

(2016) 01 SHI CK 0031
In the High Court Of Himachal Pradesh
Case No : Cr. Appeal No. 4015 of 2013

Brij Lal and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 02-01-2016

Acts Referred:

Arms Act, 1959 — Section 25
Criminal Procedure Code, 1973 (CrPC) — Section 173, Section 313
Penal Code, 1860 (IPC) — Section 147, Section 148, Section 149, Section 307

Citation : (2016) 01 SHI CK 0031

Hon'ble Judges : Sureshwar Thakur, J.

Bench : Single Bench

Advocate : A.K. Pathania and Pawan Gautam, Advocates, for the Appellant;
Vivek Singh Attri, Dy. AG, for the Respondent

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J.—1. This appeal stands directed against the judgment rendered on 18.06.2013 by the learned Additional Sessions Judge, Ghumarwin, District Bilaspur, Himachal Pradesh in Sessions trial No. 10/7 of 2012, whereby the appellants stand convicted and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs. 5000/- and in default to undergo simple imprisonment for five months for commission of offence punishable under Section 307 read with Section 149 of the Indian Penal Code. Each of the convicts stand further sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs. 1000/- and in default to undergo simple imprisonment for one month for the commission of offence punishable under Section 148 of the Indian Penal Code. Accused Brij Lal in addition to his standing convicted in the aforesaid manner for committing offences afore-referred stands both convicted besides sentenced to undergo simple imprisonment for a period of two years and to pay a fine of Rs. 3000/- for committing an offence punishable under Section 25 of the Indian Arms Act and in default to undergo simple imprisonment for a period of one month. All the substantive sentences of

imprisonment were directed to run concurrently.

2. The prosecution story, in brief, is that PW-1 Sri Ram and Brij Lal (accused) from the years 1978 to 1990 had purchased land from Prem Singh. In the year 1981, the complainant and Brij Lal had got separated and the joint land was divided by way of family partition. They both started cultivating the lands in their respective possessions, but in June, 2010 during the partition, Brij Lal had demanded upper portion of the land, hence a dispute arose between the two. On 25.12.2011, when the complainant had come back home around 6:00 p.m., he found two khair trees to have been cut from the land under his possession and from his share. On 26.12.2011, at about 8:00 a.m. the complainant had questioned the labour of the contractor and had asked them to refrain from converting the khair trees into logs. On this, Brij Lal, Indira Devi, Fullan Devi, Dev Raj and Kanta Devi (accused persons) appeared there forming an unlawful assembly and at that time Brij Lal was armed with a gun. In prosecution of the common object of the unlawful assembly, all the accused persons had started assaulting the complainant and accused Brij Lal had fired a gun shot on him. Resultantly, complainant had sustained an injury on his left jaw. Accused Dev Raj had assaulted the complainant with an axe on his right arm. Accused Brij Lal with an intention to kill the complainant had fired the gun shot. The injured was taken to Hospital where he made a statement Ext. PW-1/A to ASI Keshav Dutt. The statement was reduced into writing and was sent to police station, Ghumarwin for registration of FIR, where FIR Ext. PW-18/A was registered. Medical examination of Sri Ram was conducted by PW-1 Dr. Supriya Atwal. The nature of injuries No. 1 and 3 was stated to be grievous and that of injuries No. 2 and 4 was stated to be simple by PW-17 Dr. Supriya Atwal on the basis of report of Radiologist and on the basis of record of Govt. Dental College Shimla, and which could be caused within six hours of the examination by means of gun shot, blunt and sharp edged weapons, like "darat" and an axe. She issued MLC Ext. PW-17/B. Further case of the prosecution is that during the course of investigation blood stained over pullover (Ext. P-1), shirt (Ext. P-2), vest (Ext. P-3) and trouser (Ext. P-4) of the complainant were taken into possession by the police. On 28.12.2011, an axe (Ext. P-6) was produced by Dev Raj which was taken into possession vide recovery memo Ext. PW-3/C prepared in the presence of witnesses. Axe was sealed in a parcel with seal "S". Seal impression Ext. PW-20/A was taken separately on a piece of cloth. A site plan Ext. PW-24/K of the place of recovery of axe and its khakha Ext. PW-3/D were prepared. PW-29 ASI Keshav Dutt had taken into possession gun licence of Brij Lal (Ext. P-12) from the office of A.D.M. Bilaspur vide memo Ext. PW-4/A, on being produced by Dev Nand (PW-4). It had been renewed uptill 22.12.2011 only. Statements of witnesses were recorded as per their versions.

3. On completion of investigation into the offences allegedly committed by the accused a report under Section 173 Cr.P.C. stood prepared and filed in the competent Court.

