



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No. 129 of 2011
Reserved on: April 01, 2015.
Decided on: April 06, 2015.

Varinder Verma & anotherAppellants.
Versus
State of Himachal PradeshRespondent.

Coram

The Hon'ble Mr. Justice Rajiv Sharma, Judge.
The Hon'ble Mr. Justice Sureshwar Thakur, Judge.

Whether approved for reporting? Yes.

For the appellants: Mr. Satyen Vaidya, Advocate.

For the respondent: Mr. Shrawan Dogra, AG with Mr. P.M.Negi, Dy. AG.

Justice Rajiv Sharma, J.

This appeal is instituted against the judgment dated 28.12.2010/30.12.2010, rendered by the learned Addl. Sessions Judge, FTC, Shimla, H.P. in Sessions Trial No. 20-S/7 of 2009, whereby the appellants-accused (hereinafter referred to as the accused), who were charged with and tried for offence punishable under Section 302 IPC read with Section 34 IPC, have been convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs. 10,000/- each.

2. The case of the prosecution, in a nut shell, is that on 6.6.2009, Om Prakash came to Theog from the house of his sister Subhadra, situated in Chiundi, Tehsil Theog in connection with his work. Sh. Kuldeep Verma, the younger son of Om Prakash also came to Theog from Village Gadah on 6.6.2009 in connection with his own work. He met his father around 12 noon at bus stand Theog. The complainant Sh. Kuldeep Verma alias Dipia, came to Gadah Kufri around 3:00 PM earlier to his father. At about 6:30 PM, Shimla-Bhaj bus came and stopped

there. His father alighted from the bus. He handed over a packet containing his belongings to the complainant and at that time, S/Sh. Vidya Sagar, a member of Panchayat Samiti, Nihal Singh and Sita Ram were with Sh. Om Prakash. The complainant came to his house at Gadah. At 9:22 PM, he made a call on the mobile phone of his father to know when he was about to come. Om Prakash told the complainant that he would be reaching within next 15-20 minutes and also informed that Sh. Ganga Ram was also with him. The complainant started watching TV. However, when they did not reach even by 10:30 PM, Sh. Kuldeep Verma, complainant again rang up his father on his cell phone, but it was not reachable. He tried on the cell phone of Sh. Ganga Ram. It went on ringing. The call was not replied by Sh. Ganga Ram. The complainant started going towards Gadah Kufri and on his way, he again made a call on the cell phone of Sh. Ganga Ram. He heard the phone ringing at a short distance but on account of darkness and being alone, he got frightened and returned back. He took his cousin Sh. Mukesh Verma with him and came to that place i.e. way leading towards Gadah Kufri. They found Sh. Om Prakash and Ganga Ram lying on the ground together. They were lying dead and on further checking, they found wooden pieces lying scattered on the spot. He immediately informed Police Post Matiyana. The statement of Kuldeep Verma was recorded under Section 154 Cr.P.C vide Ext. PA. FIR was registered at PS Theog. Inquest report was prepared. The dead bodies were initially taken to Civil

Hospital, Theog and later sent to IGMC, Shimla for autopsy. A team of medical officers conducted autopsy upon the deceased and it was found that Ganga Ram had died on account of multiple ante-mortem injuries leading to head injury, whereas Om Prakash was found to have died because of gross head injury and ante-mortem manual strangulation. The accused were arrested on 7.6.2009. They made disclosure statements Ext. PW-6/A and Ext. PW-6/B under Section 27 of the Indian Evidence Act. They got the dandas and clothes recovered. On completion of the investigation, challan was put up after completing all the codal formalities.

3. The prosecution, in order to prove its case, has examined as many as 22 witnesses. The accused were also examined under Section 313 Cr.P.C. They have denied the prosecution version. The accused have also examined DW-1 Madan Sharma. The learned trial Court convicted and sentenced the accused, as noticed hereinabove. Hence, this appeal.

4. Mr. Satyen Vaidya, Advocate for the accused has vehemently argued that the prosecution has failed to prove the case against the accused. On the other hand, Mr. P.M.Negi, learned Dy. Advocate General, appearing on behalf of the State, has supported the judgment of the learned trial Court dated 28.12.2010/30.12.2010.

