

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

***Cr. Appeal No. 411 of 1996***

***Reserved on: March 23, 2010***

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

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State of H.P.

...Appellant.

Versus:

Ashok Kumar

...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 : Mr. Bhupender Gupta, Sr. Advocate  
with Mr. Janinder Mittal, Advocate

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**Sanjay Karol, J.**

On 12.8.1994, Ashok Kumar (accused) is alleged to have given beatings to Sh. Dhanvir Singh who died due to the same on 14.8.1994. In Sessions Case No. 20-D/VII-1995, the accused was charged for having committed an offence punishable under Section 302 IPC, in which he was acquitted by the learned Sessions Judge, Kangra at Dharamshala, H.P., in terms of judgment dated 18.10.1995. The State's appeal filed

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

under Section 378(3) of the Code of Criminal Procedure, admitted on 20.6.1996, has matured for hearing now.

It is the case of the prosecution that Sh. Dhanvir Singh, resident of Sarad Bammi worked as a labourer. On 12.8.1994 at about 10.00 p.m., he came to the shop of Shri Ashok Kumar brother of Shri Jeewan Kumar (PW-5), which is at a place called Kaloa. Undisputedly, village Kaloa has few shops and is situated on the National Highway where there is traffic at all times. On the request of Sh. Dhanvir Singh, PW-5 allowed him to sleep on the cot in the shop and spend the night there. At about 10.30/11.0 p.m., while Sh. Dhanvir Singh was sleeping, accused came and started giving beatings to him. The altercation ensued between the two and upon being pushed by the accused, Sh. Dhanvir Singh fell flat on the ground. Thereafter, the accused jumped 2-3 times on his chest and also gave blows with kicks. PW-5 tried to intervene but accused pushed him and also threatened him of dire consequences. Thereafter, accused made Sh. Dhanvir Singh lie on the bench outside the "Khokha" (shack) of Sh. Dev Raj and left the spot. The following morning, Sh. Dhanvir Singh called for PW-5, who offered him water and milk but could not drink the same. At about 10.30 a.m., Sh. Madan Lal (PW-7), a Registered Medical Practitioner and Sh. Madan Lal (PW-10), a Tailor Master (the witnesses having similar names are different persons), who had their shops at Kaloa

came and found Sh. Dhanvir Singh sitting on the Bench outside the shop of PW-10. He narrated the entire incident to them.

Also on the asking of PW-5, one Jagdish informed Sh. Nikku Ram (PW-3) brother of Sh. Dhanvir Singh about the incident. PW-3 reached the spot and found the condition of the his brother to be "critical" and therefore took him to a Doctor (private practitioner) for medical treatment at a place called Garli. The deceased was then taken home. In the evening of 13.8.1994, PW-3 and his brother, informed Sh. Hans Raj (PW-4) the Pradhan of the area about the incident. The Pradhan asked them to come the following morning for reporting the matter at the Police Station, Jawalamukhi. Accordingly, in the morning of 14.8.1994, PW-3, PW-4, Sh. Ajeet Singh (PW-6) Chowkidar of the village and Sh. Hoshier Singh (PW-11) went to the Police Station, where report (Ext.PL) was lodged by PW-3. F.I.R. (Ext.PM) dated 14.8.1994 under Section 308 IPC was registered with the Police Station, Jawalamukhi. Sh. Dhanvir Singh was then taken to the Govt. Hospital at Jawalamukhi and examined by Dr. Arun Sandhu (PW-2), who referred the injured to the Zonal Hospital, Dharamshala (vide certificate Ext.PE). At the Zonal Hospital, Sh. Dhanvir Singh was examined by Dr. D. N. Chadha (PW-16), as per medical record (Ext.PQ). However he died there at about 11.00 p.m.

The inquest report (Ext.PB) was prepared by the Investigating Officer Sh. Braham Dass (PW-14) and the clothes

of the deceased being a torn shirt, blood stained Banian were taken into possession vide memo Ext.PF. The clothes of the accused (Ext.P6 and Ext.P7) were also taken in to possession and the said articles were sent for chemical examination. Report Ext.PP was also obtained by the police.

