
(2001) 05 SHI CK 0027
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal N. 30 of 1997

State of Himachal Pradesh	Vs	APPELLANT
Ganga Sukh and Others		RESPONDENT

Date of Decision : 11-05-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Himachal Pradesh Panchayati Raj Act, 1968 — Section 203, 207, 323
Himachal Pradesh Panchayati Raj Act, 1994 — Section 35
Penal Code, 1860 (IPC) — Section 147, 149, 302, 323, 325

Citation : (2002) 1 ShimLC 38

Hon'ble Judges : C.K. Thakker, C.J

Bench : Single Bench

Advocate : Vivek Thakur, Assistant Advocate General, for the Appellant; G.D. Verma and Romesh Verma, for the Respondent

Final Decision : Allowed

Judgement

C.K. Thakker, C.J.—This appeal is filed against an order of acquittal recorded by the Additional Chief Judicial Magistrate, Rampur on May 22, 1996 in case No. 11-2 of 1994.

2. The Respondents-accused were charged for committing offences punishable under Sections 147, 323, 325 and 506 read with Section 149 of the Indian Penal Code (hereinafter referred to as "the Code"). The case of the prosecution was that there was a dispute between residents of two villages, namely, Upperly Bhajethli and Nichli Bhajethli, Sub-Tehsils Nankhari, District Shimlain respect of nuisance being caused by flow of water. With a view to settle the dispute, Mehar Singh, Up-Pradhan of Majholi Gram Panchayat was called to Bhajethli village on February 28, 1993. Residents of both the villages were present. At about 11.00 a.m. according to the prosecution, the complainant party came to the spot. Accused also came there and assaulted the complainant party. Accused No. 2 Bhaga Ram caused injury to Shesh Ram with a stone. Accused No. 3 Jagdish Chand caused injury to Mohan Lal and accused No. 7 Basant Ram caused injury

to Brestu. It was further case of the prosecution that meanwhile other accused persons also reached there and started beating Shesh Ram, Mohan Lal and Brestu. The injured were rescued by Babu Ram, Surat Ram, Bhadur Singh, Dina Lal and other villagers. Three persons, who sustained injuries then went to the Police Station and lodged a First Information Report. The police got them medically examined. After usual investigation, the police submitted challan against accused Nos. 1 to 6. During the course of trial, however, an application was moved for impleadment of other accused. The application was allowed and accused Nos. 7 to 11 were arrayed as accused.

3. On being asked, the accused did not plead guilty. They denied to have committed any offence. In their further statement u/s 313 of the Code of Criminal Procedure, 1973, they denied of having committed any offence or caused injuries to the complainant side. They, on the other hand, stated that the complainant assaulted them and caused injuries. They also tendered in evidence a copy of FIR No. 72 of 1993. In support of their say, the accused examined one Mathru Ram, Head Constable, Police Station, Rampur.

4. At the trial, prosecution examined eight witnesses to prove the case. The learned Additional Chief Judicial Magistrate, on the basis of evidence on record, held that it was not proved by the prosecution that all the accused were members of unlawful assembly and in furtherance of common object; they caused injuries to prosecution witnesses. The learned Magistrate was, however, satisfied that the prosecution was able to prove beyond reasonable doubt that accused No. 2 Bhaga Ram, son of Daya Ram, had caused injury to Shesh Ram and he had committed an offence punishable u/s 323 of the Code. Accordingly, the learned Magistrate convicted accused No. 2 for an offence punishable u/s 323 of the Code.

5. On sentence, the learned Magistrate observed that it was not a fit case of imposing substantive sentence on accused No. 2. But he was also satisfied that the evidence did not disclose provocation from the complainant side and yet the accused caused injury with a stone. The accused hence did not deserve admonition or benefit of probation. The learned Magistrate, accordingly directed accused No. 2 to pay fine of Rs. 1,000. The said amount was ordered to be paid to injure Shesh Ram. The learned Magistrate, however, acquitted all the remaining accused by giving them benefit of doubt.

6. Being aggrieved by the order of acquittal passed by the learned Magistrate, the State has preferred present appeal. The prayer is that the impugned judgment be set aside and accused Respondents No. 1 and 3 to 11 be convicted for offences punishable under Sections 147, 323, 506 and 325 read with Section 149 of the Code. A prayer is also made that Respondent No. 2 Bhaga Ram also be convicted for offences punishable" under Sections 147, 325 and 506 read with Section 149 of the Code.

7. Criminal Miscellaneous Petition (M) No. 965 of 1996 was allowed by the Court

and the present Criminal Appeal was admitted on February 28, 1997. An order was also passed directing the Respondents to furnish personal bonds in the sum of Rs. 2,000 each with one surety in the like amount.

8. On June 23, 2000, the matter was placed for final hearing before me. A statement was made by Mr. Romesh Verma, learned Counsel for the Respondents-accused that being aggrieved and dissatisfied with the judgment and order of conviction against Respondent No. 2, an appeal was preferred being criminal appeal No. 3 of 1996, which was allowed by the learned Sessions Judge, Kinnaur at Rampur on June 15, 1998 and accused No. 2 was ordered to be acquitted. I, therefore, granted time to the learned Assistant Advocate General to enquire.

9. The matter was thereafter placed for hearing on August 18, 2000. Meanwhile, the record of Criminal Appeal No. 3 of 1996 was received by this Court. Reading the judgment and order passed by the Sessions Court, it is correct that on June 15, 1998, the appeal filed by accused No. 2 was allowed by the learned Sessions Judge, and his conviction was set aside and he was ordered to be acquitted.