5. We have heard learned counsel for both the sides and gone through the records of the case carefully.

6. The entire case of the prosecution is based on circumstantial evidence. There is no eye witness of the incident. ◇

7. Sh. Kuldeep Verma PW-1 deposed that at 6:00 PM, Shimla Bhaj bus came. His father alighted from that bus at Gada Kufri and met him there. S/Sh. Vidya Sagar, Nihal Singh, Ganga Ram and Sita Ram were also seen with his father. His father handed over his belongings to him. He left Gada Kufri with the belongings of his father for his native place Gada. His father and Sh. Ganga Ram etc. remained in Gada Kufri only. As his father did not return home, he rang up on his mobile phone at about 9:22 PM. His father replied that he will reach home within 10-15 minutes and Sh. Ganga Ram was with him. He started watching the T.V. As his father did not reach home, he again rang him up on his mobile phone at about 10:30/10:45 PM. The phone of his father was not reachable. Then, he made a call on the mobile phone of Sh. Ganga Ram. The phone kept on ringing. Sh. Ganga Ram was staying in their house for the last many years. When he failed to contact his father and Sh. Ganga Ram on their mobile phones, he left his house on foot for Gada Kufri. At some distance from his house, he again made a phone call on the mobile phone of Sh. Ganga Ram. He heard the phone ringing. On account of the darkness and fear, he returned to his house. Thereafter, he alongwith his cousin Mukesh Kumar left the house during the night itself in search of his father and Ganga Ram. They spotted their dead bodies lying on the way. He telephonically informed the police at

11:30 PM. The police reached the spot on 7.6.2009 at about 1:30 AM. Sh. Amit Verma was also contacted by him. Sh. Ganga Ram used to stay in their house as he was turned out of his house by his brother Sh. Dhani Ram. Sh. Durga Singh is the other brother of late Sh. Ganga Ram. Sh. Ganga Ram had filed a case against Sh. Dhani Ram in the Court at Theog for property. In the year 2008, Kanungo etc. had visited the disputed property. In 'Jethanjui Mela' hot exchanges had taken place between his father and accused Dev Raj. In his cross-examination, he admitted that he did not remember the telephone number of Sh. Anil Verma, the father of Amit Verma. It is stored in his mobile phone hand set. When he heard the mobile phone of Sh. Ganga Ram ringing, he had already walked for about 4-5 minutes after leaving his house. He returned home. Thereafter, he alongwith Mukesh Kumar left their house. It took about 7-8 minutes to reach the spot from their house.

8. Sh. Arun Kumar PW-2 deposed that S/Sh. Om Parkash, Sita Ram and others got down from the bus. S/Sh. Vidya Sagar and Nihal Singh were there in Gadah Kufri. Sh. Sita Ram left Gadah Kufri in the bus. Sh. Om Parkash remarked that they should enjoy. Then he, Vidya Sagar, Om Parkash, Ganga Ram and Nihal Singh started taking liquor outside the 'dhaba' of Kesu in Gadah Kufri. At about 7:00 PM, Sh. Vidya Sagar left. Around 8:30 PM, Sh. Nihal Singh also left. He alongwith Om Parkash and Ganga Ram kept on enjoying the liquor. It was a moon lit night. Both the accused came there. They spotted them and went away.

9. Sh. Amit Verma, PW-3 is the material witness. He deposed that Om Parkash deceased was his Mama. He stated that on 6.6.2009, at about 9:15 PM, he parked his vehicle in Gadah Kufri near the dhaba of Kesu. S/Sh. Om Parkash and Ganga Ram met him at the place where he parked the vehicle. They were going towards village Gadah. Spotting him, both of them stopped. He got down from the vehicle and wished them. Sh. Om Parkash asked him to accompany them to village Gadah. He replied that he has to go to village Chiundi. He alongwith Om Parkash and Ganga Ram then started moving together towards village Gadah. He saw the accused coming from Gadah Kufri side. He recognized both of them when they came near to him. He knew the accused earlier as they were locals. Both the accused inquired from him as to when Om Parkash and Ganga Ram left for Gadah. He replied that they had left just now for Gadah. Both the accused were armed with the dandas. They went towards Gadah. Then, he left for his village Chiundi. At about 11-11:15 PM, his father received a phone call on his mobile phone from Sh. Kuldeep Verma. As the signal quality was poor, his father handed over the mobile to him. He talked with Sh. Kuldeep Verma. He told him that Om Parkash and Ganga Ram have been murdered by someone on the way to Gadah. They reached the spot on 6.6.2009 at 11:45 PM. The accused have taken the police to the spot on 10.6.2009. The accused Varinder led the police party to his house and got his clothes recovered. Accused Dev Raj also got his clothes recovered. In his cross-examination, he admitted

