

PETITIONER:
STATE OF HIMACHAL PRADESH

Vs.

RESPONDENT:
DHANI RAM & ORS.

DATE OF JUDGMENT: 25/09/1996

BENCH:
MUKHERJEE M.K. (J)
BENCH:
MUKHERJEE M.K. (J)
KURDUKAR S.P. (J)

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

M.K. MUKHERJEE. J.

Dhani Ram, Bhagat Ram and Kanshi Ram, the three respondents herein, were tried by the Sessions Judge, Kangra for committing the murder of Amarnath in their village Kui on November 20, 1979 in furtherance of their common intention. By his judgment dated May 17, 1982, the learned Judge convicted Dhani Ram under Section 302 I.P.C. and sentenced him to imprisonment for life, while acquitting the other two respondents. Against the above judgment two appeals were preferred in the High Court; one by Dhani Ram against his conviction and sentence and the other by the State against the acquittal of Bhagat Ram and Kanshi Ram. In disposing of the appeals by a common judgment, the High Court dismissed the appeal of the State and allowed that of Dhani Ram. The above judgment of the High Court is under challenge in these appeals at the instance of the State of Himachal Pradesh.

2. In the absence of any eye witness to the murder the prosecution relied upon the following circumstances to prove its case:

- (i) On November 20, 1979 Amar Nath met with a violent and unnatural death in village Kui and his dead body was found in a Nala near the house of Labdhi (PW 1);
- (ii) Amar Nath was last seen near the house of Labdhi in the company of the three accused persons (the respondents);
- (iii) Dhani Ram disappeared from the village soon after the occurrence;
- (iv) Dhani Ram, who was then employed in Indo Tibetan Border Police, had come to the village on leave for a month but suddenly he

got his leave cancelled on a false pretext;

(v) The jersey and the hunting shoes which Dhani Ram was wearing on the day of occurrence were found to bear stains of human blood;

(vi) The pajama and the shirt of Bhagat Ram which he was wearing on the day of occurrence were found to contain blood stains;

(vii) While in police custody Bhagat Ram made a disclosure statement in pursuance of which he got recovered the watch (Ex.P.2) which the deceased was having on his person on the day of occurrence;

(viii) The pajama, shirt and fleet shoes which Kanshi Ram was wearing on the day of occurrence were found to contain blood stains; and

(ix) Amar Nath had instituted a suit for recovery of Rs. 1,000/- against the father of Dhani Ram which after his death, was being defended by Dhani Ram and that suit was pending when the occurrence took place.

3. On scrutiny of the evidence adduced by the prosecution to prove the above circumstances the trial Judge held that those mentioned in serial Nos. (i), (iii), (iv), (v) and (ix) stood conclusively proved. As regards the circumstance at serial No. (ii) the trial Judge did not accept the prosecution version that the deceased had been last seen with all the three accused persons. He was however satisfied that Dhani Ram had been seen following the deceased towards the house of Labdhi (PW 1) when he (the deceased) left the house of Indro (PW 3) in the forenoon of the day of occurrence. So far as the other three circumstances were concerned the trial Judge held that none of them was proved. With the above findings the learned Judge concluded that the proved circumstances irresistibly pointed to the guilt of Dhani Ram (Respondent No.1) and the same were inconsistent with his innocence. Accordingly the trial Judge convicted and sentenced Dhani Ram under Section 302 I.P.C. and ordered acquittal of the other two respondents.

4. In disposing of the appeals the High Court reappraised the entire evidence and agreed with the findings of the trial Judge regarding circumstances under serial Nos.(i), (vii), (viii) and (ix). The remark of the High Court regarding circumstance under serial No. (iii) was that Dhani Ram himself admitted that he left the village at 10.30 A.M. but in the absence of any positive evidence about the exact time of the murder of Amarnath it would not be correct to say that he left the village soon after the murder. While dealing with circumstance under serial No.(iv) the High Court observed that there was no material on record from which it could be said that Dhani Ram had cancelled his leave on a false pretext; and that; on the contrary, the evidence indicated he had sufficient reason to cancel his leave. As regards the circumstance under serial No. (ix) the comment of the High Court was that the suit in question was instituted in the year 1972 and, therefore, in 1979 when the murder took place it could not have furnished any motive

to Dhani Ram to commit the murder. So far as the other two circumstances under serial Nos. (ii) and (v) were concerned the High Court disagreed with the findings of the trial Court and held that the prosecution failed to establish those circumstances. With the above findings and comments the High Court passed the impugned judgment.

5. We have heard Mr. Altaf Ahmad, the learned Additional Solicitor General, who appeared on behalf of the appellants, and Mr.S.N. Mehta, the learned counsel for the respondents and considered the entire evidence adduced during trial. At the outset Mr. Ahmad fairly concluded that considering the nature of incriminating circumstances alleged against the respondent Nos. 2 and 3 he was unable to contend that their acquittal by the trial Court, as affirmed by the High Court, was unjustified. He, however, strongly urged that the prosecution had succeeded in conclusively proving its case against Dhani Ram, the respondent No.1. According to Mr. Ahmad the High Court was not justified in upsetting the findings of the trial Judge in respect of the circumstances under serial Nos. (ii) and (v) as the same were based on proper appreciation of the evidence. He next urged that those two circumstances taken cumulatively with the other proved circumstances formed a chain so complete that there was no escape from the conclusion that the respondent No.1- and non else had committed the murder of Amar Nath. In responding, Mr. Mehta concurred with the submission of Mr. Ahmad that the above two circumstances were the most incriminating and only on proof thereof the prosecution could legitimately claim that the case against the respondent No.1 stood proved but submitted that the findings of the High Court in this regard could not be said to be improper, much less perverse.

6. In the context of the respective stands of the learned counsel we have to only ascertain whether the findings of the High Court in respect of the above two circumstances are patently wrong so as to entitle us to disturb the order of acquittal. To prove the aforesaid circumstances the prosecution rested its case solely upon the evidence of Indro (PW 3), who at the material time was aged about nine years. The High Court discussed her evidence at length to decide whether her evidence could be relied upon. In answering the question in the negative the High Court first took note of the admitted fact that Brahmo Devi, mother of Indro, was inimical towards Dhani Ram and she had filed a criminal complaint against wife of Dhani Ram only a month before the occurrence in question. In that background the High Court observed that there was every reason to assume that Brahmo Devi had opportunity of influencing this child and that she was also interested in so doing on account of her enmity with Dhani Ram. The High Court next noticed that Indro identified the jersey and the hunting shoes which the appellant was wearing on the day when he was last seen with the deceased and the watch (Ex.P.2.), as the one and the same which the deceased was wearing on his person on the day of occurrence. In commenting upon her above evidence the High Court observed that even if it was assumed that she could see Dhani Ram from a distance going away with the appellant she would certainly not have been in a position to remember or identifying his wearing apparels and the shoes he was wearing and the watch which Amar Nath had on his wrist. From all these facts and circumstances the High Court deduced that possibility of her being tutored could not be ruled out. Along with this aspect of the matter the High Court took note of the fact that there was no evidence to corroborate her testimony to hold that the prosecution

failed to establish circumstances under serial Nos. (ii) and (v). Since the above reasonings of the High Court are cogent and convincing and cannot by any stretch of imagination be said to be baseless or untenable no interference with the impugned judgment is called for.

7. For the foregoing discussion we dismiss the appeals. The respondents, who are on bail, are discharged from their respective bail bonds.

JUDIS