

HIGH COURT OF HIMACHAL PRADESH**Date of Decision: 20th April, 2024****Bench: Justice Vivek Singh Thakur, Justice Virender Singh**

Cr. Appeal No. 284 of 2011

STATE OF H.P. ...APPELLANT**VERSUS****PREM RAJ @ I.D. ...RESPONDENT****Legislation:**

Section 302 of the Indian Penal Code, 1860

Sections 154, 313 of the Code of Criminal Procedure, 1973

Section 27 of the Indian Evidence Act, 1872

Subject: Criminal appeal against the acquittal of the respondent in a case involving the alleged murder by pushing the deceased from a cliff after a physical altercation.

Headnotes:

Murder Acquittal Upheld – Criminal Appeal against Sessions Court Acquittal – Respondent acquitted of charges under Section 302 IPC – High Court finds no conclusive evidence of commission of the offence by the respondent, raises concerns about the credibility and sufficiency of prosecution evidence – Observes unnatural behavior and inconsistent testimonies of key witnesses – Benefit of doubt extended to respondent – Appeal dismissed. [Paras 1-30]

Evidence and Witness Testimony – Analysis of witness credibility and evidence reliability – High Court finds major inconsistencies in witness testimonies and procedural lapses in investigation – Noted discrepancies in witness accounts of the incident, including the behavior and actions of the victim and respondent – Lack of direct evidence linking respondent to the crime scene with definitive forensic evidence – Prosecution fails to prove the case beyond reasonable doubt. [Paras 13-29]

Judicial Approach to Doubt and Suspicion – Emphasizes that suspicion, regardless of degree, cannot replace proof in criminal law – Benefit of doubt necessarily given to the accused, especially in cases of serious allegations such as murder – Importance of credible, reliable, and conclusive evidence highlighted in criminal proceedings. [Para 29]

Decision – Dismissal of Appeal – High Court dismisses appeal by the State, upholding the Sessions Court’s acquittal of Prem Raj alias I.D. – Finds no merit in the appeal based on the evidential review and witness analysis – Affirms the trial court’s judgment favoring the respondent. [Para 30] [Para 30].

Referred Cases: None.

Representing Advocates:

For the Appellant: Mr. Rajesh Mandhotra, Additional Advocate General

For the Respondent: Mr. Virender Roach, Advocate

Vivek Singh Thakur, Judge

Instant appeal has been preferred by State of H.P. against judgment dated 23.4.2011, passed by the Sessions Judge, Kinnaur at Rampur Bushahar in Sessions Trial No. 32 of 2010, titled as State of H.P. Vs. Prem Raj alias I.D., whereby respondent has been acquitted in case FIR No. 67 of 2010, dated 28.3.2010, Registered under Section 302 of the Indian Penal Code (for short the "IPC"), in Police Station Rampur Bushahar, District Shimla, H.P.

2. _____ Prosecution case in brief is that on 27.3.2010 Bhupesh (PW-3), Sangram Singh (PW-5), Bhupinder and deceased Sanjay, started consuming liquor at 11:00 A.M. on the back side of dhaba of respondent- accused Prem Raj by taking glasses from Prem Raj. Late evening, respondent Prem Raj also joined them and thereafter respondent asked them to return the glasses, as he had to close the dhaba, whereupon an altercation took place between deceased and respondent. After that, all of them left the place to go their homes. On the way again there was altercation between deceased and respondent. Bhupinder, Bhupesh and Sangram Singh parted their way to their homes with advice to deceased and respondent not to quarrel.

3. Further case of the prosecution is that at about 8.30 P.M., Dev Kali (PW-8) noticed deceased and respondent quarreling near her residence situated nearby the house of deceased Sanjay. She also noticed that during that quarrel respondent was extending threat to kill Sanjay and ultimately when Sanjay went down to the place where

respondent was, respondent beat and pushed Sanjay from the cliff (dhank) and proclaimed that right treatment has been given to Sanjay.

