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DAYAL DAS

v.

STATE OF RAJASTHAN

(Criminal Appeal No. 526 of 2011)

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FEBRUARY 22, 2011

[DALVEER BHANDARI AND DEEPAK VERMA, JJ.]

*PENAL CODE, 1860:*

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*ss.304 (part-II) and 328, and s.54-A of Rajasthan Excise Act – Conviction by trial court and High Court, of accused on the statement that the person who died of consuming illicit liquor was seen drinking in the soda-lemon shop of the accused – HELD: The statement of the witness which led to*

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*conviction of the accused does not indicate that the deceased had purchased the illicit liquor from the shop of the accused –Moreover, the liquor consumed by deceased from shop of accused was not sent for chemical examination – Consequently, accused cannot be connected with the crime*

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*on the basis of such evidence – Judgments of trial court and High Court are set aside – Accused is acquitted – Rajasthan Excise Act.*

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**On the basis of 'Parcha Bayan' of PW12, the police registered an FIR against the accused, to the effect that PW12 alongwith two others consumed liquor in the soda lemon shop of the accused; at that time he saw one 'LC' also drinking in the shop of the accused. PW12 stated that he became unconscious and when he gained consciousness the following morning, he found himself**

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**in the hospital and learnt that 'LC' had died because of consuming illicit liquor. The trial court convicted the accused of the offences punishable u/ss 304 (Part –II) and 328 IPC, and s.54-A of the Rajasthan Excise Act and sentenced him to imprisonment for 10 years. The High**

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Court upheld the conviction and the sentence.

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In the appeal filed by the accused, it was contended for the appellant that the statement of PW12 nowhere mentioned that the victim died of the illicit liquor purchased from the shop of the accused and, as such, the evidence did not connect the accused with the crime.

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Allowing the appeal, the Court

HELD: 1.1 It could not be found from the original statement of PW-12 that the deceased had purchased illicit liquor from the shop of the appellant. This part is totally missing from the original statement of PW-12, though his testimony has led to the conviction of the appellant. Consequently, the appellant cannot be connected with the crime on the basis of the statement of PW-12. [Para 11] [1140-C-D]

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1.2 It may be pertinent to mention here that the other two witnesses, namely, PW-9 and PW-13 had turned hostile during the trial. It may also be pertinent to mention that the liquor consumed by the deceased at the shop of the appellant, was not sent for chemical examination. Only on the basis of the statement made by PW-12, that the deceased was drinking at the shop of the deceased, it is difficult to sustain the conviction of the appellant u/s 304 (Part-II) IPC. Thus, both the Court of Session and the High Court have erroneously read and comprehended the statement of PW-12, and, unfortunately, that has led to the conviction of the appellant. The judgments of the High Court and the trial court are set aside. Consequently, the conviction of the appellant is set aside and he is directed to be released. [Para 12, 14, and 15] [1140-E-F, H; 1141-A-B]

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 526 of 2011.

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A From the Judgment & Order dated 25.05.2006 of the High Court of Rajasthan at Jaipur in S.B. CrI. Appeal No. 356 of 1984.

B D.N. Goburdhan, Prabal Bagchi, Anirudh Anand for the Appellant.

Abhishek Gupta, R. Gopalakrishnan for the Respondent.

The Judgment of the Court was delivered by

C DALVEER BHANDARI, J. 1. Delay condoned. Leave granted.

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

D 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.

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

F 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.

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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.

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6. On the basis of the Parcha Bayan, the Police 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.

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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.

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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.

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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.

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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

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A 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.

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.

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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.

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16. The appeal filed by the appellant is allowed and disposed of accordingly.

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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.

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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.

R.P.

Appeal allowed.