

(2005) 11 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No's. 262, 291 and 450 of 2005

Balwant Singh alias Rattan, Sohan Singh and Ram Pal

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 22-11-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 173, 207
Penal Code, 1860 (IPC) — Section 34, 342, 354, 392, 395

Citation : (2006) 1 ShimLC 197

Hon'ble Judges : Surjit Singh, J

Bench : Single Bench

Advocate : J.S. Bhogal, Ashok Sharma, D.S. Parmar, Nand Lal Chauhan and Anil Chauhan, for the Appellant; H.K.S. Thakur, Dy. A.G., for the Respondent

Final Decision : Allowed

Judgement

Surjit Singh, J.—Appellants, in all the three appeals, were jointly charged with and tried for offences punishable, under Sections 459, 392/395 read with Sections 397, 427 read with Sections 34, 342 read with Sections 34 and 354 read with Section 34 of the Indian Penal Code, for allegedly breaking open the house of one Kanshi Ram, during night time, robbing him of currency notes and golden ornaments, making an attempt to murder him, in the course of the commission of the aforesaid offence of robbery, committing the offence of mischief by pelting stones on the roof of the house of said Kanshi Ram and damaging the slates of the roof, confining said Kanshi Ram in his house and assaulting his minor daughter, aged about 8 years, with an intent to outrage her modesty.

2. On 2.10.1998 a statement was made to the police by said Kanshi Ram, when he was admitted in the District Hospital, Bilaspur. Police recorded that statement, u/s 154 of the Code of Criminal Procedure, and on the basis of that a case under the aforesaid provisions of the Indian Penal Code was registered against all the three appellants. What said Kanshi Ram narrated to the police, per aforesaid

statement, may be summed up thus. His wife died a year back. He lived in his house with his minor daughter, aged about 8 .and a minor son agod about 14. His son had been sick for the last two years, which had affected his mental balance. On 1.10.1998 he returned home after doing his duty as an Helper in the IPH Department, after 5.00 p.m. Thereafter he prepared meals and around 11 went to sleep. Around 12 he heard the sound of stones hitting his roof top. He saw through the window that appellants Sohan Singh, Balwant Singh and Ram Pal were pelting stones on the roof of his house. When he asked them why they were damaging his roof, they broke open the door of his house and entered the room he had been sleeping alongwith his children. Appellant Sohan Singh and Ram Pal were having knives while appellant Balwant Eiingh was , having a Danda. They all attacked him and caused some injuries on his person. Thereafter they tied him to the cot he was sleeping on, by means of a bed-sheet and gave him severe beating. His daughter, aged about 8 years, was also beaten up. A currency note of Rs. 100/- which was there in his pocket, was removed. He had Rs. 1,500/- in the pocket of another shirt that was lying in his room. That money was also removed by the appellants. Then the appellants took his daughter to a nearby field and teased her. Next morning around 6.30 his minor daughter went to the places of his brothers to call them. When his brothers Gian Chand and Hoshiar Singh came, he narrated the incident to them. They called the Pardhan of the Panchayat. Then his brothers and the Pardhan of the Panchayat took him to Primary Health Centre, Harlog where he was medically examined. Police were informed telephonically by the Pardhan of the Panchayat. At the Primary Health Centre, Harlog, Kanshi Ram was medically examined. Eighteen injuries were found on his person. Thereafter he .was referred to District Hospital, Bilaspur for treatment. At Bilaspur X-ray examination for the injuries on his face was conducted and fracture of jaws was found. The Injury on the jaws was opined to be dangerous to life.

3. Minor daughter of Kanshi Ram was also got medically examined. Her hymen was found ruptured at 11 O" clock position. However, no bleeding was noticed. One more small injury was also found on her person.

4. During the course of investigation, the minor daughter of Kanshi Ram, complainant informed the police that the appellants had taken away from their box the golden ornaments of her mother. The complainant himself in his supplementary statement got recorded that the appellants, besides removing Rs. 100/- from the pocket of his shirt, which he was wearing, took away his shirt and Pyzama and also removed ornaments and some currency notes from the box.

5. Appellant Balwant Singh, while in police custody, made a disclosure statement leading to the recovery of a Danda. Appellant Sohan Singh also made a disclosure statement, which led to the recovery of the shirt and the Pyzama of the complainant and currency notes of Rs. 1,500/ -. Appellant Ram Pal made a disclosure statement leading to the recovery of a golden Chak and a pair of golden ear-rings from his house. These ornaments were identified to belong to

his wife by complainant Kanshi Ram. Police also recorded statements of several witnesses, including a neighbour of Kanshi Ram, named Sadda Ram, who stated that he heard the cries of the children of Kanshi Ram on the fateful night and that when he shouted as to why the children were crying, there was no response and so he went to sleep. Next morning he saw complainant Kanshi Ram by the road side with several injuries on his person and. on his asking he told that he had been beaten up by appellants Sohan Singh, Balwant Singh and Ram Pal. On the completion of the investigation, police filed report, u/s 173 of the Code of Criminal Procedure, alongwith the relevant papers, in the Court of the Illaqua Magistrate, who after complying with the requirement of Section 207 of the Code of Criminal Procedure, committed the case to the Sessions Court.

