

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 526

OF 2011

(Arising out of SLP(Crl.) No.10302/2010)

DAYAL DAS

Appellant(s)

:VERSUS:

STATE OF RAJASTHAN

Respondent(s)

J U D G M E N T

DALVEER BHANDARI, J.

1. Delay condoned. Leave granted.

2. We have heard the learned counsel for the parties at length.

3. This appeal emanates from the judgment and order dated 25th May, 2006 passed by the High Court of Judicature at Rajasthan, Jaipur Bench, in Criminal Appeal No.356 of 1984 by which the High Court has affirmed the order of conviction and sentence passed by the Trial Court.

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4. Brief facts which are relevant to dispose of this appeal are recapitulated as under:

On 26.8.1979 at 11.30 a.m., the Station House Officer, Police Station, Clock Tower, Ajmer recorded the Parcha Bayan (Ext.34) of Bheru Lal, PW-12 in Jawahar Lal Nehru Hospital, Ajmer. According to the Parcha Bayan, on 23.8.1979 at about 8.45 p.m., while he was standing outside the New Majestic Cinema, Hari Singh, Band Master and Ram Niwas came out from the shop of Soda Lemon belonging to Dayal Das Sindhi - appellant herein. Both were known to him (Bheru Lal). All these persons consumed liquor at the shop of the said Dayal Das Sindhi. While they were

consuming liquor at the shop of Dayal Das Sindhi,
one Lal Chand Thelewala was also seen drinking
liquor in the said shop.

5. Bheru Lal became unconscious and when he
regained consciousness on the next morning, he found
himself in the hospital and there he learnt that
Lal Chand had died because of consuming of illicit
liquor.

6. On the basis of the Parcha Bayan, the Police
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Officer registered the First Information Report
("FIR" for short) and started investigation. After
investigation it was found that seven persons,
namely, Lal Chand, Arjun, Bhagwan, Chaman Das,
Dhanna, Jethanand and Suresh Rawat lost their lives
due to consuming of illicit liquor.

7. The Additional Sessions Judge, Ajmer, after
trial of this case delivered the judgment on
7.8.1984 in Sessions Case No.3/1980 convicting the
appellant Dayal Das under Section 304 Part-II and
Section 328 of the Indian Penal (IPC) Code and
Section 54-A of the Rajasthan Excise Act. He was
sentenced to undergo rigorous imprisonment for ten
years and a fine of Rs.4,000/- under Section 304
Part-II of the IPC and he was further convicted and
sentenced to simple imprisonment for three years and
imposed a fine of Rs.3000/- under Section 54-A of
the Rajasthan Excise Act. However, both the
sentences were directed to run concurrently.

8. The appellant aggrieved by the said judgment
of the Additional Sessions Judge, preferred an

appeal before the Rajasthan High Court. The High Court in the impugned judgment has upheld the judgment of the Trial Court.

9. The Trial Court and the High Court concurrently held that the deceased Lal Chand had purchased illicit liquor from the shop of the appellant Dayal Das Sindhi and drinking of that illicit liquor at the shop of the appellant was the cause of death of Lal Chand.

10. Mr. D.N. Goburdhan, learned counsel appearing for the appellant as amicus curiae made threshold submission that both the judgments of the Trial Court and the High Court are perverse because the evidence of Bheru Lal, PW-12 has not been correctly read and appreciated by both the Courts below. According to Mr. Goburdhan, in the entire evidence of PW-12, it is nowhere mentioned that illicit liquor was purchased by the deceased Lal Chand from the shop of Dayal Das Sindhi. All what is mentioned in the statement is that he saw Lal Chand drinking in the shop of Dayal Das Sindhi. It is difficult to connect the accused with the crime only on the evidence that Lal Chand was seen drinking at the shop of Dayal Das Sindhi.

11. We have ourselves read the original statement of Bheru Lal, PW-12 but could not find from the statement that the deceased Lal Chand had purchased illicit liquor from the shop of the appellant. This part of the testimony of Bherulal has led to the conviction of the appellant but the same is totally missing from the original statement of Bheru Lal,

PW-12. Consequently, the appellant cannot be connected with the crime on the basis of the statement of PW-12.

12. It may be pertinent to mention here that the other two witnesses, namely, Hari Singh, PW-9 and Ram Niwas, PW-13 had turned hostile during the trial of this case. It may also be pertinent to mention that the liquor consumed by Lal Chand at the shop of the appellant Dayal Das, was not sent for chemical examination. Only on the basis of the statement made by Bheru Lal, PW-12, that the deceased Lal Chand was drinking at the shop of Dayal Das Sindhi, it is difficult to sustain the conviction of the appellant under Section 304 Part-II of the IPC.

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13. Learned counsel appearing for the State of Rajasthan fairly submitted that in the entire evidence of Bheru Lal, PW-12, he had nowhere stated that the deceased Lal Chand purchased illicit liquor from the shop of Dayal Das Sindhi.

14. On a careful reading of the original statement of Bheru Lal, PW-12, we have no hesitation in arriving at the conclusion that both the Sessions Court and the High Court have erroneously read and comprehended the statement of Bheru Lal, PW-12 and unfortunately that has led to the conviction of the appellant.

15. In this view of the matter, we are left with no option but to set aside the impugned judgment of the High Court as also the judgment of the Trial Court. Consequently, the conviction of the appellant

is set aside and he is directed to be released from jail forthwith unless required in connection with any other case.

16. The appeal filed by the appellant is allowed

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and disposed of accordingly.

17. The appellant was not represented by any counsel and this Court had to appoint amicus curiae in this matter. Therefore, we direct that copies of this Judgment/order be sent to all concerned authorities forthwith for compliance of the order.

18. Before parting with this case, we would like to place on record our appreciation for very able assistance provided to us by the learned amicus curiae Mr. D.N. Goburdhan, Advocate.

.....J
(DALVEER BHANDARI)

.....J
(DEEPAK VERMA)

New Delhi;
February 22, 2011.

ITEM NO.4

COURT NO.4

SECTION II

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S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Cr1) No(s).10302/2010

(From the judgement and order dated 25/05/2006 in SBCRL No.356/1984 of the HIGH COURT OF RAJASTHAN AT JAIPUR)

DAYAL DAS

VERSUS

Petitioner(s)

STATE OF RAJASTHAN

Respondent(s)

(With appln(s) for c/delay in filing SLP, bail and office report)
(FOR FINAL DISPOSAL)

Date: 22/02/2011 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DALVEER BHANDARI
HON'BLE MR. JUSTICE DEEPAK VERMA

For Petitioner(s) Mr. D.N. Goburdhan, Adv. (A.C.)
Mr. Prabal Bagchi, Adv.
Mr. Anirudh Anand, Adv.

For Respondent(s) Mr. Abhishek Gupta, Adv.
Mr. R. Gopalakrishnan, Adv.

UPON hearing counsel the Court made the following

O R D E R

Delay condoned. Leave granted.

Heard the learned counsel for the parties at length.

The impugned judgment of the High Court as also the judgment of the Trial Court are set aside. The conviction of the appellant is set aside, the appellant is directed to be released from jail forthwith and the appeal is allowed and disposed of in terms of the signed judgment.

(A.S. BISHT)
COURT MASTER

(RENU DIWAN)
COURT MASTER

(Signed reportable Judgment is placed on the file)