

(2012) 03 SHI CK 0267
In the High Court Of Himachal Pradesh
Case No : Criminal A. No. 86 of 2004

State of Himachal Pradesh	Vs	APPELLANT
Dharam Dass alias Jhagrhu		RESPONDENT

Date of Decision : 12-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 378
Penal Code, 1860 (IPC) — Section 323, 326, 506

Citation : (2012) 03 SHI CK 0267

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Justice V.K. Ahuja, J.—This is an appeal filed by State of Himachal Pradesh u/s 378 of the Cr.P.C. against the judgment, dated 6.11.2000, passed by learned Additional Chief Judicial Magistrate, Jogindernagar, District Mandi, H.P., vide which the respondent was acquitted of the charge framed against him under Sections 326, 323 and 506 IPC. Briefly stated, the facts of the case are that on 20.12.1996 a statement was made by one Lekh Ram u/s 154 Cr.P.C. to the police in which he alleged that in the morning at 8.00 a.m., he was present in his house when the respondent came to his courtyard and gave three blows of a drat on his person. He alleged that the occurrence was witnessed by one Mahant Ram working nearby and on seeing him, the accused ran away. He further alleged that his son Ram Dayal was present in the house. On this report, a case was registered and after investigation, the challan was filed before the learned trial Court, who tried the respondent under the Sections mentioned above leading to his acquittal.

2. We have heard Mr.Rajesh Mandhotra, learned Deputy Advocate General for the appellant and Mr.G.R. Palsara, learned counsel for the respondent and have gone through the record of the case.

3. On appraisal of the evidence led by the prosecution, it is clear that the

complainant/injured Lekh Ram had stepped into the witness box as PW-1 and had reiterated the allegations made in the complaint that he was given three blows with a drat by the respondent in his courtyard. His statement was sought to be corroborated by two witnesses, namely, PW-4 Mahant Ram, whose name was also mentioned in the statement made by the complainant u/s 154 Cr.P.C., and PW-5 Ram Dayal.

4. PW-4 Mahant Ram had stated that he was present for giving grass to his animals and he heard a noise and when he went to the spot, he saw PW-1 Lekh Ram crying and the accused had already run away. He stated that no blow was given in his presence and he was told by Lekh Ram that he had been given the blows by the respondent. He did not state that he had seen the respondent running from the spot. He admitted that he is not on talking terms with the accused since they had a quarrel.

5. The other eye witness examined to prove the case is PW-5 Ram Dayal, son of the complainant. In the statement made to the police by the complainant it was never alleged that Ram Dayal was present at the spot or had seen the occurrence, though it was alleged by the complainant that his son Ram Dayal aged about 12/13 years was also present in the house. However, there is no specific reference that he was present in the courtyard and had seen the accused inflicting the blows upon the complainant.

6. The said Ram Dayal, son of the complainant, as PW-5 had stated that his father was given two blows with a drat and one blow was given over the head with a stone, which was never the case of the complainant himself. He further stated that his father was rescued by the son of the accused, which was also never stated by the complainant or by the other eye witness. He states that no other witness came to the spot, meaning thereby that he rules out the possibility of PW-4 Mahant Ram having seen the occurrence.

7. The Medical Officer PW-9 Dr. Sunil Thakur has stated that there were two incise wounds and one lacerated wound on the scalp, which was possible with blunt weapon only, meaning thereby that it was not possible with the drat, while two other injuries were possible with drat. Therefore, the medical evidence does not corroborate the statement of the complainant fully in regard to the injuries, which also does not find due corroboration from the other witnesses.

8. The accused had also proved in evidence an affidavit Ext.D-1 of the complainant Lekh Ram in which it was mentioned that both the parties had grappled with one another and he had suffered the injury with a drat in grappling and the accused had also suffered injuries. This clearly shows that the injuries were not caused in the manner as stated by the complainant in the court. The complainant did not offer any such explanation that this affidavit Ext.D-1 was taken under some threat or by deceit, which clearly shows that this affidavit has been duly proved since the complainant admits his signatures and does not offer any explanation and, therefore, keeping in view this affidavit, it cannot be said

that the injuries were caused to the complainant/injured in the manner as stated by him in the Court. In view of above discussion, it is clear that the final conclusion drawn by the learned trial Court cannot be said to be perverse calling for an interference by this Court. We accordingly hold that there is no merit in the appeal filed by the appellant, which is dismissed.