

SUPREME COURT OF INDIA

State of H.P.

Vs.

Rakesh Kumar

CrI.A.No.1494 of 2003

(S.B. Sinha J.)

06.05.2009

JUDGEMENT

Dr. Mukundakam Sharma, J.

1. This is an appeal against the judgment and order of acquittal of the accused-respondent by the Division Bench of the Himachal Pradesh High Court whereby the High Court acquitted the accused-respondent after he was found guilty under Section 302 of the *Indian Penal Code* (for short the 'IPC') by the Trial Court, Mandi, Himachal Pradesh. Pursuant to the aforesaid order of conviction the trial court sentenced the respondent to undergo rigorous imprisonment for life and also to pay a fine of Rs. 5,000/- and in default to undergo simple imprisonment for six months.

2. Being aggrieved by the aforesaid order of conviction and sentence, the respondent filed an appeal from jail before the Himachal Pradesh High Court which was heard and at the end, the aforesaid order of acquittal was passed which is under challenge in this appeal.

3. Before we deal with the contentions raised by the counsel appearing for the parties, it would be necessary to notice the facts which are the basis of the aforesaid criminal case.

“Yash Pal (PW-3) was working as Chowkidar in Income Tax Office at Mandi. Sanjiv Rana (PW-2) was working as Clerk in Agriculture Land Development Bank, Mandi. Both of them were related to each other and also hail from the same village. Gagnesh Kaushal (PW-1) was one of their friends and was running his painter's shop at Paddal. On 13.1.2000, which was a Lohri day, the deceased Sanjiv Sen arranged for a party in the house of Yash Pal (PW-3) and invited Gagnesh Kaushal, Sanjiv Rana and Sharwan Kumar to the said party. While they were sitting in the room of Yash Pal, both Yash Pal and his wife had gone for dinner at Mohalla Paddal from where they returned at about 9.30 p.m. It has come out in evidence that before return of the couple, all the aforesaid persons had consumed a bottle of liquor. Music was also being played at a low pitch. Wife of Yash Pal (PW-3) had gone to bed after having dinner as she was not well. It is also disclosed from the evidence on record that on the

same day i.e. on 13.1.2000 when the aforesaid party was on, and around 10.30 p.m. the accused knocked at the door of the aforesaid room upon which it was opened by Sharwan. The respondent entered the room and asked as to who had called his name. Being so asked Gagnesh Kaushal (PW-1) stated that nobody had called him and the respondent was asked to leave the room. While going out of the room, the respondent further told Gagnesh Kaushal (PW-1) to make the deceased understand otherwise his head would be smashed. Saying so, the respondent left the room. Gagnesh Kaushal (PW-1) claimed to have bolted the room from inside and they were dancing in the said room when around 12 to 12.30 p.m. in the midnight of 13th and 14th January, 2000, the deceased Sanjiv Sain opened the door and went out for urination. It is alleged that at that time and as soon as he opened the door and was in the process of going out, he was stabbed by the respondent with a sharp-edged weapon in chest. According to Gagnesh Kaushal (PW-1), an attempt was made by him i.e. PW-1 and others to nab the culprit immediately after the victim was stabbed but the respondent fled away from the spot. Gagnesh Kaushal (PW-1) at that stage asked Sharwan to press the chest of the deceased so as to control the bleeding. He also brought cotton from the nearby house and gave first aid to the deceased. He also rushed out to arrange a three wheeler. When the deceased was taken to Sanjivan Hospital, Mandi by him, and Sharwan, others were sent to inform the villagers. As no doctor was available at the aforesaid private hospital, the deceased was taken to Zonal Hospital, Mandi.

They reached the hospital at about 1.20 a.m. and as soon as they reached the hospital, the deceased was given treatment by the doctor but he died around 1.30 a.m.”

4. In view of the aforesaid situation, Gagnesh Kaushal (PW-1) the informant went to the police station and lodged the first information report which is marked as Annexure P-1/A. After receipt of the aforesaid first information report, the police started investigation during the course of which a post-mortem examination was done on the body of the deceased. The post-mortem report was exhibited in the trial court and marked as Exhibit P-8/A. After completion of the investigation, the police submitted charge-sheet against the respondent and charge was framed against the respondent. During the course of the trial, a number of prosecution witnesses were examined. However, the defence examined none. The respondent was examined under Section 313 of Cr.PC and after completion of the trial, the trial court found the petitioner guilty of the offence alleged against him. After passing an order of conviction, the Additional Sessions Judge sentenced the respondent to undergo rigorous imprisonment for life under Section 302 of IPC and also to pay a fine of Rs. 5,000/- and in default of payment of the fine to undergo simple imprisonment for a further period of six months.