6. The learned Additional Sessions Judge charged the appellants with the aforesaid offences, tried them and ultimately held them guilty of offences, u/s 459 read with Sections 460, 392 read with Sections 397, 427, 342, 354 read with Section 34 of the Indian Penal Code and sentenced them to various terms of imprisonment and various amounts of fine for the aforesaid offences, vide judgment dated 28.5.2005 and order 31.5.2005.

7. Grievance of the appellants is that the evidence on record does not prove the charge against them and that as a matter of fact, from the evidence of the prosecution itself, it is more than clear that the prosecution story is false. According to them, the evidence on record indicates that Kanshi Ram had been beaten up elsewhere probably for his having developed illicit intimacy with some woman and with a view to saving his face in the public and for explaining the injuries on his person, he cooked up a false story. It is alleged that the evidence of the prosecution is full of contradictions, improvements and infirmities. Also, it is alleged that there is a delay of more than 18 hours in reporting the matter to the police and there is no explanation therefor.

8. I have perused the evidence and also heard the learned Counsel for the appellants as also the learned Deputy Advocate General for the respondent-State.

9. It may be stated at the very outset that the complainant was taken to Primary Health Centre, Harlog on 2.10.1998. As per medicolegal report Ext. PW-14/A, he reached the said Primaly Health Centre at 11.25 a.m. He was medically examined after one police constable, named Baldev Ram submitted an application for his medicolegal examination, per medical report. Kanshi Ram, while appearing as PW-1, testified that when he was still at Primary Health, Harlog, police recorded his statement. At 4.00 p.m. he was removed from Primary Health Centre, Harlog and taken to District Hospital, Bilaspur. Statement of Kanshi Ram, u/s 154 of the Code of Criminal Procedure Ext. PA, purports to have been recorded at District Hospital, Bilaspur at 700 p.m. on 2.10.1998 by ASI Deep Ram. This ASI, while in the witness box as PW-18, has stated that first he reached Primary Health Centre, Harlog around 3.00 p.m., but by then Kanshi Ram had been shifted to District Hospital, Bilaspur and so he could not record his statement at the said Primary Health Centre. This part of his statement does not

appear to be correct, because this witness says that he reached the Primary Health Centre at 3.00 p.m., while Kanshi Ram was removed from that Centre for being shifted to the District Hospital, Bilaspur at 4.00 p.m. Kanshi Ram's deposition as PW-1, in the cross-examination that his statement was recorded by the police at Primary Health Centre, Harlog, also belies the aforesaid statement of PW-18 ASI Deep Ram. The statement made by Kanshi Ram at Primary Health Centre, Harlog has been withheld. As a matter of fact, it was this statement, which could have been admitted in evidence as the First Information Report.

10. The evidence led by the prosecution is full of contradictions. In addition, there are improvements in the version, which the prosecution wants to use as the earliest version of the occurrence, i.e. statement Ext. PA of complainant Kanshi Ram, recorded at the District Hospital, Bilaspur by ASI Deep Ram.

11. Complainant Kanshi Ram in his deposition as PW-1 has stated that the appellants had taken away currency notes of about Rs. 1,600/- and some ornaments and also his shirt and Pyzama. He has stated that a pair of ear-rings Ext. P-1 and a Chak Ext. P-2, which appellant Ram Pal got recovered from his house, were shown to him and he identified the same to belong his deceased wife. He also stated that shirt Ext. P-3 and Pyzama Ext. P-4 were the same, which were taken away by the appellants.

12. PW-2, the minor daughter of complainant Kanshi Ram, has also stated that the appellants opened a box lying in their house and took out from the same currency notes and golden ornaments and carried those with them. She also stated that the appellants took away her father's shirt and Pyzama, which he was wearing that day.

13. PW-3 Jai Lal, the minor son of the complainant, has stated that the appellants stole ornaments and currency notes from their house.

14. The story regarding stealing of ornaments and taking away of the shirt and the Pyzama of the complainant is nothing but an improvement. In spite of the fact that statement Ext. PA, sought to be used as the earliest version by the prosecution, was recorded more than 18 hours after the occurrence, there is no mention of the stealing/removing of any currency notes or ornaments from any house nor is there any reference to the shirt and Pyzama of the complainant therein. This fact itself is enough to disbelieve the story that the appellants had stolen currency notes and ornaments from inside a box. Not only this, in the so called earliest version the complainant got recorded that the entire amount of money to the extent of Rs. 1,600/- had been removed from the pockets of his two different shirts, i.e. one which he was wearing and the other which was lying in the house.

