

(2018) 07 SHI CK 0022
In the High Court Of Himachal Pradesh
Case No : Cr. Appeal No.423 of 2010

State of Himachal Pradesh	Vs	APPELLANT
Chhewang Bodh & Other		RESPONDENT

Date of Decision : 02-07-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 154, 374, 378(3)
Indian Penal Code, 1860 — Section 147, 149, 323, 336, 354, 379, 427, 452, 504, 506

Citation : (2018) 07 SHI CK 0022

Hon'ble Judges : SANDEEP SHARMA, J

Bench : Single Bench

Advocate : S.C. Sharma, Dinesh Thakur, Amit??Kumar Dhumal, Vinay Thakur

Final Decision : Dismissed

Judgement

Sandeep Sharma, J.

1. Instant criminal appeal filed under Section 378(3) of the Code of Criminal Procedure (for short, â??Cr.P.C.) is directed against the impugned

judgment of acquittal dated 19th May, 2010, passed by the learned Sessions Judge, Mandi, District Mandi, in Cr. Appeal No.16 of 2006, reversing the

judgment dated 4th April, 2006, passed by the learned Judicial Magistrate, Ist Class, Court No.II, Mandi, District Mandi.

2. Briefly stated, the facts, as emerge from the record, are that on 19.8.2001 at about 10.00 AM, allegedly complainant Darshan Singh (PW-1) was

inspecting the construction work of his house and in the meanwhile, persons, namely, Hira Lal/accused A-1, Chhowang Bodh/accused A-2, Budhi

Singh/accused A-10, Budhi Singh/accused A-4, Chand alias Amar Singh/accused A-9, Tulsi Ram/accused A-3 came there and told him that he is

encroaching upon the land belonging to Radha Swami Satsang. Complainant

Darshan Singh assured them that he would only lay lintel on his already constructed wall and shall not cover the land beyond the wall till the decision of Civil Court, however, fact remains that persons named above ignoring the aforesaid assurance given by the complainant gave a signal to the persons standing nearby his house. Immediately, thereafter, wife of the complainant, namely, Lalita Devi (PW-2) informed the complainant that devotees of Radha Swami Satsang have started breaking the shuttering and walls. The complainant alongwith aforesaid accused came down and found that Ram Dayal/accused A-7, Tej Ram/accused A-8, Dolma Devi wife of Budhi Singh/accused A-5, Savitri Devi/accused A-6 were causing damage to the shuttering and Walls. Accused, who had earlier come to discuss with the complainant also joined rest of the accused and started causing damage to the house of the complainant. Lalita Devi (PW-2) and Manish Kumar son of complainant Darshan Singh (PW-1) requested the accused to refrain from causing damage to their house but accused, namely, Budhi Singh/accused A-4, his wife Dolma/accused A-5, Savitri/accused A-6, Chand Ram/accused A-9, thrashed and dragged them out of their house. Allegedly, accused named hereinabove after having pelted stones on the house of the complainant took away the bricks, shuttering planks, wooden supports from the spot in a tractor. Allegedly, the aforesaid incident was witnessed by Sohan Lal (PW-3), Anil Kumar (PW-4) and person namely, Baseer Mohammad.

3. Complainant Darshan Singh vide his statement Ext. PW-1/A, recorded under Section 154 Cr.P.C., narrated the aforesaid incident to the police, on the basis of which formal FIR Ext. PW-5/A came to be registered against the accused. After completion of investigation, police presented the challan in the competent Court of law.

4. The learned trial Court after satisfying itself that a prima-facie case exists against the accused charged them under Sections 147, 452, 323, 427, 379, 336, 504 and 506 read with Section 149 of Indian Penal Code and 354 of IPC, to which they pleaded not guilty and claimed trial.

5. Learned trial Court on the basis of evidence collected on record by the prosecution, held accused Budhi Singh/accused A-10, Dolma Devi/accused A-5, Budhi Singh/accused A-4, Savitri Devi/accused A-6, Amar Singh alias Chand/accused A-9, Chhewang Bodh/accused A-2, Ram Dayal/accused

A-7 and Mast Ram/accused A-11 guilty of having committed offences punishable under Sections 452, 323 and 379 read with Section 149 of I.P.C.

and accordingly convicted and sentenced them to undergo imprisonment as under:

Simple imprisonment for one year and to pay fine of Rs.1,000/- and in default of payment of fine, further undergo simple imprisonment for a

period of two months for commission of offence punishable under Section 452 read with Section 149 of IPC, to undergo simple imprisonment for a

period of six months and to pay a fine of Rs.500/- and in default of payment of fine to further undergo simple imprisonment for a period of one month

for the commission of offence punishable under Section 379 read with Section 149 of IPC, to undergo simple imprisonment for a period of three

months and to pay a fine of Rs.500/- and in default of payment of fine to further undergo simple imprisonment for a period of thirty days for the

commission of offence punishable under Section 323 read with Section 149 of IPC and to undergo simple imprisonment for a period of three months

and to pay a fine of Rs.500/- and in default of payment of fine to further undergo simple imprisonment for a period of thirty days for the commission of

offence punishable under Section 147 of IPC. Whereas the learned trial Court acquitted accused Hira Lal/accused A-1, Tulsi Ram/accused A-3

and Rej Ram/accused A-8 of the charge.

