

(2009) 11 SHI CK 0062
In the High Court Of Himachal Pradesh

Rangeel Singh and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 20-11-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 323

Citation : (2009) 11 SHI CK 0062

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Judgement

Surinder Singh, J.—The appellants were convicted by the learned Sessions Judge, for forming an unlawful assembly thereby using deadly weapons in prosecution of the common object and causing murder of Prem Dass, thus, sentenced each of them, under different sections as under:

Under Section 302

read with Section 149 IPC

Life Imprisonment and fine of Rs.10,000/- each; in default of payment of fine rigorous imprisonment for a further period of 2 years each.

Under Section 147

IPC

Rigorous Imprisonment for six months and fine of Rs.1000/- each; in default of payment of fine rigorous imprisonment for a further period of two month each.

Under Section 148

IPC

Rigorous Imprisonment for six months and fine of Rs.1000/- each; in default of payment of fine rigorous imprisonment for a further period of two month each.

Under Section 323

read with Section 149 IPC

Rigorous Imprisonment for six months and fine of Rs.1000/- each; in default of payment of fine rigorous imprisonment for a further period of two month each.

Under Section 341

read with Section 149 IPC

Simple Imprisonment for one month and fine of Rs.500/- each and in default of payment of fine, simple imprisonment for seven days more

2. Prosecution case as emerges from the evidence on record, in brief, can be stated thus. As per Jamabandi Ex.PA, the land bearing Khata/ Khatauni No. 164/220, Khasra No. 605, stood recorded in the ownership of PW1 Jaram Singh and others. Although, it was mortgaged by Jaram Singh with one Krishan Lal, Subhash Chand, the sons of Shri Shonku, but its possession was with his cousin Prem Dass (deceased) resident of village Triun. It is alleged that the appellants were causing interference in the said land, therefore, Jaram Singh and deceased filed a civil suit in the Court and obtained the stay orders, restraining the appellants from causing any interference and raising construction over the disputed land, which caused annoyance to the appellants.

3. On 24th March, 2004, Prem Dass had gone to a nearby village, in connection with his own work. When he did not return in the evening, his son PW12 Jeewan at about 8.30 p.m. went in search of him towards Garnota side. When he reached village Chhedu near the mile-stone, he met his father Prem Dass, who was accompanied by PW13 Yashwant and DW1 Narso Ram. Jeewan, also joined them while returning on their way, they came across, the disputed land. The appellants Rangeel Singh, his sons Mohinder Singh, Surinder Singh and Manoj Kumar alongwith their wives, namely appellants Biaso Devi, Rekha Devi and Veena Devi were present there. All of a sudden, they attacked Prem Dass. Manoj Kumar was having a shovel (belcha) in his hand and Surinder Kumar a darat, whereas the other appellants were having dandas and they also started beating Prem Dass. Appellant Manoj Kumar is alleged to have given a shovel blow on the head of Prem Dass and appellant Surinder Singh dealt a blow with darat, which caused injury on the index finger of Prem Dass, on the right hand. Others started beating him with dandas. Yashwant tried to intervene in that episode he also sustained injuries on his head and shoulder. Jeewan cried for help and the appellants chased him, but he ran away from the spot. While running he looked back, he noticed that his father Prem Dass, Yashwant and Narso Ram had also run away to save their lives. Jeewan while fleeing adopt the path through water channel etc and reached the shop of Yashwant. PW13 Yashwant and his father had already reached there. His father was almost in a semi-conscious condition he was having some bleeding injuries. Yashwant sent for the vehicle of PW2 Ashok Kumar and took Prem Dass to Police Post "Sihunta" and lodged a report. Thereafter he was taken to Primary Health Centre Sihunta for medical examination. There he was attended upon by PW4 Dr. Parveen Kumar. On the

medical examination of Prem Dass, he noticed following injuries:

(i) Incised wound of 1 cm bone deep on palmer aspect of right index finger. Fresh bleeding was found present. He was advised the X-ray for the said injury and also Anterior, posterior view for injury No. 2. The radiological opinion with respect to injury No. 2 was that there was an incised wound of size 4 cm x 0.5 cm on the scalp on right parietal region, 10 cm above the right ear.