With the completion of the investigation, challan was presented in the Court and the accused was charged for having committed an offence punishable under Section 302 IPC, to which he did not plead guilty and claimed trial.

In all, the prosecution examined 16 witnesses. The accused stands acquitted by the Court below. Hence the present appeal.

As per medical report proved on record, the deceased was initially examined by Dr. Arun Sandhu (PW-2) who found the following injuries on his body:

- “1. There is lacerated wound on the upper lip. Through and through cutting mucocutaneous junction 1.5 cm deep to upper side. Blood clot and pus discharge present. The wound is on the right side of medial line. There is corresponding injury to the right lateral incisor tooth root and gum.
2. Complain of pain abdomen. On examination pulse was 70 per minute, B.P. 90/70 mm of mercury. Rigidity is present in the abdominal muscles, so nothing could be made out. Referred for pain abdomen to Zonal Hospital Dharamshala for expert opinion and management.”

The deceased was thereafter examined by PW-16 at Zonal Hospital. Dharamshala, according to whom, the exact size and the condition of the spleen could not be deciphered for the reason that it had ruptured and the patient was in a condition of shock. The injuries were allegedly inflicted upon the deceased in the night of 12.8.1994. As stands proved on record by the documentary evidence, he was medically treated for the first time on 14.8.1994 at about 10.30 a.m., unfortunately succumbed to injuries on the same day at about 11.00 p.m. in the hospital at Dharamshala. According to Dr. D. P. Swami (PW-1), who conducted the post mortem, the death took place due to "haemorrhagic shock due to rupture of spleen and liver as a result of blunt injuries (anti-mortem)". This injury according to the Doctor could have been caused by giving blows with fists and kicks. The fact that the deceased died due to the same is thus not in dispute.

Did the accused give beatings to the deceased is the question which needs to be examined. In this case there is no weapon of offence.

In our considered view, there are certain unexplained circumstances which have rendered the prosecution version to be extremely doubtful. The accused stands acquitted by the Court below. From the material on record, it cannot be said with certainty that the prosecution has been able to prove the case against the accused beyond reasonable doubt. There is

no consistent, cogent or reliable proven material on record to prove the guilt of the accused. The defence taken by the accused also raises doubt about the improbability of the prosecution case.

It is the defence of the accused that the family of PW-5 indulge in the sale of illicit liquor at their shop and on the fateful day, the deceased who was drunk was in fact beaten up by PW-5. As per the version of PW-4, the police had registered a case under the Excise Act against Shri Puran Chand, father of Sh. Ashok Kumar and PW-5. Most importantly, from the site plan (Ext.PO), it is evident that the bottle of liquor was found at the spot by the Investigating Officer. This lends credence to the defence version.

The prosecution case primarily rests on the testimony of the following independent witnesses; PW-3, PW-4, PW-5, PW-6, PW-7, PW-10 & PW-11. As we shall examine their statements hereinafter, it is our considered view that there are material contradictions and unexplained improbabilities in their statements. They cannot be said to be trustworthy witnesses. The veracity of their deposition is in doubt, hence no reliance can be placed on them to hold the accused guilty.

Amongst them, PW-5 is the star witness. He allegedly witnessed the occurrence of the incident. His conduct is un-natural. The veracity of his statement is in doubt. He was not close to the accused yet he allowed him to sleep in his brother's

shop. According to him, after giving beatings to the deceased, the accused left the spot in his presence. Yet he allowed the deceased to remain outside on a bench in front of the "Khokha" of Sh. Dev Raj. He did not attend to the injured but himself went off to sleep. Admittedly, when he intervened he was also pushed and threatened by the accused, yet he did not disclose this fact to anyone. The matter was not reported by him till the time his statement was recorded by the police. Further, he has made significant improvements from his earlier version (Ext.DB) given to the police wherein he got recorded that Sh. Dhanvir Singh had become unconscious. The reason is not far fetched. As per the defence, this witness alongwith his brother was carrying on the business of sale of illicit liquor in the shop (dhaba) and the police has initiated action against his family members under the Excise Act.