4. The accused/appellants herein stood charged for committing offences punishable under Sections 147, 148, 307 read with Section 149 of the Indian Penal Code. In addition thereto accused Brij Lal stood also charged for committing an offence under Section 25 of the Indian Arms Act. All the accused pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined 24 witnesses. On closure of the prosecution evidence, the statements of accused persons, under Section 313 of the Code of Criminal Procedure, stood recorded wherein they pleaded innocence and claimed false implication. In defence they chose not to lead any evidence.

6. The accused/appellants stand aggrieved by the judgment of conviction recorded by the learned trial Court. Shri A.K. Pathania, learned Advocate has concerted to vigorously contend before this Court qua the findings of conviction, recorded by the learned trial Court, standing not anvilled on a proper appreciation by it of evidence on record, rather, theirs standing sequelled by gross mis-appreciation of material on record. Hence, he contends qua the findings of conviction being reversed by this Court, in the exercise of its appellate jurisdiction and theirs being replaced by findings of acquittal.

7. On the other hand, the learned Deputy Advocate General appearing for the State has with considerable force and vigour contended qua the findings of conviction recorded by the Court below being based on a mature and balanced appreciation of evidence on record and theirs not necessitating any interference rather meriting vindication.

8. This Court with the able assistance of the learned counsel on either side, has with studied care and incision, evaluated the entire evidence on record.

9. MLC Ext. PW-17/B is reflective of the victim of the offence standing afflicted with gunshot injuries besides injuries with blunt and sharp edged weapon like axe and Darat. She has opined therein of injuries No. 1 and 2 being grievous and of injuries No. 3 and 4 being simple. Gun exhibit P-5 recovered under memo Ext. PW-5/B, Axe Ext. P-6 recovered under memo Ext. PW-3/C and Darat Ext. P-7 recovered under memo Ext. PW-3/B stand espoused by the prosecution to stand used respectively by accused Brij Lal, accused Dev Raj and accused Fullan Devi for inflicting therewith injuries on the victim/complainant. Given the gravity of injuries borne on the person of the injured/victim hence endangering his life besides with proven recovery of weapons of offence afore-stated at the instance of the afore-referred accused by the Investigating Officer under recovery memos respectively comprised in Ext. PW-5/B, Ext. PW-3/C and Ext. P-3/B does tentatively inspire an inference of the charges framed against the accused for which they stood tried and convicted being sustainable. The learned counsel appearing for the accused appellants has adverted to the testimonies of PW-22 and PW-23 the purported eye witnesses to the occurrence whose reneging from their previous statements recorded in writing stand espoused by him to smother

the effect of the testimony of the victim besides nullifying the effect of recoveries of weapons of offence i.e. Gun exhibit P-5 effectuated under memo Ext. PW-5/B, Axe Ext. P-6 effectuated under memo Ext. PW-3/C and Darat Ext. P-7 effectuated under memo Ext. PW-3/B, respectively effectuated at the instance of the accused aforesaid by the Investigating Officer. While testing the sinew of the aforesaid submissions addressed before this court by the learned counsel for the accused-appellant, it is imperative to advert to the testimony of the victim-complainant. His testimony in case free from any taint of inter se contradictions arising from his deposing a version qua it in his examination in chief inconsistent with a version thereof narrated in his cross examination would solitarily command sway especially with its comprising an inspiring besides creditworthy narration qua the incident of an injured/victim hence not warranting its standing corroboration by other purported eye-witnesses to the occurrence. Necessarily for reiteration if his testimony qua the occurrence comprised in his examination in chief is in harmony with his testimony qua it embodied in his cross-examination, it would both be inspiring and credible dehors the purported eye witnesses to the occurrence PW-22 and PW-23 reneging from their previous statements recorded in writing hence omitting to lend any succor to the prosecution case besides not corroborating the version qua the incident comprised in the testimony of PW-1 the injured, qua the assault standing launched on his person respectively by the accused aforesaid with theirs respectively wielding Gun exhibit P-5, Axe Ext. P-6 and Darat Ext. P-7 sequelling infliction of injuries on his person opined by the doctor concerned to be dangerous to life. On an arousal of the aforesaid inference of the testimony of the victim/injured being both reliable as well as trustworthy would render unnecessary reliance if any by the prosecution upon the deposition of PW-3 which even otherwise is a rendition of an account by her qua the occurrence after its conclusion besides with its unfolding the factum of hers gaining knowledge qua the occurrence only on hers standing apprised by the victim/injured of accused Brij Lal firing a gun shot at him, Dev Raj inflicting a blow with an axe and Fullan Devi striking him with a darat, hence negates her presence at the site of occurrence at the stage contemporaneous to its initiation and conclusion thereat whereupon an inference stands fomented of hers not being an ocular eye witness to the occurrence, incapacitating her to render a vivid and credible account qua it for founding thereupon any attribution of an incriminatory role with conclusivity to accused Brij Lal, accused Dev Raj and accused Fullan Devi arising from theirs respectively firing a gun shot, delivering an axe blow and a darat blow on the person of the victim. An incisive reading of the testimony of PW-1 evinces the prime factum of his purveying therein both in his examination-in-chief besides in his cross-examination a consistent and a harmonious version qua the accused aforesaid respectively firing a gun shot at him besides inflicting an axe blow and striking a darat blow on his person. With PW-1 being consistent in his deposition comprised both in his examination-in-chief and in his cross-examination qua the ascription therein of an inculpatory role to accused Brij Lal, accused Dev Raj and accused Fullan Devi renders his testimony to be