(ii) Doctor also noticed the abrasions of size 5 cms x 0.5 cm on the back on sacral region, over which no bleeding was found present.

The Doctor to this effect issued Medico Legal Certificate Ex.PW4/A regarding the above injuries.

When Prem Dass was being examined, his condition deteriorated, thus he was referred to Rajinder Prasad Medical College (RPMC), Dharamshala for further treatment. When he was being taken to the said hospital, his son Jeewan noticed that his father was not responding to his calls. Thus, he brought him back to the Primary Health Centre "Sihunta" in the same vehicle and got him checked up again from PW4 Dr. Parveen Kumar. On examination, the doctor declared Prem Dass dead.

4. Thereafter, the dead body was taken to Police Post Sihunta and contacted HC Dev Raj, who informed about the death of Prem Dass to PW18 Inspector/SHO Partap Singh, Police Station Chamba. This information was recorded by him in the daily diary and the said Inspector proceeded to Sihunta alongwith the supporting staff. On reaching Police Post, he inspected the dead body of Prem Dass lying in the Van outside the Police Post. He called the Photographer and took the snaps, filled in the inquest form Ex.PW11/A and sent the dead body for autopsy to Primary Health Centre Samote, and he himself proceeded to the place of incident. On reaching there HC Dev

5. Raj handed over the investigation file to him which contained the site plan Ex.PW18/A etc. Yashwant, who had also sustained the injuries in the said incident was also got medically examined in PHC Sihunta. His blood stained shirt was taken into possession vide memo Ex.PW13/B.

6. On 25.3.2004 at 12.30 a.m, PW5 Dr. Arvind Kumar and PW4 Dr. Parveen Kumar conducted the postmortem of the dead body in PHC Samote. The dead body was having the same injuries as were noticed earlier by PW4 Dr. Parveen Kumar. However, on opening the scalp cap, they noticed extradural and sub-dural haematoma in the right parietal temporal region, which was extensive in size. Although, the brain was congested, but no fracture was seen on the scalp. The heart was found filled with blood and congested. In the opinion of the doctors, the probable time that elapsed between the injury and death was few minutes to hours and between death and postmortem was less than 24 hours. The doctor issued the postmortem report Ex.PW5/A.

7. The police took into possession the blood stained earth, stones from the spot

vide memo Ex.PW16/A. PW18 Inspector Partap Singh, during search of disputed shops, under construction, took into possession blood stained Belcha Ex.P2 vide memo Ex.PW13/A. Appellant Rekha Devi is stated to have produced darat Ex.P1 and dandas Ext.P3, which were also taken into possession on 26.3.2004 vide memo Ex.PW17/A. The appellants were arrested.

8. Police also took into possession the blood stained clothes of Rangeel Singh, vide memo Ex.PW14/A which were sent for the forensic examination. On receipt of the report of examination, the blood stains of the group of deceased were found on them.

9. After completing the investigation, the case was presented against the appellants, in the court for their trial.

10. Findings a prima-facie case against the appellants, the learned trial Court charge-sheeted the appellants for the offences aforesaid, to which they pleaded not guilty and claimed trial.

11. To substantiate their case, the prosecution examined complainant PW12 Jeewan Singh, injured witness PW13 Yashwant Singh, PW4 Dr. Parveen Kumar, and PW5 Dr. Arvind Kumar, besides examining the recovery witnesses and the Investigating Officer.

12. The appellants were also examined u/s 313 of the Code of Criminal Procedure. They admitted that the stay orders were passed by the Court with respect to the land in dispute, in a suit filed by PW1 Jaram Singh, but denied that the said land was in possession of deceased Prem Dass. The specific stand to which the appellants had taken was that deceased Prem Dass and PW13 Yashwant Singh, had consumed liquor and that Prem Dass was heavily drunk. Rangeel Singh was sleeping in his room. Prem Dass dragged Rangeel Singh but he could not maintain his balance and struck against a sharp tin-roof and sustained injuries. Rangeel Singh appellant raised alarm. The other appellants came to the spot. In the meantime, Prem Dass, Yashwant and DW1 Narso Ram ran away.