Perhaps to save PW-5 from the crime, the Investigating Officer appears to have introduced PW-7 and PW-10, to whom the accused allegedly confessed of having given beatings to the deceased. It is for this reason that this witness has retracted from his earlier version. Deceased being unconscious would render the version of PW-7 & PW-10 to be false. Further, this witness has feigned ignorance about the prosecution being faced by his brother. It is not the case of the prosecution that the deceased was either a relative or his friend.

Why did he allow an outsider to sleep in the shop of his brother has also not been explained by him.

PW-3, on the asking of this witness, allegedly reached the spot in the morning of 13.8.1994. The testimony of PW-5 is conspicuously silent about the events which took place in the morning of 13.8.1994. He has simply stated that he was busy in his Dhaba. It is highly unbelievable that a person who witnessed the occurrence of a crime and that too in his shop would have remained silent and aloof, particularly when the family members of the deceased reached at the spot. Importantly, it is the version of this witness that the accused came and suddenly started slapping the deceased who was sleeping on the cot. The sudden provocation or the cause for such an occurrence remains unexplained. It is not the case of the prosecution that the deceased and the accused were having prior enmity or dispute. It is not the case of the prosecution that the accused was a man of bad character either.

According to PW-7, when he reached his Clinic at Kaloa he found the deceased sitting outside the shop of PW-10. The deceased who was having pain in the abdomen asked him to save his life. He did not administer any treatment and asked the deceased to go to a big Hospital. He was informed by the deceased about the beatings given by the accused and when confronted, the accused admitted the same to be correct and agreed to get the deceased treated at a big hospital. He states



that the deceased was taken away by PW-3 but is silent whether it was in the presence of the accused or not. PW-10 does not support PW-7 with regard to the presence of either the accused or PW-3 at the spot. The presence of this witness at the spot and the events as narrated by him appears to be doubtful as both PW-3 & PW-5 do not corroborate his presence in the morning of 13.8.1994. He is a Registered Medical Practitioner. He examined the deceased and must have maintained some record. Why else would he ask the deceased to go to a big hospital. Importantly, PW-7 is a Registered Medical Practitioner. He did not notice any external injury which, according to PW-1 were there.

According to PW-3, on 13.8.1994 at about 9.00 a.m. he was informed by Sh. Jagdish that his brother who had been beaten up was lying on the bench outside the shop of Sh. Dev Raj at Kaloa. The prosecution has not examined either Jagdish or Dev Raj. Who is this Dev Raj, does he have a shop in village Kaloa? Also what did he witness in the morning of 13.8.1994 has not been established on record. As per the version of PW-7 & PW-10, the deceased was sitting on the bench outside the shop of PW-10. Upon reaching the spot PW-3 found his brother lying on the bench in a critical condition and he could not talk. He does not mention about the shop of PW-10. In any event this version of his stands falsified by the version of PW-7 & PW-10, according to whom, the deceased who was sitting with great difficulty had complained about the pain in the abdomen and

also narrated the incident to PW-7. According to PW-3 the occurrence of the incident was narrated to him by PW-5. Surprisingly, PW-5 does not say a word about the same. None has corroborated the version of PW-3.

Further according to PW-3, accused Ashok Kumar who was present at the spot had offered to purchase medicines for the accused. Now PW-7 and PW-10 do not support PW-3 on this count at all. All that PW-7 states is that PW-3 carried away his brother.

That apart the deceased was taken by PW-3 to a private practitioner (Doctor at Garli), where he was given medical treatment. This Medical Practitioner has not been examined. What treatment was given by him has also not been disclosed. This becomes significant in the background of the defence taken by the accused. The first medical treatment given to the accused, as established on record is after a period of 24 hours of the occurrence of the alleged crime. This lends credence to the defence taken by the accused. Even according to PW-3 the deceased was critical, then what stopped from taking him to a big hospital for giving better treatment has not been explained. Why the deceased approached the Pradhan (PW-4) only in the night of 13.8.1994 and wait for the morning of 14.8.1994 to lodge the report himself has also not been explained. The only explanation forthcoming is that PW-3 was waiting for the report to be lodged in the presence of PW-4. This

by itself cannot be a plausible or a justifiable explanation. Police Station, Jawalamukhi was just at a distance of one hour from the spot of crime. The family members of the deceased knew the identity of the accused. The occurrence took place on a National Highway and one could have easily travelled up to Jawalamukhi in a public transport.

