

(2012) 03 SHI CK 0456

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 441 of 2005

State of Himachal Pradesh

APPELLANT

Vs

Dhani Ram, Ram Swaroop and Harish Chander

RESPONDENT

Date of Decision : 01-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 313
Penal Code, 1860 (IPC) — Section 120B, 201, 307, 323, 325

Citation : (2012) 03 SHI CK 0456

Hon'ble Judges : Sanjay Karol, J;R.B. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sanjay Karol, J.—For an offence, which is alleged to have been committed on 20.01.2001, accused were put to trial. In terms of judgment dated 06.07.2005, passed by the Ld. Additional Sessions Judge, Fast Track Court, Shimla, H.P. in S. Trial No. 30-S/7 of 2003/2001, titled as State Vs. Dhani Ram and Others, accused persons stand acquitted of the charged offences.

2. It is the case of prosecution that on 20.1.2001 at about 9:25 P.M., Smt. Santosh Kumari (PW-3) telephonically informed Police Post, Jatog that her father-in-law Geeta Ram and brother-in-law Ram Lal (PW-16) were assaulted by Dhani Ram and his two sons Ram Swaroop and Harish Chander. Geeta Ram and Ram Lal are badly injured and bleeding profusely. Constable Shanta Devi (PW-12) made entries in the Rojnamcha Ex.PW12/A. She also made entry in the Rojnamcha Ex.PW12/B to the effect that H.C. Anil Kumar No. 537 and Constable Hans Raj N.869 were deputed to proceed to the spot for necessary action. H.C. Rajinder Singh (PW-13) recorded statement of Geeta Ram u/s 154 Cr.P.C. (Ex.PW13/B) and sent Rukka for registration of the case and FIR No. 13/2001 dated 21.1.2001 (Ex.PW13/B) was registered at Police Station, West, Shimla under Sections 307, 323, 325, 506, 201, 120-B read with Section 34 IPC. ASI Iqbal Mohammad (PW-17) reached the spot and took the injured to Deen Dyal

Upadhayaya (popularly known as Rippon) Hospital, Shimla for medical treatment. Here they were examined by Dr. R.N. Shashni (PW-1). Since injuries sustained by Ram Lal were grievous, he was referred to the Post Graduate Institute Hospital at Chandigarh and Geeta Ram was referred to IGMC hospital at Shimla. Geeta Ram was examined by Dr. O.S Randhawa (PW-15) at IGMC, Shimla. Ram Lal after his treatment from PGI Hospital, Chandigarh returned back on 23.1.2001 and admitted in the Rippon hospital at Shimla from where he was discharged on 31.1.2001. As per medical records (Ex.PW1/A and Ex.PW4/A) pertaining to Geeta Ram, as also the medical record pertaining to Ram Lal(Ex.PW1/B), injuries sustained, were both simple and grievous. The matter was investigated by H.C. Rajinder Singh (PW-13), ASI Iqbal Mohammad (PW-17) and Inspector Keshav Ram (PW-18). PW-18 got the spot photographed, recovered Danda from the custody of accused Ram Swaroop. Clothes belonging to the accused and the injured were also recovered. Report of the Forensic Science Laboratory was also obtained. Blood stained earth and stones were also collected from the spot. During investigation, statement of Geeta Ram revealed that on 20.1.2001, he and Ram Lal had gone to attend a Court hearing at Shimla. On their way back, at about 3:30 P.M. they took tea in the shop of Sh. Om Parkash at Shamlaghat. Thereafter, they proceeded on foot towards their village, Diyasari. After covering a distance of about 200 meters, they met Ram Swaroop (accused No. 2) and Harish Chander (accused No. 3) and told them that their goats/sheep were destroying the grass of Ghasni belonging to Geeta Ram. Immediately thereafter Dhani Ram (accused No. 1) came with a Danda and all the three accused assaulted them as a result of which, both Geeta Ram and Ram Lal sustained grievous injuries and their clothes were torn. They cried for help and Bala Ram (not examined), Rameshwar (not examined) and Om Parkash (PW-5) reached at the spot and rescued them. The accused assaulted them with an intention of killing them. While leaving they threatened the injured of doing away with their lives. Accused were arrested on 21.1.2001 and Dandas were recovered on 28.1.2001 on the basis of disclosure statement. Statement (Ex.D-A) of injured Ram Lal was recorded by the police on 22.2.2001. With the completion of investigation, Challan was presented in the Court for trial.

3. The accused were charged for having committed offences punishable under Sections 307 and 506 both read with Section 34 I.P.C., to which they did not plead guilty and claimed trial.

4. In order to establish its case, in all prosecution examined 18 witnesses and statements of the accused u/s 313 Cr.P.C. were also recorded. In defense accused examined two witnesses.

