

(2013) 05 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 183 of 2005

State of Himachal Pradesh

APPELLANT

Vs

Bal Krishan @ Bali and Others

RESPONDENT

Date of Decision : 14-05-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 307, 332, 506(II)
Prevention of Corruption Act, 1988 — Section 3

Citation : (2013) 05 SHI CK 0008

Hon'ble Judges : V.K. Sharma, J; Surinder Singh, J

Bench : Division Bench

Advocate : Ramesh Thakur, A.A.G, for the Appellant; D.N. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Surinder Singh, J.—By means of the present appeal, the State has challenged the acquittal of the respondents for the offences punishable under Sections 307, 332, 506(II) of the Indian Penal Code read with Section 3 of Prevention of Damages to the Public Property Act. The respondents hereinafter to be referred as "the accused persons" were tried on the allegation that on 23.1.2003, PW1 C. Sanjay Kumar was on night duty in the Police Station, Theog w.e.f. 7 p.m. to 8 a.m. alongwith PW3 Mast Ram, Home Guard. According to the case of the prosecution, PW2 C. Kamal Dev had returned from leave and joined his duty on that very night. He was sitting besides C. Sanjay Kumar aforesaid.

(ii) Around 9.30 p.m., the complainant C. Sanjay Kumar was alleged to have doing some official work, the accused persons have broken open the gate of the Police Station by kicks and entered the room. On being asked about their forcible entry, they hurled abuses and obstructed PW1 C. Sanjay Kumar in discharging his official duties, thereafter fisticuffed him. He was caught hold from his neck by accused Bal Krishan with an intention to kill him. Accused Sandeep Jandev pulled

Sanjay Kumar his uniform-shirt, which got torn off from chest. Constables Kamal Dev, Mast Ram and Yashwant (who was in the adjacent room) happened to be present there, rescued Sanjay Kumar from the clutches of the accused persons.

(iii) PW8 Inspector Trilochan Sharma, S.H.O., Police Station was at his official residence. He was informed by a constable about the incident. He reached the Police Station. At that time, C. Sanjay Kumar, Mast Ram Home Guard, C. Yashwant Singh and C. Kamal Dev were present there. They had already apprehended the accused persons. C. Sanjay Kumar revealed about the incident to him, consequently, FIR Ext. PA on his statement was recorded by Inspector aforesaid.

(iv) The accused persons were got medically examined, because they had consumed alcohol. C. Sanjay Kumar (PW1) was also got medically examined. SHO prepared the site plan of the place of alleged incident (Ext. PG) and took into possession broken pieces of the door from the reporting room vide memo Ext. PC and the torn shirt of C. Sanjay Kumar vide memo Ext. PB and the photographs Ext. P5 to P9 of the place of incident.

(v) PW4 Dr. Kuldeep Kanwar noticed two abrasions on the right and left side of the neck of C. Sanjay Kumar, which were simple in nature having been caused within 2 to 6 hours. His Medico Legal Certificate is Ext. PW4/A. But, accused Bal Krishan was not found to have taken the alcohol nor there was smell of alcohol in his breath and was not having any injury on his person. His MLC is Ext. PW4/D, whereas, accused Sandeep and Rakesh were smelling alcohol. Their pupils were bilaterally dilated. Their MLCs are Ext. PW4/E and F respectively. In the opinion of doctor, the injuries caused to PW1 Sanjay Kumar were not sufficient to cause death. The urine and blood samples of Sandeep and Rakesh were sent for the forensic examination.

2. After completing the investigation, challan was presented in the Court for the trial of the accused persons for the offences referred above, to which they pleaded not guilty and claimed trial.

3. To prove its case, the prosecution examined its witnesses. The accused in the cross-examination of prosecution witnesses raised defence that they were activists of SFI and Constable Sanjay Kumar was inimically disposed of towards them. Further that a week ago from the date of alleged incident there was wordly dual and in turn, said constable had threatened them to involve in a serious case. In their statements u/s 313 of the Code of Criminal procedure, they denied the circumstances which were found attendant upon each of them and alleged false implication in the case, however, no evidence in defence was led.

