

State of H.P. Vs. Datu Ram and Others

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Court : Himachal Pradesh

Decided On : Jun-15-2011

Judge : R.B. Misra & Sanjay Karol

Appeal No. : Cr. Appeal No. 489 of 2001

Appellant : State of H.P.

Respondent : Datu Ram and Others

Judgement :

SANJAY KAROL, J. (Oral)

1. For an offence, which is alleged to have been committed on 13/14.6.1992, accused were put to trial. In terms of judgment dated 28.05.2001 passed by learned Addl. Sessions Judge, Shimla, Camp at Bilaspur, in Sessions Trial No. 14-S/7 of 2001/94 titled as State of H.P. vs. Datu Ram and Ors., accused stand acquitted of the charged offences.

2. It is the case of the prosecution that 10 days prior to 13.6.1992, Ram Parkash (deceased) who at night was coming to his village saw all the accused i.e. Kamaljeet, Balak Ram and Datu Ram breaking the lock of a trunk on the road side. Said trunk was stolen by these persons. When deceased inquired as to what they were doing, he was told that if he disclosed about it to anyone he would face dire consequences. On 13th of June, 1992 at about 11.15 A.M., Sh. Jasbir Singh (PW-6) nephew of Ram Parkash and Conductor of truck No. HIB-549 was coming

home from Behal side. He met accused outside the house of accused Datu Ram. Ram Parkash was also with them. When he asked Ram Parkash to accompany him to the house he was told that he would come later. However, Ram Parkash did not come home that night. Following morning at about 6 A.M., (PW-6) and Jeet Ram went in the truck towards Kiratpur side. When they reached near village Massewal, they saw a dead body lying in the centre of the road, which was identified to be that of Ram Parkash. Sh. Jasbir Singh turned the truck towards his village and on way met his another uncle Raghbir Singh (PW-7). Both of them came to the spot where the dead body was lying. The body was then put into the truck in the presence of accused Datu Ram and other persons standing at the spot. Datu Ram accompanied Jasbir Singh and Raghbir Singh in the truck to the village. Accused Datu Ram prevented Jasbir Singh and Raghbir Singh from reporting the matter to the police on the ground that it would lead to complications. The body was found in the State of Punjab whereas the deceased and the accused resided in the State of Himachal Pradesh. However, the matter was brought to the notice of the Panchayat authorities who got the matter reported to the police at Kiratpur to the effect that deceased Ram Parkash was mentally deranged and his dead body was removed from the spot and taken home. Complaint was lodged by Ujagar Singh. Police reached at the spot and on their asking the dead body was again taken back to the place where it was originally found. Mohinder Singh, SHO and Ram Chand, Vice President of the village were present at that time. Police at Anandpur Sahib (Punjab) took the body for post mortem which was got conducted at Civil Hospital, Anandpur Sahib by Dr. Daljit Singh (PW-1). Thereafter the body was handed over to the relatives for cremation. F.I.R. (Ext.DB) dated 14.6.1992 was registered with Police in the State of Punjab. Superintendent of Police, Ropar vide written communication (Ext.PW-6/A) informed the Superintendent of Police at Bilaspur that the crime had been committed in the State of Himachal Pradesh and consequently F.I.R. (Ext.PW-5/A) dated 5.9.1992 was registered at Police Station, Bilaspur. The matter was investigated by the police in Himachal Pradesh. During the course of investigation, Mohinder Kaur (PW- 3) wife of deceased Ram Parkash also filed a private complaint in the Court of Chief Judicial Magistrate, Bilaspur. The Chief Judicial Magistrate recorded the preliminary evidence of the witnesses and committed the

case to the court having competent jurisdiction. Investigation in the matter was completed by the police and challan presented in the Court for trial. Private complaint and the challan filed by the police were taken-up together.

3. Investigation revealed that accused persons were guilty of having killed deceased Ram Parkash and thereafter destroyed the evidence.

4. Accused Datu Ram, Balak Ram and Kamaljeet were charged for having committed offences punishable under Sections 302, 201 read with Section 34 IPC and accused Baldev was charged for having committed an offence punishable under Section 201 read with Section 34 IPC. The accused did not plead guilty and claimed trial.

5. In order to prove its case prosecution examined 13 witnesses and the statements of the accused under Section 313 Cr.PC were also recorded. Court below acquitted the accused of the charged offences. Hence, the present appeal.

6. In the instant case, admittedly there is no witness who has seen the occurrence of the incident. Prosecution case primarily rests on circumstantial evidence.

7. It is a settled position of law that in such like cases burden is on the prosecution to prove that the chain of evidence furnished by the circumstances is not only complete but leave no reasonable doubt resulting into innocence of the accused. Circumstances should be such so as to be conclusive in nature and consistent only with the hypothesis of guilt of the accused and not being capable of being explained by any other hypothesis. The only irresistible conclusion should be that the accused alone are perpetrators of the crime.

