

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 119 of 1998

Date of decision : February 26, 2010

State of H.P.	...Appellant
<i>Versus</i>	
Karam Deen	...Respondent

Coram

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

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting? Yes

For the Appellant: **Mr. Rajender Dogra, Additional Advocate General.**

For the Respondent: **Mr. Gulzar Rathor, Advocate.**

Surjit Singh, Judge (Oral)

State has appealed against the judgment, dated 5.1.1997, of learned Sessions Court, whereby respondent Karam Deen, who was tried for an offence, under Section 302 IPC for allegedly murdering his brother-in-law (wife's brother) Ramjan, has been acquitted.

2. Prosecution's version, as per evidence on record, is like this. Deceased Ramjan was married to Hasmat Bibi. Respondent Karam Deen is a brother-in-law of the deceased being deceased's sister's husband. Respondent and one Alia were allegedly having illicit relations with Hasmat Bibi. Deceased Ramjan used to object to the illicit relations of the respondent with his wife. On 4th July, 1996, Ramjan went to the Patwari of the village and from there he went to village Ranital,

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

...2...

telling the Patwari that he was going to that village. He was seen in the company of respondent at Ranital on 4.7.1996, in the evening, by PW-6 Harvinder Singh. Thereafter he was never seen alive by anybody.

3. A report was lodged with the police by PW-7 Lal Deen, a brother-in-law of the deceased, on 9th July, 1996, about the deceased having gone missing. Thereafter police and other relatives of the deceased started searching for him. On 25.10.1996, written complaint Ext. PW1/A, was submitted by PW-1 Kamaldin, a brother of the deceased, to Deputy Superintendent of Police, alleging that he suspected that the present respondent and one Alia, who were having illicit relations with the deceased's wife Hasmat Bibi, had done him to death with intent to remove the hurdle in the way of their having illicit relations with said Hasmat Bibi. Deputy Superintendent of Police marked the complaint to the Station House Officer on 26.10.1996 and on 27.10.1996, case was formally registered on the basis of this complaint, vide FIR Ext. PW9/A. Copy of the formal FIR Ext. PW9/A was received by the Additional Chief Judicial Magistrate on 28.10.1996.

4. On the very day of the registering of the case, vide FIR Ext. PW9/A, respondent allegedly made a disclosure statement leading to the discovery of the skeleton, the clothes and a pair of shoes of the deceased, besides one bamboo stick, the alleged weapon of offence. Skeleton was identified to be that of the deceased by PW-1 Kamaldin on the basis of denture, because the deceased had one tooth missing and the same was

...3...

found missing in the denture of the skull recovered from the spot. Shoes and skull were sent to a Forensic Science Expert, namely PW-13 Dr. D.K. Ghosh, who opined that the skull was of a male human being with a height of 5' 9" approximately and the age of the man appeared to be 50 years.

5. Prosecution sought to prove the case against the respondent by circumstantial evidence. It led evidence to prove the following circumstances:

- (a) There was a motive to kill the deceased as he used to object to the respondent having illicit relations with his wife and visiting his house in his absence;
- (b) Respondent made extra judicial confession to PW-1 Kamaldin that he and one Alia had killed the deceased;
- (c) Deceased was seen alive last in the evening on 4.7.1996 in the company of the respondent;
- (d) Respondent made a disclosure statement leading to the discovery of the skeleton of the deceased.

6. We have heard learned Additional Advocate General and learned counsel for the respondent and scanned the evidence on record.

7. For the reasons given hereinafter, we are of the considered view that none of the aforesaid four circumstances stands proved, beyond reasonable doubt.

Circumstance (a)

8. Allegation that the respondent had been having illicit relations with the wife of the deceased was sought to be proved by the prosecution by examining PW-1 Kamaldin, a brother of the deceased, PW-4 Sita Devi, a neighbour of the deceased and PW-6 Harvinder Singh, also a neighbour of the deceased. No doubt PW-1 Kamaldin and PW-6 Harvinder Singh did say that the respondent had been having illicit relations with the wife of the deceased, but they did not testify the facts and the circumstances, which led to their believing or concluding that the two were having illicit relations. Their statements are too vague to be used as specific and definite substantive evidence proving the allegation.

9. PW-4 Sita Devi stated that the respondent used to visit the wife of the deceased and some time in the absence of the deceased also, but she had no idea what kind of relations were there between the two. Therefore, it cannot be said with precision that the respondent had been having illicit relations with the wife of the deceased.

Circumstance (b)

10. Making of extra-judicial confession by the respondent was sought to be proved by the testimony of PW-1 Kamaldin. The witness no doubt stated that the respondent confessed to him having killed the deceased, but his statement is not believable. According to him, the confession was made to him by the respondent before he made complaint Ext. PW1/A to Deputy Superintendent of Police. In the said complaint, there is

not even a whisper of the alleged extra judicial confession. The only thing stated in the complaint is that the witness had suspicion that his brother was done to death by the respondent and one Alia, because the two were having illicit relations with the deceased's wife. Thus, this allegation also does not stand established.

Circumstance (c)

11. As regards the circumstance of the deceased having been seen last in the company of the respondent, prosecution relied upon the testimony of PW-6 Harvinder Singh. No doubt the witness stated that the two were seen together at Ranital in the evening on 4.7.1996, but there is no evidence on the record, indicating that the deceased was not seen alive thereafter till recovery of his alleged skeleton. The wife and the children of the deceased were the best persons to have testified that the deceased left the house on 4.7.1996 and did not return home or was not seen alive thereafter. Prosecution for the reasons best known to it chose not to examine either the wife or any of the children of the deceased, though he had a son aged 15-16 years and a daughter aged 13 years. Thus, this circumstance also cannot be said to have been proved, beyond reasonable doubt.

Circumstance (d)

12. Evidence with regard to the recovery of the skeleton allegedly at the instance of the respondent is also doubtful. Respondent is alleged to have made a disclosure statement on the very day of the registration of the case. Case was registered on 27th October, 1996 at 10 a.m., per endorsement Ext.PW9/B

...6...

on formal FIR Ext. PW9/A. It appears from the evidence that the respondent was in the custody of the police at Police Post, Ranital, before 10 a.m. on 17th October, 1996. The fact gives the impression that probably the skeleton had already been spotted, when the case was registered or even complaint Ext. PW1/A was made.

13. No doubt PW-2 Laldin one of the witnesses of the alleged disclosure statement and the recovery of skeleton, stated that the respondent was brought to Police Post at 3 or 4 in the evening, but PW-1 Kamaldin, a brother of the deceased, in the cross-examination, very categorically stated that when he reached the Police Post, Ranital around 9 or 10 on 27.10.1996, respondent and some other people were already there. Though the witness stated that he remained at the Police Post till late in the evening, when the respondent and the other suspect Alia, were taken to the place from where the skeleton was recovered, he did not say that any disclosure statement was made in his presence by the respondent or for that matter the other suspect Alia.

14. In view of the above discussion, we do not think this to be a fit case for interfering with the judgment of acquittal passed by the trial Court. Hence, the appeal is dismissed.

(Surjit Singh), J

February 26, 2010_(ss)

(Rajiv Sharma), J