5. The trial court, while rendering the judgement of conviction and sentence, examined the statements of all the prosecution witnesses. In the light of the submissions made by the defence counsel before him, the trial court, however, found that there was no major discrepancy in the statements of any of the witnesses so as to cast a shadow of doubt in coming to the conclusion that any of the three witnesses namely Gagnesh Kaushal (PW-1),

Sanjiv Rana (PW-2) and Yash Pal (PW-3) is not trustworthy. The trial court found that the statements given by all the three witnesses corroborate each other on material particulars and that the flow of their version appears to be quite natural. Prosecution witnesses Gagnesh Kaushal (PW-1), Sanjiv Rana (PW-2) and Yash Pal (PW-3) had stated in their statements that they had seen the accused causing blow in the chest of the deceased.

6. The aforesaid version of Gagnesh Kaushal (PW-1), Sanjiv Rana (PW-2) and Yash Pal (PW-3) was challenged by the defence counsel and in that view of the matter their deposition was critically analysed by the learned Additional Sessions Judge.

“He, however, found that it was apparently clear that all the aforesaid three prosecution witnesses were present in the house of Yash Pal (PW-3). They were, therefore, natural witnesses.

The deceased Sanjiv Sain after opening the door was stepping out to urinate when he was immediately given a blow on his chest. At that stage the deceased came running inside and he named the accused for stabbing him in his chest. Gagnesh Kaushal (PW-1) has also stated that he along with Sanjiv Rana (PW-2) and Yash Pal (PW-3) tried to chase the accused but he ran away from the spot. The aforesaid statement of the deceased which was relied upon by Gagnesh Kaushal (PW-1), Sanjiv Rana (PW-2) and Yash Pal (PW-3) was in the nature of a dying declaration made to them. There is no reason why the said statement cannot be taken into consideration as a relevant fact. There is also no reason as to why the deceased would falsely implicate the accused to save the real assailant. The trial court also relied upon the discovery of the knife containing human blood at the instance of the accused from his house.

After detailed appreciation of the evidence on record, the trial court came to the conclusion that accused had committed the offence under Section 302 of IPC and he was sentenced accordingly.”

7. The accused-respondent preferred the appeal as against his order of conviction and sentence. The aforesaid appeal was taken up by the Division Bench of the Himachal Pradesh High Court. The High Court, on appreciation of the evidence on record, held that there are a number of discrepancies in the statements of the prosecution witnesses namely Gagnesh Kaushal (PW-1), Sanjiv Rana (PW-2) and Yash Pal (PW-3) and that no order of conviction and sentence could be passed on the basis of such vital discrepancies in the statements. Therefore, the High Court by its judgment and order dated 08.08.2003 allowed the appeal filed by the respondent and set aside the order of conviction and sentence passed by the learned Additional Sessions Judge, Mandi and directed that the respondent shall be set at liberty forthwith.

8. Aggrieved by the aforesaid order of acquittal of accused- respondent, the present appeal is filed by the State of Himachal Pradesh.

9. Mr. J.S. Attri, learned counsel appearing for the appellant, during the course of his submission before us, minutely took us through the evidence on record and pointed out that the discrepancies on which the High Court had relied upon cannot be stated to be very vital. He submitted that there was no reason as to why the aforesaid witnesses as also the deceased would rope in the accused-respondent as no enmity is proved between them. It was also submitted by him that the High Court was not justified in putting undue reliance on absence of blood on the floor, as stated by Inspector Ram Swaroop Sharma, Investigating Officer (PW-13), as according to the witnesses namely Gagnesh Kaushal (PW-1), Sanjiv Rana (PW-2) and Yash Pal (PW-3), the deceased immediately after being stabbed came back to the room where he was put on the cot.