5. The Court below acquitted all the accused of the charged offences, hence, the present appeal.

6. From the testimonies of the witnesses as also medical record produced by them, it is clear that Geeta Ram and Ram Lal were firstly examined at the Rippon hospital on 20.1.2001. In this regard MLCs (Ex.PW1/A and Ex.PW1/B) reveal that

medical examination was conducted on 20.1.2001 at 11:30 P.M. Significantly, both the injured were conscious and did not disclose the incident or narrate the manner in which they sustained injuries to anyone. Geeta Ram was referred to the IGMC hospital at Shimla and Ram Lal was referred to PGI hospital, Chandigarh for further treatment. Record also reveals that Geeta Ram was treated at IGMC hospital on 21.1.2001. He was examined by Dr. O.S. Randhava (PW-15). After taking treatment from PGI hospital between 21.1.2001 and 23.1.2001, Ram Lal was admitted in the Rippon Hospital on 24.1.2001 and discharged on 31.1.2001. The incident was also not narrated by them to the doctors or the police posted in the hospital. Significantly, statement of Ram Lal was recorded by the police only on 22.2.2001.

7. In this case, we find that police has not disclosed what police party observed first after reaching at the spot where incident is alleged to have taken place. Relevant police officials, whose names find mention in Rojnamcha Ex.PW12/B, and were asked to proceed to the spot have not been examined in Court at all. Their examination, as events would unfurl hereinafter was absolutely necessary.

8. According to PW-13, he recorded statement of Geeta Ram on 21.1.2001 after reaching the hospital at IGMC, Shimla. Now this fact stands materially contradicted by PW-17 who in his uncontrovered testimony states that on 20.1.2001 he visited the hospital at IGMC, Shimla and verified statement of Geeta Ram. Now if the statement was written on 21.1.2001 itself, then how could it be verified on the previous day. Error in recording the date perhaps could be typographical but then none of the police official who actually visited the spot first, i.e. prior to visit of PW-13, PW-18 and PW-17, have been examined in Court. PW-13 does not state that he first went to the spot and then came to the hospital and according to PW-18, he reached the spot only on 21.1.2001 at 8:00 A.M. and PW-17 did not visit the spot until 23.4.2001.

9. Now if the police did not take the injured to the hospital then the question is who took them. Significantly, some of the witnesses have contradicted their version by stating that it was the police who took them to the hospital: PW-18 only states that injured were sent for medical examination to DDU hospital at Shimla through Iqbal Mohammad (PW-17). On this aspect, PW-17 is absolutely silent. Unfortunately, Geeta Ram could not be examined in Court for the reason that he died during trial and Ram Lal got his statement recorded only on 22.2.2001 by giving a version which is not only at variance but contradictory to the version given by Geeta Ram. It is in this background that non examination of such police officials who reached the spot first acquires significance. Significantly, Geeta Ram and Ram Lal did not disclose the incident to the Doctor or get the statement recorded with the police posted at Rippon or IGMC, Shimla. Both were conscious at the time of their initial examination by the Doctor. Police has not explained the delay in recording the statement of Ram Lal. It is not the proven case of prosecution that Ram Lal was otherwise not available or that his statement could not be recorded for justifiable reasons. Record reveals that

injured were brought to the hospital by Anil Kumar. Even this witness was not examined in Court. Police has not bothered to associate him during investigation. He would have thrown some light with respect to the events which transpired on the spot. We emphasize this fact for the reasons that genesis of the prosecution case appears to be untrue if not false.

10. In this case, it is the defense of the accused Dhani Ram that he is a government employee and was not present in his house at the relevant time and on the day of incident only Ram Swaroop and Harish Chander were in the house. After consuming liquor both Ram Lal and Geeta Ram came to their house and started shouting loudly that they had won the case in which accused Dhani Ram had deposed against them as a witness. They proclaimed that accused could do whatever they want to. Thereafter, complainant forcibly tried to enter the house of the accused which resulted into a scuffle. Both Geeta Ram and Ram Lal fell down on rough surface where stones were lying as a result of which they sustained injuries. Accused have also placed on record judgment Ex.D-1 delivered by learned Additional Chief Judicial Magistrate, Court No. 1, Shimla, H.P. which shows that family members of the complainant party in which Dhani Ram had deposed, stand acquitted.

11. We also find that there has been prior litigation between the complainant and the accused, which fact stands admitted by Santosh Kumari (PW-3).

12. To establish the charge, prosecution has to prove beyond reasonable doubt, by leading clear, cogent, reliable and material piece of evidence that the accused persons, in furtherance of common intention attempted to murder Geeta Ram and Ram Lal by giving blows with a Danda and caused grievous injuries to them. They also threatened to do away with their lives.

