

State of H.P. Vs. Dalip Singh

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Court : Himachal Pradesh

Decided On : May-24-2010

Judge : R.B. Misra and; Surinder Singh, JJ.

Appellant : State of H.P.

Respondent : Dalip Singh

Disposition : Appeal dismissed

Judgement :

R.B. Misra, J.

1. The present appeal has arisen after leave to appeal has been granted under Section 378 of the code of Criminal Procedure in reference to judgment of acquittal dated 19.7.1996, passed by the learned Sessions Judge, Solan in Sessions Trial No. 1-NL/7 of 1995, acquitting the appellant of the offence under Sections 302 and 201 Indian Penal Code.

2. In order to adjudicate the present appeal, it is necessary to give factual background of the case of the prosecution. It appears that on 12.10.1994, there was marriage of Rajbir Singh Gill which had taken place in village Dhella. Accused as well as Suleman (deceased) son of Shri Kalu resident of village Chanal Majra had also participated in the said marriage and had consumed alcohol with others. While going to his house, Suleman (deceased) was bibbing and was alleged to

have accompanied Raghubir Singh.

3. It appears that on 12.11.1994, the dead body of Suleman was recovered from a Well near village Dhella and mother of deceased Suleman Smt. Pammy lodged the report to the Police Station Barotiwala on 14.12.1994 on the basis of her report, FIR No. 94/94 was registered under Section 302 and 201 Indian Penal Code.

4. After investigation, it was revealed that Suleman had consumed excessive liquor while participating in the marriage ceremony and while going to his house, when he reached the house of Mukesh Dixit, in village Dhela, Dalip Singh came there. He was wielding an iron rod. He gave the blow of the iron rod on the shoulder of Suleman. Suleman fell down. Thereafter Dalip Singh dragged Suleman and threw him in the well. Accordingly Dalip Singh appellant was charged sheeted for the offence under Sections 302 and 201 Indian Penal Code.

5. In order to prove its case, prosecution examined as many as 20 witnesses whereas accused under Section 313 of the Code of Criminal Procedure has denied the offences and charges of prosecution.

6. We have gone through the contents of prosecution witnesses, material on record, medical evidence, and we notice that PW14 Dr. G.L. Bhardwaj has conducted the postmortem examination Ext. PW14/A of deceased Suleman. As per opinion of PW14, deceased died on account of shock caused by haemorrhage. The injury to the brain, in the opinion of PW14 Dr. Bhardwaj on the head of the deceased could have been caused after a fall inside the well. Deceased was found to have consumed liquor before his death. There was clavicle fracture on the right side of the chest that shows that the deceased had fallen head-down in the well. From the testimony of PW14, no injury however has been noticed on the shoulder of deceased Suleman which is contrary to the version of prosecution as appellant was stated to have been inflicted injury by iron rod on the shoulder of the deceased.

7. Ramesh Kumar (PW1) has stated that marriage of Rajbir had taken place in village Dhella on 12.11.1994 at 8 a.m. PW1 had gone for natural call. While

washing his hands on the tube-well Ext. P1 a cane was found nearby the tube-well. Ext. P1 was containing Laddu and jalabies which were picked-up and were consumed by him and PW1 came to his house. As per testimony of PW1 (Ext. P1) cane was brought to his house. However, on 12.13.1994 a person came to his house whose name he did not remember had inquired about the cane Ext. P1 when the cane was shown to that stranger he identified it belonging to him and the same Ext. P1 (cane) was returned to that stranger by the father of (PW1).

8. In cross-examination PW1 could not tell about Ext. P1 cane and to whom it belongs.

9. PW2 Manga Ram a resident of village Gurumajra stated that he was deployed as an attendant to look after the tube-well and PW2 and Suleman deceased had participated in the marriage ceremony which took place on 12.11.1994. According to PW2, he was over drunk and in that state he had exchanged hot words with Nathu, Piara and Suleman. Beyond that PW2 has not stated anything.

10. PW3 Jagan Nath has stated that when he went to village 'Godabri' known as village 'Dhela' on 13.12.1994 for brining bricks, he observed that many people were gathered near the tube-well and a dead was being taken out from the tube-well with police assistance. As per testimony of PW3, he himself and Het Ram went inside the well and brought the dead body of Suleman out of the Well. Bhura and others also identified the dead body to be that of Suleman.