that on 6.6.2009, he did not carry any goods in the vehicle. He came from Matiyana and parked the vehicle in Gadah Kufri. ~~He did not~~ remember as to whether the goods were transported by him in the vehicle on 5.6.2009 or not. He came alone in the vehicle from Matiyan to Gadah Kufri on 6.6.2009. His statement was recorded by the police at 11:30 AM on 7.6.2009. He further admitted that ~~he did not~~ tell or made any attempt to tell Kuldeep that accused were carrying dandas and were inquiring about the deceased. He ~~had no~~ talk with Kuldeep at the spot. From the spot, he went to Karana, Badyog, Bharana villages to bring the relatives of the deceased. He was asked by Gian Verma the brother of the deceased to go to these villages. He did not tell Gian Verma that the accused were carrying dandas and inquiring about the deceased. He brought Hira Singh and his wife from village Bharana to the spot in his vehicle. Even on return, he did not tell this fact that accused were carrying dandas and inquiring about the deceased to any person including Hira Singh and his wife.

10. Sh. Nasib Singh Patiyal, PW-4 has examined dandas Ext. P-12 and P-13.

11. HHC Ranjeet Singh PW-5 deposed that on 7.6.2009 at 2:45 AM, rukka Ext. PA was handed over to him by ASI Ajay Kalia.

12. Sh. Diwan Chandel, PW-6 deposed that on 10.6.2009, he and Ajay Verma were called by SHO Khazana Ram to Police Post Matiyana. Both the accused were present there. Accused Varinder made a

disclosure statement in their presence to the effect that on 6.6.2009, the danda used by him in the commission of the offence has been kept concealed in a pool at Gadah Kufri. Accused Varinder also told the police that the clothes which he was wearing on 6.6.2009 have been kept by him in his house. Disclosure statement Ext. PW-6/A was recorded by the police in his presence. Similarly, accused Dev Raj made a disclosure statement in their presence to the effect that on 6.6.2009, the clothes which he was wearing have been kept concealed in a pool at Gadah Kufri. The disclosure statement is Ext. PW-6/B.

13. Sh. Budhi Ram, PW-8 deposed that at about 1-1:30 PM, the police vehicle came. SHO asked him and Kishan Verma to join the investigation. Accused Varinder got down from the vehicle. He led the police party to a place near the pond. The pond had some water. Accused Varinder Verma entered the water and took out a danda. The same is Ext. P-13. The danda was measured by the police. It was 27 inch long and 6 inch in diameter. It was taken into possession vide memo Ext. PW-8/A. Spot map was also prepared. Thereafter, accused Dev Raj got down from the vehicle. He led the police party to the same pond. Accused Dev Raj then entered the water and brought out a danda. It was measured. The same was 35 inch long and 8 ½ inch in diameter. The danda is Ext. P-12. It was recovered vide seizure memo Ext. PW-8/B.

14. Statements of PW-9 to PW-14 are formal in nature.

15. HC Het Ram, PW-15 has sent the case property to FSL, Junga on 16.6.2009.

16. Dr. Piyush Kapila, PW-17 has conducted the post mortem of both the dead bodies on 7.6.2009 alongwith Dr. H.S. Sekhon. According to them, Ganga Ram died as a result of multiple ante mortem injuries leading to head injury. The probable time elapsed between injury and death was immediate and that between death and post mortem examination was between 18-24 hours. The cause of death of Om Parkash was head injury and ante mortem manual strangulation. He also proved report Ext. PW-17/G with regard to weapon of offence.

17. Dr. Shalini Bhardwaj, PW-18 has medically examined the accused and has issued MLCs Ext. PW-18/B and Ext. PW-18/C.

18. Dr. Kuldeep Kanwar, PW-19 has issued preliminary post mortem reports Ext. PW-19/B and PW-19/C. According to him, the duration between injury and death in both the cases was in between 30-120 minutes. The duration between the deaths and post mortem was 12 to 36 hours. He admitted in his cross-examination that he has conducted hundreds of post mortems.