4. Further that Dev Kali, upon noticing aforesaid incident, went to the house of Sanjay where his brother Ravi Mehta (PW-1) and mother of Sanjay were watching TV. She informed them that respondent had thrown Sanjay from the cliff. However, brother and mother of Sanjay did not go to spot by saying that Sanjay had gone to Rampur. On next morning at 6:30 A.M., Ravi Mehta went to Dev Kali to inquire about the place of incident whereupon she pointed out the place as well as the person lying on the spot, who was found to be Sanjay and he was dead. Dead body was shifted to the house of Sanjay and telephonic information was given to the Police Post, Nankhari about the incident which was recorded at 7.45 A.M as Rapat No. 16 in daily diary dated 28.3.2010 (Ex. PW-14/A). In turn, telephonic information from Police Post, Nankhari was given to Police Station Rampur, which was entered as Rapat No. 12 (a) dated 28.3.2010 at 8:30 A.M. After arrival of Police at 2:15 P.M. statement of Ravi Mehta under Section 154 Cr.P.C. (Ex. PW-1/A) was recorded by PW-17 SI Brij Lal and was sent to Police Station as Rukka, whereupon FIR Ex. PW-12/A was registered in Police Station Rampur and FIR was sent back to the Investigating Officer.

5. The investigation was carried, statements of witnesses were recorded, dead body was sent to post mortem, spot map Ex. PW-17/B was drawn and inquest report Ex. PW-17/A was prepared.

6. On finding evidence against the respondent, respondent was arrested on same day i.e. 28.3.2010 and clothes worn by him, having blood stains, which were identified by PW-5 Sangram Singh, PW-3 Bhupesh and Bhupinder as clothes worn by respondent on the date of incident, were taken in possession vide seizure memo Ex. PW-3/A. Seizure memo Ex. PW- 3/A was witnessed by PW-3 Bhupesh and PW-5

Sangram Singh. Blood stained soil was taken into possession vide memo Ex. PW-7/A, blood stained stone was taken in possession vide memo Ex. PW-7/B and Control Sample of soil was also taken vide memo Ex. PW-7/C.

7. As per prosecution case, during interrogation in custody, respondent made a disclosure statement Ex. PW-3/B in presence of PW-5 Sangram Singh and PW-3 Bhupesh, stating that on the night of 27.3.2010 after beating Sanjay he had thrown the stone at Nankhari below the road and in furtherance to aforesaid disclosure statement he identified the spot where stone was thrown by him and got the stone recovered which was taken in possession vide memo Ex. PW-4/A in presence of PW-4 Mast Ram and PW-16 Jawahar Mehta.

8. According to prosecution, on 4.4.2010 father of respondent threatened PW-8 Dev Kali to kill for making statement against his son, whereupon she made a complaint to the Police, whereupon proceedings under Section 107 and 151 Cr.P.C. were initiated in the Court of SDM, Rampur vide kalandra Ex. PW-9/A. Thereafter, statement of PW-8 Dev Kali Ex. PW-8/A was recorded under Section 164 Cr.P.C. on 8.4.2010 before Sub Divisional Judicial Magistrate PW-18 Rajesh Tomar. In furtherance to latter Ex. PW-19/A from Superintendent of Police, Shimla to Professor and Head-cum-State Medico Legal Advisor, Department of Forensic Medicine, IGMC, Shimla alongwith copy of inquest report Ex. PW-19/B, post mortem of dead body was conducted by PW-19 Dr. Piyush Kapila on 29.3.2010 at about 12.00 Noon and issued post Mortem report Ex. PW-19/C. Final opinion (Ex. PW-19/D) after receiving report from SFSL was issued by Dr.Piyush Kapila, which reads as under:-

“In the light of the above reports, the post-mortem report has been reviewed and our final opinion in the case is that deceased died as a result of gross head injury and blood alcohol concentration at the time of death is 211.48 mg%.”