4. Shri Ramesh Thakur, learned Assistant Advocate General vehemently argued that the statement of the complainant, an injured person was wrongly brushed aside by the learned trial Court. The accused persons were proved to have consumed liquor and given beatings to him and there were also eye witnesses to the said incident.

5. To rebut the aforesaid evidence, Shri D.N. Sharma, learned counsel for the accused persons supported the impugned judgment and ventilated that PW2 Mast Ram, Home Guard turned hostile and did not support the case of the prosecution even despite his cross-examination by the learned Public Prosecutor. He also submitted that the other witness PW2 C. Kamal Dev is a got-up witness and that C. Yashwant, who was allegedly sitting in the adjoining room and happened to intervene, which make the prosecution case doubtful.

6. Significantly, PW1 C. Sanjay Kumar has admitted that the accused persons were activists of SFI to whom he knew since long as they were also involved in many cases in the area of Theog. He also admitted that accused Sandeep was a councilor of the Municipal Committee. Though he denied that a week ago from the day of alleged incident, he had threatened them to involve them in such a case to which they would remember throughout. The incident in question is alleged to have taken place in the Police Station, which is abutting the National Highway and thickly populated area. Even the police officials are residing in the same vicinity and building and within a minute, the police officials including the Inspector/SHO would have heard and arrived the spot without loss of time. According to PW1, Bal Krishan had caught him from the neck, Sandeep tore off his shirt and Rakesh gave fist and kick blows and he was rescued by Mast ram, Kamal Dev and Yashwant.

7. PW2 C. Kamal Dev stated to have returned from leave, but, his presence is not recorded in the daily diary nor PW1 stated that at the particular time what work he was doing. Further, Inspector/SHO took into possession the shirt alleged to have torn by Sandeep and the glass pieces on the next day i.e. 24.1.03, not on his arrival same night. There is no record to show the presence of PW2 C. Kamal Dev, PW3 Mast Ram Home Guard in Police Station at 9.30 p.m. in the month of January, 2003, though daily diary is being maintained in regular official business. To prove that two accused persons were drunk and urine of Bal Krishan was sent for the forensic examination, but it did not contain any alcoholic content, whereas neither the blood nor urine of other accused persons were taken and sent for forensic examination. The injuries in question according to the doctor could be caused by a fall and the opinion Ext. PK does not suggest any contusion or fracture by which the injuries in question can be termed as dangerous to life.

8. PW3 Mast Ram Home Guard was declared hostile, he only stated about the wordly exchanges inter se the accused persons and C. Sanjay Kumar. He did not substantiate the case of the prosecution qua manhandling and tearing of the uniform of the complainant. He had given a call to ASI Balibhadar Investigating Officer, when he had returned Sanjay Kumar was on his seat in the same position. Pertinently, C. Yashwant and ASI Balibhadar were not examined to lend strength to the version given by the complainant. The presence of C. Kamal Dev is doubtful in the Police Station as no official record has been produced with respect to his presence at the time of incident, when according to him he had

reached the Police Station after availing the leave at 8.20 p.m. There is also no record with respect to his night duty, he confirmed that Mast Ram was in the duty prior to his joining on that day. He also stated that the Police Station is in the main Bazaar and C. Yashwant Singh (not examined) was first to reach there.

9. There is also no reference in the FIR lodged by the complainant that the accused persons had broken the window panes and to do away with the life of the complainant.

10. There is contradictory evidence of the official witnesses, which makes the prosecution case a suspect and it lacks reliability and the defence version gives strength to the case of the accused persons as they being the activists of the S.F.I. were alleged to have involved in many cases. The overzealousness of the C. Sanjay Kumar to implicate them in the attempt to murder, when it was not such a case, gives strength to their version. The whole prosecution story becomes suspect.

11. In view of the above situation, in our considered opinion, the learned trial Court has properly appreciated the evidence on record and the findings of acquittal are borne out from the evidence adduced by the prosecution, which requires no interference of this Court. The appeal sans merits, hence dismissed. The respondents are discharged of their bail bonds entered upon by them at any time during the proceedings of this case. Send down the records.