
(2010) 10 SHI CK 0084
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 303 of 2000

State of Himachal Pradesh

APPELLANT

Vs

Dina Nath and Another

RESPONDENT

Date of Decision : 19-10-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2010) 10 SHI CK 0084

Hon'ble Judges : Surjit Singh, J;Rajiv Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Surjit Singh, J.—This appeal by the State is directed against the Judgment, dated 1.3.2000 of learned Sessions Court, whereby Respondents, Dina Nath and Nanak Chand, who were tried for offence u/s 302 read with Section 34 of Indian Penal Code, have been acquitted.

2. Prosecution story, as per evidence led during trial, is that on 2.12.1998, PW-1 Tara Chand lodged a report with S.H.O., Police Station, Manali that dead body of a man was lying near village Rangari by the side of the road. Police went to the spot and saw the dead body lying by the side of the road leading to village Sihunsa. Inquest was conducted and dead body was sent to district hospital, Kullu for postmortem examination. PW-2, Dr. Malay Sarkar conducted the postmortem examination and observed as follows:

The body was in rigour mortis condition. Clotted blood present over face, mouth, nose and right hand.

Contusion mark over left leg anterior aspect. No ligature mark was present in the neck. There was scalp wound on left temporal area about 1-1/4 inch surrounded by clotted blood. Few contusion mark on left side of forehead. There was haematoma over fronto parital area on left side. There was fracture on medible with medible pushed inside mouth with broken teeth present.

Larynx and trachea contained clotted blood. Blackish pigmentation was present on both lungs. Both chambers were empty small amount of clotted blood was present in right heart.

Oesophagus and stomach contained clotted blood. Large intestine contained fical matter.

3. Investigation of the case revealed that the deceased and Respondents consumed liquor at Manali at Zing-Zing Bar restaurant of PW-10 Shiv Ram on 1st December, 1998 and after consuming liquor they left Manali by auto rickshaw of PW-6 Hem Raj towards village Sihunsa and thereafter consumed liquor at the residence of PW-14 Fateh Chand in village Sihunsa and then there was a quarrel between the Respondents on one side and the deceased on the other and the Respondents assaulted the deceased and killed him.

4. Prosecution could not collect any direct evidence. The charge against the Respondents was sought to be proved by the following circumstances:

(a) Deceased and Respondents were last seen together at Manali and thereafter at the house of PW-14 Fateh Chand.

(b) There were blood stains on the pants of both the Respondents per report of the Chemical Examiner, Ex.PW-2/C.

5. Trial Court charged the Respondents with offence u/s 302 with Section 34 of Indian Penal Code, to which they pleaded not guilty. Therefore, they were tried for the said offence.

6. Trial Court concluded that the circumstance regarding deceased having been last seen alive in the company of the Respondents, did not stand established and that the mere presence of blood stains on the pants of the Respondents having not been proved to be of the blood of the deceased, the Respondents could not be said to have been linked with the commission of offence. Consequently, the Respondents were acquitted.

7. We have heard learned Additional Advocate General for the Appellant as also the counsel for the Respondents and gone through the record.

8. Shiv Ram (PW-10) is the owner of the restaurant known as "Zing-Zing Bar Hotel" where the Respondents and the deceased allegedly consumed liquor in the evening of 1st December, 1998. He did not support the prosecution story that Respondents and the deceased were at his hotel and consumed liquor. PW-7 Thakur Dass, who allegedly saw the Respondents and the deceased at the hotel of PW-10 Shiv Ram, also did not support the prosecution version. PW-6 Hem Raj by whose auto rickshaw, the Respondents and the deceased allegedly travelled towards village Sihunsa, also turned hostile. Fateh Chand (PW-14) and his brother Lal Chand (PW-9) also denied that the deceased and the Respondents visited their house and consumed liquor late in the night. Thus, the prosecution has failed to prove the circumstance of the deceased and the Respondents

having been last seen together on the night intervening 1st and 2nd December, 1998.

9. As regards the circumstance regarding stains of blood on the pants of the Respondents, prosecution did not lead any evidence connecting the two pants, on which stains of human blood were found, with the Respondents. The evidence adduced was that these pants were produced by the Respondents at the time when they were in the police custody during investigation. No other evidence was adduced to show that the pants belonged to the Respondents. Hukam Chand, PW-3 simply stated that the Respondents had produced certain clothes including pants, shirts, socks, jackets etc. to the police at police station during the investigation of the case. Otherwise also, the blood stains found by the Chemical Examiner on the two pants have not been connected with the blood of the deceased. As per Chemical Examiner report Ex.PW-2/C, the blood stains were disintegrated and did not admit of determination of blood group.

10. In view of the foregoing reasons, we do not find any merit in the appeal and the same is therefore dismissed.