

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

***Cr. Appeal No. 370 of 1996***

***Reserved on: March 16, 2010***

**Date of Decision : March 31, 2010**

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State of H.P.

...Appellant.

Versus:

Chet Ram

...Respondent.

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***Coram:***

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

**The Hon'ble Mr.Justice Sanjay Karol, Judge.**

*Whether approved for reporting?<sup>1</sup>    No*

For the appellant:        Mr. R. M. Bisht, Dy. A. G.

For the respondent :    Ms. Nidhi Chawla, Advocate

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**Sanjay Karol, J.**

In Sessions Trial No. 62-N/7 of 1994, the accused was charged for having committed offences punishable under Sections 201 & 302 IPC. The alleged crime took place on 10.5.1994. After trial, the learned Sessions Judge, Sirmaur District at Nahan, acquitted the accused in terms of its judgment dated 27.7.1995. The State appeal filed in the year 1996 under Section 378 of the Code of Criminal Procedure has matured for hearing now.

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<sup>1</sup> Whether reporters of Local Papers may be allowed to see the judgment?

It is the case of the prosecution that Shri Banwari Lal (deceased) and Shri Chet Ram (accused) were employed as daily wagers in the Giri Power Project, Girinagar, near Paonta Sahib, Himachal Pradesh. On the issue of their seniority and regularization, certain differences had arisen between them. On 10.5.1994 at about 5.50 p.m., Shri Pritam Chand (PW-4), deceased Banwari Lal and Shri Inder Singh (PW-7), went to the house of Shri Ram Singh (uncle-Mama of PW-4), in village Parduni, where they had tea and started their journey back to village Doiyonwala. On the way, they met the accused near the house of one Parkash Chand in village Parduni. He also joined them. After some time deceased Banwari Lal stopped at the house of his in-laws and the other three continued with their journey. When they reached a place called Tairless, they also met Chowkidar Som Dutt. At Doiyonwala they purchased a bottle of liquor from Shri Ramesh and after going to his house, only accused and PW-7 consumed liquor. Thereafter, all three of them started their journey towards the Field Hostel, Girinagar, but however, mid way accused Chet Ram returned to his house. Finally PW-4 and PW-7 reached the Field Hostel and took their meals. Thereafter, PW-7 slept with Shri Nanak Chand in the Chowkidar hut and PW-4 slept in the verandah.

At about 3.30 a.m., accused came there and shouted for PW-4. His clothes were wet and he looked perplexed. There accused confessed with PW-4 that he had done away with the

deceased and thrown his body in the canal. PW-4 was asked not to disclose this fact to any one or else he would meet the same fate.

After confessing his guilt the accused went away but again came at about 7.00 a.m. to handover an application for taking leave from the office on 11.5.1994. PW-4 reported the matter to the police on 12.5.1994.

In the meanwhile, noticing the absence of deceased Banwari Lal from his house, his relatives got worried and started searching for him. His wife went to the office to inquire about his whereabouts. The daughter-in-law of the brother of the deceased, who had taken her cattle to the canal, noticed a payjama (Ext.P-1) belonging to the deceased lying on the bank of the canal. She informed Shri Bihari Lal (PW-1) of the same, who along with the other members of the family went to the spot and searched for the deceased in the canal. He got the water discharged and found the dead body of the deceased on the bottom of the canal. The police was informed and they visited the spot and recorded the statement of PW-1 under Section 154 Cr.PC (Ext.PA). On the basis of the said statement FIR (Ext.PP) dated 12.5.1994 under Sections 201 & 302 IPC was registered with the Police Station, Paonta Sahib. The inquest report (Ext.PB) was prepared and the post mortem (Ext.PK) was got conducted through Dr. R. K. Dhiman, who gave his report dated 12.5.1994. The payjama (Ext.P-1) was recovered by the police

vide memo Ext.PC. The sample of the blood stains as also the earth from the bottom of the canal was taken by the police vide memos Ext.PD & Ext.PE. In custody, the accused made a disclosure statement (Ext.PF), on the basis of which the canvas shoes (Ext.P-2) of the deceased were recovered vide memo Ext.PG and the stone (Ext.P-3) stained with the blood, with which the accused had allegedly killed the deceased was taken into possession vide memo Ext.PH. The clothes of the accused (Ext.P-4 & Ext.P-5) were also taken into possession vide memo Ext.PJ.