11. In cross-examination PW3 has stated that the tube-well was situated at about 25 yards from the cluster of houses. The house of Rajbir, whose marriage was being solemnized was situated at the same distance from the tube-well. According to testimony of PW3 voices in the village could be heard, if raised from the tube-well. Jhuggies of the workers of Brick-kiln are situated at the distance of about 25 yards. As per testimony of PW3 in cross-examination dead body was lying with mouth stomach down and back upward. He noticed the water pipe in the middle of the well and pump fixed on the angle iron and gadders on the well. The ages of angle iron were sharp. PW3 however, noticed wounds on the face and head of the deceased. From the testimony of PW3 (though not a spot witness), how had gone inside the well for the recovery of the deceased from the well has

noticed sharp angle iron and gardeners inside the well and has noticed wound on the face and head of the deceased. However, he had not noticed any injury on the shoulder and the injuries have not been divulged in the postmortem report by PW14.

12. PW4 Sat Pala Labourer of Brick-kiln at village Dhella has only testified that the marriage had taken place in Dhella and from the village Brick-kiln which was less than half furlong. However, he has categorically stated that he is not aware that any body has taken the water from the tube-well as the key of the tube-well was kept with Kala. According to testimony of PW4 he had visited the tube-well on 12.12.1994 at 8 a.m., when he had noticed the water around the tube-well and the same was reported to Kala indicating that how the water had come out from the tube-well. According to him dead body was found floating on the well on 13.12.1994. The testimony of PW4 is contradictory in the sense that the dead-body was floating on the well on 13.12.1994. However, he has not indicated anything about the presence of police or presence of any body and no endeavour was being made by the police or any person regarding taking out the dead body from the well.

13. PW5 Nazir is stated to have associated in the investigation and has only recovered the Shawl Ext. P2 to be of Smt. Phumbi.

14. PW6 Raghuvir Singh a resident of Dhela and is employee of Irrigation Department as labourer stated that he along with his family members participated in the marriage and while he was taking meals at the house of Lachhman, Amar Jeet son of Lachhman called him and asked to take Suleman to his house because Suleman (deceased) was unable to walk on account of bibbing. While PW6 was taking Suleman to his house, accused came there and hit PW6 with iron rod on his stomach in the left side and had threatened him not to raise alarm otherwise, he would be killed. According to PW6, accused also hit Suleman with rod on his shoulder. However, he did not tell to anybody about the said incident. When PW6 had accompanied Suleman deceased, however, it is very strange and he was hit by a rod by the accused and the deceased Suleman was also hit by rod on his shoulder but the incident was not conveyed, narrated or divulged to any

person till 16.12.1994, i.e., the date when his statement was recorded by the police.

15. PW7 Kishan Dass is a resident of Chanal Majra. He observed that S.P. Solan was present in village Dhella and accused had divulged that he had killed Suleman by iron rod and iron rod had been kept by him in a field.

16. In cross-examination PW7 has divulged that rod Ext. P3 was found in search from the field. However, from the testimony of PW7 it was also divulged that 40-50 persons were searching the rod from the field. However, he is not aware about those persons. The testimony of PW7 is also not inspiring confidence regarding recovery of iron rod and no endeavour appears to have been made by the prosecution to indicate that the same rod was used for inflicting injury on the deceased Suleman. No blood stains of any nature was found on the iron rod and then when 40-50 persons were searching, under what circumstances the rod was recovered by PW7 only.

17. PW8 Smt. Pammy mother of Suleman deceased has only stated that her son had gone to attend the marriage and he did not turn-up. She asked Nurra to get information about the whereabouts of Suleman and she was told by Nurra that Suleman had died and his dead body was being brought. However, PW8 had not seen the occurrence and her testimony is not vital supporting the prosecution version.

18. PW9 Head constable Prem lal has prepared the Rojnamcha Ext. PW9/A.

19. PW10 Shri Bhura has only stated that deceased had participated in the marriage on 12.11.1994 and has stated that dead body of Suleman was recovered on 13.12.1994 from the tube-well.

20. PW1 1-Kala has stated that he was working as Water man at Brick Kiln situated at village Dhella and he usually worked from 9 a.m. to 10 p.m. The brick kiln are watered from the water of the nearby tube-well. He locked the tube-well and on 13.12.1994 he opened the lock of tube-well at 8 a.m. only PW1 1 went to the tube- well, he found the chain of the tube-well broken, and he did not notice

the body of Suleman inside the tube-well.

