

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Criminal Appeal No. 317 of 2011

Date of Decision: 28.02.2026

State of Himachal PradeshPetitioner

Versus

Gaurav Sharma ...Respondent

Coram:

The Hon'ble Mr. Justice Sandeep Sharma, Judge.

*Whether approved for reporting?*¹ Yes

For the Petitioner: Mr.Rajan Kahol, Mr. Vishal Panwar
Additional Advocate Generals and Mr.
Ravi Chauhan and Mr. Anish Banstu,
Deputy Advocates Generals.

For the Respondent: Mr. Ajay Sharma, Advocate.

Sandeep Sharma, J. (Oral)

Instant appeal filed under Section 378 (3) of the Code of Criminal Procedure, lays challenge to the judgment dated 05.05.2011 passed by the learned Judicial Magistrate First Class, Jubbal, District Shimla, HP in IPC Challan No. 8/2 of 2010, whereby respondent/accused (herein after referred to as 'accused') has been acquitted of the offence punishable under Section 270 IPC.

2. In nutshell, case of the prosecution is that on 01.06.2009, complainant PW-5 Padam Dutt lodged a complaint at Police Station, Jubbal, stating therein that they are having their Malkiti/ownership land at Mandol Chak Sarana, where they have

¹ Whether reporters of the local papers may be allowed to see the judgment?

erected Nallu and Chabutra (raised platform) for offering water to their ancestors. Complainant stated that on 31.05.2009 at about 9:00 am, PW-4 Ramesh Sharma, Pradhan Gram Panchayat Badal, telephonically informed him that on 30.05.2009, at 9:30 pm, he saw accused Gaurav son of Sh. Bhawani Dutt burying something just behind aforesaid Nallu. Complainant after having received the aforesaid information visited the spot along with Madan Sharma on 31.05.2009 at about 9:00 am and saw fresh dug-earth just behind the Nallu. Complainant having noticed leaves spread over the fresh dug-earth, went to the house of Bhawani Dutt, where accused Gaurav and his mother Anita met them. On inquiry, accused Gaurav apprised the complainant that his cow had died last night and he had buried dead body of his cow behind the said Nallu after digging a pit. After being asked by complainant and Madan Lal Sharma that why he had not buried his cow in his own land, allegedly accused Gaurav became infuriated and started abusing them. Complainant named above alleged that Gaurav knowingly buried his dead cow in the land, near the place, where they had constructed a Nallu for offering the water to his ancestors. Complainant alleged that accused malignantly buried dead cow in their land knowingly or having reasons to believe that it is likely to cause infectious disease, which would be dangerous to life.

3. On the basis of aforesaid complaint, police lodged FIR Ex.PW5/A and conducted investigation. After completion of investigation, police presented challan in the Competent Court of Law, which after having found prima facie case against the accused, charged him under Sections 270 & 447 of IPC, in which he pleaded not guilty and claimed trial. Prosecution with a view to prove its case examined as many as 14 witnesses, whereas, accused in his statement recorded under Section 313 Cr.PC, denied the case of prosecution in toto but despite having afforded opportunities failed to lead evidence in his defence.

4. Learned trial Court on the basis of evidence adduced on record, acquitted the accused for his having committed offence punishable under section 270 of IPC whereas, convicted him under Section 447 of IPC and sentenced him to undergo simple imprisonment for three months and pay fine of Rs.500.

5. Being aggrieved and dissatisfied with the aforesaid judgment of conviction and order of sentence awarded by the learned trial Court under Section 447 of IPC, accused preferred appeal in the court of learned Additional Sessions Judge, Rohru, which is pending adjudication. However, it has been informed that matter qua offence under Section 447 IPC stands compounded.

Instant appeal has been filed by the State qua the acquittal of the accused U/S 270 of IPC.

6. Precisely, the grouse of the appellant/State as has been highlighted in the appeal and further canvassed by Mr. Rajan Kahol, learned Additional Advocate General is that the learned Court below misinterpreted the evidence led on record by the prosecution. Mr. Kahol while referring the evidence led on record, attempted to argue that prosecution successfully proved on record that accused firstly, without consent and permission from the land owner, buried his dead cow on his land and thereafter, to prolong measures to prevent disease or infection, which could have been resulted on account of unscientific/unsafe burial of dead cow. While fairly acknowledging factum of compounding of offence under Section 447 of IPC, Mr. Kahol submitted that same is of no consequences so far offence by accused under Section 270 IPC is concerned, since prosecution successfully proved on record that accused having knowledge that burying of dead cow near residential area, may cause infection, coupled with the fact that he did not take any permission from the owner of the land, as such there was no occasion, if any, learned Court below to acquit him from the offence under Section 270 of IPC.

7. To the contrary, Mr. Ajay Sharma, learned Counsel representing the accused while supporting the impugned judgment

of acquittal, vehemently argued that no evidence worth credence ever came to be led on record at the behest of the prosecution that accused buried his dead cow on the land of complainant with intention and knowledge to spread infectious disease. Mr. Sharma further submitted that dead animals in villages are usually buried in the fields and in the case at hand, no complaint ever came to be made by the complainant as well as other residents, with regard to emission of foul smell or infection, if any, caused on account of burial of dead cow by the accused and as such learned trial Court rightly acquitted the accused of his having committed offence under Section 270 of IPC.

