

State of H.P. Vs. Jai Dev and ors.

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Court : Himachal Pradesh

Decided On : Dec-16-2009

Judge : Surjit Singh and; Surinder Singh, JJ.

Appellant : State of H.P.

Respondent : Jai Dev and ors.

Disposition : Appeal dismissed

Judgement :

Surjit Singh, J.

1. State has appealed against the judgment dated 1.7.1995 of learned Sessions Judge, Shimla, whereby respondents Jai Dev, Jatinder Kumar and Harneet, have been acquitted of the charge of murder, under Section 302 read with Section 34 IPC.

2. A report was lodged with the police on 23rd July, 1994, by PW-1 Puna Ram, an uncle of deceased Ganga Ram, that on 21.7.1994 Ganga Ram had gone to Nirmand from his village Jadani Pipal to buy merchandise but did not return and that his dead body had been found at 5 p.m. on 23.7.1994, the date of his lodging the report. The report was reduced into writing, in the form of statement, under Section 154 Cr. P.C., record of which is Ext. PW1/A, and case was formally registered on the basis of this report, vide FIR Ext. PW14/A.

3. PW-17 ASI Kushal Kumar of Police Station, Nirmand went to the spot, where dead body had been spotted. He conducted inquest and prepared report Ext. PW1/B. He also prepared site plan Ext. PW17/A. Dead body was sent for postmortem examination, which was conducted at Nirmand Hospital by PW-7 Dr. Jai Parkash on 24.7.1994 at 1 p.m. He noticed the following injuries:

1. There was lacerated injury on the right side of parietal area of the scalp running obliquely from the mid point in between the parietal prominence and sagittal suture going anteriorly. It is two inch in length, 1 inch depth and half inch in width. Margins not clear but swollen. Dark red blood clotted on it when this wound cleared and separated underneath the skull looked fractured at the site. The adjacent area of the scalp immediately to this injury has formation of haematoma.

2. One contusion on bulk of calf muscles of right leg at its mid point. It is half inch x 1/4' in dimension. It is of dark red colour. Scalp already described on first leaf. Skull fractured at the site of injury described above in the first leaf of the report.

Doctor gave the opinion that death had taken place due to shock and concussion. Time lag between the death and the postmortem examination was found to be between 48 hours and 72 hours. Death was opined to have taken place instantaneously with the infliction of injuries.

4. Investigation of the case revealed that deceased Ganga Ram, accompanied by PW-9 Padam Negi had gone to the house of PW-8 Shiv Lal on the night of 21st July, 1994, where deceased Ganga Ram, PW-8 Shiv Lal, PW-9 Padam Negi and PW-4 Tikkam Ram consumed two bottles of liquor. After consuming the liquor, all the four slept in the house of PW-8 Shiv Lal in village Bhagrighat. Around 12 or 12.30 in the night, Ganga Ram was heard shouting by PW-8 Shiv Lal and PW-9 Padam Negi that he was the son of a Thakur. When PW-8 Shiv Lal and PW-9 Padam Negi went out, they saw deceased Ganga Ram standing in the verandah of the house of PW-8 Shiv Lal and the three respondents just outside the verandah, quarreling with the deceased. PW-8 Shiv Lal picked up a pickaxe (Gainti), which was lying in his verandah and tried to separate the handle from the pickaxe, with a view to chasing away the respondent. In that process, the pickaxe fell outside the verandah. It was picked up by one of the respondents, namely Jai

Dev. Deceased Ganga Ram then ran away from the verandah. He was chased by all the three respondents. Respondent Jai Dev was carrying the pickaxe, without handle, with him, while chasing deceased Ganga Ram. After about 1/2 hour all the three respondents returned. This time they started shouting outside the house of one Sarmu Ram. They were challenging Sarmu Ram. PW-10 Charnu Ram, a brother of Sarmu, came out. PW-11 Jiwan Dass, a son of Sarmu, also came out. PW-11 Jiwan Dass picked up a Darat to scare away the respondents, who then ran away and while leaving they proclaimed that they were going to attend a marriage and that as and when they got a chance, they would sprinkle kerosene on their houses and set them on fire.

5. All the three respondents were arrested by the police. Respondent Jai Dev made a statement, record of which is Ext. PW1/E, on 10.10.1994. Pursuant to that statement, a pickaxe Ext. P-12, without handle, was recovered from the bushes. It was found lying at a distance of 5-7 feet from the site, where the dead body was found on 23.7.1994.

