

(1988) 09 P&amp;H CK 0023

**High Court Of Punjab And Haryana At Chandigarh****Case No:** Criminal Revision No. 1432 of 1985

Inder Singh and another

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision:** Sept. 22, 1988**Citation:** (1989) 1 RCR(Criminal) 154**Hon'ble Judges:** A.P. Chowdhri, J**Bench:** Single Bench**Advocate:** V.K. Bali and Mr. Madan Dev, for the Appellant; Satbir Singh, for the Respondent**Final Decision:** Allowed

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**Judgement**

A.P. Chowdhri, J.

Both the revision Petitioners were convicted by the learned Chief Judicial Magistrate, Rohtak, u/s 34 of the Police Act and sentenced to pay a fine of Rs 25/- each; in default of payment of fine the defaulting accused was further sentenced to rigorous imprisonment for five days.

2. The prosecution case is that Inder Singh and Dharam Chand were working as Ahlmad and Reader in the Court of Sub Judge Ist Class, Jhajjar, District Rohtak On the night intervening 10th and 11th of April, 1985 they went to the court at about 12.00 mid night in a drunken condition, opened the court room, went inside the office and vomitted. Kapoor Singh P.W.1, was the chowkidar on duty Both the accused quarreled with him. The Chowkidar reported the matter to the police Bhoj Raj, Assistant Sub-Inspector, alongwith Satpal, Constable accompanied the Chowkidar and the three of them were coming when they met both the accused at Raiya Chowk where they were making noise and quarrelling with each other. They were arrested by the Assistant Sub Inspector and were medically examined at 12.30 at night. Dr. S. K. Wadhwa, P.W.4, found that they were smelling of alcohol, talking irrelevantly and were staggering; their pupils were dilated. The medical officer concluded that they were under the influence of liquor.

3. At the trial, the prosecution examined Kapoor Singh, Chowkidar, P.W.1, Satpal Constable, P. W. 2; Bhoj Raj, Assistant Sub Inspector, P.W.3; and Dr. S. K. Wadhwa, P W. 4.
4. The plea of the accused was one of denial and false implication. It was stated that on 3-12-1984 i. e. almost four months prior to the occurrence Kapoor Singh, Chowkidar, had slapped Inder Singh, Ahlmad of the court, regarding which Inder Singh made a complaint on 4-12-1984 to the Senior Subordinate Judge, Rohtak, and a departmental enquiry was held in which both Inder Singh as well as Dharam Chand appeared as witnesses against Kapoor Singh who was ultimately found guilty and fined one month's pay amounting to Rs. 638 30 n. p Kapoor Singh had given a threat to the present accused that he would falsely implicate them in some criminal case The accused examined Banarsi Dass, Constable, who had scribed personal search memo Exhibit P. B. and P. C. in the police station and Dharampal, C. O. C. to the Senior Subordinate Judge, Rohtak, who deposed about the departmental proceedings and the punishment imposed on Kapoor Singh Chowkidar on the complaint of Inder Singh accused.
5. The learned Chief Judicial Magistrate believed the prosecution evidence and convicted and sentenced the accused as aforesaid.
- 6 The learned Counsel for the Petitioners referred to the statement Exhibit P. A. of Kapoor Singh on the basis of which the present case was registered. He contended that except the last two lines which were apparently added, later on, the remaining narration did not disclose any offence u/s 34 of the Police Act. He, therefore, argued that this lapse appears to have been noticed subsequently and the same was supplied which goes a long way to indicate that what was said in the last line was not true. I find that there is force in the contention. In the statement Exhibit P. A. the Chowkidar stated that Inder Singh and Dharam Chand had come to the court premises "at 12.00 mid night, they opened the office room, went inside and vomitted and also quarrelled with him. The statement was concluded by saying that he was going to report the matter to the police when he met Bhoj Raj, Assistant Sub Inspector. Thereafter, the last sentence appears It is to the effect that the aforesaid persons were overpowered outside the court in public thoroughfare while they were making noise. In the context of an offence u/s 34 of the Police Act, the last line (he gist of the offence, it is clear to the naked eye that the last line was added at a later stage. This by itself renders the prosecution story open to serious doubt. In this connection, Bhoj Raj P W.3. denied in cross-examination that the last two line in Exhibit P. A. were in different ink. Though the ink in the last two lines may not be different but the construction of the last sentence and the entire context leaves no room for doubt that the said two lines were added at a later stage. It has also to be remembered that this is a case where enmity of Kapoor Singh, Chowkidar, with the two accused has been successfully proved. The statement of Kapoor Singh is, therefore, to be taken with all caution. It was admitted by the three P Ws i. e Kapoor

Singh P.W.1, Satpal, Constable, P.W.2 and Bhoj Raj, A. S I. P.W.3, that at the time of occurrence, no persons were going and coming at the Raiya Chowk and there was no traffic. The prosecution altogether failed to allege or prove that there was some habitation near the place of occurrence Admittedly, there was no traffic going on at that time It is, therefore, not proved that any obstruction, inconvenience, annoyance, risk, danger or damage was caused to the residents or the passangers in that locality. Merely being found under the influence of liquor does not constitute an offence u/s 34 of the Police Act It is equally necessary that the "accused must commit any of the offence to the obstruction, inconvenience, annoyance, risk, danger or damage to the residents or passangers in the open place, street or thoroughfare concerned. It was so held in Tanchanon Kuthl and Anr. v. Emperor A I R 1917 Cal 312 and Hemant Singh v. Union Territory Chandigarh 1981 C. L. R. 524. It was held that apart from the other ingredients the prosecution must prove that the accused caused obstruction, inconvenience, annoyance, risk, danger or damage to the residents of passangers. In the absence of such an allegation, the offence was not brought home to the accused. The revision petition must, therefore, succeed on this ground

7. The learned Counsel for the Petitioners also argued that the other ingredients: of the accused having been found drunk or riotous or being incapable of taking care of themselves is also not proved. His contention is that on the basis of the observation made by the Medical Officer, it could not be definitely said that the accused were drunk or incapable of taking care of themselves He relied on Bachu-bhai Hassanalli Karyani v. State of Maharashtra 1971 (3) S.C. 930. In that case, the doctor who examined the accused based his conclusion on the facts that the accused breath was smelling of alcohol, that his gait was unsteady, that his speech was incoherent and that his pupils were dilated No urine test of the accused was carried out and although the blood of the accused was sent for chemical analysis, no report of the analysis was produced by the prosecution. Their lordships held that it could not be definitely held that the accused was drunk at the time in question. In the facts of the present case also, Dr. S. K. Wadhwa, P W. 4, noted the similar symptoms in his report Exhibit P.W.4/A with regard to Inder Singh and Exhibit P.W.4/B with regard to Dharam Chand. Admittedly, no blood or urine tests "were carried out It cannot, therefore, be held that the accused were drunk These two ingredients having not been proved, the accused could not be convicted. For these reasons, the revision petition is allowed. The conviction of the accused is set aside. They are acquitted. Fine paid by them shall be refunded.