19. ASI Liaq Ram, PW-20 has registered the FIR Ext. PW-20/A.

20. ASI Ajay Kalia, PW-21 testified that on 6.6.2009, Sh. Kuldeep Verma gave an information on his mobile phone to the effect that the dead bodies of his father and Sh. Ganga Ram were lying in the 'rasta' between Gada and Gada Kufri. He alongwith Ranjeet Singh proceeded to the

spot. On 7.6.2009, at about 1:30 AM. The dead bodies of Ganga Ram and Om Parkash were lying on the spot. He checked the dead bodies. He noticed injuries on the face and head of the deceased. The blood had come out. Sh. Kuldeep Verma and other villagers were there at the spot. He recorded the statement of PW-1 Kuldeep Verma under Section 154 Cr.P.C. vide Ext. PA.

21. Insp. Khazana Ram, reached the spot on 7.6.2009 at about 2:45 AM. The blood stained soil was lifted from the spot by FSL team. The same was handed over to him. It was taken into possession vide memo Ext. PW-21/B. He recorded the statements of S/Sh. Kuldeep Verma, Laiq Ram, Kishan Verma and Amit Verma. He prepared the inquest reports Ext. PW-17/B and PW-17/C. He sent the dead bodies for post mortem examination to Civil Hospital, Theog. The accused were also got medically examined. The recoveries were made by the accused on the basis of the disclosure statements. In his cross-examination, he admitted that he did not record the statement of Sh. Keshu.

22. The trial Court has taken the following circumstances into consideration while convicting the accused:

- "a) On 6.6.2009 in between 8:30-9 PM when the deceased and Arun Verma PW-2, were taking liquor outside the Dhaba of Keshu at Gadah Kufri, the accused were found roaming about that place. Further, when Arun Verma went to Badyog, he did not meet any person in between Gadah Kufri and Gadah.
- b) In between 9:15-9:30 PM, the accused were seen by Sh. Amit Verma, PW-3, armed with Dandas at Gadah Kufri, they inquire about the deceased from Amit Verma and then followed them towards Gadah.

c) The deceased were murdered, in between 9:30-10:30 PM.

d) The accused made disclosure statements under Section 27 of the Evidence Act, on 10.6.2009, in PP Matiyana, before Inspector Khajana Ram and then led to the recoveries of Dandas, Ext. P-12 and Ext. P-13, used in assaulting the deceased, as well as the blood stained clothes. The clothes were smeared with blood and the blood group tallied with the blood groups of the deceased.

e) The pieces of wood, Ext. P-4, collected from the spot by the experts FSL, Junga were found as the fragmented parts of Dandas, Ext. P-12 and Ext. P-13.

f) There was strong motive for the accused to commit crime."

23. Sh. Kuldeep Verma, PW-1 has stated that he met his father at Gadah Kufri. He came back to his house. He contacted his father at about 9:22 PM. His father told him that he will reach home within 10-15 minutes alongwith Sh. Ganga Ram. He started watching the TV. As his father did not reach home, he again rang him up on his mobile phone at about 10:30/10:45 PM. The phone of his father was not reachable so he gave a call on the mobile phone of Sh. Ganga Ram. The phone kept on ringing. Sh. Ganga Ram was staying in their house for the last many years. When he failed to contact his father and Sh. Ganga Ram on their mobile phones, he left his house on foot for Gadah Kufri. At some distance from his house, he again made a phone call on the mobile phone of Sh. Ganga Ram. He heard the phone ringing. Because of the darkness and fear, he returned to his house. Thereafter, he alongwith his cousin Mukesh Kumar left the house during the night itself in search of his father and Ganga Ram. They spotted their dead bodies lying on the way. The prosecution has not examined Mukesh Kumar. He was a material

witness. It is not believable that a son who was desperately looking for his father would come back and that too after hearing the mobile ring. His first reaction would have been to reach the spot and try to see whether everything was in order or not. In his cross-examination, Sh. Kuldeep Kumar, PW-1 has admitted that he did not remember the phone number of Ganga Ram. When he heard the mobile phone of Sh. Ganga Ram ringing, he had already walked for about 4-5 minutes after leaving his house. Then, he returned home. Thus, the incident has taken place near his house. He should have gone to the spot instead of coming back. He has also admitted that Dhani Ram and family members were inimical towards them as his father used to help Ganga Ram and in the Mela hot exchanges had taken place between his father and accused Dev Raj.