13. The appellants examined Narso Ram, DW1 in defence to substantiate their plea.

14. The learned trial Court disbelieved the defence version and while relying upon the prosecution version convicted and sentenced the appellants as aforesaid, which is under challenge in this appeal.

15. We have heard the learned Counsel for the parties and have carefully and minutely reappraised the evidence on record.

16. PW1 Jaram Singh testified on oath that he had given the land in dispute for cultivation to his deceased cousin Prem Dass. The appellants forcibly started construction of the shops he unsuccessfully tried to prevent them from doing so, ultimately, he had to file a civil suit in the Court of Civil Judge, Dalhousie and

obtained the stay orders against the appellants. According to the prosecution case, this land was apple of discord between the parties and the appellants nurtured enmity against the complainant party.

17. To prove the occurrence, the prosecution examined PW12 Jeewan, the son of deceased. He stated that on 20th March, 2004, his father had gone to a nearby village in connection with his work. When he did not return, he went in search of him and ultimately found him in the company of PW13 Yashwant and DW1 Narso Ram near village Chhedu while they were returning home. He joined them and all of them started going together to their respective homes. When they reached near village Rayan, where the land in dispute is situated, appellant Rangeel Singh was constructing the shop over the disputed land. The appellants present there. He further stated that appellant Manoj Kumar was having a shovel (belcha) in his hand and appellant Surinder Singh was having a darat, whereas, Rangeel Singh, Mohinder Singh and their wives Biaso Devi, Veena Devi and Rekha Devi were having dandas with them. The aforesaid appellants suddenly attacked Prem Dass. He also testified that the appellant Manoj dealt a blow with Belcha on the head of his father whereas Surinder Singh wielded darat and caused injury on the index finger of Prem Dass. PW13 Yashwant tried to intervene and saved him, but he was also given beatings and he sustained injuries on his head and shoulder. He further stated that he (PW12) cried for help. On this the appellants rushed towards him, but he escaped through fields and water channels and reached in the shop of Yashwant. His father and Yashwant had also run away from the spot and reached there before his arrival. He noticed bleeding injuries on the head of his father and found him in a semi-conscious state. He also stated that he also heard the appellant Rangeel Singh proclaiming that the land in litigation would cause the death of his father. Seeing the condition of Prem Dass Yashwant contacted Ashok Kumar (PW2), and took his father to the Police Post Sihunta in his Van and lodged the report with the police.

18. From there he was taken for medical examination to Primary Health Centre Sihunta, where he was attended upon by Dr. Parveen Kumar (PW4). He further stated that the said doctor referred his father to Rajinder Prasad Medical College, Dharamshala for further treatment, on the way his condition worsened. When he was not responding, he was again taken back to the same doctor. He declared him dead. Thereafter the dead body was taken to the Police Post Sihunta and the complainant informed about the death of his father to HC Dev Raj.

19. PW13 Yashwant corroborated the above version of PW12 Jeewan .He was specific on the point that the appellant Manoj dealt a Belcha blow on the head of the deceased, whereas, Surinder Singh dealt the darat blow which hit the hand of deceased Prem Dass .He also stated that the other appellants came out from the shops, under construction and attacked the deceased with the dandas. When he intervened to rescue him, he sustained injuries on his hand and shoulder. When Jeewan cried for help, accused persons rushed towards him and it was thereafter, he alongwith the deceased and DW1 Narso Ram ran away from the

spot. In cross-examination, he admitted that the shops of the appellants Manoj is adjacent to the rented shop of Sagri Ram. He denied the suggestion given on behalf of the accused persons that the deceased, Narso Ram (DW1) and PW13 aforesaid were intoxicated.

20. Narso Ram defence witness admitted that Yashwant (PW13) met him at village Chedu, in the shop of Foreman Chandu, but stated that he was carrying a Pithu and asked him that if he was tired; He offered liquor to him, then he alongwith Yashwant aforesaid took liquor in the shop of Chandu. Thereafter, they proceeded towards village Thukrala. When they were on their way, they met Prem Dass. He was also offered liquor by Yashwant and all of them sat in the shop of Shagri Ram and took liquor alongwith cooked meat. Deceased and Yashwant both got intoxicated and started calling the names to both appellants Manoj and Surinder. Thus, both the appellants closed their shops and proceeded towards their house. Thereafter, he alongwith Prem Dass and Yashwant went to the house of Nanak Chand, an Ex-serviceman. Again they took liquor, then proceeded to their respective houses, when they crossed and went about 30/40 yards ahead of the house of the appellants on the road, Prem Dass (deceased) and Yashwant both started calling names to the appellants near the shops, which were in dispute. He left them there and started going towards his home. At that time, he noticed appellants Surinder and Manoj empty handed coming from their house.