9. Vide report Ex. PW-10/A, State Forensic Science Laboratory verified that blood stained soil was similar to the Control Sample of soil. State Forensic Science Laboratory vide report Ex. PW-20/A communicated the following result:-

“(1) Human blood of group ‘AB’ was detected on exhibit-2 (blood stained soil taken from spot), exhibit-3 (blood stained stone pieces), exhibit-4b (pants, Prem Raj), exhibit-6 (blood sample, Sanjay alias Tanu), exhibit-8a (pants, Sanjay alias Tanu) and exhibit-8b (sweater, Sanjay alias Tanu).

(2) Human blood was detected on exhibit-4a (shirt, Prem Eaj), exhibit-5 (stone) and exhibit-8c (vest, Sanjay alias Tanu), but the result were inconclusive in respect of blood groups.

(3) Blood was detected in traces on exhibit-8d (underwear, Sanjay alias Tanu) and exhibit-8e (socks, Sanjay alias Tanu which was insufficient for further examination.”

10. During investigation, spot was also got identified and demarcated from Patwari on 23.4.2010, who issued tatima Ex. PW-10/A, jamabandi Ex. PW-10/B and on the basis of aforesaid demarcation spot map Ex. PW-17/J was prepared.

11. Challan was presented in the Court and supplementary challan, after receiving report from State Forensic Science Laboratory, was also submitted in the Court and respondent was subjected to trial on pleading not guilty.

12. Prosecution has examined twenty witnesses and statement of respondent was recorded under Section 313 Cr.P.C., but no evidence in defence was chosen to be lead. It is also case of prosecution that earlier deceased was engaged as driver on a vehicle attached with a Wine Contractor, whereas respondent used to serve meat and illegally smuggled liquor to his customers and for that, on the basis of raids of Police, respondent was also facing two cases in case FIR No. 70 of 2008 and 127 of 2009, registered in Police Station, Rampur and respondent was suspecting that raids of Police were at the instance of information supplied

by deceased and further that deceased did not accede to the request of respondent to join him in trade of illegal liquor and, therefore, respondent was inimical to deceased Sanjay.

13. Witnesses to the incident, sequence of events and cause of incident are PW-1 Ravi Mehta, PW-2 Shiksha Devi (wife of deceased), PW- 3 Bhupesh, PW-5 Sangram Singh (friends of deceased), PW-6 Kishori Lal (uncle of deceased) and PW-8 Dev Kali (eye witness to the incident).

14. There are three statements of PW-8 Dev Kali on record. In deposition of PW-8 Dev Kali in Court, statement Ex. PW-17/L recorded under Section 161 Cr.P.C and statement Ex. PW-8/A recorded under Section 164 Cr.P.C., Dev Kali nowhere stated that respondent hit deceased with stone. She has stated that both were quarreling and respondent gave beatings to Sanjay and both of them went on the lower side of the road and she heard sound of falling of deceased from the cliff. Whereas PW-6 Kishori Lal has stated that Dev Kali disclosed about witnessing the quarrel between respondent and deceased and respondent gave a stone blow and pushed Sanjay, resulting into fall of Sanjay downward. It is also noticeable that in recovery memo Ex. PW-7/B there is overwriting, whereby two big blood stained stones and three small blood stained stones have been converted into one big blood stained stone and three small blood stained stones. It appears that one big blood stained stone was separated from the stones recovered from the spot where dead body was found and the same stone has been shown to have been recovered in furtherance to alleged disclosure statement made by respondent under Section 27 of the Indian Evidence Act, because on the spot wherefrom Sanjay was alleged to have been pushed by respondent, no blood was found and it has been opined by PW-19 Dr. Piyush Kapila that in case of hitting by some stone causing bleeding injury, there must be

blood on the spot where injury was caused.