6. Being aggrieved and dissatisfied with the aforesaid judgment of conviction recorded by the learned trial Court, eight accused, as named in the memo

of parties, preferred an appeal under Section 374 of Cr.P.C. in the Court of learned Sessions Judge, Mandi, who vide judgment dated 19th May, 2010,

accepted the appeal and acquitted all the accused/respondents. In the aforesaid background, appellant-State, has approached this Court by way of

instant proceedings, praying therein for restoration of the judgment passed by the learned trial Court, after setting aside the judgment of acquittal

recorded by the learned First Appellate Court.

7. Mr.Dinesh Thakur, learned Additional Advocate General, vehemently argued that the impugned judgment passed by the learned Sessions Judge, is

not sustainable in the eye of law because same is not based upon the proper appreciation of evidence and as such, same needs to be quashed and set

aside. Mr.Thakur further contended that bare perusal of impugned judgment

passed by learned Sessions Judge clearly suggests that the evidence led on record by the prosecution has not been appreciated in its right perspective, as a consequence of which, erroneous findings have come on record and the accused have been let off on very flimsy grounds. Mr.Thakur further contended that bare perusal of judgment passed by the learned Sessions Judge clearly suggests that the prosecution has proved beyond reasonable doubt that the accused named in the present appeal not only gave beatings to the wife and son of the complainant, rather they have committed theft by taking bricks, shuttering planks, wooden supports from the house of the complainant and as such, there was no occasion left for the first Appellate Court to differ with the findings of the learned trial Court. While specifically inviting attention of this Court to the statement of PW-1 Darshan Singh, Mr.Thakur contended that it stands duly proved on record that on the date of alleged incident accused named in the appeal, not only trespassed the house of the complainant, rather they gave beatings to his family members. Lastly, Mr.Thakur contended that if the statements of prosecution witnesses are read in conjunction, it certainly suggests that the learned Sessions Judge has misread, misinterpreted and misconstrued the evidence adduced on record by the prosecution while reversing the judgment passed by the learned trial Court, which is apparently based on proper appreciation of evidence adduced on record.

8. Mr.Vinay Thakur, learned counsel representing the respondents-accused, while supporting the impugned judgment of acquittal recorded by the Court below, contended that there is no illegality and infirmity in the same, because the same is based on proper appreciation of evidence and, as such, there is no scope of interference. While refuting the submissions having been made by learned Additional Advocate General, Mr.Vinay Thakur, learned counsel representing the respondents-accused, strenuously argued that the prosecution witnesses have miserably failed to prove beyond reasonable doubt that on the date of alleged incident accused, named in the appeal, were present on the spot and they gave beatings to the wife and son of the complainant. While referring to the statement of complainant Darshan Singh PW-1, Mr.Vinay Thakur, learned counsel representing the accused, argued that bare reading of the same suggests that there are material contradictions and improvements in his statement and as such, the

learned First Appellate court rightly came to the conclusion that no much reliance, if any, can be placed on the same while ascertaining the guilt, if any, of accused named in the appeal as well as in the FIR. Lastly Mr.Vinay Thakur, contended that none of the prosecution witnesses save and except PW-1 has categorically stated something specific with regard to beatings, if any, allegedly given to his wife and as such, the learned Sessions Judge, rightly arrived at a conclusion that in view of material contradictions in the statements of prosecution witnesses, judgment of conviction recorded by the learned trial Court cannot be allowed to sustain.

9. Having heard learned counsel representing the parties and perused the record, especially the statements of the prosecution witnesses, this Court is not persuaded to agree with the contentions of learned Additional Advocate General that there is misreading and misinterpretation of evidence by the learned Sessions Judge while reversing the judgment of conviction recorded by the learned trial Court, rather this court is of the view that the learned Sessions Judge has appreciated the evidence in its right perspective and there is no illegality and infirmity in the impugned judgment.

10. Close scrutiny of evidence adduced by the prosecution nowhere suggests that it was able to prove beyond reasonable doubt that on the date of alleged incident, accused named in the appeal, were part of the unlawful assembly and they had given beatings to the wife and son of the complainant.