21. From the above narration of the defence witness it is ostensibly clear that at the relevant time he was in the company of deceased Prem Dass as stated by PW Jeewan and Yashwant. It also stands proved from his statement that Surinder and Manoj appellants were present near the disputed shops, but the story of consumption of liquor by the deceased is proved to be totally false as per the report Ex.PW18/C of the Forensic Science Laboratory, whereby the contents of alcohol were not found in the viscera of the deceased. Further, Narso Ram could not say with surety when questioned by the learned Prosecutor whether deceased had died due to beatings given by the accused persons. Therefore, in view of the above proved facts, statement of Narso Ram was rightly disbelieved by the learned trial Court.

22. The clothes of Rangeel Singh, which were taken into possession by the police were also sent for Forensic Science Laboratory. It contained blood stains matching with the blood of the deceased, as per report Ex.PW18/C. Presence of Rangeel Singh and his sons Manoj and Surinder at the spot stand established.

23. Now, the duty of the Court is to find out the truth from the evidence on record. We have critically examined the statements of all the witnesses with respect to the prosecution case. There appears to be exaggeration in the story propounded by the prosecution witnesses to rope in the entire family.

24. According to PW4 Dr. Parveen Kumar, the injuries No. 1 and 2 caused to the deceased were with the sharp edged weapon, which could be caused by darat

Ex.P1 and Belcha Ex.P2, whereas injury No. 3 was opined to be with a blunt weapon, like Danda (Ex.P3).

25. On culling out the evidence of the prosecution aforesaid, it stands proved beyond doubt that Manoj Kumar had hit the deceased with Belcha Ex.P2 on his head and Surinder Singh attacked the deceased with darat Ext.P1 which caused injury on his right finger and their father Rangeel Singh who was having danda Ex.P3 and caused injury with that danda. Doctor stated that blunt injuries could be by a Danda blow. The clothes of Rangeel Singh contained the blood stains of the blood group of deceased as per the forensic report and he offered no explanation to this effect. Therefore, the appellants above named in furtherance of their common intention, in our opinion committed the offence of murder of the deceased. Insofar as the presence of other appellants, namely Mohinder Singh, Biaso Devi, Rekha Devi and Veena Devi is concerned, it is not established. Their residential house is away from the disputed shops. There was no occasion for their being present at 8.30 p.m. at the place of occurrence. Had they been armed with dandas and attacked the deceased as alleged, there would have been more injuries on the person of the deceased. Thus, taking into account the totality of the circumstances, the offence of rioting is not proved beyond doubt. Consequently, Sections 147, 148 and 149 of the Indian penal Code are not attracted at all. As such, they deserve to be acquitted for the charges framed against them. In result, appellants, namely Rangeel Singh, Manoj Kumar and Surinder Singh are proved to have committed the offence punishable u/s 302 read with Section 34 I.P.C., against them and they have also been proved to have shared the common intention to murder Prem Dass and wrongfully restraining him from proceeding towards his destination thereby committed an offence punishable u/s 341 and also u/s 323 read with Section 34 I.P.C. for causing simple injuries. Therefore, their conviction and sentence under Sections 302, 341 and 323 read with Section 34 of the Indian Penal Code is upheld, whereas, appellants Mohinder Singh, Biaso Devi, Rekha Devi and Veena Devi are acquitted by giving them the benefit of doubt.

26. Appeal is partly allowed.

27. Appellant Biaso Devi, Rekha Devi and Veena Devi are already on bail, pursuant to the orders dated 14.12.2006 of this Court, therefore, their bail bonds are cancelled and discharged. Mohinder Singh appellant is lodged in jail in this case undergoing the sentence. He be released forthwith if not required in any other case.

28. Follow up action be taken immediately by the Registry.

29. Send down the records.