

(2010) 12 SHI CK 0111
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 280 of 2004

State of Himachal Pradesh	Vs	APPELLANT
Bhupender Singh and Others		RESPONDENT

Date of Decision : 06-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 109, 34, 341, 352

Citation : (2010) 12 SHI CK 0111

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Surinder Singh, J.—Respondents were acquitted by the learned trial Court in Cr. Case No. 124/2 of 2002, decided on 6.4.2004, for the offences punishable under Sections 352, 341, 109 read with Section 34 of the Indian Penal Code, hence the State has challenged their acquittal in this appeal.

2. Shri A.K. Bansal, learned Additional Advocate General vehemently argued that the learned trial Court did not properly appreciate the evidence on record and if it is closely and cautiously scanned, there are grounds to convert the acquittal into conviction.

3. None appeared for the Respondents, however, I have gone through the evidence and have examined the points taken by the learned Additional Advocate General, but I failed to find out perversity of the trial Court judgment and if there is any reason existing in the evidence to pass the conviction against the Respondents, for the offences charged.

4. In short, the allegations to which the Respondents were put on trial can be summed up thus. On 31st May, 2002, complainant Hemant Kumar was a Centre Superintendent in the College of Engineering at Kala Amb. It is alleged that Kanwar Deep Singh Respondent No. 5, was caught red-handed in the unfair

means case. In the evening around 5.45 p.m. of the aforesaid day after closure of the examination of B. Tech, complainant was returning in his own vehicle towards Kala Amb alongwith PW3 Anuj Kansal and Krishan Kumar Centre Clerk. Respondents stopped their vehicle near "Katha factory" at Kala Amb and attacked with the bricks, stones and knives. In the meantime, PW2 Principal Gulshan Kumar and Clerk Panna Lal of the said Engineering College, who were behind them travelling in their car and went ahead of the complainant saw that the Respondents were assaulting him, as such, they reversed their vehicle which took about 3-4 minutes and on seeing them, the Respondents escaped in the fields on the side of Naraingarh road. They were chased by I.I.T. students and apprehended Respondents Bhupender Singh, Ajay Kumar and Niyaz Ali. They brought them to the college campus and informed the police.

5. Police reached on the spot. Respondents were taken into custody and the formal FIR was lodged against them. Police also took into possession two stones Exts.P1 and P2 and after recording the statements of the witnesses, challan was finalized against the Respondents and put in the court for their trial.

6. The Respondents were accordingly chargesheeted for the offences aforesaid, to which they abjured their guilt.

7. To prove its case, prosecution examined its witnesses and Respondents were also examined u/s 313 of the Code of Criminal Procedure. They denied the incident and according to them on account of false UMC cases against them, they were falsely implicated in this case.

8. Although the complainant PW1 Hemant Kumar stated that there was UMC case against the Respondent Kanwar Deep Singh, which nourished the grudge against him and resulted into the present incident, but the case of Respondents as noted above is that the U.M.C. cases were made against all of them, this incident was false and even in this case, they were falsely implicated. As PW1, the complainant stated that when their vehicle was stopped, they were given beatings and stones were pelted upon them and further that he was attacked with a knuckleduster. Surprisingly, there was no injury on the person of the complainant nor they got themselves medically examined.

9. According to the Investigating Officer PW5 HC Paramjit Singh, he was not informed by any of the aforesaid persons that they had sustained injuries and that they were ready and willing to undergo the medical examination. Even when the Respondents aforesaid were apprehended by the complainant party and the police arrived at the spot, none of the Respondents was medically examined in order to find out the truthfulness of the statement of PW1 that one of the Respondent, who used knuckleduster had also sustained the bleeding injury because of the breaking of the knuckleduster.

10. Although the complainant stated that he caught Respondent No. 5 Kanwar Deep Singh in an UMC case, but in cross-examination, stated that none of these Respondents was the students of the college. Even when confronted with the

supplementary statement recorded u/s 161 of the Code of Criminal Procedure, he denied having given such statement to the police.

11. Another witness PW2 Gulshan Kumar did not specifically state as to who were the accused persons, who had stopped the complainant. According to him, he was in a separate vehicle following PW1 Hemant Kumar and when he crossed his vehicle, he noticed in the back view mirror that the complainant party was apprehended, but when he reversed his car, which took 4-5 minutes, in the meantime, accused persons had already fled away, which means that he was unable to recognize them.

12. Even PW3 Anuj Kansal stated that two of the accused persons had assaulted PW1 and caught hold the Clerk Krishan Kumar, but pertinently in cross-examination, he stated that there was an altercation amongst the students with respect to UMC cases prepared against them and requested him to take care of their career.

13. It is noticed that there are material variations in the statements of the witnesses. The recovery of the alleged knives is also doubtful. The stones Exts.P1 and P2 alleged to have been recovered by the police are not connected with the incident. P Ws 1 and 2 stated that they were attacked by the Respondents and were given beatings, but there is nothing to corroborate that they had received any injury nor it is substantiated by medical evidence. The college students, who are alleged to have chased the Respondents, were not examined to lend strength to the case of the prosecution. However, it is clear that the complainant had prepared UMC cases against some of the students of Engineering College including Respondent No. 5, but he made his own statement doubtful by saying that the Respondents were not the students of college including Respondent No. 5.

14. Therefore, on the strength of the above evidence, neither the case of abetment nor of an assault as alleged stands proved in accordance with law against the Respondents, as such the appeal merits dismissal. As the findings of the learned trial are borne out from the record, hence no interference is called for. The appeal is accordingly dismissed.

15. The Respondents are discharged of their bail bonds entered upon by them at any stage, during the proceeding of the case.

16. Send down the records.