

PETITIONER:
RAM SINGH & ORS.

Vs.

RESPONDENT:
STATE OF HIMACHAL PRADESH

DATE OF JUDGMENT: 24/02/1997

BENCH:
M.K. MUAKHERJEE, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.P. KURDUKAR, J.

These criminal appeal by Special Leave have been filed by the eleven appellants challenging the legality and correctness of the judgment and order dated March 11, 1988 passed by the High Court of Himachal Pradesh at Shimla affirming their conviction and sentence under Section 201/120-B of the Indian Penal code passed by the Sessions Judge, Mandi.

2. Alongwith the appellants, four others, namely, Mohd. Sardar, Lal Singh, Jiwan Lal and Netar Mani (all police officials) were put up for trial for offences punishable under Section 302/342/506/201/120-B of the India Penal code and on their convictions for the above offences, were sentenced to suffer life imprisonment under Section 302/120-B IPC and for various other terms of sentences in respect of other offences. The Appellants however were arraigned only for the offence punishable under Sections 201/120-B of the Indian Penal Code. these appeals are, However. Confined to the conviction and sentences of the appellants under Section 201/120-B of the Indian Penal Code for it is common premise that the confessions of the four convicts were affirmed by the High Court and their Special Leave Petition to this Court was dismissed.

3. Briefly Stated the prosecution case is as under:-

One Kishan chand @ Krishnoo (PW 10) of Village Dadah Lodged a report at Balh police station stating that on July 7, 1983, a theft of some currency notes and three gold ornaments had taken place in his house. This report was lodged on July 8, 1983. After registering the crime, Krishnoo went to his village. He suspected Dila Ram (PW 16). On 10th July, 1983, Lal Singh, police constable accompanied by some other constables came to the house of Krishnoo who pointed out deceased). Both of them were interrogated by Lal Singh. In the Meantime. ASI Narbir Singh came there and continued further interrogation. The police party thereafter took Lal Singh and Sheru to the police station balh on the evening of July 10, 1983. During the investigation, couple of other suspects were also interrogated but without any success. One Basanta Ram was also taken the police station

on 9th July, 1983 and was detained there. Therefore, Longu Ram, father of Basanta Ram, approached Sh Parkash Chand (PW 1) in the morning of July 11, 1983 to use his good offices with SI Mohd. Sardar for Release of his son. On such Intervention, SI Mohd. Sardar Agreed to release Basanta and Dila Ram after the swelling on their feet subsided. SI Mohd. Sardar asked Parkash Chand (PW 1) to wait in the police station as he would be taken as a witness to the recovery of stolen articles pursuant to the statement under Section 27 of the Evidence Act made by Sheru. They went towards 'nalla' at village Dadah alongwith Sheru but nothing could be recovered. At the instance of SI Mohd. Sardar, At the relevant time, a police van bearing No. 265 was called from police headquarters at Mandi for carrying out the excise raids as it was reported that an illicit distillation was going on at various places. Sheru who was then in the custody of SI Mohd. Sardar Made further statement that stolen articles were kept in Dadah 'nalla' and he would recover the same from there. The police party then came to Dadah 'nalla' in a track but nothing was recovered therefrom. It is the prosecution case that SI Mohd. Sardar and other police constables used the third degree methods on Sheru causing several injuries to him. On 11th July, 1983, 1983, police party headed by Mohd. Sardar went to the house of Sheru as he had made a statement that ornaments were kept at his house. After reaching the house of Sheru, his mother Reshmo (PW 14), wife Bhuvneshwari (PW 11) and other relatives came out of the house and permitted to take the search but nothing was recovered. It is then alleged by the prosecution that the police party thereafter gave merciless beating to Sheru. He was thereafter gave merciless beating to Sheru. He was thereafter taken to the police station and detained during the night. On July 12, 1983, Sheru during further interrogation made a statement that he had kept the stolen articles in village Shegli. In pursuance of the said statement, Mohd. Sardar alongwith the place party boarded the mini bus (police van) and went towards village Shegli. Nothing was recovered from the said village. Sheru was again given severe beatings by Mohd. Sardar and other police constables and it appears that during further interrogation Sheru used to make statements as regards stolen articles having been concealed at various places but nothing could be recovered. The last leg of the investigation was a confessional statement which is alleged to have been made by Sheru that he had kept the stolen property under a banana tree at village Biharta. SI Mohd. Sardar alongwith the police party and other police constables who had come from Mandi proceeded towards village Biharta in a police van. The police van then was parked on the road and SI Mohd. Sardar and three other police constables went on foot towards village Biharta. Nothing was recovered from that place. Due to severe beating by the police officials during his detention in the police custody, the health of Sheru deteriorated and , therefore, they decided to take him to the civil dispensary, Sheru Succumbed to his injuries. Realising the consequences of death of Sheru, SI Mohd. Sardar and other police constables got down from the vehicle and held a discussion to decide the mode of disposal of the dead body. Initially they thought of taking the dead body of Sheru to the forest areas and burn it there. Accordingly, SI Mohd. Sardar asked Jivan Lal, police constable and Krishnoo to go to Chail Chowk in police van and get two empty gunny bags, one tin a rope. They returned with these articles at dusk time. They all boarded the mini bus (police van) and asked the driver to take it to Sunder Nagar dispensary for