8. In the instant case, out of 13 prosecution witnesses, testimonies of Mohinder Kaur (PW-3), Jasbir Singh (PW-6), Raghbir Singh (PW-7) and Geeta Ram (PW-10) are relevant. Rest others are formal witnesses or police officials.

9. Combined reading of the testimonies of the aforesaid witnesses established one fact that prior to the occurrence of the alleged incident, accused were allegedly found to have been involved in a case of theft which fact was witnessed by deceased Ram Parkash. The element of animosity between the accused and the

complainant party is also established on record. Animosity is a double edged sword. As such, in these circumstances, statements of the witnesses need to be scrutinized carefully and with more circumspection.

10. Circumstance, as made out by the prosecution, against the accused, is of last seen. According to Sh. R. K. Sharma, learned Sr. Addl. Advocate General, this circumstance by itself is sufficient to prove the guilt of the accused. According to him, accused were seen in the presence of the deceased in front of the liquor vend of accused Datu Ram, in the night of 13th June, 1992 by Jasbir Singh (PW-6). PW-3 has deposed that one Harbansi Devi also witnessed the same. This fact is so narrated by PW-3 in her complaint made in the Court of Chief Judicial Magistrate as also her statement CW-1. Now neither the prosecution nor the complainant has examined Harbansi Devi in court. Why so? has not been explained. She was the best person to have narrated the entire incident in Court. She would have revealed the truth as to whether deceased was seen in the presence of the accused in the night of 13th June, 1992, being the night prior to the fateful day on which the dead body of the deceased was recovered. Significantly, in Court PW-3 does not narrate this fact. Why so? is also not clear. Incidentally, she lodged the complaint after a period of more than five months. In Court, it is not her case that the police had not discharged their duties in carrying out the investigation in a fair manner. Why did she remain quiet for more than five months to disclose the fact that Harbansi Devi had witnessed the incident, is not evident from the record.

11. Further, we feel that testimony of PW-6 in relation to the said circumstance, does not inspire confidence. He does not appear to be a truthful witness. Undisputedly, the matter was reported to the police on 14.6.1992 itself. In his statement to the police, there is no reference of this fact either. Further, Jasbir Singh also did not report this fact to other authorities within the State of Himachal Pradesh. Absence of this fact in his statement is thus conspicuous, rendering the prosecution version to be extremely doubtful.

12. Apart from this, no other circumstances have been indicated to us to show the complicity of the accused with the alleged crime. However, additionally it is argued that accused Datu Ram tried to mislead PW-6 and PW-7 by telling them not to

correctly inform the police about the discovery of the body on the road. This circumstance also cannot be said to be borne out from the record. Complaint lodged by Jasbir Singh with the police in Punjab was subsequently withdrawn by them on the asking of accused Datu Ram stating that the same had been wrongly recorded. Admittedly, accused Datu Ram had participated in all the ceremonies including the funeral ceremony of deceased Ram Parkash. His continuous presence renders the prosecution version about his complicity in the crime to be doubtful. At no point in time did the complainant suspect him. Also PW-6 did not tell the police that he had seen the accused along with the stolen trunk which was not even recovered during investigation.

13. We also notice that prosecution has not recovered the weapon of offence. Accused have also not been linked with the destruction of any such weapon. Suspicion alone cannot be a ground for conviction.

14. We also notice that Devinder Singh (PW-4) has in no uncertain terms deposed that deceased Ram Parkash was in fact seen having dinner in the house of one Khushi Ram where feast was organized on account of some function. Possibility of the deceased, after purchasing liquor from the shop of accused Datu Ram having gone to the house of Khushi Ram and then gone alone towards the place where the dead body was recovered cannot be ruled out. It is no body's case that deceased was seen in the house of Khushi Ram along with the accused persons. The dead body was recovered at a distance of 2-3 kms. away from the shop of accused Datu Ram. Neither it is the case of the prosecution nor have any one disclosed that the accused carried the body of deceased Ram Parkash to the place where it was recovered. None has also seen the accused giving beatings to deceased Ram Parkash.

15. The alleged incident of discovery of theft took place 10 days prior to the date of crime. Nothing has come on record to show that since then accused persons had been conspiring to take revenge against deceased Ram Parkash.

16. Prosecution has also not associated independent witnesses who were present at the time of recovery of the dead body. Clues in relation to the death, present on the spot, if any, have also not been investigated and brought on record.

17. Thus, for the aforesaid reasons, we find that prosecution has failed to link the accused to the charged offences.

18. Accused have had the advantage of having been acquitted by the Court below. Keeping in view the principles laid down in Mohammed Ankoos and others vs. Public Prosecutor, High Court of Andhra Pradesh, Hyderabad, (2010) 1 SCC 94, it cannot be said that the Court below has not correctly appreciated the evidence on record or that acquittal of the accused 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.

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