15. It is also noticeable that injuries on the head of deceased were enough deep damaging, the internal part of brain including causing fracture of skull and in such eventuality, as stated by doctor some hair should be found on that object. However, on the stone alleged to be used to hit Sanjay is on blunt side and sharp side is not having any blood. Therefore, in case injury was caused by this stone, then sharp edge was towards the respondent and in that eventuality, keeping in the deepness of the injury, stone must have hit with big force in which eventually possibility of receiving injury to the hand of the assailant cannot be ruled out, but in present case no such injury was found on the person of respondent.

16. It is also claimed by PW-8 Dev Kali that after witnessing the incident she went to the house of deceased, where his brother PW-1 Ravi Mehta and mother were watching TV and she informed them about the incident, but according to them Sanjay was at Rampur, as informed by Sanjay at 3:00 P.M. on that date. It is extremely unnatural behavior of PW-1 Ravi Mehta and his mother as despite having specific information with name of victim and assailant by a lady residing in their vicinity, they did not move towards the place of incident, which was at a distance of few hundred meters from their house. PW-1 Ravi Mehta has stated in his statement recorded under Section 154 Cr.P.C. that deceased Sanjay had left the house at 3:00 P.M. by informing that he was going to Rampur. Whereas according to PW-3 Bhupesh and PW-5 Sangram Singh, deceased Sanjay started consuming liquor on the back side of dhaba of respondent after 4:00 P.M. and they continued to consume liquor till 7:00 P.M., whereafter respondent lifted the glasses in which they were taking liquor for closing the dhaba. All of them walked together thereafter, but with some alteration

between Sanjay and respondent. In case relations were strained and respondent was inimical towards deceased, there was no occasion for the deceased or to the respondent to consume liquor together, that too on the back side of dhaba of respondent in the glasses provided by respondent.

17. According to PW-1 Ravi Mehta, PW-8 Dev Kali, as also stated by Dev Kali, she had informed about the quarrel between deceased Sanjay and respondent and pushing Sanjay by respondent from the cliff and, therefore, in the morning at 6:30 A.M., PW-1 Ravi Mehta went to Dev Kali to inquire about the place of incident. There is no explanation to the fact that when during night immediately after the incident PW-1 Ravi Mehta and his mother did not move to inquire the matter, for what reason early in the morning Ravi Mehta inquire Dev Kali about the place of incident and his brother. It is also noticeable that PW-1 Ravi Mehta, brother of deceased, has deposed that on 28.3.2010 at about 6:45 A.M., PW-8 Devi Kali disclosed to him that Sanjay was lying dead on the path leading to village Thana, whereupon he visited the spot and saw dead body, upon which he rang to his father and uncle PW-6 Kishori Lal and they lifted the dead body and took the same to the house of Sanjay. He has further stated that when the villagers gathered, they told that Police is to be informed. He has further deposed that thereafter Dev Kali came and disclosed about the incident of previous evening. In case PW-8 Dev Kali had informed PW-1 Ravi Mehta during previous night, then there was no reason for not informing the Police immediately after spotting the dead body by PW-1 Ravi Mehta as well as PW-6 Kishori Lal, but they shifted the dead body from the spot to the house and according to PW-6 Kishori Lal it were villagers who advised to inform the Police and thereafter Dev Kali disclosed about the incident. It is also a fact that statement of PW-1 Ravi Menta under Section 154 Cr.P.C. was recorded at 2.15 P.M. whereas

Police had arrived on the spot immediately after the information at about 8:30 A.M. and thereafter SHO from Police Station Rampur was also on the spot at about 12.30 P.M. There is no plausible explanation for not reporting to the Police about commission of offence by respondent, who allegedly quarreled and pushed the deceased which was witnessed by Dev Kali and informed to his brother PW-1 Ravi Mehta during the previous night.