15. Prosecution story regarding assault of the girl with a view to outraging her modesty, also appears to be an after thought. In the FIR the only reference to this allegation is that the appellants teased the girl. To the doctor at the time of medicolegal examination of the girl it was disclosed that she had been raped. The

medicolegal examination of the girl was conducted on 3.10.1998, according to the testimony of PW-13 Dr. S. Agnihotri. As a matter of fact, the medicolegal report Ext. PW-13/B shows that the medical was conducted on 5.10.1998. The date is mentioned at three different places in this report, one on the top, another 2-3 lines below the top line against the column of "date and hour of arrival and the third at the bottom regarding date of examination. At the first two points the date has been changed to "3.10.1998", but at the bottom it remains unchanged. According to this report, there was rupture at 11 O" clock position of the hymen, but no fresh bleeding was there and the vagina did not admit even the tip of little finger. The probable duration of the injury is stated to be 12 to 36 hours. Now, if the medical examination was conducted on 5.10.1998, the aforesaid injury, noticed on the person of the girl, i.e. the daughter of the complainant, does not stand connected with the alleged incident.

16. Not only that the medicolegal evidence does not corroborate the version regarding the alleged indecent assault on the minor girl of the complainant, but even the oral evidence does not support it. The minor daughter of the complainant appeared as PW-2. She stated that she was taken by appellants Ram Pal and Balwant Singh to a nearby field, where she was beaten up by Ram Pal and then she was undressed and oil was poured on her private parts. As already noticed, to the doctor, who conducted the medicolegal examination, it was stated that the girl had been raped. In her testimony as PW-2, the girl nowhere says that any of the appellants even touched her vagina, leave alone raping her, leading to the rupture of her hymen. Further more, PW-4 Gian Chand, a brother of complainant Kanshi Ram, whom the girl went to call the next day early in the morning, is silent about this part of the prosecution story, though he says that the incident was narrated to him by the complainant as also his minor daughter, who came to call him. He does not whisper even a word about this part of the prosecution story.

17. Conduct of the complainant also suggests that he has not come out with the truth. PW-5 Sadda Ram lives in the neighbourhood of the complainant. The witness has stated that on the night of 1.10.1998 he heard the cries of the children of Kanshi Ram and shouted to Kanshi Ram as to why the children were crying, but there was no response. Now, had the complainant been in fact attacked in the manner alleged by him, he must have responded to the shout of his neighbour Gadda Ram immediately or atleast when the appellants, had allegedly ran away after Sadda Ram shouted, he or his daughter or son could have gone to Sadda Ram's place to inform him and to seek his help for managing the injuries received by him (complainant Kanshi Ram).

18. The aforesaid contradictions, improbabilities and improvements, probabilise the defence version that after the death of his wife, the complainant developed illicit relations with some women and on the relevant night he probably visited one of such women but having been noticed by the man of the house-hold, he was given a thrashing. There are a few. facts and circumstances, which stand

established by the prosecution's own evidence, which further strengthen the aforesaid plea of the appellants. PW-5 Sadda Ram has stated that the next morning he saw Kanshi Ram, with several injuries on his person, by the side of the road. Now, if the injuries had been caused to the complainant inside his house and he was even unable to move, because that is why that instead of himself going he had sent his minor daughter on the next morning to call his brothers., it is not understood how he happened to be lying by the side of the road on the next morning, when PW-5 Sadda Ram saw him.

19. Further, it appears that the complainant was half-naked when beaten up. To explain this situation, a false story has been cooked up that the Pyzama and shirt, which the complainant was wearing that day, had been taken away by the appellants.

20. There are also several other infirmities in the prosecution evidence. The minor daughter of the complainant has stated that one appellant was having a Chhura (dagger), one a Gupti and one a Danda. What the prosecution has produced is only a small sized knife having 3" long blade and 4" long handle, meant for peeling and cutting vegetables and fruits, and a Dadda 3"-6" long though according to the Investigating Officer, namely PW-21 Pritam Singh, Inspector, the length of the Danda, recovered by him, was 4" - 10". In the momo. Ext. PJ also the length of the Danda, allegedly got recovered by Balwant Singh, appellant, is written as "4"-10".

21. The question is then why the appellants have been named as accused by the complainant. From the defence plea, it can be inferred that the complainant developed illicit relations with a women from the house-hold of one of the three respondents and on the relevant night he, having been found half-naked, at the house of one of them, was given thrashing, then chased upto his house and may be that stones were also pelted on his rooftop. No doubt, the respondents have not specifically taken such a plea, but the reason for the same is obvious. Taking of such plea would have exposed the respondents and their women folk to ridicule and disgrace in the society.

22. As a result of the above discussion, it is held that the evidence led by the prosecution does not prove the charge against the appellants beyond reasonable doubt. Consequently all the three appeals are accepted, the judgment of the trial Court, to the extent it convicts and sentences the appellants for various offences, is set aside and all the three appellants are acquitted of all the offences they have been convicted of. The appellants being in custody, are ordered to be released forthwith, if they are not required to be kept in detention in some other case.

23. Main judgment be placed on the file of Criminal Appeal No. 262 of 2005 and a certified copy on each of the other two files, i.e. Criminal Appeals No. 291 and 450 of 2005.