6. Police also took into possession shirt Ext. P11, which had allegedly been worn by respondent Jai Dev at the time of occurrence. Respondent Jai Dev went wearing that shirt alongwith the other two respondents to village Jiara, to attend a marriage. He danced in the party in a lawn upto 1 a.m. and threw away his shirt. PW-6 Shyam Lal picked up that shirt and kept it on one side of the lawn. He handed over that shirt to the police on 25.7.1994, vide memo. Ext. PW5/A.

7. Respondents denied their involvement in the commission of crime. They threw suggestions to the prosecution witnesses that the deceased had been done to death by PW-8 Shiv Lal, PW-9 Padam Negi and PW-4 Tikkam Ram and that they kept the dead body concealed in the house of PW-8 Shiv Lal till 23.7.1994, on which date it was thrown at the site it was spotted.

8. Learned trial Court did not believe the prosecution version and acquitted the respondents.

9. We have heard the learned Assistant Advocate General as also the learned Counsel for the respondent and gone through the record.

10. Deceased Ganga Ram was seen alive last in the company of PW-8 Shiv Lal, PW-9 Padam Negi and PW-4 Tikkam Ram, when they drank two bottles of liquor at the house of PW-8 Shiv Lal.

11. PW-8 Shiv Lal did not lodge any report with the police that the three respondents had come to his house on the night intervening 21st and 22nd July, 1994 and chased deceased Ganga Ram with a pickaxe, in the hands of one of them, namely Jai Dev or that after some time they returned to the village and started abusing and threatening Sarmu and a brother PW-10 Charnu Ram and son PW-11 Jiwan Dass chased them away. Not only this, he (PW-8 Shiv Lal) disappeared from his village on 24.7.1994, after the dead body had been found on 23.7.1994 in the bushes at a distance of about half a kilometre from his house. He returned to the village only on 28.7.1994. He alongwith PW-11 Jiwan Dass and PW-10 Charnu Ram was kept at the Police Station for 6-7 days and the police had been pressurizing them, during that period, to come out with truth. The fact is admitted by PW-11 Jiwan Dass and also by PW-10 Charnu Ram.

12. PW-8 Shiv Lal himself admitted in his cross- examination that he left his house on 24.7.1994 in the morning at 7 and returned on 28.7.1994. He stated that when he returned to his house, an ASI came to his house and took him to the Police Station. He also admitted that he did not narrate the incident to anybody till he was taken to the Police Station on 28.7.1994.

13. Statements of all the four above named witnesses, namely PW-8 Shiv Lal, PW-9 Padam Negi, PW-10 Charnu Ram and PW-11 Jiwan Dass were recorded, under Section 164 Cr. P.C, before a Magistrate on 4.8.1994. PW-8 Shiv Lal stated that he made statement before the Magistrate, under Section 164 Cr. P.C. for his safety, at the instance of police. It is anybody's guess as to what did he mean by safety and his making the statement at the instance of the police.

14. Story put forward by PW-8 Shiv Lal that on coming out to the verandah of the house, he picked up a pickaxe and tried to separate its handle and in that process the pickaxe fell and was picked up by respondent Jai Dev is falsified by PW-9 Padam Negi, who stated that when the respondents ran away, PW-8 Shiv Lal chased them with pickaxe, fitted in the handle. The story is further falsified by the

testimony of PW-1 Puna Ram, who stated that pickaxe was recovered about 7 days after the occurrence. Prosecution version is that pickaxe was recovered about 75 days after the occurrence, pursuant to the alleged disclosure statement made by respondent Jai Dev, record of which is Ext. PW1/E. PW-1 Puna Ram stated that pickaxe was recovered by the police about 7 days after the occurrence.

15. Statement of PW-1 Puna Ram not only falsifies PW-8 Shiv Lal's version that pickaxe had fallen from its handle and was picked up by respondent Jai Dev, but also falsifies the prosecution version that it was recovered pursuant to disclosure statement, record of which is Ext. PW1/E, on 10.10.1994.

16. From the testimony of PW-8 Shiv Lal, PW-9 Padam Negi, PW-10 Charnu Ram and PW-11 Jiwan Dass it appears that they themselves were suspects in the eyes of the police. Not only the statements of these witnesses suggest so, but the fact that the respondents were not taken into custody immediately, after these witnesses made statements, under Section 161 Cr. P.C. to the police or under Section 164 Cr. P.C. to the Magistrate in the month of August, 1994, also indicated so. Respondents were arrested only in the month of October, 1994. The fact that the respondents were arrested very late further suggests that the police were not very sure about the correctness of the version given by these witnesses and that is why they delayed the arrest of the respondents.

17. In view of the above discussion, we do not think this to be a fit case for interference with the judgment of acquittal. Hence, the appeal is dismissed.