18. It is also relevant to notice, as deposed by PW-3 Bhupesh and PW-5 Sangram Singh that they, on arrival on the spot in the morning of 28.3.2010, did not disclose about consumption of liquor together with deceased Sanjay, respondent Prem Raj, Bhupinder, but they disclosed it to the Police in later half of 28.3.2010. As per DDR No. 16, dated 28.3.2010, it was not reported that a murder had taken place, but it was reported to the Police that dead body of Sanjay has been found and has been shifted. PW- 1 Ravi Mehta and others were not having knowledge of the fact that respondent and deceased were quarreling and respondent had pushed deceased Sanjay from the cliff leading to his death.

19. Dead body was shifted for postmortem to IGMC, Shimla alongwith forwarding letter from the Police written by Superintendent of Police. In the said forwarding letter, it has been stated on behalf of PW-1 Ravi Mehta that on 27.3.2010 his brother Sanjay Kumar had gone to Rampur, who had not returned home at about 9.00 P.M. and PW-8 Dev Kali informed him that Prem Raj and Sanjay Kumar were quarreling on the way leading to village Thana. This information was not taken seriously. On one side in the statement recorded under Section 154 Cr.P.C. PW-1 Ravi Mehta has stated that Sanjay had informed that he was going to Rampur and, therefore, he was not expecting his return on that

night and thus did not pay any heed to the information supplied by PW-8 Dev Kali, but on the other hand he was claiming that deceased Sanjay was expected to return home by 9:00 P.M.

20. Deposition of PW-19 Doctor Piyush Kapila is also relevant to discuss, wherein he has admitted that death could have caused by falling from Dhank which correlates with initial inquest given to the police and further that according to final opinion deceased died as a result of gross head injury and blood alcohol concentration at the time of death was 211.48 mg%, which was reported vide final opinion Ex. PW-19/D. He has admitted that fall can be accidental also with further explanation that in case of 211.48 mg% of blood alcohol level a person will not be able to balance himself and may fall and all injuries mentioned in post mortem report were possible in case of fall from dhank.

21. PW-2 Shiksha Devi wife of deceased is not witness to the incident. She has deposed only regarding the enmity between respondent and deceased for the reasons stated by other witnesses.

22. In the inquest report, at two places, cause of death has been written fall/push from the dhank. When there was direct evidence about pushing deceased from dhank by respondent, there was no occasion to the Police to state that death may have occurred due to fall.

23. In case there was information available with PW-1 Ravi Mehta about pushing deceased by respondent from the dhank, there was no reason for them to shift the dead body from the spot to the house. It appears that initially death was considered to be accidental, but later on it was termed as a murder, may be on the basis of speculation and thereafter for framing the respondent evidence was created. From the material on record, it is apparent that either there is padding by the Investigating Officer by introducing unbelievable unnatural behavior and evidence to spoil the case or evidence has been created to frame the respondent in a

case of murder by suspecting commission of offence by respondent. There is no conclusive evidence on record to substantiate commission of offence by respondent, for which he was charged.

24. PW-8 Dev Kali is residing in the house of Chaman Lal, who is a Nepali lady deserted by her husband, earning her livelihood by working in the houses and fields of PW-1 Ravi Mehta as well as Chaman Lal and Chaman Lal is father of PW-5 Sangram Singh, with whom deceased was consuming liquor on 27.3.2010. PW-8 Dev Kali is mother of three sons aged 18, 15 and six years respectively, who are residing with her. She went to the house of PW-1 Ravi Mehta to narrate the incident allegedly witnessed by her, but she did not inform her landlord Chaman Lal. According to PW-5 Sangram Singh, they parted their way to go their respective homes and Sanjay and respondent were left there. The place of incident is at a distance of 40-50 meters from the house of Chaman Lal, witnessed by PW-8 Dev Kali from that house. It is unbelievable that PW-5 Sangram Singh, who part with company of deceased Sanjay and respondent, did not hear the noise of quarrel between deceased and respondent, but was noticed by PW-8 Dev Kali only.

