
(2017) 05 SHI CK 0070
In the High Court Of Himachal Pradesh
Case No : 767 of 2008

STATE OF HIMACHAL PRADESH

APPELLANT

Vs

BISHAN DASS AND ANOTHER

RESPONDENT

Date of Decision : 15-05-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 154](#) - Information in cognizable cases
[Indian Penal Code, 1860](#), [Section 34](#), [Section 323](#), [Section 325](#), [Section 451](#), [Section 279](#) - Acts done by several persons in furtherance of common intention - Punishment for voluntarily causing hurt - Punishment for voluntarily causing grievous hurt - House-trespass in in order to commit offence punishable with imprisonment - Rash driving or riding on a public way

Citation : (2017) 05 SHI CK 0070

Hon'ble Judges : Ajay Mohan Goel

Bench : Single Bench

Advocate : Vikram Thakur, Parul Negi, Ramakant Sharma, Soma Thakur

Final Decision : Dismissed

Judgement

1. By way of this appeal, the State has challenged the judgment passed by the Court of learned Judicial Magistrate 1st Class, Court No. III, Hamirpur in Police Challan No. 90-1-2000, dated 20.09.2008, vide which learned trial Court has acquitted the accused for commission of offences punishable under Sections 451, 325 and 323 read with Section 34 of the Indian Penal Code.

2. Case of the prosecution in brief was that statement of one Shri Parveen Katna (PW-3) was recorded under Section 154 of the Code of Criminal Procedure on 13.12.1999, in 1Whether reporters of Local Papers may be allowed to see the judgment. which he stated that on 12.12.1999 at around 7:30 p.m., while on his way from Heera Nagar to shopping complex of the committee, when he reached near Jai Bharat Furniture House on his Scooter No. HP-22-4446, one Vivek Sharma, son of Bishan Dass, who was driving his vehicle bearing registration No.

HP-22-9555 struck the said vehicle with his scooter. As per the complainant, thereafter he went to Himachal Builders, which shop was owned by Raj Kumar and was near the bus stand and narrated the said incident to Raj Kumar and Rakesh Kumar. All of them went to the house of Bishan Dass. Bishan Dass asked them to discuss the matter on the following morning, however, his wife started abusing them. Thereafter, Bishan Dass and two other persons started beating Rakesh Kumar on the road. This was followed by Vivek Sharma and two other persons also physically assaulting him in the second floor of a market complex with iron rods and physical blows. According to the complainant, he was saved by Piare Lal, Surinder and Pardeep.

3. On the basis of the statement of complainant, an FIR, i.e. FIR No. 209/99, dated 13.12.1999 was registered against the accused under Sections 279, 451 and 323 read with Section 34 of the Indian Penal Code. On the basis of said FIR, investigation was carried out. After completion of investigation, challan was filed in the Court and as a prima facie case was found against the accused, accordingly, they were charged for commission of offences punishable under Sections 451, 325 and 323 read with Section 34 of the Indian Penal Code, to which they pleaded not guilty and claimed trial.

4. Learned trial Court on the basis of material produced before it by the prosecution concluded that the prosecution had failed to prove its case against the accused beyond reasonable doubt and, as such, learned trial Court acquitted all the accused by giving them benefit of doubt. While arriving at the said conclusion, it was held by the learned trial Court that the genesis of the case of the prosecution was the statement of complainant Parveen Katna, as per whom, the vehicle of accused Vivek Sharma had struck his scooter, who thereafter went to the shop of Raj Kumar and then alongwith Rakesh Kumar and Raj Kumar went to the house of Bishan Dass, father of accused Vivek Sharma, where wife of accused Bishan Dass started abusing them and thereafter some persons who were outside the road initially started beating Rakesh Kumra, which was followed by the beating of the complainant also by accused Vivek Sharma and other persons. It was held by the learned trial Court that neither PW- 2 nor PW-5, who as per the prosecution were eye witnesses, had supported the case of the prosecution. Learned trial Court also took note of the fact that in fact there was also a cross case pertaining to the same incident, which had been filed by the accused against the complainant. It was further held by the learned trial Court that the statements of prosecution witnesses demonstrated that there was involvement of complainant alongwith other persons, who had outnumbered the accused persons and in these circumstances, it was hard to believe the prosecution case that the accused were aggressors. Learned trial Court also expressed its doubts over the veracity of the factual story as was put forth by the complainant. On these bases, it was held by the learned trial Court that as the prosecution was not able to prove its case against the accused beyond reasonable doubt, the accused could not be convicted.