21. PW1 1 in his testimony has stated that on 13.12.1994 he had opened the lock of tube-well at about 10 a.m. However, he has not divulged that he had ever seen by any body. Then how the testimony of PW4 can be said to be reliable when he had told that when he went to the tube-well, the water was found near the tube-well and he reported the matter to Kala as to why the water had come out from the tube-well as such testimony of PW4 and PW1 1 are contradictory to each other. So much so, PW4 in his testimony has stated that the key of tube-well was being kept with Kala. PW4 is stated to have visited the tube-well on 8 a.m. on 12.12.1994 and he did not notice the chain of the door of the tube-well broken, whereas, from the testimony of PW1 1 Kala, who visited the tube-well on 13.12.1994, noticed the chain of the door of the tube-well broken. Testimony of PW4 and PW1 1 are contradictory in the sense that breaking the chain of the door of the tube-well after 12.12.1994 is meaningless as the same was noticed on 13.12.1994 by Shri Kala, who was stated to be in possession of the key of the tube-well.

22. Contradictory version of PW4 and PW1 1 has arisen and a suspicion has been created as to how the tube-well was used and the water was taken out from the tube-well.

23. PW12 Shri Nurra has stated that Suleman had carried the milk in a cane Ext. P1 and when he was sent by PW8 mother of the deceased to find out the where about of the deceased, he brought Ext. P1 to the house of mother of the deceased and Ext.P1 cane was given to him by Shri Budh Ram of village Dhella. About the said recovery of Ext. P1 also a contradictory version has come from the testimony of PW12 Nurra and testimony of PW1 Ramesh Kumar who is stated to have consumed laddu and jalebis from Ext. P1, which was carried by PW1 to his house and was kept at his house and the same was handed over by his father to a stranger. When Ext. P1 carried by deceased cannot be said to have been recovered and carried by two persons, namely, PW1 Ramesh Kumar and PW12 Nurra.

24. PW3 Nasib Singh has stated that he was President of Gram Panchayat Dhella and Suleman deceased had attended the marriage and had paid Rs. 101 as shagun. Nothing material has come from the testimony of this witness.

25. PW15 Vijay Kumar has only testified that a chemical examination report was found which has been verified by him. Viscera was sent for chemical examination, the report of which has been testified by PW15.

26. PW16 Gopal Chand constable has stated that he had carried five packets to FSL Bharari which was given to him and the same was deposited at FSL Bharari.

27. PW17 Om Parkash constable has stated that he had carried two packets to FSL Bharari and the same was not tampered with.

28. PW18 ASI Shri Ram has stated that he had recorded the testimony of two witnesses and had partly made investigation.

29. PW19 Sardari Lal S.I. was investigating Officer. He stated that he reached village Dhella on receiving information on telephone on 13.12.1994, prepared the inquest report Ext. PW19/B and sent the dead body for postmortem. He recorded the statement of witnesses on 15.12.1994 and took into possession Ext. P1 vide recovery memo Ext. PW10/A. He also took into possession Shawl Ext. P2 which was handed over by PW Kala. However, PW19 has not stated the injuries inflicted on the body of the deceased. He has also not indicated about the recovery of iron rod. The recovery of Ext.P1 cane itself is not reliable as PW1 has stated that Ext.P1 was taken out by him to his house whereas recovery of Ext. P1 was said to be made by Nurra (PW12).

30. On analysis of prosecution evidence, we find that an endeavour has been made by the prosecution to co-relate the offence with the accused on the basis of testimony of PW8 Smt. Pammy, PW10 Bhurra, P12 Nurra and PW13 Nasib Singh. From analysis of the prosecution evidence, we also notice that iron rod was being traced by 40-50 persons and abruptly it was found as Ext. P3 and no endeavour on the part of the prosecution has ever been made to prove that rod recovered Ext. P3 was ever used for inflicting injury on the body of deceased. Therefore, we are

of the considered view that recovery of Ext. P3 iron rod which is the main relevant weapon used for the crime and is for the purpose of inflicting injury and was said to be the cause of death of the deceased becomes irrelevant as per testimony of PW3, who himself went inside the well along with Het Ram to recover the dead body of deceased who has noticed the edged angle iron sharp garder in the well and has observed wounds in the face and head of the deceased which could have been the cause of death and could have been caused by falling of the deceased in the well. However, he also noticed that the injury as has been pointed out by PW3 which are contradictory from the injuries as has been found in the postmortem report, on the basis of medical report of PW14. The manner of causing injury is also contradictory.

31. We find that no prosecution witness has indicated the manner of injury which has been caused. PW6 who is stated to have accompanied the deceased at some place has not divulged about the incident to anybody hence cannot be said to be reliable. The prosecution has failed to prove its case beyond reasonable doubt.

32. On analysis of the prosecution witness and material on record, we apparently notice the contradiction in the injuries having been caused on the body of the deceased.

Therefore, we are of the considered view that the prosecution has failed to prove its case beyond reasonable doubt and rightly so the same view has been taken by the learned Sessions Judge. We do not find any scope of interference in the finding of learned Sessions Judge in the impugned judgment, hence the appeal is dismissed.