13. In order to prove the same, our attention has been invited to the statement of Amar Chand (PW-2) Santosh Kumari (PW-3), Om Parkash (PW-5), Dhani Ram (PW-7), Smt. Shakuntla Devi (PW-8) and Ram Lal (PW-16).

14. It has come on record that adjoining to the place of incident, there are houses of several persons. Significantly, police did not associate any one of such persons/residents during investigation, except for Dhani Ram (PW-7), in whose presence weapon of offence i.e. Danda was allegedly recovered. Even this witness has not supported the prosecution case at all.

15. Having minutely examined testimonies of the relevant witnesses, as referred to hereinabove, we find that there are material contradictions with regard to the place and the manner in which the occurrence took place and also narration of events which took place prior to and after the incident.

16. At this stage, we find it necessary to reproduce statements as recorded in examination-in-chief of the most crucial witness i.e. Ram Lal (PW-16). It reads as under:-

stated that on 20.1.2001, I alongwith Geeta Ram and brother Rameshwar had

come to the Court to attend the case in Court No. 1, Shimla, on that day, a decision has been made in our favor. We boarded the bus at 5:00 P.M. for our village. At about 7 PM bus when we reached Shamlaghat we got down from the bus and proceeded on foot to our house. Our house is half a Km. from Shamlaghat. At some distance from Shamlaghat, where the road turns to one side the accused present in the Court were hiding in the bushes. They attacked us from behind with "dandas". The accused also attacked me with knuckle duster on my face and caused injuries. also suffered injuries on my legs. Geeta Ram was also attacked with "dandas" and his arm was fractured. The accused also removed money from my pocket. My watch "Rico" automatic was also removed. My gold ring was also taken away. The accused then carried me and Geeta Ram on their backs and threw us outside the gate of their house. Thereafter I became un-conscious. Police also came on the spot and brought us to the hospital at Ripon. Geeta Ram was referred to IGMCH hospital. I was also referred to P.G.I. Chandigarh. The accused harbors grudge against us on account of our land near their house in which they oftenly let their cattles to graze, for which we have been objecting. Dandas Ext. P-11 & P-12 are the same with which we have been attacked.

(Emphasis supplied)

17. In cross-examination, he was confronted with his previous statement (Ex.D-A) wherein the fact that he was attacked with a Knuckle-duster and that his land is adjoining to the house of the accused does not find recorded. Significantly, his statement Ex.D-A is totally at variance with the statement of Geeta Ram Ex.PW3/A, which stands proved by PW-13 in which there is no reference that accused were hiding in bushes and all of a sudden they attacked with Dandas and knuckle-duster. There is also no reference about the theft of watch and gold ring etc. Ram Lal does not state the talks of the sheep/goats destroying the grass which took place between them and the accused. Further according to this witness, he alongwith Rameshwar and Geeta Ram had gone to the Court. Now significantly, Rameshwar has not been examined in Court and Geeta Ram also did not mention about Rameshwar. On this aspect, Smt. Santosh Kumari (PW-3) has a different version to narrate. In Court she states that she had also accompanied the complainant to the Court. Significantly, neither Ram Lal nor Geeta Ram mentions about her presence at the spot at the time of occurrence of the incident.

18. She further states that at about 8:00 P.M. when they reached near the house of the accused, accused Dhani Ram, Teju and Swaroop quarreled with Geeta Ram and Ram Lal. After they returned to their house she heard cries of the injured persons. She went for help and found Ram Lal lying in an injured condition near the gate of house of accused Dhani Ram. Geeta Ram was confined in a room who also was injured and blood was oozing out from his head. She telephonically informed the police. Significantly, she admits that there are houses of Tota Ram, Om Parkash, Ram Lal, Parma Nand and Lachhi Ram near the house of accused

Dhani Ram. Now she did not try to contact anyone of such persons. Why so?, has not been explained. Her version in Court about the manner and nature of occurrence of incident significantly stands belied and contradicted by PW-16 who states that accused were hiding in the bushes and suddenly attacked them on their way. After the incident they were carried and dropped in front of the house of accused Dhani Ram. According to him beatings were given only once. He does not state that he was beaten up again in front of the house.

19. Significantly, Amar Chand (PW-2) and Om Parkash (PW-5) are sons of deceased Geeta Ram and Smt. Santosh Kumari (PW-3) is the wife of Om Parkash (PW-5). Accordingly, PW-2 and PW-5 also reached at the spot immediately after occurrence of the incident.