bereft of any taint of inter se contradictions. A reading of the cross-examination of PW-1 with a portrayal therein of suggestions standing meted to PW-1 by the learned defence counsel of an axe blow standing delivered on his person with force by accused Dev Raj and a blow of darat standing delivered upon him by accused Fullan Devi which suggestions elicited a response in the affirmative from him does ipso facto fillip an inference of the defence acquiescing to accused Dev Raj and accused Fullan Devi holding or wielding an axe and a darat respectively with user whereof they inflicted blows on his hands as noticed in MLC Ext. PW-17/B. The suggestions aforesaid by the learned counsel for the defence to PW-1 and theirs eliciting a response in the affirmative by PW-1 while connotative of an admission by the defence of both Dev Raj and Fullan Devi assaulting the victim with an axe and a darat, negates the effect, if any, of the purported eye witnesses to the occurrence Mohamad Ameen and Mohamad Meer reneging from their previous statements recorded in writing. Concomitantly, effect thereof is of omission on the part of the complainant to attribute in his previous statement recorded in writing an inculpatory role to Fullan Devi comprised in the letters holding a darat wherewith hers inflicting its blow on his hand cannot render it to stand imbued with any taint of an improvement or an embellishment for hence exculpating her incriminatory role especially when for reasons aforestated her inculpation stands conceded by the defence. Even the incriminatory role attributed by PW-1 in his examination in chief to accused Brij Lal of his with Gun Ext. P-5 firing its shot at him when stands uningrained with any taint of inter se contradictions arising from his not deviating therefrom in his cross-examination rather with formidability renders it amenable to credence, credibility whereof stands firmly clinched by the factum of the defence counsel while cross-examining PW-1 putting suggestions to him in portrayal of the factum of an admission on the part of the defence of accused Brij Lal holding gun Ext. P-5 wherefrom he fired a gun shot on the left side of PW-1 especially when elicitation thereon in the affirmative stood evinced from PW-1 wherefrom an inference of hence the defence conceding to the inculpation of accused Brij Lal stands firmly garnered. Dehors the suggestions qua the aforesaid facet put to PW-1 by the learned defence counsel while cross-examining him sequelling evincing therefrom an affirmative response from PW-1, with redoubled vigour is connotative of, especially when on an affirmative response thereto standing meted by PW-1, the learned defence counsel omitted to elicit an explanation from him, of hence the defence acquiescing to the inculpatory role propounded consistently by PW-1 qua accused Brij Lal.

10. The effect of the above discussion is of inefficacy, if any, in the recovery of weapons of offence Gun exhibit P-5 recovered under memo Ext. PW-5/B, Axe Ext. P-6 recovered under memo Ext. PW-3/C and Darat Ext. P-7 recovered under memo Ext. PW-3/B, standing waned. The upshot of the above discussion is of the prosecution succeeding in proving its case against accused Brij Lal of his with Gun recovered under memo Ext. PW-5/B, of accused Dev Raj with axe recovered under memo Ext. PW-3/C and of accused Fullan Devi with Darat recovered under

memo Ext. PW-3/B respectively with user thereof inflicting injuries on the victim. In sequel the conviction of the accused aforesaid for their committing offences punishable under Sections 307 read with Sections 149 and 148 of the Indian Penal Code and under Section 25 of the Indian Arms Act merits no interference.