10. There is no dispute with regard to the fact that the presence of Gagnesh Kaushal (PW-1), Sanjiv Rana (PW-2) and Yash Pal (PW-3) in the room was natural and that they could see that the deceased was stabbed in his chest immediately after he opened the door upon which he came back and told them about the incident. He was put on the cot and the place of the wound was pressed with cottons. In that view of the matter it would be natural that no blood was found on the floor but the same was found on the cot and in the clothe that the deceased was wearing on that day. Therefore, acquittal of the accused-respondent on the said ground, in our considered opinion, was not justified.

11. Yash Pal (PW-3) was the tenant of the room where Gagnesh Kaushal (PW-1), Sanjiv Rana (PW-2) and Yash Pal (PW-3) were present at the time of occurrence along with the deceased. It has come in evidence that about two hours before the incident the accused came to the place and abused the deceased upon which he was sent back at 10.30 p.m. i.e. after two hours of that incident the deceased received the aforesaid injury on his chest when he was going out of the room by opening the door.

“Immediately after receiving the said injury he came back to the room and told all present including Gagnesh Kaushal (PW-1), Sanjiv Rana (PW-2) and Yash Pal (PW-3) that he has been stabbed by the accused. Immediately thereafter he was given first aid and after arranging for a three wheeler he was taken to the hospital where he could not be given any treatment and, therefore, he was taken to the Zonal Hospital, Mandi where he died. It is also established from the record that immediately thereafter, the incident was reported to the police.”

12. One of the contentions which was raised by the respondent was about Gagnesh Kaushal (PW-1) first going to the hospital instead of going to the police station. According to him, the said conduct was not natural in as much as the police station is located in between the hospital and the place of occurrence.

“The aforesaid stand of the accused-respondent also found favour with the High Court. We, however, find no merit in such contention for the reason that when a person receives an injury and is still alive it is the natural conduct of the person accompanying him to see that his life could be saved.

Therefore, the first endeavour is always to take the person to the hospital immediately so as to provide him medical treatment and only thereafter report the incident to the police.

Every minute was precious and, therefore, it is natural that the witnesses accompanying the deceased first tried to take him to the hospital so as to enable him to get immediate medical treatment. Such action was definitely in accordance with normal human conduct and psychology. When their efforts failed and the deceased died they immediately reported the incident to the police. In fact, it was a case of quick reporting to the police.”

13. The accused also took up a plea of alibi. The trial court disbelieved the said plea of alibi for which reasons are given in the judgment of the trial court. According to us, the aforesaid plea of alibi is without any merit as the presence of the respondent on the date of the incident at the place of occurrence is conclusively proved as Gagnesh Kaushal (PW-1), Sanjiv Rana (PW-2) and Yash Pal (PW-3) have categorically stated in their evidence that the accused-respondent had gone to the room where they were having a party at about 10.30 p.m. Therefore, the aforesaid plea of alibi has no basis at all.

14. There is another submission of the counsel appearing for the respondent who submitted before us that the order of acquittal should not be interfered with as no independent witness was examined. It was submitted by him that the driver of the three-wheeler and also the brother of the deceased who had gone to the hospital were not examined. We find no reason as to why and how the evidence of the aforesaid two persons was relevant. The brother of the deceased went to the hospital where the deceased was being given medical treatment and, therefore, whatever he has heard of the occurrence was from a third party and was, therefore, hearsay. So far as the driver of the three-wheeler is concerned, he only carried the deceased to the hospital and, therefore, his evidence was also not material.

15. Gagnesh Kaushal (PW-1), Sanjiv Rana (PW-2) and Yash Pal (PW-3) are the natural witnesses who have categorically deposed about the involvement of the accused in the incident.

“The blood stained knife was also recovered at the instance of the accused from his house on the basis of the disclosure statement made by the accused-respondent. When we consider all the evidence that stand out and when they are co-related it is established that the accused-respondent had stabbed the deceased in his chest when he was going out of the room after opening the door to urinate. As a result of the said injury received at the end of the accused, the deceased died in the hospital.”

16. Consequently, the order of acquittal passed by the High Court is bad and illegal. We hereby set aside the said order of acquittal and restore the order of the trial court. We pass an order of conviction and sentence against the respondent in terms of the order passed by the trial court. The bail bond of the respondent is hereby cancelled. The accused-respondent shall surrender immediately to serve out the remaining term of sentence.

17. The appeal is allowed to the aforesaid extent.