24. According to Sh. Kuldeep Verma, PW-1 he contacted Amit Verma on his telephone. PW-3 Amit Verma deposed that his father received telephone at 11-11:15 PM from Kuldeep Verma since the quality of signal was poor, his father handed over the cell phone to him. He had talked with Kuldeep Verma. He told that Om Parkash and Ganga Ram were murdered. In his cross-examination, PW-1 has admitted that he had called on the mobile of Anil Verma, the father of Sh. Amit Verma.

25. Sh. Arun Kumar, PW-2 deposed that Sita Ram and others got down from the bus. S/Sh. Vidya Sagar and Nihal Singh were there in Gadah Kufri. Sh. Sita Ram left Gadah Kufri in the bus. Sh. Om Parkash remarked that they should enjoy. Then he, Vidya Sagar, Om Parkash,

Ganga Ram and Nihal Singh started taking liquor outside the 'dhaba' of Kesu in Gadah Kufri. At about 7:00 PM, Sh. Vidya Sagar left. Around 8:30 PM, Sh. Nihal Singh also left. He alongwith Om Parkash and Ganga Ram kept on enjoying the liquor. It was a moon lit night. Both the accused present in the Court came there. They spotted them and went away. In his cross-examination, he admitted that they had consumed two bottles of country liquor. Thus, the incident has taken place, as per the prosecution case, outside the shop of Kesu. Sh. Kesu has not been cited as a witness by the police. A suggestion was put to SI Khazana Ram PW-22 as to why he has not associated Kesu in the investigation. His only explanation was that Kesu has already closed the shop and left the place.

26. According to the prosecution case, Sh. Amit Verma, PW-3 has seen the accused near the spot carrying dandas on 6.6.2009 after 9:00 PM. He has seen the accused coming from Gadah Kufri side. His version is that accused inquired from him as to when Ganga Ram and Om Parkash had left for Gadah. He told that they had just left and they left for village Gadah and he left for village Chiundi. However, in his cross-examination, he could not state whether the goods were transported by him in the vehicle on 5.6.2009 or not. He also admitted that on 6.6.2009 he did not carry any goods in the vehicle. He has reached the spot with his father on 6.6.2009 at 11:45 PM. He also went to bring the relations on the spot. He has categorically stated that he has seen the accused carrying the dandas in their hands. When he met them, they inquired

about the deceased persons. However, surprisingly, he reached on the spot at 11:45 PM but did not disclose this fact to PW-1 Kuldeep Verma, as per his cross-examination. He was asked by Gian Verma, the brother of the deceased to go to villages Karana, Badyog, Bharana to bring the relatives of the deceased. He did not tell Gian Verma that the accused were carrying dandas and inquiring about the deceased. He brought Hira Singh and his wife from village Bharana to the spot in his vehicle. Even on return, he did not tell this fact that accused were carrying dandas and inquiring about the deceased to any person including Hira Singh and his wife. The conduct of PW-3 Amit Verma is very strange. He should have told PW-1 Kuldeep Verma or Gian Verma or Hira Singh and his wife that the accused were inquiring about the deceased and carrying dandas near the spot. Sh. Amit Verma, PW-3 is a chance witness. His version cannot be believed. Moreover, his statement was recorded belatedly by the police. The statements of the witnesses in cases like the one in hand should be recorded immediately.

27. The weapon of offence, as per the prosecution case, are two dandas Ext. P-12 and P-13. These were examined by Nasib Singh Patiyal PW-4. These dandas were recovered on the basis of the disclosure statements made vide Ext. PW-6/A and PW-6/B. The accused have got these dandas recovered from the Pond near Gadah Kufri. The dandas were brought by the accused from the mud of the pond. In case the accused have thrown the dandas, those should have been floating in the

water. Budhi Ram, PW-8 has admitted in his cross-examination that the pond was 800-900 meters away from Gadah Kufri. The dandas were not floating in the water of the pond. Thus, the recovery of dandas is suspicious.

