
(2012) 08 SHI CK 0108
In the High Court Of Himachal Pradesh
Case No : Criminal Revision No. 113 of 2006

Kishan Chand

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 07-08-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 325

Citation : (2012) 08 SHI CK 0108

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Advocate : B.S. Ranjan, for the Appellant; R.M. Bisht, D.A.G., for the Respondent

Judgement

Justice Sanjay Karol, Judge

1. In terms of present Criminal Revision, filed under the provisions of Code of Criminal Procedure, accused-petitioner has assailed the judgment dated 2nd September, 2006, passed by Sessions Judge, Kullu in Criminal Appeal No. 32/2005, titled as Kishan Chand versus State of Himachal Pradesh, affirming the judgment dated 21st October, 2005, passed by Chief Judicial Magistrate, Kullu, Himachal Pradesh in Criminal Case No. 244-I/2000, titled as State versus Kishan Chand. In terms of the impugned judgments, accused stands convicted for having committed an offence, punishable u/s 325 of the Indian Penal Code, 1860 and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs. 10,000/- and in default thereof, to further undergo simple imprisonment for a period of two months.

2. Challenge to the findings rendered by the Courts below is on the ground that testimonies of material prosecution witnesses have not been correctly appreciated, while returning the findings, which has resulted into travesty of justice. Also, correctness, legality and propriety of such findings have been assailed for the very same reason.

3. It is the case of prosecution that Shri Kanshi Ram (PW-7) had engaged the present accused Kishan Chand as his driver. There was a dispute with regard to non-payment of Rs. 500/- by PW-7 to the accused. On 12th August, 2000, PW-7 met the accused near a place known as Sarwari Bridge, where accused demanded a sum of Rs. 500/- from him. PW-7 assured that the amount would be paid by him in the near future. However, accused started quarrelling and gave blows with his fists, as a result of which one tooth of the upper jaw of PW-7 broke. Resultantly, PW-7 lodged report (Ex. PW-7/A) with the police, on the basis of which FIR No. 422 (Ex. PW-6/A), dated 28th August, 2000, u/s 325 of the Indian Penal Code, 1860, was recorded at Police Station, Kullu, by Inspector Shri Om Chand (PW-6). Complainant was got medically examined by the police from Dr. Rita Negi (PW1) and Dr. Deepak Kapoor (PW-2), who issued MLC (Ex. PW-2/A), based on X-ray film (Ex. P-1). Matter was further investigated by the police, which revealed complicity of the accused to the alleged crime. As such, challan was presented in the Court for trial.

4. Accused was charged for having committed offence, punishable u/s 325 of the Indian Penal Code, 1860, to which he did not plead guilty and claimed trial.

5. In order to establish its case, prosecution examined as many as nine witnesses and statement of the accused u/s 313 of the Code of Criminal Procedure was also recorded, in which he pleaded false implication.

6. Trial Court, after appreciating the evidence, found the accused guilty of the charged offence and sentenced him to undergo imprisonment. Appeal filed by the accused before Sessions Judge, Kullu, also stands dismissed. Hence, the present Revision Petition.

7. I have heard Shri B.S. Ranjan, Advocate, learned counsel for the accused as also Shri R.M. Bisht, learned Deputy Advocate General, on behalf of the State. I have also minutely examined the testimonies of the witnesses and other documentary evidence placed on record by the prosecution. In my considered view, judgments rendered by the Courts below have resulted into travesty of justice and as such need to be reversed. Findings are not based on complete, correct and proper appreciation of relevant material on record.

8. From the testimonies of the doctors, i.e. Dr. Rita Negi (PW-1) and Dr. Deepak Kapoor (PW-2), and the medical record, it stands proved that tooth of the complainant was broken. However, doctors have not ruled out possibility of the cause of injury on the body of the complainant and the breaking of the tooth on account of fall.

9. Out of nine witnesses, prosecution case primarily rests upon testimonies of the complainant, i.e. Shri Kanshi Ram (PW-7) and his close relative Shri Amar Nath (PW-4). These are the only spot witnesses. Significantly the alleged offence took place at a public place and police/prosecution has not associated any independent witness during investigation or examined in Court. Why so? has not been so explained by the prosecution. With caution, I may add that this fact

alone has not weighed at all while allowing the present petition. It be only noticed that testimonies of these witnesses are absolutely uninspiring in confidence.

