

(2021) 08 SHI CK 0217

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 228 Of 2010

State Of Himachal Pradesh

APPELLANT

Vs

Balwinder Singh And Others

RESPONDENT

Date of Decision : 23-08-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 82, 173(2), 299

Citation : (2021) 08 SHI CK 0217

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : Nand Lal Thakur, Kunal Thakur, Ram Lal Thakur, Sunny Dhatwalia, Manohar Lal Sharma, N.K.Thakur, Divya Raj Singh

Final Decision : Dismissed

Judgement

FIR NUMBER,"72/03, dated 24.06.2003, Police Station Dehra, District Kangra under

Sections 398 and 506 IPC read with Section 25/27 of Arms Act.

TRIAL COURT CASE NO.,"RBT Sc No. 30-G/VII/05/04 (ST No. 15/09), decided on 09.10.2009, by

learned Additional Sessions Judge (Fast Tract Court), Kangra at

Dharamshal

9. Complainant Surender Kumar testified as PW-8. During his statement on oath he reiterated his statement based on which the police registered the,

FIR captioned above. He testified that he drove a taxi. On 23.6.2003, at 7.15 p.m. three passengers boarded his taxi at Jawalaji. When they reached",

at Nakhed Khad, then such passengers asked him that they have to attend call of nature. He stopped the taxi and the passengers came there after ten",

minutes. The stand taken by the complainant on oath is materially different from the statement he had made earlier. In the earlier statement, the",

complainant had specifically stated that all of a sudden the passengers of the car asked him to stop the car and immediately one of them came,

towards his side and asked him to come out, when he refused to do so, then they drag him by holding his hand. However, in the meantime they had",

taken out the keys of the car. Thus the improvement, which the complainant had made is that they had gone away for ten minutes to attend call of",

nature and then they returned after ten minutes. Why the complainant initially did not reveal this fact to the investigator, is mysterious?",

10. The complainant further stated that in the meantime a car came from Dehra side and he boarded the same, which is in contradiction to the earlier",

statement in which he has stated that by taking shelter of the car, he ran towards the forest and subsequently hide himself in the shop. This is a",

material contradiction. In such a situation, it is not possible for a person to forgot that whether he had run away in a car or he had walk towards forest",

and from there to shop. In the earlier statement Ex.PW-3/A, the complainant has specifically stated that when he saw a car coming, he took shelter of",

the said car and came towards the Bridge. However, when he was running, in the meantime, one person also fired upon him. He further stated that at",

that time he was at Nahehar Khad. PW-8 complainant Surender Kumar, who is only material witness in this case further stated that the police had",

nabbed the accused on the next day from a rain shelter. This is in total contradiction to the statement of the investigator PW-13 Dalip Singh, who",

while testifying in the proceedings under Section 299 Cr.P.C., in which he was cited as PW-11, has specifically stated that he had nabbed the accused",

from the Rashu forest. In the cross-examination PW-8 Surender Kumar stated that rain shelter from where the accused was intercepted was at a,

distance of 2-4 kilometers from the place of occurrence. They were arrested on 24th June, 2003, i.e. the next date.",

11. It is strange that in case the accused had fired at the complainant, then why did they remain in the vicinity and that too at a distance of 2-4",

kilometers. The incident pertains to summers and at such time there is lot of traffic towards the temples in the vicinity including Jawala Devi Temple.,

The accused could have got various means of transport to abscond from that place. Thus, their being apprehended just at a distance of 2-4 kilometers",

that too on the next date creates a serious doubt about the entire prosecution story. During cross-examination, PW-8 admitted that he had seen the",
accused Balwinder, for the first time, in April, 2009. The incident pertains to June 2003 and the accused had seen him, for the first time, in April, 2009,"
after around six years. Even at that time, the investigator did not conduct any Test Identification Parade. Thus, the identification of Balwinder Singh is",
not credible. Complainant PW-8 has also admitted in his cross-examination that for the first time he had met with those persons on 23rd June 2003 and,
not earlier to that.,

12. The case of the prosecution revolves around the testimony of PW-8 Surender Kumar. As far as the recovery of weapon from the accused by,
investigator PW-13 Dalip Singh is concerned, it is contradictory because as per the investigator he had nabbed the accused from the forest whereas",
as per the complainant the accused were nabbed from the rest house on the next morning. If the accused were nabbed from the rest house, there is",
no explanation that why independent witnesses have not been associated. Thus, it is not possible to hold the accused guilty on such sketchy and",
contradictory evidence.,

13. Strangely, as per the complainant own version, the accused were armed with deadly weapon and nobody was there to stop them. Despite that the",
beatings administered by them were not even enough to visit a doctor. This is improbable, given that they were three armed with a deadly weapon",
whereas he was all alone and he had nothing to protect himself.,

14. In the entirety of facts and circumstances, more particularly when the complainant has contradicted from his earliest version, coupled with that",
fact that the complainant has not gone to any doctor to get himself examined, makes his part of story as doubtful. As per the complainant, the accused",
were three persons and he was alone. In case they wanted to grab his car, then nobody could have stopped them from beating him and snatching the",
keys of the car. As per the statement of the complainant that he was sitting in the car and accused were well in control of the situation. Thus, the",
stand of the complainant that the accused gave him beatings and he did not even go to the doctor, makes his statement incredible. Thus, the evidence",
led by the persecution is not cogent enough to arrive at a conclusion of guilt. Consequently, the prosecution failed to prove its case beyond reasonable",

doubt.,

15. I have gone through the impugned judgment, which is well reasoned and calls for no interference.",

16. In the facts and circumstances peculiar to this case, the appeal filed by the State is dismissed being devoid of merit. Bail bonds are discharged.",