

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA.**

Cr.Appeal No. 321 of 1999.

Judgment reserved on : 14.8.2006

Date of Decision: August 31, 2006.

Daulat Ram & others

...Appellants.

Versus.

State of H.P.

.. Respondent.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for Reporting?

For the Appellant(s): Mr. Vinay Thakur, Advocate.

**For the Respondent(s): Mr. Ashutosh Burathoki, Additional
Advocate General.**

Deepak Gupta, J.

This appeal by the convicted accused is directed against the judgment of the Additional Sessions Judge, Solan in Sessions Trial No.10-S/7 of 1997 decided on 13.8.1999 where by has convicted the accused of having committed offence under Sections 365/34, 304-II/34, 120B/34 and 506/34 IPC. The accused Hari Nand has also been convicted for the offence under Section 452 IPC. All the convicts have been sentenced to undergo simple imprisonment for 5 years under Section 365/34 IPC and to pay a fine of Rs.2000/- each and to undergo simple imprisonment of three months in default of payment of fine. They have also been given similar sentence of 5 years under Section 304-II/34 IPC and to undergo simple imprisonment for

one year under Section 120-B/34 IPC. They have also been sentenced for two years under Section 506/34 IPC. Hari Nand has also been convicted for the offence under Section 452 IPC and sentenced to imprisonment of 5 years and to pay a fine of Rs.2000/-. All the sentences have been ordered to run concurrently.

The facts of the case necessary for decision of the case are that Santa was an elderly man aged about 90 years. He was virtually blind and was also hard of hearing. He was earlier residing with accused Khyali Ram. Khyali Ram is the father of Mahender Singh one of the appellants and father-in-law of Smt Nirmala Devi wife of Mahender Singh. Nirmala Devi was the maternal grand-daughter of deceased Santa. Santa had executed a Will on 23.5.1984 in favour of Khyali Ram and was residing with him for a long time.

Nathu Ram, PW1 is the nephew (brother's son) of Santa. According to him, Santa had shifted from the house of Khyali Ram to his (Nathu Ram) house and had executed a registered Will in his favour on 2.8.1996. Further, according to this witness, on 22.8.1996 at about 0030 hours on the night intervening 22/23.8.1996, when he along with his son-in-law Nikka Ram (PW2) and his wife Nardei were sleeping in the same room, the appellants Daulat Ram, Mahender Singh and Hari Nand accompanied by 3 – 4 persons whom he could not recognize but who were later identified as Hem Singh, Narender Singh and Amar Singh came to his house and hurled

abuses at him and asked him to come out. He further alleges that they kicked open the door and Hari Nand accused who was accompanied by 3 - 4 persons entered his house and caught hold of Santa and asked him to accompany them. In spite of Santa's resistance, Hari Nand wrapped him with a Khesi and Tamba and carried him forcibly on his back from his house. The facts as to what happened thereafter are not very clear. An FIR was lodged at 2.30 p.m on 23.8.1996 by PW Nathu Ram at Police Station, Arki about the incident in question.

On 25.8.1996 the dead body of a person was found near the house of Khyali Ram, Nirmala Devi and Mahender Singh who lived in a quarter near Panjari in Shimla. This body was identified to be that of deceased Santa. On the basis of the FIR and the subsequent events a case under Sections 365, 304, 177, 452 read with Sections 34 and 120B IPC was lodged against the accused persons, Daulat Ram, Nirmala Devi, Khyali Ram, Mahender Singh, Hari Nand, Hem Singh, Narender Singh and Amar Singh. The learned trial Court has acquitted all the other accused except the present appellants as mentioned hereinabove.

I have heard Mr. Vinay Thakur learned counsel appearing on behalf of the appellants and Mr. Ashutosh Burathoki, learned Additional Advocate General on behalf of the State- respondent.

Mr. Vinay Thakur has urged that the allegations against the present appellants/accused are totally false and they have falsely been implicated by the police in this case. According to him, there is no material on record to show that deceased Santa was kidnapped by the accused persons. He submits that the learned trial Court has totally ignored the evidence of PW12 Shyam Lal who was the Taxi driver. He further submits that there was inordinate delay in lodging the report and it is apparent that the report had been lodged after careful consideration. He further submits that the version of the complainant and his son-in-law cannot be believed since the village in which they reside admittedly consisted of a large number of houses and in case such an incident had occurred, the complainant would definitely have raised an alarm. He further submits that on the same evidence the trial Court could not have acquitted some of the accused and convicted the present appellants.

On the other hand Mr. Ashutosh Burathoki, learned Additional Advocate General appearing on behalf of the State-respondent submits that the case against the present appellants stands fully proved. He further submits that accused Khyali Ram, Nirmla Devi and Mahender Singh have definitely acted in a highly suspicious manner. According to him, their version that they found the dead body outside their quarter which was later identified to be that of Santa who was closely related to them cannot be believed. He further submits

that sniffer dog was taken to the spot where the dead body of Santa was lying. The dog after taking scent from the dead body entered the house of the accused which shows that the deceased had been taken to the house of Khyali Ram, Mahender Singh and Nirmala Devi.