Between the morning of 13.8.1994 and 14.8.1994 admittedly the deceased and PW-3 remained together and yet nothing was disclosed to him by the deceased. Therefore, it is unbelievable and highly improbable that the deceased would have narrated the incident to a third party i.e. PW-7 and not to his real brother i.e. PW-3. If Sh. Dhanvir Singh could not talk to PW-3 then how could he narrate the incident to the other witnesses.

The statement of PW-10 was recorded on 30.8.1994 whereas the matter was reported to the police on 15.8.1994. Why it took so much of time for the police to record the statement has not been explained.

According to PW-4, he was contacted by PW-3 and his brother Sh. Ajeet Singh in the night of 13.8.1994. Why did he immediately not take action and report the matter to the police has not been explained. Why he did not advise the complainant party to get the deceased properly treated first has also not been explained. He knew that the condition of Sh. Dhanvir Singh was serious and yet he waited for the complainant party to come

to him the next day and that too to get the matter reported to the police. He is the Pradhan of the area and is supposed to watch the interest of his constituents. He was duty bound to promptly report the matter to the police. His statement in fact does not inspire confidence. His version stands contradicted by the record. According to him, when the statement of the deceased was being recorded at the Police Station, Jawalamukhi, he was not present as he was sitting in another room with the SHO, whereas according to HC Ravi Kumar (PW-12) who recorded the said statement, both PW-4 and PW-6 were present.

The next witness examined by the prosecution is PW-6, the Chowkidar of the area, according to whom, in the morning of 13.8.1994 the incident had been narrated to him by PW-5. The accused who was present there, upon being confronted confessed that he had only slapped the deceased twice and the deceased received injuries on the lip due to the fall. Upon being reminded of his moral duty to get the deceased medically treated, the accused took away the deceased from the spot. Now his version renders the version of PW-3 & PW-7 to be false. The contradiction in their statements is major and significant. Importantly, PW-6 does not mention the presence of PW-3, PW-7 & PW-10 at the spot in the morning of 13.8.1994. Where did the accused take away the deceased has not been established by the police.

The next witness is Sh. Hoshier Singh (PW-11) who had been requested by the accused to intervene and get the matter compromised. Importantly, this witness is simply an agriculturist. He admits not to have any social dealings or connection with the accused. Why would he try to intervene particularly when he knew that the accused had committed a serious crime. He remained as an Honorary Captain in the Army, yet having learnt about the complicity of the accused in the alleged crime he remained silent and chose not to report the matter to any one.

Most importantly, there is yet another revealing factor which renders the prosecution version to be doubtful. Importantly, the viscera of the deceased was not preserved and no chemical examination of the same was got done. This gains significance in the background of the defence taken by the accused.

Even with regard to the recording of the extra judicial confession (Ext.PL) of the deceased, there is a dispute. According to PW-12, no questions were put to the deceased and all that was narrated was reduced into writing. The family members of the deceased were present at that time. Why the statement was not recorded in their presence has not been explained by the prosecution. According to PW-3 & PW-6, the deceased had not disclosed anything about the occurrence of the incident to them. PW-3 has stated the condition of the deceased

to be serious and critical and that he could not speak. Now, according to PW-4, the deceased was giving the replies either in the negative or affirmative to the questions put to him. Medical record (Ext.PQ) does not show the accused to be in conscious or unconscious state. Hence the version of PW-12 that the statement (Ext.PK) of the accused, as narrated was recorded by him, appears to be incorrect.

The conduct of the prosecution witnesses and in particular the family members is not that of a prudent person. The prosecution story is rendered improbable and doubtful as has been noticed hereinabove.

For all the aforesaid reasons, it cannot be said that the prosecution has been able to prove its case beyond reasonable doubt. 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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