11. However, during his examination in chief PW-1 has attributed to accused Indira Devi and Kanta Devi an incriminatory role of their delivering kick and fist blows on his person. The attribution of the aforesaid incriminatory role by PW-1 to the aforesaid stands manifested only during the course of his recording his deposition in Court. It finds no occurrence in his previous statement recorded in writing. Consequently, omission on the part of PW-1 to state the aforesaid factum in his previous statement recorded in writing renders his deposition in Court wherein he has named Indira Devi and Kanta Devi as also has ascribed to them an incriminatory role of their belabouring him with kick and fist blows to be both an embellished as well as an improved version qua their inculpation, warranting its being hence discardable. In sequel the incriminatory role aforesaid attributed by PW-1 to Indira Devi and Kanta Devi is espoused to be both incredible and untrustworthy for anvilling thereupon any conclusion qua the aforesaid belabourings with kick and fist blows of PW-1 by accused Kanta Devi and accused Indira Devi. Even when the incriminatory role aforesaid ascribed by PW-1 to Indira Devi and Kanta Devi stands afflicted with a vice of improvement and embellishment rendering it to be unbelievable would not per se exculpate the guilt of the accused aforesaid in joining co-accused Brij Lal, Dev Raj and Fullan Devi in the latter respectively in the manner aforestated assaulting PW-1 unless potent evidence in display of their sharing a common object with the accused aforesaid stands emerged. Primarily, to conclude qua accused Kanta Devi and Indira Devi in joining accused Brij Lal, Dev Raj and Fullan Devi hence forming with them an unlawful assembly with both sharing a common object with the aforesaid assailants of the victim/injured, it is imperative to also gauge from evidence on record qua occurrence of a disclosure therein of their being present simultaneously alongwith the aforesaid accused at the site of occurrence. In case evidence unfolds the factum of their simultaneous presence thereat with the accused aforesaid who stand in close relations to them, it would be unnecessary to disinter, given their presence in the aforesaid capacity at the site of occurrence alongwith the co-accused aforesaid, from evidence on record qua existence of a display therein of their sharing a common object with the assailants of the victim/injured significantly when proximity in their relationship with the accused aforesaid magnifies their sharing a common object with them. For hence pronouncing upon the factum of the presence of accused Indira Devi and accused Kanta Devi at the site of occurrence the factum of the complainant enunciating in the F.I.R. the names of both Kanta Devi and Indira Devi being contemporaneously present alongwith accused aforesaid at the apposite stage at the site of occurrence when fortifyingly establishes their presence thereat with the assailants of the victim/injured warrants a finding from this Court qua their sharing a common object with the accused aforesaid in their delivering injuries

on PW-1 respectively with theirs wielding a gun, an axe and a darat. The mere presence of Kanta Devi and Indira Devi contemporaneously alongwith the aforesaid accused at the site of occurrence would ipso facto be not connotative of theirs sharing a common object with the accused aforesaid nonetheless when evidence exists of theirs being members of the family of the assailants of the victim/injured or of theirs being close relatives of the accused aforesaid hence not mere bystanders or spectators of the occurrence qua whom given their presence contemporaneously alongwith the aforesaid accused at the site of occurrence an inference of theirs sharing a common object with the assailants of the victim would hence stand not dispelled. In sequel, with theirs being close relatives of the accused aforesaid their presence contemporaneously alongwith aforesaid accused at the site of occurrence is rather construable especially with theirs being aware of Brij Lal, Dev Raj and Fullan Devi respectively wielding a gun, an axe and a darat of theirs also sharing a common object with the aforesaid accused qua perpetration of an assault by them on the person of the victim with their respective user. In aftermath even if there is an improvement or an embellishment by PW-1 arising from the fact of his only deposing in Court qua Kanta Devi and Indira Devi belabouring him with kick and fist blows whereas it remained unpronounced in his previous statement recorded in writing nonetheless its effect would not detract from either the factum of their presence contemporaneously alongwith accused Brij Lal, Dev Raj and Fullan Devi at the site of occurrence nor would dispel the effect of given their close relationship with them of theirs for reasons afore-stated also sharing a common object with them in theirs respectively assaulting PW-1 with weapons i.e. Gun exhibit P-5 recovery whereof stood effectuated under memo Ext. PW-5/B, Axe Ext. P-6 recovery whereof stood effectuated under memo Ext. PW-3/C and Darat Ext. P-7 recovery whereof stood effectuated under memo Ext. PW-3/B.

12. For the reasons which have been recorded hereinabove, this Court holds that the learned trial Court below has appraised the entire evidence on record in a wholesome and harmonious manner apart therefrom the analysis of the material on record by the learned trial Court does not suffer from any perversity or absurdity of mis-appreciation and non appreciation of evidence on record, rather it has aptly appreciated the material available on record.

13. In view of the above, I find no merit in this appeal which is accordingly dismissed. In sequel, the impugned judgment is affirmed and maintained. Record of the learned trial Court be sent back forthwith.