28. The cause of death of deceased Ganga Ram was due to ante mortem injuries received on head as per the opinion of PW-17 Dr. Piyush Kapila. The cause of death of deceased Om Parkash was due to gross head injury and ante mortem manual strangulation. However, surprisingly, Dr. Kuldeep Kanwar, PW-19 has also issued preliminary post mortem reports Ext. PW-19/B and PW-19/C. According to him, the cause of death was due to injuries of face and head leading to shock and death in the case of Ganga Ram and in the case of Om Parkash the deceased died of ante mortem facial injuries leading to shock and death. PW-19 Dr. Kuldeep Kanwar has proclaimed in his cross-examination that he conducted hundreds of post mortems. He was supposed to examine the dead body of Om Parkash closely. The cause of death of Om Parkash as per the statement of Dr. Piyush Kapila, PW-17 was manual strangulation. Dr. Kuldeep Kanwar, PW-19 could not miss such an important aspect of the matter as to how deceased Om Parkash has died.

29. The blood and urine samples of deceased were sent to FSL, Junga. The report of FSL, Junga is Ext. PW-22/L. The quantity of ethyl alcohol in the blood of Ganga Ram (deceased) was found to be 283.66 mg% and in urine it was found to be 285.50 mg%. The quantity of ethyl

alcohol in the blood of Om Parkash (deceased) was found to be 264.22 mg% and in urine it was found to be 272.55 mg%. It, thus, proves that both of them were heavily drunk. It has come in the statement of PW-2 Sh. Arun Kumar that they had consumed two bottles of liquor and liquor was also brought by Om Parkash from Matiyana. PW-17 Dr. Piyush Kapila has also admitted in his cross-examination that if a person's blood alcohol concentration is more than 260 mg %, then he could be treated under the influence of liquor. Thus, the possibility of the deceased receiving injuries by fall cannot be ruled out being heavily drunk.

30. In the case based entirely on circumstantial evidence, motive also plays an important role. According to Mr. P.M.Negi, learned Dy. Advocate General, the motive was the dispute between the families. It is settled law that motive is a double edged weapon. Since there was land dispute between the two families, as per the prosecution case, the possibility of the accused being falsely implicated can also not be ruled out. Sh. Kuldeep Verma, PW-1 has also deposed that there was land dispute and Sh. Ganga Ram (deceased) had filed case against Sh. Dhani Ram, father of the accused Varinder Verma. Sh. Dhani Ram has also filed suit against Sh. Ganga Ram. Om Parkash used to assist Ganga Ram in the Court. PW-3 Amit Verma, is closely related to Om Parkash (deceased). Sh. Kuldeep Verma, PW-1 has also deposed that Sh. Ganga Ram had filed a case against Sh. Dhani Ram in the Court at Theog for the property. Sh. Ganga Ram used to stay in their house as he was turned

out of his house by his brother Sh. Dhani Ram. Sh. Durga Singh is the other brother of late Sh. Ganga Ram. Sh. Arun Kumar, PW-2 has also admitted in his cross-examination that Sh. Om Parkash helped Sh. Ganga Ram in the litigation. It is also borne from the statement of PW-8 Sh. Budhi Ram that case was got registered by Dhani Ram, father of Virender Verma against his son and the same was withdrawn. Sh. Budhi Ram, PW-8, is one of the witness before whom the dandas were got recovered by the accused from the pond. Sh. Budhi Ram, PW-8 in his cross-examination has admitted that the land dispute was going on between Ganga Ram and family members of accused Varinder Verma. He has also admitted in his cross-examination that Sh. Dhani Ram, father of the accused Varinder had filed a case against his son Rajesh alias Raju and his nephew Kishori Lal. He also admitted that there was water dispute going on in the village. He and Dhani Ram are from opposite factions. Thus, Amit Verma PW-3 is closely related to deceased Om Parkash. Sh. Budhi Ram, PW-8 has inimical relations with the father of accused Varinder Verma. Though, it is true that the statements of closely related witnesses can be taken into consideration but it has to be done with care and caution. Sh. Budhi Ram, PW-8 has also admitted that proceedings under Sections 107/150 Cr.P.C. were pending decision between him and Sh. Dhani Ram, father of accused Varinder Singh.

31. The statements of Sh. Amit Verma, PW-3 and Sh. Budhi Ram, PW-8 do not inspire any confidence. Sh. Amit Verma, PW-3 has stated to

have seen the accused carrying dandas and inquiring about the deceased and PW-8 Budhi Ram was witness to recoveries of dandas from the pond by the accused. The statement of material witnesses Sh. Mukesh Kumar and Keshu Ram have not been recorded by the prosecution.