post mortem examination. The police van stopped a little away from the petrol pump and thereafter Deepak Raj, Natar Mani, police constables and Krishnoo went with the tin to Chail Chowk and then brought the diesel in the tin and petrol in one bottle from the said petrol pump. SI Mohd. Sardar asked the driver to take the vehicle to Nilaspur. They thereafter moved on Jukhala-Brampukhar road and after covering a distance of 3/4 Kms., the police van was stopped. The dead body was taken out of the van at some distance and after sprinkling diesel over the dead body, it was set on fire. It was then realised that some residential house were in the nearby locality and the flames would attract their attention. Immediately they extinguished the fire, put the dead body into the gunny bag and tied it with a rope and brought back and kept in the police van. They thereafter proceeded towards sleeper bridge and threw the dead body into the Sutlej river. They took every care to see that the dead body disappeared in the flow of the water of the river. On 13th July, 1983 at about 4.00 a.m., they all returned to the police station, Balh. It is alleged by the prosecution that Mohd. Sardar warned Parkash Chand (PW 1), Bihari Lal (PW 2) and Krishnoo (PW 10) not to disclose the incident to anybody. If any query is made by any of the relatives of Sheru, he be told that he had absconded from the police custody. Parkash Chand, Bihari Lal and Krishnoo However did not accept the advice of Mohd. Sardar. They went to one Jai Singh, a member of Panchayat and told him about the incident. They then contacted Tulsi Ram (PW 13), the Up Pradhan who advised them to go and inform about the incident to Sh. B.C. Negi (PW 20), Superintendent of Police, Mandi. Accordingly, Superintendent of Police, Mandi was contacted and he was told about the incident. S.P. Mandi alongwith other police officials went to police station Balh and lodged the report at the instance of Parkash Chand. After completing the investigation, a charge sheet came to be filed against the four co-convicts and the appellants for the offences mentioned hereinabove.

4. The appellants denied the allegations levelled by the prosecution against them. According to them, they did not know anything now and who killed Sheru and thereafter how the dead body was made to disappear. They are innocent and they be acquitted.

5. As stated earlier, the limited question that falls for our consideration in this appeal is as to whether the complicity of the appellants for the offences punishable under Section 201/120-B of the Indian Penal Code was proved beyond reasonable doubts. To Prove the complicity of the appellants, the prosecution mainly relied upon the evidence of three eye witnesses, namely, Parkash Chand (PW 1), Bihari Lal (PW 2) and Krishnoo (PW 10). It is not in dispute that the corpse of Sheru could not be traced.

