

Baldev Raj

Vs

State of Himachal Pradesh

Criminal Appeal No. 2 of 1976

(Syed M. Fazal Ali, P.S. Kailasam, A.D. Koshal JJ)

19.11.1979

JUDGMENT

FAZAL ALI, J. –

1. This appeal by special leave is directed against the judgment of the High Court of Himachal Pradesh by which the conviction of the appellant under Section 302 and sentence of life imprisonment were confirmed by the High Court. The prosecution case is detailed in the judgment of the High Court and it is not necessary for us to repeat the same. Even according to the prosecution, it appears that the origin of the manner in which the deceased met her death is shrouded in obscurity. In fact the FIR was lodged at the police station Gona by PW 1 Rattan Singh who was the father-in-law of the deceased where he has not mentioned at all that the deceased was assaulted or murdered by anybody. The facts mentioned in the FIR clearly show that it was a case of accidental death as a result of the deceased attempting to light fire in the house and while doing so her clothes caught fire. The medical evidence however does not show that the deceased died of burns though some traces of burning appear on some parts of the body. The High Court has rejected the entire evidence produced by the prosecution against the appellant and relied solely on the statement of PW 8, Smt. Bindra Devi the mother of the deceased to whom the deceased is said to have made an oral dying declaration that she was beaten to death by her husband Baldev Raj, the appellant. We have gone through the evidence of PW 8 from start to finish and we are not impressed with her evidence and are unable to hold that she is a reliable witness. In the first place there does not appear to be any particular occasion for the presence of PW 8 at the time when the deceased was being carried on a charpai. Secondly PW 8 says that she was not recognised by the deceased but was only identified by the voice of her mother. The most important circumstances to discredit the testimony is that she was nowhere in the picture for five days after the occurrence, when for the first time she made a statement before the police regarding the alleged dying declaration. In her deposition before the Sessions Court she admitted that before the committing Court, she had stated that she had met the Sub-Inspector even before her statement was taken by the police. There is nothing to show that at the time when she met the police for the first time she gave out that the deceased has made any oral dying declaration to her. Apart from this the evidence of this witness suffers from a number of infirmities which render her story inherently improbable.

2. The learned counsel appearing for the State submitted that there was some evidence to show that some strings of moonj was recovered but that by itself would not be sufficient to incriminate the accused. The father-in-law who was the best witness to know about the occurrence has given a complete go-by to the prosecution story when he alleged in the FIR which is the earliest version of occurrence, that the deceased had died an accidental death. It was contended by the counsel for the State that the defence taken by the appellant is false; even if that is so that by itself would not

strengthen the prosecution case. On a perusal of the only evidence relied upon by the High Court we are satisfied that the evidence of PW 8 is not worthy of credence. Thus the position is that there is no legal evidence to found the conviction of the appellant. The appeal is accordingly allowed and the appellant is acquitted of the charges framed against him. He is directed to be set at liberty forthwith.

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