

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A No.358 of 1995

Decided on : August 31, 2009

State of H.P.

...Appellant.

Versus

Jagdish Chand

...Respondent.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant : Mr. Ramesh Thakur, Assistant Advocate General.

For the Respondent : M/s Inderjit Singh & Jeevesh Sharma, Advocates.

Surjit Singh, J (Oral)

State has appealed against the judgment, dated 17th December, 1994, of Additional Sessions Judge, Shimla, whereby respondent Jagdish Chand, who was charged with and tried for offence, under Section 304 of the Indian Penal Code, has been acquitted.

2. Allegations, on which the respondent was put on trial, are like this. On 24th February, 1991, Khub Ram (PW-1), a brother of deceased Gulab Singh, went to Police Post, Sunni, and lodged report that on that very day one Khem Raj came to his house, around 4 or 5 in the evening and informed that dead body of his brother Gulab Singh

Whether reporters of the local papers may be allowed to see the judgment?

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was lying in the area of village Dadiog, near the shop of Mohan Lal. That report was entered in the *Rojnamcha*. Police went to the spot and found the dead body lying 10-15 feet below the edge of the road.

3. Inquest was conducted. Necessary forms were filled in. Dead body was sent to the Hospital for postmortem examination, where PW-12 Dr. V.K. Mishra conducted postmortem examination and noticed the following injuries:

1. An abrasion on the forehead, 1½ x 1 cm in the centre near hair line, 4 cm above the glabella, dark brown in colour, direction below upwards, mud and dry leaves present in scalp hair.
2. Black eye right upper lid.

On opening the dead body, fracture of C-3 vertebra and dislocation (wedge fracture), fracture of cribriform plate right side, and fracture of middle cranial fossa (R), extending to pituitary fossa, were noticed. It was opined that the death had occurred instantaneously with the infliction of the injuries and the time lag between the death and the postmortem was 36 to 72 hours. Postmortem examination was conducted on 26th February, 1991, at 12.45 p.m. Cause of death was opined to be shock due to spinal compression.

4. During the course of investigation, PW-3 Ghaneshu Ram informed the police, on 10th March, 1991,

that on 20th February, 1991, he and deceased Gulab Singh had consumed liquor, by the side of the road at a distance of about 200 metres from the shop of one Mohan Lal, in village Dadiog and that when they had finished drinking, respondent Jagdish Chand came there and asked Gulab Singh to get away from the spot, as J.E. was coming and that he then pushed the deceased, as a result of which he fell. Police came to know, during the course of investigation that on 20th February, 1991, respondent, accompanied by Anant Ram (PW-6), Jamna Dass and J.E. Darshan Kumar, was going towards Baghi Pul and on the way they stopped at the tea stall of PW-4 Mohan Lal and while J.E. Darshan Kumar, Anant Ram and Jamna Dass were taking tea at the tea-stall, respondent Jagdish Chand went ahead. A boy working at the tea-stall of Mohan Lal, named Jagmohan, stated that he had made available tumblers and water to deceased Gulab Singh and PW-3 Ghaneshu Ram and that after some time respondent came there and asked deceased Gulab Singh to go away from the road side.

5. Respondent was arrested. During interrogation he made a disclosure statement leading to the discovery of a fuse grip, with which he allegedly hit the deceased.

6. Prosecution examined PW-1 Khub Ram, a brother of the deceased, PW-3 Ghaneshu Ram, PW-4 Mohan Lal, PW-5 Khem Ram, PW-6 Anant Ram, PW-7 Jamna Dass, PW-8 Jagmohan, PW-10 Darshan Kumar, J.E., PW-12

Dr. V.K. Mishra, PW-13 SI Ajit Kumar and PW-14 Inspector Krishan Kumar to prove the case.

7. Prosecution mainly relied upon the testimony of PW-3 Ghaneshu Ram. Trial Court has disbelieved his testimony, holding that the same is not corroborated by the medical evidence, in the form of testimony of PW-12 Dr. V.K. Mishra and the postmortem report Ex. PM. Learned trial Court has observed that the statement of PW-3 Ghaneshu Ram is also not corroborated by PW-6 Anant Ram, PW-7 Jamna Dass, PW-8 Jagmohan and PW-10 Darshan Kumar, J.E. Consequently, the respondent has been acquitted.

8. We have heard the learned Assistant Advocate General as also the learned counsel for the respondent and perused the evidence.

9. According to PW-3 Ghaneshu Ram, deceased and the respondent were seen together on 20th February, 1991, when the respondent told the deceased to move away from the road side, as the J.E. was coming that way and that the two had grappled. According to the statement of PW-12 Dr. V.K. Mishra, death of the deceased had taken place instantaneously with the sustenance of injuries by him and that the time gap between the death and the postmortem, which he conducted on 26th February, 1991 at 12.45 p.m., was 36 to 72 hours. He very categorically stated that the time gap was not more than 72 hours.

According to him, had the time been more than 72 hours then the decomposition of the dead body would have been much more than what he had observed. Now, according to the time gap given by this witness, the death of the deceased had taken place not prior to 23rd February, 1991. But, according to Ghaneshu Ram (PW-3), the respondent had grappled with the deceased on 20th February, 1991.

10. Not only that the testimony of PW-3 Ghaneshu Ram is not corroborated by the medical evidence, but the other witnesses also do not corroborate him. PW-6 Anant Ram, PW-7 Jamna Dass and PW-10 Darshan Kumar, J.E., say that the respondent had been within their view throughout, when they were taking tea at the tea stall of Mohan Lal. PW-8 Jagmohan, a servant of Mohan Lal, though says that the respondent came on the spot, where the deceased and PW-3 Ghaneshu Ram were taking liquor, yet he does not say that any quarrel or grappling, as testified by PW-3 Ghaneshu Ram, had taken place between the respondent and the deceased.

11. Evidence adduced by the prosecution, with respect to the recovery of grip, at the instance of the respondent, is also doubtful. PW-7 Jamna Dass, according to the prosecution, was one of the witnesses in whose presence recovery was effected, pursuant to the disclosure statement. The witness, however, did not support the prosecution story. He stated that he took out the grip, on

the asking of the police from the transformer and handed it over to them. He denied that the grip was taken out from the transformer by the respondent, as is the story of the prosecution.

12. Disclosure statement leading to the discovery of the grip was allegedly made in the presence of PW-2 Nagin Chand and one more person, who was not examined. PW-2 Nagin Chand denied that any statement was made in his presence. He stated that when his signature on Ex. PC, record of the alleged disclosure statement, was obtained, grip Ex. P-2 was already with the police.

13. Also, we do not find any evidence, indicating that the injuries noticed on the dead body could have been caused by blows of grip Ex. P-2.

Taking into account the aforesaid facts and the circumstances, we do not think this to be a fit case for reversing the judgment of acquittal. Hence, the appeal is dismissed.

(Surjit Singh), J

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(Surinder Singh), J