only PW11 Rajesh Kumar Block Officer was able to identify two of them as Devinder Singh and Kuldip Singh respondents.

16. Now the statement of PW11 Rajesh Kumar, requires to be noticed. Although he stated that he was able to identify above two persons, but he stands shattered in his cross-examination. He was asked to identify these persons out of the persons present in the Court, but miserably failed to identify any of them. He also stated that none of them were known to him prior to the alleged incident, and stated that their names were supplied by the staff member to him. He also stated that while fleeing in the darkness he could not see the face of any of them as their backs were towards them. When confronted with the

aforesaid situation, he expressed his inability to identify any of accused persons. Therefore, his testimony cannot be relied upon even to fasten the guilt on Devinder Singh and Kuldip Singh.

17. Further, it is not understood what magic stick the police had with them to find out culpability of accused Mohinder Singh and Jagmohan as they cannot be linked with offences charged. Further, identification of Rajinder Singh and Ravinder Singh as stated by PW3 Albel Singh, Forest Guard is also absolutely unreliable and except the statements of the aforesaid witnesses there is absolutely nothing on record to connect the accused persons with the alleged offence.

18. Therefore, on the scrutiny of the evidence, I do not find that the prosecution has been able to prove the case against the accused persons beyond reasonable doubt. Hence, the acquittal of the accused persons cannot be interfered with. As such, the appeal sans merit and is accordingly dismissed.

19. The respondents are discharged of their bail bonds entered upon by them at any stage during the proceedings of this case.

20. Send down the record forthwith.

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