8. Having heard learned counsel representing the parties and perused material on record vis-a-vis reasoning recorded by the learned trial Court while acquitting the accused under Section 270 of IPC, this Court is not persuaded to agree with the aforesaid arguments advanced by learned Additional Advocate General. Bare perusal of evidence led by the prosecution to prove the guilt of the accused under Section 270 of IPC, this Court has come to the conclusion that prosecution was unable to prove all ingredients of Section 270 of IPC. At this stage, it would be apt to take note of section 270 of IPC:-

“Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection

of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

9. Perusal of aforesaid provision reveals that if an accused malignantly does any act, which he knows or has reason to believe that it may spread infection of any disease, dangerous to life, he shall be punished with imprisonment for a period prescribed in the aforesaid Section. It is none of the case of the prosecution that there is no practice of burying or burning dead animals in the locality. It is also not the case of the prosecution that accused buried his dead cow near a water source, as a result of which, water was contaminated. It is also not the case of the prosecution that foul smell was reported by any of the residents on account of burial of dead cow by the accused, rather as per own case of the prosecution, factum with regard to burial of dead cow in the fields of complainant came to the notice of the complainant upon a telephonic call given by PW-4 Ramesh Sharma, Pradhan, Gram Panchayat, Badal, who nowhere stated that accused malignantly, with intention or knowledge to spread infection, buried his cow in the field of complainant. Careful perusal of the statement of afore witness suggests that he, only with a view to inform complainant (PW-5) Padam Dutt, that accused has buried dead cow in his field, called the complainant but while doing so,

he never complained that on account of burying of dead cow, there is likelihood of spreading infection.

10. As per prosecution case, dead cow was buried near the Nallu/Chabutra, raised by complainant (PW-5) Padam Dutt. Though, said Chabutra was claimed to be constructed for offering water to the ancestors of complainant, but complainant nowhere stated that near aforesaid Chabutra, there was any water source. Though prosecution attempted to argue that by burying dead animal near Chabutra, which was allegedly raised to offer water to the ancestors of complainant, accused attempted to hurt the religious faith of the complainant but such action if any, will not make accused liable for being charged under Section 270 of IPC. As has been observed, herein above, to bring offence of accused under the ambit of Section 270 of IPC, prosecution has to prove that action of burying dead animal was with the intention and knowledge to spread infectious disease, dangerous to life.

11. However, in the instant case, no evidence worth credence, ever came to be led by the prosecution to prove that accused had buried his dead cow on the land of the complainant with knowledge and intention that such act of him, may spread infectious disease, which may be dangerous to life of the residents. Though, accused attempted to claim before trial Court that he had not buried his dead cow on the land of the complainant

but since he was unable to prove such fact, he was held guilty for having committed criminal trespass under Section 447 of IPC. Offence as has been committed by accused under Section 447 of IPC has been now compounded in the appeal.

12. If the statements made by the prosecution witnesses are read in conjunction, this Court is persuaded to agree with the submission of learned Additional Advocate General that prosecution was able to prove the factum of burial of dead cow by the accused in the open field owned and possessed by the complainant but such fact alone cannot be said to be sufficient to conclude guilt of the accused under Section 270 of IPC, which clearly provides that whoever malignantly does any act, which he knows or has reason to believe that same is likely to spread infection of any disease, which is dangerous to life, shall be punished for the term given in the aforesaid Section. None of the prosecution witness, as have been discussed above, stated anything with regard to the knowledge and intention of the accused. Complainant though alleged that accused trespassed upon his land and without his permission buried his dead cow, but he nowhere stated that on account of aforesaid act of accused, complaint, if any, was ever received by him from the residents of the area with regard to emission of foul smell or outbreak of any

disease, which is otherwise mandatory /essential for invocation of Section 270 of IPC.

13. Most importantly in the case in hand, PW-12 Dr. Mohinder Thakur, who rendered his opinion, nowhere stated on record that cow was not buried in deep pit or what was the position of burial of cow. Dr. Mohinder Thakur (PW-12) never visited the spot and such opinion, if any, rendered by him on 29.12.2009 is of no consequence. None of the prosecution witness specifically stated as to what was the depth of the pit, in which cow was buried and what was the lapses on the part of the accused in burying the cow. Although, PW-6 Madan Sharma deposed that persons passing through the spot used to cover their mouths and nose to avoid foul smell but he was unable to spell the names of such persons. PW-5 Complainant Padam Dutt, who had otherwise received information with regard to burial of dead cow in his land, nowhere deposed that foul smell, if any, was emitting from the pit. It has come in the evidence that when PW-5 complainant Padam Dutt visited the spot, he saw that pit was well covered with fresh earth, and leaves and bushes were lying over the same, which itself suggests that accused had taken appropriate steps to ensure that no damage is caused to the carcass by animals, who otherwise after having noticed foul smell could make an attempt to dig the carcass from the pit. It is quite apparent from the evidence

adduced on record by prosecution that it miserably failed to prove any malignant act on the part of the accused, which is likely to spread infectious disease dangerous to lives of residents in the vicinity.

14. Consequently, in view of detailed discussion, this Court sees no reason to interfere with the findings recorded by the learned Court below while acquitting the accused for his having committed offence under Section 270 of IPC and same is upheld and present criminal appeal fails and dismissed, accordingly. Bail bonds, if any, shall stand cancelled.

(Sandeep Sharma)
Judge

February 28, 2026
(meera)