If the statement of PW-1 examined in its entirety, it clearly suggests that the accused named in the appeal had actually gone to the house of complainant to persuade him not to lay lintel till the matter is decided by the Civil Court. It has also come in the statement of complainant PW-1 that

when he was having discussion with the persons named in the appeal, his wife came to the spot and disclosed that few devotees of Radha Swami

Satsang are causing damage to the walls as well as shuttering, which assertion/ admission on his part belies the story of prosecution that the accused

named in the appeal were present on the spot at the time of the alleged incident and they had given beatings to the wife and son of the complainant.

Though in the instant case, prosecution with a view to prove its case examined as many as 17 witnesses, but the statement of PW-1 is only relevant

and material to decide the controversy at hand, because admittedly at the time of alleged incident, complainant Darshan Singh was present on the spot,

whereas other witnesses save and except PW-3 and PW-4 were not present, rather they either reached the spot after hearing the noise or on the information furnished by the complainant Darshan Singh PW-1. If the statement of PW-1 is examined in its entirety, it certainly compels this Court to agree with the contention of learned counsel representing the respondents/accused that no much reliance, if any, could be placed on the same because of material contradictions and improvements made by this witness to his initial statement recorded under Section 154 Cr.P.C. and as such, the learned Sessions Judge has rightly discarded the same at the time of ascertaining the guilt, if any, of the accused.

11. As per PW-1 on 19th August, 2001 at about 10.30 AM when he was standing near his house on the road and was talking to some persons, his

wife called him from below and informed that some people of Radha Swami Satsang were removing the shuttering from the back side and were

damaging the slab. This aforesaid statement of the complainant is in total contradiction to the initial statement made under Section 154 Cr.P.C.

wherein the complainant reported to the police that at the time of alleged incident he was standing on the slab of his house. He deposed before the

court below that he after being informed by his wife went to the back side of the house and saw 500-700 people were there, but, interestingly, this part

is totally missing in the initial statement made to the police. He also deposed before the court below that persons gathered on the spot were removing

the shuttering with the help of rope and they also hurled stones, but if this part of his statement is read juxtaposing his statement recorded under

Section 154 Cr.P.C., it certainly suggests that there is an attempt on the part of the complainant to improve his initial statement given to the police

under Section 154 Cr.P.C., wherein no such allegations were levelled.

It has also come in the statement of the complainant that accused persons removed some steel, shuttering, bricks etc. and thereafter carried the same

in tractor. He further deposed that Dy.S.P. Hirdu Ram came on the spot, who after having looked at the complainant party went towards Satsang

Bhawan and then after a while, he got shuttering, steel etc. of the complainant thrown into the river but interestingly no such allegation has been

levelled or reported to the police by the complainant in his initial statement recorded under Section 154 Cr.P.C. Though, in the FIR some accused

persons had been named, but it was nowhere case of the complainant that number of these "others" was as big as the figure 500 to 700.

Similarly, though there is mention with regard to beatings allegedly given by the accused to the wife and son of the complainant in the FIR, but the

complainant in his statement before the court below only stated that accused gave beatings to his wife but there is no mention that the accused also

gave beatings to his son. As per the FIR, accused Budhi Singh, his wife Savitri and Chand i.e. four persons gave beatings to the wife of the

complainant, but on oath complainant stated that besides the said Budhi Singh, another Budhi Singh, his daughter and also the wife of first Budhi Singh

also gave beatings to his wife.

In his examination-in-Chief, he stated that seven people gave beatings to his wife, whereas in his cross-examination he stated that his wife was given

beatings by 10 to 12 ladies. Similarly, complainant deposed before the court below that his wife was rescued by Sohan Lal, but while appearing as

PW-3 Sohan Lal nowhere stated that he had rescued the wife of the complainant, rather in his statement, he disclosed to the Court that he after

having heard some voices came to the house of complainant and saw that some people were talking to the complainant on the road. He also stated

that some persons started removing the shuttering which was on their side. He nowhere stated that he rescued the wife of the complainant.

Complainant also stated that he had made a phone call from Sohan Lal's mobile phone but Sohan Lal (PW-3) has not supported this statement of

complainant, rather one Anil Kumar, who appeared as PW-5 deposed that complainant Darshan Singh came at his clinic and made a phone call from

there. Complainant also deposed that the shuttering was being removed with the help of rope, but never said that for the purpose of removing

shuttering accused persons came on the slab and as such, the aforesaid version of removing shuttering by using rope does not appear to be

trustworthy. Interestingly, the case of the prosecution is that the complainant's wall was damaged, his shuttering was damaged partly and some

steel was also removed and carried away by the accused persons, but no definite evidence in this regard was led on record by the prosecution.