32. According to the prosecution case, the accused have got dandas recovered from the pond in the presence of PW-8 Budhi Ram and Krishan Verma vide seizure memos PW-8/A and PW-8/B. One of the witnesses PW-8 Budhi Ram, as we have already noticed, had inimical relations with the father of the accused Varinder Kumar. Krishan Verma is the brother of deceased Om Parkash. The police should have associated independent witnesses instead of associating the real brother of deceased Sh. Krishan Verma and PW-8 Budhi Ram who had strained relations with the father of one of the accused Sh. Varinder Verma.

33. According to PW-2 Arun Kumar, Sh. Om Parkash, Sita Ram and others got down from the bus. S/Sh. Vidya Sagar and Nihal Singh were there in Gada Kufri. Sh. Sita Ram, Vidya Sagar and Nihal Singh have not been cited as witnesses by the prosecution.

34. The matter is required to be considered from another angle. The deceased have taken liquor at Gada Kufri outside the dhaba of Kesu. They were heavily drunk. They were also in the company of PW-2 Arun Kumar. Vidya Sagar and Nihal Singh left. They have taken liquor together. The possibility of the brawl taking place between these persons can also not be ruled out after consuming liquor. The prosecution has

failed to complete the chain. The prosecution has also failed to prove the case against the accused beyond the reasonable doubt.

35. Their lordships of the Hon'ble Supreme Court in the case of **Balbir Vrs. Vazir and others and connected matters**, reported in **(2014) 12 SCC 670**, have held that motive is a double edged weapon and just as there is a possibility of murders having been committed because of motive due to enmity, there is also a possibility of false implication of innocent people to settle past scores. It has been held as follows:

“12. We are dealing with an appeal against acquittal. The acquittal is not recorded by the trial court but by the High Court. We shall therefore see whether there were sufficient reasons for the High Court to set aside the conviction. We must however bear in mind that if the view taken by the High Court is a reasonably possible view it should not be disturbed because the acquittal of the accused by the High Court has strengthened the presumption of their innocence. We must also mention that according to the prosecution this is a case of strong motive. Land disputes between the two sides and earlier attacks made on deceased Krishna Gir have been deposed to by the witnesses. The High Court has observed that no documentary evidence is produced by the prosecution in support of this case. However, we cannot dismiss the prosecution case of enmity between the two sides lightly because reference to it is made by several witnesses. But that by itself does not help the prosecution. Just as there is a possibility of murders having been committed because of motive due to enmity, there is also a possibility of false implication of innocent people to settle past scores. That is why it is said that motive is a double edged weapon. We shall keep this in mind and approach the case.”

36. Their lordships of the Hon'ble Supreme Court in the case of **Shyamal Saha and another vrs. State of West Bengal**, reported in **(2014) 12 SCC 321**, have held that chain of events must be so complete

as to leave no room for any other hypothesis except that accused was responsible for commission of offence. It has been held as follows:

“26. The High Court believed the testimony of Dipak and Panchu and came to the conclusion that they had crossed the river along with Paritosh, Shyamal and Prosanta. However, the High Court did not take into consideration the view of the Trial Court, based on the evidence on record, that it was doubtful if the five persons mentioned above boarded the boat belonging to Asit Sarkar to cross the river as alleged by the prosecution. The High Court also did not consider the apparently incorrect testimony of Animesh who had stated that he had gone to the police station and given his version but despite this, he was not cited as a witness. The version of Animesh was specifically denied by the Investigating Officer.

27. When the basic fact of Paritosh having boarded a boat and crossing the river with Shyamal and Prosanta is in doubt, the substratum of the prosecution’s case virtually falls flat and the truth of the subsequent events also becomes doubtful. Unfortunately, the High Court does not seem to have looked at the evidence from the point of view of the accused who had already secured an acquittal. This is an important perspective as noted in the fourth principle of Chandrappa. The High Court was Crl. Appeal No. 1490 of 2008 Page 16 of 21 Page 17 also obliged to consider (which it did not) whether the view of the Trial Court is a reasonable and possible view (the fifth principle of Chandrappa) or not. Merely because the High Court disagreed (without giving reasons why it did so) with the reasonable and possible view of the Trial Court, on a completely independent analysis of the evidence on record, is not a sound basis to set aside the order of acquittal given by the Trial Court. This is not to say that every fact arrived at or every reason given by the Trial Court must be dealt with – all that it means is that the decision of the Trial Court cannot be ignored or treated as non-existent.