With the completion of the investigation, challan was presented in the Court and the accused was charged for having committed offences punishable under Sections 302 & 201 IPC, to which he did not plead guilty and was put to trial.

The statement of the accused under Section 313 Cr.PC was recorded. The accused took up a defence of false implication. The trial Court acquitted the accused of the charged offences.

Undisputed facts emerging from the record are as under:

(i) The prosecution examined Shri Bihari Lal (PW-1), Shri Chokus Ram (PW-2), Smt. Bhuri Devi (PW-3), Shri Pritam Chand (PW-4), Shri Shyam Singh (PW-5) & Shri Inder Singh (PW-7) as independent witnesses. PW-1 to PW-5 are close relatives. PW-1 is the brother of the deceased. PW-2 is the

brother-in-law of the deceased. PW-3 is the niece of the deceased. PW-4 & PW-5 are the nephews of the deceased. Only PW-7 is not related to the complainant party.

(ii) PW-4 and one Som Dutt were also interrogated by the police in connection with the same crime. Initially, PW-4 was in police custody for two days and thereafter for one day when his statement under Section 161 Cr.PC was recorded.

(iii) The complainant party and the accused have been litigating against each other over a land dispute.

(iv) As per the version of the Investigating Officer (PW-13), Shri Som Dutt committed suicide during the course of the investigation.

(v) During investigation, the Investigating Officer had found Shri Som Dutt to have taken part in the removal of the payjama and the shoes of the deceased before the dead body was thrown into the water.

(vi) There is no eye witness to the occurrence of the incident.

The prosecution case rests on circumstantial evidence. We shall first deal with the statements of PW-1 to PW-5. Deposition of PW-1 helps the prosecution only to the extent that the deceased and the accused had differences on the question of their claim for seniority. But, however, this version of his does not appear to be correct for the reason that nothing has been proved on record that inspite of the accused and the

deceased being in service for more than 20 years, a single complaint had been lodged by the deceased with respect to the same. With respect to some agricultural land, he admits to have filed a suit against the accused. He has made material and significant improvements from his earlier statement (Ext.PA) recorded with the police with which he was confronted. His version in Court that the wife of the deceased had gone to inquire about the whereabouts of her husband in the office is not there. Similarly, the fact that payjama of Shri Banwari Lal was stained with blood is not there.

PW-2 is also an interested witness. His deposition is only to the effect that the payjama as also the blood stained earth was taken into possession by the police. His statement does not advance the case of the prosecution for the simple reason that the report of the State Forensic Laboratory (Ext.PW), is not linked to the accused by sampling of his blood. Importantly, no blood was found on the alleged weapon of offence i.e. stone (Ext.P-3) or the payjama (Ext.P-5) and the shirt (Ext.P4). Human blood found on the trouser (Ext.P5) was inadequate for further test.

Statement of PW-3 is only to the effect that deceased Banwari Lal had meals at her house at about 8.30 p.m.

The star witness of the prosecution is actually Shri Pritam Chand (PW-4). His statement, in our view, is absolutely false and full of improbabilities. To us, it appears that he has

tried to save himself. As per his version, after PW-7 had consumed liquor with the accused, they left for the Field Hostel, Girinagar. After walking for a short distance, the accused returned to his house and the other two continued with their journey to the Field Hostel where they reached at about 9/9.30 p.m. After having their meals, PW-7 slept with Chowkidar Shri Nanak Chand in the hut and he slept in the verandah. At about 3.30 a.m., the accused came there and shouted for him. Clothes of the accused were wet and he was looking perplexed. On query he was informed that the deceased had fallen into the canal. On further questioning, the accused confessed to have killed the deceased and thrown his body into the canal. At about 5.30 a.m., the accused went away. PW-4 got scared and bolted the door of the room from inside and went off to "sleep". The accused threatened him not to disclose the fact to anyone lest he be also killed. At about 7.00 a.m., the accused again came back to hand over an application for leave to be given to the Junior Engineer. Why he remained silent and what transpired for two hours i.e. between 3.30 a.m. and 5.30 a.m., has not been explained by this witness. Both PW-7 and Chowkidar Nanak Chand were available at close distance. Further, why he did not take any action thereafter has also not been explained by him. How could he sleep after knowing the death of his relative. His conduct is absolutely un-natural and his statement does not inspire confidence. This witness is obviously deposing falsely. He