Though, some articles were shown to be recovered from the river Beas near Radha Swami Satsang Bhawan, but the disclosure statement, made by

Mast Ram that he could identify the place where the broken bricks of the wall, shuttering, steel, hammer and rope etc. after having been carried away

in tractor, were thrown nowhere proves the case of the prosecution. Such disclosure statement was made in the presence of Raju and Amar Singh.

Raju was not examined, whereas Amar Singh has not supported the case of the prosecution. Otherwise also, if some recovery is made from the bank

of river and the shuttering was identified by Jeet Ram contractor as belonging to him, that could not be taken into consideration because admittedly

there was no identification mark on the shuttering which was stated to be owned by Jeet Ram though Jeet Ram identified the same.

12. The prosecution with a view to prove the recovery of timber from river examined PW-5 Chandu. According to this witness, timber was found by

him as well as Ismile, floating in the river and they retrieved it from the river but it was none of the case of prosecution that some timber was thrown

into the river rather specific case was that people gathered and after having damaged the walls and shuttering, taken away bricks and steel and

subsequently threw the same in the river. Moreover, Chandu was declared hostile, whereas Ismile was not examined at all. According to the

complainant, photographs were taken by his son and the same were tendered in evidence in his statement Exts. P-5 to P-18, but to the contrary,

prosecution examined one Chaman Singh (PW-11) who stated that these photographs were taken by him at the instance of police. Complainant

claimed before the Court below that these photographs were taken before the police arrived, but according to PW-11, the same were taken only after

the police had arrived. As has been noticed hereinabove statement of PW-1 is only relevant to determine the controversy at hand, whereas other

witnesses save and except PW-3 and PW-4 are not witnesses to the incident and as such, no much reliance could be placed upon the same while

determining the guilt, if any, of the accused. There are material contradictions and inconsistencies in the statements of PW-1, PW-2 and PW-3 and as

such learned trial court wrongly placed reliance upon their statements while holding the accused guilty of having committed offences punishable under

Sections 147, 452, 323, 427, 379, 336, 504 and 506 read with Section 149 of Indian Penal Code and 354 of IPC.

13. This Court further find force in the arguments of Mr. Vinay Thakur, learned counsel representing the accused, that no specific reason, if any, has

been assigned by the trial court while holding the accused named in the appeal guilty and acquitting other accused, against whom same and similar

allegations were levelled, that too, on the same and similar set of evidence.

14. By now it is well settled that in a criminal trial evidence of the eye witness requires a careful assessment and needs to be evaluated for its

credibility. Honâ??ble Apex Court has repeatedly held that since the fundamental aspect of criminal jurisprudence rests upon the well established

principle that â??no man is guilty until proved soâ?, utmost caution is required to be exercised in dealing with the situation where there are multiple

testimonies and equally large number of witnesses testifying before the Court. Most importantly, Honâ??ble Apex Court has held that there must be

a string that should join the evidence of all the witnesses and thereby satisfying the test of consistency in evidence amongst all the witnesses. In

nutshell, it can be said that evidence in criminal cases needs to be evaluated on touchstone of consistency. In this regard, reliance is placed upon the

judgment passed by Honâ??ble Apex Court in C. Magesh and others versus State of Karnataka (2010) 5 Supreme Court Cases 645, wherein it has

been held as under:-

â??45. It may be mentioned herein that in criminal jurisprudence, evidence has to be evaluated on the touchstone of consistency. Needless to

emphasis, consistency is the keyword for upholding the conviction of an accused. In this regard it is to be noted that this Court in the case titled Surja

Singh v. State of U.P. (2008)16 SCC 686: 2008(11) SCR 286 has held:- (SCC p.704, para 14)

â?? 14. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other

witness is held to be creditworthy;..the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation.â??

46. In a criminal trial, evidence of the eye witness requires a careful assessment and must be evaluated for its credibility. Since the fundamental

aspect of criminal jurisprudence rests upon the stated principle that â?? no man is guilty until proven so,â? hence utmost caution is required to be

exercised in dealing with situation where there are multiple testimonies and equally large number of witnesses testifying before the Court. There must

be a string that should join the evidence of all the witnesses and thereby

satisfying the test of consistence in evidence amongst all the witnesses.

15. Consequently, in view of the detailed discussion made hereinabove as well as law referred hereinabove, this Court sees no illegality and infirmity in

the impugned judgment passed by the learned First Appellate Court, which otherwise appears to be based upon the proper appreciation of the

evidence adduced on record and as such, same is upheld.

16. Accordingly, the appeal is dismissed, alongwith pending application(s), if any.