In my opinion, there can be no manner of doubt that the deceased Santa was taken to the house of Khyali Ram in village Panjari in Shimla. The version of the accused Nirmala Devi, Mahender Singh and Khyali Ram that they found a dead body near their quarter and then reported the matter to the police cannot be believed. Normal human reaction on seeing a dead body of a person would be to see whose body it is and try to identify the person. Santa had earlier made a Will in favour of Khyali Ram and the deceased was the maternal grand-father of Nirmala Devi. They were bound to recognize his dead body. This only can lead to one irresistible conclusion that Santa between the night of 22/23.8.1996 and the morning of 25.8.1996 had been brought to the house of Khyali Ram at village Panjari in Shimla.

However, it is for the prosecution to stand on its own feet and show that Santa was in fact kidnapped from the house of Nathu Ram. Nathu Ram and his son-in-law of Nikka Ram have given a similar version that the present appellants along with three other persons had come to their house and after threatening them, forcibly took away Santa. Their statements, however, cannot be readily accepted to be correct. Admittedly,

the village where they live is a large village consisting of about 100 houses. It is also an admitted case that from their village the motorable road is about one hour's walk, meaning that it must be at least 2/3 kms away from the road. If such an incident happens, one can understand that when they were threatened the complainant and his son-in-law may have kept silent. Immediately after the accused left along with Santa, they should have raised an alarm and in case such an alarm had been raised all the villagers would have gathered together and could have easily chased the accused persons and caught them since admittedly the accused persons were carrying the old man on a narrow path to the main road.

Another factor which militates against the version given by the complainant is that they did not lodge the FIR till 2.30 p.m. the next day. There is no explanation whatsoever for the inordinate delay of almost 13 hours in lodging the complaint with the police. Even if it be assumed that the complainant could not have gone at night to lodge the report, the first thing that should have been done in the morning is, to have gone to the police station and lodge the complaint.

The version of Shyam Lal (PW12) who was the driver in whose taxi Santa was brought from the road at the house of PW1 to Shimla shatters the prosecution case. According to this witness, one day earlier to the incident 4 – 5 people came to him at Kunihar and hired his taxi and told him that they had to take their ailing grand- father from village Sai to Snowdon

Hospital, Shimla. He parked his taxi near the road and these persons went down and came back after about 1-1/2 hours. They told him that the road was bad and, therefore, they could not bring their grand-father. The next day, the same people came to him and hired his taxi. They came back after about two hours to the main road and carried an old man to the road. He took them and the old man to the hospital at Shimla and came back. This witness was declared hostile in cross-examination by the A.P.P. but nothing material could be extracted in his cross-examination.

I am of the opinion that the statements of PW1 and PW2 do not inspire confidence for various reasons. I have already given two reasons; (i) that no hue and cry was raised immediately after the incident and (ii) there was inordinate delay in lodging of the FIR. Another reason is that PW1 first stated that the deceased Santa had been living with him for a long time but later admitted that deceased Santa started residing with him only after he executed a registered will on 2.8.1996. It is apparent that Santa, therefore, resided with him only for about 20 days. It is also the admitted case that Santa was not well and there was some animosity between two sides since Santa had admittedly executed a Will in favour of the complainant on 2.8.1996 whereas he had earlier executed a Will in favour of accused Khyali Ram on 23.5.1984. Further according to PW12 Shyam Lal, on the next day they left Kunihar at about 4 -5 pm and accused along with Santa came

at about 7 p.m. This also belies the version of the complainant that the incident took place around mid night.

No doubt some of the accused also acted in a highly suspicious manner by not accepting the fact that Santa had been living with them. It may be that they got scared because of the criminal case which had already been lodged against them. However it is an undisputed fact that Santa died a natural death and there is no allegation that he was murdered. It appears that accused Nirmala Devi, Mahender Singh and Khyali Ram got scared after Santa died and thereafter put his body outside their quarter. It may be possible that their intention may also have been to get another Will executed in their favour. However, it is not the death of Santa which is the subject matter of the case but the question is whether Santa was kidnapped by the accused or not.

For the reasons given above, I am of the considered opinion that the prosecution has miserably failed to prove that deceased Santa was taken against his wishes from the house of complainant. Therefore, their conviction is bad and liable to be set aside.

The appeal filed by the accused is accordingly allowed and the conviction and sentence imposed upon the appellants/convicts by the learned trial Court is set aside. The bail bonds furnished by the appellants are discharged.

August 31, 2006.
S.

(Deepak Gupta), J.