28. What is also important in this case is that it is one of circumstantial evidence. Following the principles laid down in several decisions of this Court beginning with Sharad Birdhi Chand Sarda v. State of Maharashtra¹³ it is clear that the chain of events must be so complete as to leave no room for any other hypothesis except that the accused were responsible for the death of the victim. This principle has been followed and reiterated in a large number of decisions over the last 30 years and one of the more recent decisions in

High

this regard is 13 (1984) 4 SCC 116 Crl. Appeal No. 1490 of 2008 Page 17 of 21 Page 18 Majenderan Langeswaran v. State (NCT of Delhi) and Another. 14 The High Court did not take this into consideration and merely proceeded on the basis of the last seen theory.

29. The facts of this case demonstrate that the first link in the chain of circumstances is missing. It is only if this first link is established that the subsequent links may be formed on the basis of the last seen theory. But the High Court overlooked the missing link, as it were, and directly applied the last seen theory. In our opinion, this was a rather unsatisfactory way of dealing with the appeal."

37. Mr. P.M.Negi, learned Dy. Advocate General, has also drawn the attention of the Court to Ext. PX to prove that human blood was found on exhibits sent for chemical examination including wooden pieces and clothes of the deceased as well as the accused and hair. However, the fact of the matter is that the prosecution has not proved that the blood samples of the accused were also taken during the course of investigation. Their lordships of the Hon'ble Suprme Court in the case of

Parkash vrs. State of Karnataka, reported in **(2014) 12 SCC 133**, have held that when the blood stained clothes are recovered, a serological comparison of blood of deceased and appellant and blood stains on his clothes was necessary and that was absent from evidence of prosecution. In this case, the prosecution has sought to prove that blood group of deceased was AB and blood stains on appellant's seized clothes also belong to blood group AB. This does not lead to any conclusion that bloodstains on appellant's clothes were those of deceased's blood. There are millions of people who have blood group AB and it is quite possible that even appellant had the blood group AB. Thus, merely since clothes

of appellant were bloodstained and stains bore same blood group as that of deceased, circumstances could not be used against the appellant. Their lordships have further held that in a case of circumstantial evidence, there has to be some degree of trustworthiness and certainly about existence of circumstances. It has been held as follows:

“40. The second discrepant statement was that Shivanna stated that the police had kept Prakash's clothes on the table. It was submitted, in other words, that the blood stained clothes were already seized by the police and kept on the table. We are not sure whether the actual statement made by Shivanna has been lost in translation.

41. In any event, the recovery of the blood stained clothes of Prakash do not advance the case of the prosecution. The reason is that all that the prosecution sought to prove thereby is that the blood group of Gangamma was AB and the blood stains on Prakash's seized clothes also belong to blood group AB. In our opinion, this does not lead to any conclusion that the blood stains on Prakash's clothes were those of Gangamma's blood. There are millions of people who have the blood group AB and it is quite possible that even Prakash had the blood group AB. In this context, it is important to mention that a blood sample was taken from Prakash and this was sent for examination. The report received from the Forensic Science Laboratory [Exh.P-27] was to the effect that the blood sample was decomposed and therefore its origin and grouping could not be determined. It is, therefore, quite possible that the blood stains on Prakash's clothes were his own blood stains and that his blood group was also AB.

45. We are not satisfied with the conclusion of the High Court that since the clothes of Prakash were blood stained and the stains bore the same blood group as that of Gangamma, the circumstance could be used Prakash. A serological comparison of the blood of Gangamma and Prakash and the blood stains on his clothes was necessary and that was absent from the evidence of the prosecution.”

38. Accordingly, the appeal is allowed. Judgment of conviction and sentence dated 28.12.2010/30.12.2010, rendered by the learned

Addl. Sessions Judge, FTC Shimla, H.P., in Sessions trial No. 20-S/7 of 2009 under Section 302/34 IPC is set aside. The accused are ~~acquitted of~~ the charge framed under Section 302/34 IPC, by giving them benefit of doubt. Fine amount, if any, already deposited by the accused is ordered to be refunded to them. Since the accused are in jail, they be released forthwith, if not required in any other case.

39. The Registry is directed to prepare the release warrants of the accused and send the same to the Superintendent of Jail concerned, in conformity with this judgment forthwith.

(Rajiv Sharma),
Judge.

April 06, 2015,
(karan)

(Sureshwar Thakur),
Judge.

High Court