10. I find that PW-7 in Court has made several improvements. Also there are exaggerations and embellishments in his testimony. No doubt, in his examination-in-chief, he has deposed that on 12th August, 2000, accused stopped him and demanded a sum of Rs. 500/- to which he told that the same would be paid lateron, but the accused started giving him blows with fists on account of which his tooth of the upper jaw broke and fell on the ground. Thereafter, he reported the matter to the police, who got him medically examined. But in cross-examination this witness admits that his version to the effect that he had disclosed to the police that the incident was witnessed by Shri Dile Ram and Shri Amar Nath not to have been mentioned in his previous statement (Ex.PW-7/A), with which he was confronted. In fact, in the said statement there is no reference of demand of an amount of Rs. 500/-. He admits that portion "A" to "A" of his statement Mark "Y" has not been correctly recorded by the police. He admits that he had informed the police that one Shri Dile Ram had separated Shri Amar Nath from the accused at the time when quarrel took place. It be only noticed that here he has introduced yet another case. In his examination-in-chief, he only states that quarrel took place between him and the accused. Now if this were so then where is the question of Shri Dile Ram separating Shri Amar Nath from the accused during the course of quarrel. He also admits that police has not correctly recorded his statement (Ex.PW-7/A), which version stands contradicted by the police officials. Also I find that in the complaint, there is no reference of Shri Amar Nath. Though in Court PW-7 has denied that said Shri Amar Nath (PW-4) is his father-in-law but then this version stands completely contradicted and belied by Shri Amar Nath himself, who in no uncertain terms has admitted that he is in fact father-in-law of the complainant but by a distant relation. Further, PW-7 does not remember the time and duration of the period for which quarrel took place between him and the accused. More significantly this witness has deposed that shirt (Ex. P-2) produced by the police in Court is not the one which he actually handed over during the course of investigation. All this has totally shattered the prosecution case.

11. Coming to the testimony of Shri Amar Nath (PW- 4), I find that this person is not only an interested witness and but also he has been introduced during the course of investigation. No doubt in his examination-in-chief, he has supported the case as is so deposed by the complainant. But to corroborate the testimony of this witness, prosecution has not examined Shri Dile Ram, an independent person who was present on the spot and witnessed the occurrence of the incident. That apart, in cross-examination, this witness admits that at the time when quarrel took place, five-six other persons were also present there, but then he could not disclose their names. The area where quarrel took place is small and people are familiar with each other. This only shows that the witness was perhaps not present on the spot. Why is it that prosecution has not associated

any one of such persons during investigation? has not been explained. Further this witness could not deny the suggestion put by the accused that tooth of the complainant already stood broken prior to the quarrel. This witness admits that Shri Kanshi Ram owed money to the accused who was working as a driver with the complainant. Possibility of false implication cannot be ruled out.

12. I find that there is contradiction with regard to the date on which the shirt was taken into possession by the police. According to PW-4, the same was taken into possession on 29th August, 2000 whereas complainant has deposed that it was handed over on 28th August, 2000.

13. Record also reveals that no stains of blood were found either on the spot or on the tooth.

14. It cannot be said that prosecution has been able to prove its case, beyond reasonable doubt, by leading clear, cogent, creditworthy, reliable and independent piece of evidence. Hence, for all the aforesaid reasons, judgment of conviction and sentence, dated 21st October, 2005, passed by the trial Court in Criminal Case No. 244-I/2000, titled as State versus Kishan Chand, as affirmed by Sessions Judge, Kullu vide judgment dated 2nd September, 2006, passed in Criminal Appeal No. 32/2005, titled as Kishan Chand versus State of Himachal Pradesh, are set aside and the Revision Petition is allowed. Consequently, the accused is acquitted. Fine amount, if deposited by the accused, be refunded to him and bail bonds furnished by him are also discharged.

Revision Petition stands disposed of.