5. Feeling aggrieved by the said judgment, the State has filed this appeal.
6. I have heard the learned Deputy Advocate General as well as learned Senior Counsel for the respondent and have also gone through the records of the case and the judgment passed by the learned trial Court.
7. Naresh Kumar entered the witness box as PW-1 and he deposed about the shirt and Banyaan of the complainant, Ex. P-1 and Ex. P-2, being taken into possession in his presence. PW-2 Piar Singh, according to the prosecution, is an eye witness, who saw the occurrence of the alleged incident. However, a perusal of his statement demonstrates that he did not support the case of the prosecution and was declared as a hostile witness. Though he was subjected to lengthy cross-examination by the learned Public Prosecutor, however, nothing could be elicited from him by the learned Public Prosecutor to substantiate the case of the prosecution. This witness has categorically denied that the accused were physically assaulting the complainant, as was the case put forth by the prosecution.
8. Complainant entered the witness box as PW-3 and he deposed about the occurrence of the alleged incident starting from his scooter being hit by the vehicle being driven by accused Vivek Sharma and thereafter his going to the house of the accused alongwith Raj Kumar and Rakesh Kumar and initially them being abused by the mother of accused Vivek Sharma and thereafter, his being physically assaulted by the accused. In his cross-examination, he denied the suggestion that he had filed a false case against the accused to save himself from a cross case.
9. Surinder Singh entered the witness box as PW-4 and this witness has deposed that on 12.12.1999 at around 10:30 p.m., he heard the cries of the complainant and then he and Piar Lal went to the spot where they saw four persons beating the complainant. This witness further deposed that after rescuing the complainant from the said persons, they took him to the hospital.
10. PW-5 Yatinder Sharma, who as per the prosecution was an eye witness, has also not supported the case of the prosecution and he was also declared as a hostile witness. This witness in his cross-examination by the learned Public Prosecutor has categorically denied that the complainant was physically assaulted by the accused.
11. Next relevant witness is PW-8 Dr. Dinesh Sharma, Medical Officer, PHC Nagwain, who has deposed that on 12.12.1999, he had medically examined the complainant at around 11:30 p.m., who was brought with alleged history of being beaten about an hour back and certain injuries were found on the person of the complainant, which were both grievous and simple.
12. Investigating Officer of the case, Om Parkash Dhiman entered the witness box as PW-11. In his cross-examination, this witness admitted that a cross-case was registered against the complainant Parveen Katna and others, which was

also investigated by him.

13. A perusal of the testimony of key prosecution witnesses demonstrates that there is no independent witness who saw the alleged accident of the scooter of the complainant with the vehicle of accused Vivek Sharma. Except the bald statement of the complainant, there is no cogent evidence on record from which it can be inferred that on the fateful evening, the scooter of the complainant was actually hit by a vehicle being driven by accused Vivek Sharma, as the prosecution wants this Court to believe.

14. Besides this, the factum of complainant having gone to the house of Bishan Dass alongwith Raj Kumar and Rakesh Kumar and there they being abused by wife of Bishan Dass, has also not been satisfactorily proved by the prosecution on record. The prosecution could have had proved the said fact from the testimony of Raj Kumar and Rakesh Kumar, who according to the complainant accompanied him to the house of Bishan Dass, but neither of the said two witnesses have been examined by the prosecution. Therefore, the contention of the complainant that after he went to the house of Bishan Dass with Raj Kumar and Rakesh Kumar, wife of Bishan Dass abused them and thereafter Rakesh Kumar was beaten up by Bishan Dass with the help of two other persons, remains unsubstantiated.

15. Now as far as the factum of the complainant having been beaten by accused Vivek Sharma with the help of other co-accused is concerned, it has come in the testimony of PW-4 that he allegedly saved the complainant from the clutches of the accused, who allegedly was being beaten by the accused in market complex and that too around 10:30 p.m. First of all, the prosecution has not been able to satisfactorily explain as to what was the complainant doing at such wee hours of the night in an under construction shopping complex. It is not as if the alleged incident occurred around 10:30 p.m., because according to the complainant, the incident took place at around 7:30 p.m. However, it is a matter of record, as is evident from the statement of Investigating Officer himself that a cross case has also been filed pertaining to the incident by the accused against the complainant. In these circumstances, when apparently there is no cogent evidence placed on record by the prosecution from which it could be inferred that the injuries which were received by the complainant were actually inflicted upon him by the accused, it cannot be said that the judgment of acquittal returned in favour of the accused by the learned trial Court is a perverse judgment.

16. I have carefully gone through the judgment passed by the learned trial Court and a perusal of the same demonstrates that learned trial Court after taking into consideration the evidence placed on record of the prosecution and after a correct appreciation of the same, has returned the findings of acquittal in favour of the accused.

17. A three Judge Bench of the Hon"ble Supreme Court in Sanwat Singh and others Vs. State of Rajasthan, AIR 1961 Supreme Court 715 has held: "9. The

foregoing discussion yields the following results: (1) an appellate court has full power to review the evidence upon which the order of acquittal is founded;

(2) the principles laid down in Sheo Swarup's case⁽¹⁾ afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as,

(i) "substantial and compelling reasons", (ii) "good and sufficiently cogent reasons", and

(iii) "strong reasons" are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion

; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified."

18. The Hon^{ble} Supreme Court in Govindaraju alias Govinda Vs. State by Srirampuram Police Station and another (2012) 4 Supreme Court Cases 722 has held that a benefit that has accrued to an accused by the judgment of acquittal can be taken away and he can be convicted on appeal, only when the judgment of the trial Court is perverse on facts or law. It has further been held by the Hon^{ble} Supreme Court that in appeal the judgment of acquittal should be interfered with only if upon examination of the evidence before it, the appellate Court is fully convinced that the findings returned by the learned trial Court are really erroneous and contrary to the settled principles of criminal law.

19. Coming to the facts of the prosecution case, in my considered view, in the present case, it cannot be said that the judgment passed by the learned trial Court is perverse either on facts or on law. The conclusions which have been drawn by the learned trial Court are in fact borne out from the records of the case and, therefore, as I have already said above, it cannot be said that the findings of acquittal returned by the learned trial Court are perverse findings nor it can be said that the findings so returned by the learned trial Court are erroneous or contrary to settled principles of criminal law. Therefore, in view of the above discussion, as there is no merit in the present appeal, the same is accordingly dismissed.