25. It has been also case of prosecution that on pant Ex. PW-4/B and shirt Ex. PW-4/A of respondent Prem Lal human blood was detected and blood stains of blood found on the pant was AB+ which was same as to the sample of blood found on the spot and blood sample of deceased Sanjay. As has come in evidence, it is case of prosecution that during quarrel respondent pushed Sanjay from the cliff/dhank and no blood was found on the spot where from deceased Sanjay was allegedly pushed and in such eventuality presence of blood on the pant and shirt alleged to have been produced by respondent creates doubt regarding the fairness of investigation. It is noticeable that in seizure memo Ex. PW-3/A clothes worn by respondent were taken in possession in presence of PW-3

Bhupesh and PW-5 Sangram Singh, whereas in their deposition these witnesses have stated that respondent produced his pant and shirt, which he was wearing and having blood stains and the same were taken in possession. It is not their version that he was wearing the same pant and shirt on the date of arrest and it was taken in possession whereas memo says that clothes which were worn by respondent were identified by witnesses as clothes which were worn by respondent at the time of incident. The link evidence connecting the respondent with clothes and blood stains is not trustworthy and, therefore, this piece of evidence is of no help to the prosecution. Blood group of respondent Prem Raj was also not determined, so as to rule out that blood alleged to have been found on the clothes allegedly belonging to him was not his blood.

26. Enmity is a double-edged weapon. It may be a motive to commit a crime, including murder, and it can also be a reason for impleading a suspect.

27. In present case, according to PW-6 Kishori Lal, PW-8 Dev Kali disclosed witnessing the incident of quarrel and respondent pushing the deceased on the ground for the first time after arrival of the police. He is uncle of deceased, who was called by PW-1 Ravi Mehta, brother of the deceased, after noticing the dead body of deceased Sanjay. Contrary to it, it is claim of Dev Kali, as also stated by Ravi Mehta in his statement under Section 154 Cr.P.C., she had already disclosed it to Ravi Mehta and his brother on previous night. It is also a matter of record that at the time of informing the police, it was not alleged that deceased was pushed by respondent, rather, on finding dead body on the spot, it was shifted to the house. Had there been knowledge of incident on the basis of alleged information supplied by Dev Kali, there was no occasion for brother Ravi Mehta and uncle Kishori Lal to shift the dead body to the

house and not inform the said fact to the police. In case story of prosecution is proved, then there was no puzzle to be solved about the cause of death of deceased Sanjay, but, according to Ravi Mehta, on finding dead body, they were puzzle and, therefore, they shifted the dead body from the spot to the house.

28. Aforesaid facts indicate padding of hiding of facts to twist the case in a particular direction to frame the respondent for extraneous reasons or may be for suspicion. Noticeably, PW-3 Bhupesh Kumar and PW-5 Sangram Singh were also silent for a considerable time, which creates doubt about their statement, which may be result of afterthought. Probably before recording statement under Section 154 Cr.P.C., instead of making statement on the basis of known facts, deliberations took place which delayed the recording of statement under Section 154 Cr.P.C.

29. It is apparent from the above discussion that statements of PWs-1, 2, 3, 5 and 6 do not inspire confidence, rather create doubt that either something has been added to the story or something is being hidden by the prosecution, which creates doubt about the prosecution case. On the basis of evidence on record it can be suspected that respondent may have killed deceased Sanjay, but for want of cogent, reliable and convincing evidence, it cannot be concluded without any reasonable doubt that Sanjay was killed by respondent only. Other possibilities of accidental death cannot be ruled out. It is settled that suspicion, may be of higher degree, cannot take place of proof of commission of offence. Benefit of doubt is always to be extended to the accused. State has not been able to make out a case of commission of offence by respondent beyond reasonable doubt to rebut the presumption of innocence, particularly when respondent is having benefit of acquittal by the trial Court.

30. In view of aforesaid observation, we do not find any merit in the appeal and accordingly the appeal is dismissed.

Appeal stands disposed of.

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