admits having remained in police custody for three days when his statement was recorded by the police. The Investigating Officer (PW-13), admits that this witness was a suspect as the investigation revealed that he was in the company of the deceased and the accused on the fateful night. Now, if the accused had killed the deceased and that too not before an eye witness, there was no need for him to have gone to this witness to make a confession in the middle of the night. After all he was the relative of the deceased. He could have conveniently sent the leave application to the office through any one. This witness was neither his superior officer nor a man of his confidence. His mother is a distant cousin of PW-1 who is the real brother of the deceased. Importantly, the police has not investigated or examined the Chowkidar Nanak Chand. His version that he bolted the door of the room is obviously false and stands contradicted from his earlier version wherein he has deposed that it was PW-7 and Chowkidar Nanak Chand who were sleeping in the room and he was sleeping in the verandah. It is not the case of the prosecution that the verandah had a door which could be bolted from inside.

Further more this witness has not explained as to why he remained silent for more than 24 hours and only disclosed to the police on 12.5.1994, the fact of the accused having made a confessional statement.



Statement of PW-5 also does not inspire confidence. Importantly, he admits not to have lodged any report with the police on the evening of 11.5.1994. This version of his stands contradicted by PW-1, according to whom, S/Shri Shyam Singh and Kesar Singh had been deputed by him to report the matter of recovery of the dead body of the deceased to the police at Police Post, Majra. Importantly, it stands admitted by this witness that PW-13 had informed him that Shri Kesar Singh and the accused had confessed to the concealment of the pair of shoes of the deceased and the stone which was used by them as a weapon of offence. Surprisingly, Shri Kesar Singh was cited as a witness and not an accused. There is no explanation on record explaining the same.

PW-7 does not advance the case of the prosecution any further. Even according to him the deceased had left their company and stopped at the house of his in-laws.

At best, this witness has proved the fact that the accused consumed liquor and after walking for a short distance left them. Importantly, there is no link evidence to show that after the deceased had left the house of PW-3 at about 8.30 p.m., he was last seen in the company of the accused. It is also not the case of the prosecution that on the fateful day while the accused was in the company of PW-4 & PW-7, he had either expressed anger or made a grievance about the alleged service dispute. It is also not that the accused proclaimed that he would

kill the deceased. Hence, his statement does not help the prosecution at all.

The statements of the prosecution witnesses cannot be relied upon to press the guilt of the accused in the commission of the alleged crime. Their statements are neither reliable nor trustworthy.

Importantly, PW-1 had deputed PW-5 and Shri Kesar Singh to lodge the report with the police on 11.5.1994. PW-5 states that he lodged the report at Police Post, Majra, but however except for his statement there is nothing on record to substantiate this fact. According to PW-12, while being posted as Moharrer constable at Police Station, Paonta Sahib, he received a telephonic call from HC Madan Singh of Police Post, Majra. Based on the same, he recorded roznamcha (Ext.PQ) vide report No. 39. Now Ext.PQ is silent as to who had lodged the report at the Police Post, Majra. It is the version of Sh. Kuldeep Sharma (PW-13) that before he reached the spot the police officials of Police Post, Majra had already reached there. The Investigating Agency has not examined any such person(s). Who are they has also not been explained by the prosecution. What was first seen by them; who all were present at that time and who all were examined at the spot has not been disclosed. Hence, the version of the prosecution witnesses that they had spotted the body of the deceased, including his payjama does not appear to be correct.

The only other circumstance against the accused is his alleged confessional statement made in the presence of PW-5, who also witnessed the recovery memos (Ext.PF, Ext.PG & Ext.PH). Statement of this witness cannot be relied upon for the reasons already discussed hereinabove earlier.

If on 11.5.1994 itself the police had information that the deceased had been killed by the accused then what prompted the police to interrogate PW-4 and deceased Som Dutt in relation to the very same offence. One cannot lose sight of the fact that there is no ocular evidence to the incident. The independent prosecution witnesses, except for PW-7 being interested witnesses, having prior dispute with the accused cannot be said to have deposed truthfully.

For all the aforesaid reasons, we find no merit in the present appeal which is accordingly dismissed. The bail bonds furnished by the accused are ordered to be discharged.

**( Deepak Gupta )  
Judge.**

**( Sanjay Karol ),  
Judge.**

**March 31, 2010.  
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