20. PW-2 states that he was informed by his mother Kaushalya Devi that Geeta Ram, Ram Lal, Shyam Lal (not examined) and Rameshwar (not examined) were beaten up by the accused persons. It is not even the case of the prosecution that Shyam Lal and Rameshwar were given beatings by the accused. Also Kaushalya Devi has not been examined in Court. Significantly, this witness has controverted himself by subsequently stating that on the date of incident, his mother had gone to the house of his maternal uncle in village Khiari which is at a distance of one hour. Hence, presence of Smt. Kaushalya Devi at the spot appears to be doubtful apart from the fact that testimony of this witness is hearsay. This witness does not state what action he took after reaching the spot. After all he allegedly found Ram Lal and Geeta Ram lying in an injured condition. Neither did he inform the police, nor did he raise alarm and seek help of neighbors. He also did not take steps to rescue the injured. Apart from the fact that his statement is unbelievable and full of contradictions, his presence on the spot appears to be doubtful. After all Geeta Ram was his father and yet did not do anything. As such it appears that this witness was not present at the spot and introduced subsequently. His statement also does not inspire confidence. He also feigns ignorance about the fact that accused Dhani Ram had appeared as a witness against his father. The case, judgment of which is Ex.DA has been going on for quite some time and prior dispute between parties stand admitted.

21. Om Parkash who is also son of Geeta Ram also does not mention presence of Amar Chand. This witness states that hearing cries of his father and Ram Lal he went to the spot with Rameshwar Lal and Bala Ram. He found Geeta Ram and Ram Lal lying in an injured condition on the lintel of the house of accused Dhani Ram. He contradicts versions of PW-2 and PW-3 that injured were taken to the hospital only after police arrived at the spot. According to him, he alongwith Rameshwar Lal and Bala Ram took the injured to IGMCH hospital at Shimla in a vehicle. Now this statement stands materially contradicted by medical evidence on record. The injured were first examined at Rippon hospital and not IGMCH. It appears that even this person was not present at the spot and seems to have been introduced by the police later on. Medical record Ex.PW1/A shows that injured were brought to the hospital by Anil Kumar, whose identity no one is

disclosing.

22. Shakuntla Devi (PW-8) is wife of injured Ram Lal (PW-16). In Court she states that on 20.1.2001 at about 7:30 P.M. she heard cries. As such, she rushed and found her husband lying injured and in an unconscious state on the lintel of the house of accused Dhani Ram. Blood was oozing out. Police came to the spot, took the injured to IGMC, Shimla. Now this version is totally in contradiction to the version given by PW-5 and PW-3. Hence, testimony of this witness does not appear to be worthy of credence.

23. Significantly, PW-16 does not state that Geeta Ram was confined by accused Dhani Ram in his house. In fact, it is his specific case that after they were given injuries, accused carried them on their backs and threw them outside their house.

24. From the testimonies of prosecution witnesses, it appears that there are different version with regard to the exact place where accused allegedly assaulted Geeta Ram and Ram Lal. Initially, Geeta Ram reported that after they had walked for about 200 meters from Shamlaghat the accused assaulted them. In Court, Ram Lal states that after they had covered "some distance" from Shamlaghat they were assaulted. Significantly, he does not state that he was assaulted in or near the house of accused Dhani Ram. PW-18 has deposed that Ram Lal and Geeta Ram were actually dragged by the accused over a distance of 562 feet. Now this version does not appear to be true. There are no telltale signs to this effect either on the bodies or clothes of the injured and the accused.

25. The prosecution has definitely not been able to prove the incident which allegedly took place on the path near Shamlaghat. To controvert the defense taken by the accused, prosecution has introduced the story that the accused carried the complainant party on their backs but why would they do so. This only lends credence to the defense of the accused.

26. We thus find that version stated by the prosecution witnesses in Court is different from the one narrated in the FIR. We also find that weapon of offence was not sent for chemical examination. There is nothing on record to link the accused with the injuries sustained by the complainants. Clothes of the accused and the injured and other material sent for chemical analysis also do not link the accused to the alleged crime.

27. There is no doubt that injuries which could have been fatal, but this fact alone would not be sufficient to prove the guilt of the accused. Suspicion cannot take place of proof.

28. Hence, it cannot be said that prosecution has been able to prove its case, beyond reasonable doubt, by leading clear, cogent, convincing, reliable and material piece of evidence to show that it were the accused who had given beatings to the complainant or threatened them of doing away with their lives.

29. The accused have had the advantage of having been acquitted by the Court below. Keeping in view the ratio of law laid down in Md. Ankoos and Others Vs.

The Public Prosecutor, High Court of A.P., it can not be said that Court below has not correctly appreciated the evidence on record or that acquittal of the accused has resulted into travesty of justice. No ground for interference is called for. Present appeal is thus dismissed. Bail bonds, if any, furnished by the accused are discharged.