6. M/s Rajendra Singh and Ranjit Kumar, Learned Counsel appearing in support of this appeal urged that the evidence of Parkash Chand (PW 1), Bihari Lal (PW 2) and Krishnoo (PW 10) in the facts and circumstances of the case could not be the basis of conviction of the appellants as they were accomplices in the present crime. According to the learned counsel, if their evidence is excluded out of consideration, then there is no material on record to sustain the conviction of the appellants. The conduct of these witnesses was totally opposed to the ordinary nature of Human conduct. Their evidence does not show as to how any of these appellants was responsible for causing the disappearance of the dead body. The appellants were gainfully employed as government servants and infect they had nothing

to do with the investigation of the theft case. They were on they did not participate in any of the criminal acts alleged against the four co-convicts, namely, Mohd. Sardar, Lal Singh, Jivan Lal and Natar Mani. Assuming that they were the inmates of the police van that by itself would not prove their complicity in the present crime.

7. Mr. T.A. Khan, Learned Counsel appearing on behalf of the State supported the impugned judgment.

8. We have carefully perused the judgment of the court below, the oral evidence of Parkash Chand (PW 1), Bihari Lal (PW 2) and Krishnoo (PW 10) and other materials on record and we are satisfied that the impugned judgment suffers from no infirmity.

9. The contention raised on behalf of the appellants is that the evidence of Parkash Chand, Bihari Lal and Krishnoo should be rejected on the ground that they were accomplices and there is no corroboration to their evidence from the materials on record. It is difficult to brand these witnesses as accomplices because they were required to accompany the investigating party in respect of a theft case. It is true that these three witnesses were all along with the investigating party till the dead body was thrown into the Sutlej river. That by itself could not make them accomplice in the present crime. The evidence of these three witnesses indicates that they were uneasy when they were allowed to go from the police station on 18th July, 1983 and as soon as they were free from the control of the investigation party, they immediately rushed to Superintendent of Police, Mandi to lodge the complaint. Parkash Chand (PW 1) and Bihari Lal (PW 2) have testified that they without any loss of time contacted the Superintendent of Police, Mandi and narrated the incident. They have given all details how the injuries were caused to Sheru and on his death how the dead body came to be disposed of. The learned courts below accepted their evidence as trustworthy and credible and we see no reason to take a different view in that behalf. As regards the charge of conspiracy, Krishnoo (PW 10) has testified that the appellants and the other four co-convicts were talking with each other at a short distance and during said discussion, they decided to cause the disappearance of the dead body in a clandestine manner. In pursuance of this conspiracy, they initially tried to burn the dead body and thereafter extinguished the fire, put the dead body into the gunny bag and after carrying it in the police van near the sleeper bridge, they threw it in the Sutlej river. Parkash Chand (PW 1), Bihari Lal (PW 2) also testified to this effect. In this view of the matter, in our opinion, the prosecution has established the conspiracy that was hatched by the appellants and the other four co-convicts with regard to causing disappearance of the dead body of Sheru.

10. After going through the judgments of the courts below and the other evidence on record, we are satisfied that the conviction recorded by the courts below against the appellants under Section 201/120-B of the Indian Penal Code does not suffer from any infirmity. We accordingly affirm the same.

11. During the course of hearing, we were told by the learned advocate for the appellants that appellant No. 3 died on 15th February, 1989. The appeal to this extent, therefore, stands abated.

12. It was then contended on behalf of the appellants that each one of them had substantially undergone a substantive sentence. They are the government employees, Pursuant to the order passed by this Court, they have been released on bail.

In view of these circumstances, it was contended that ends of justice would be met if the appellants are sentenced to the period which they have already undergone. After hearing counsel for the parties as regards the quantum of sentence, we are of the opinion that ends of justice would be met if the substantive sentence of each of the accused under Section 201/120-B IPC is reduced to the period which they had already undergone. We accordingly do so.

13. For the foregoing conclusions, the conviction of the appellants under Section 201/120-B of the Indian Penal Code is confirmed, but, however, the sentence awarded to them for the said offence is reduced to the period already undergone. the sentence of fine against each of the accused is confirmed. The bailbonds of the accused to stands cancelled. The appeals are thus disposed of.

JUDIS