10. Mr. Thakur, learned Assistant Advocate General submitted that the trial Court has committed an error of fact and of law in acquitting the accused for the offences with which they were charged. He submitted that looking to the evidence of prosecution as a whole, there was no doubt about the incident in which the witnesses sustained injuries and it was clearly established from their substantive evidence. Those injuries were further proved from medical evidence on record. There was dispute between the residents of two villages in connection with flow of water and thus there was motive on the part of the accused in beating complainant party. The learned Magistrate has gravely erred in not appreciating the evidence of prosecution witnesses, particularly injured witnesses and in acquitting the accused. He, therefore, submitted that the order of acquittal deserves to be quashed and set aside.

11. Mr. Verma learned Senior Counsel, on the other hand, supported the order of acquittal against accused Nos. 1 and 3 to 11 passed by the learned Magistrate. He submitted that after appreciating the evidence on record, the learned Magistrate reached a finding of innocence in favour of accused Nos. 1 and 3 to 11. The counsel made grievance that when on the basis of prosecution evidence, the case was not believed by the trial Court qua accused Nos. 1 and 3 to 11, there was an error of fact and of law in believing the same evidence against accused No. 2 and in convicting him. Accused No. 2, therefore, preferred an appeal before the Sessions Court, which was allowed and he was also acquitted. The order passed by the Sessions Court on June 15, 1998 has become final inasmuch as no appeal was filed by the State against the said order. The counsel submitted that serious complication would arise if the present appeal is allowed. Accused No. 2, who was convicted by the trial Court has been acquitted by the Sessions Court and the said decision has become final. If the order passed by the learned Magistrate is set aside, the person who has been acquitted by a

competent Court (Sessions Court) before more than two years will be convicted. Thus, there will be two contradictory orders; One, an order passed by the Appellate Court which had never been made subject matter of scrutiny by this Court and order of this Court convicting him. The counsel also submitted that the incident was of February, 1993 and many years have passed. It would, therefore, not be appropriate to interfere with an order of acquittal. On merits, he submitted that injuries were also sustained by the accused but they were not explained by the prosecution witnesses. Thus, the prosecution has suppressed material facts and the accused were given benefit of doubt. It, therefore, cannot be said that by acquitting the accused, any error has been committed by the Courts below. Mr. Verma, therefore, prayed for dismissal of the appeal.

12. Now, from the facts of the case, it is quite clear that some dispute was going on between residents of two villages in connection with flow of water. On the day of incident, people of both the villages were called by Up-Pradhan Mehar Singh. According to the prosecution, at that time, accused No. 2 Bhaga Ram accused No. 3 Jagdish Chand and accused No. 7 Basant Ram caused injuries to prosecution witnesses. Injuries were duly established from medical evidence. It, therefore, cannot be said that the incident had not happened. As many as eight witnesses were examined by the prosecution in support of the case, which included Medical Officer. Certificates of injuries and X-ray plates were also produced on record. At the trial before the learned Magistrate, it was submitted by the Assistant Public Prosecutor that on the basis of the evidence of prosecution witnesses, it was proved that injuries were caused to prosecution witnesses by the accused and they should be convicted. The learned Magistrate, however, did not place reliance on prosecution evidence and he acquitted rest of the accused except accused No. 2.

13. While dealing with the sworn testimony of eye witnesses including injured witnesses, the learned Magistrate observed:

Prosecution examined five eye witnesses. Out of these five, three are the persons who sustained injuries. They are Shesh Ram, Mohan Lal and Brestu Ram. As they have sustained injuries, apparently they are interested witnesses

(Emphasis supplied)

Proceeding further, the learned Magistrate stated:

They no doubt have fully supported the prosecution case, but in view of their interestedness in the success of the case much depends" on the statement of other independent witnesses.

(Emphasis supplied)

14. The learned Magistrate then observed that one of the eye witnesses, PW-6 Dina Lal turned "hostile" and did not support the case of the prosecution. The Court was thus left only with one independent witness, namely, PW- 4 Mehar Singh, Up-Pradhan of Gram Panchayat, Majholi. It was not disputed that he was

present in the village to solve the dispute between the residents of two villages, but from his evidence, it was established that only Bhaga Ram, accused No. 2 had assaulted the complainant party and was aggressor. He inflicted a blow with stone on complainant Shesh Ram. It was also proved that injuries were caused by Jagdish Chand with stone. But it was not clear that Jagdish Chand, accused No. 3 was an aggressor like accused No. 2 Bhaga Ram and hence accused No. 3 was entitled to benefit of doubt. Regarding remaining accused, according to the learned Magistrate, the evidence was weak. Moreover injuries were caused to the accused, which had not been explained by the prosecution. In the light of cumulative effect of all the circumstances, they were entitled to benefit of doubt, noted the learned Magistrate.

15. The State has preferred present appeal against acquittal of all the accused for offences punishable under Sections 147, 323, 506, 325 read with Section 149 of the Code including accused No. 2, convicted u/s 323 of the Code. The convicted accused No. 2, on the other hand, preferred an appeal against his conviction before the Sessions Court. It was contended by him that since the learned Magistrate held that the Appellant had committed an offence punishable u/s 323 of the Code, the learned Magistrate had no jurisdiction to deal with and decide the case as it was exclusively triable by the Gram Panchayat. The argument weighed with the Sessions Court who held that the learned Magistrate ought not to have decided the case. On merits also, the Sessions Court observed that since the injuries to the accused were not explained by the prosecution, the Appellant-accused was entitled to benefit of doubt. Accordingly the appeal filed by him was allowed. To recall, the said judgment and order had become final as it had never been challenged by the State.

16. Having considered rival contentions of the parties and the facts and circumstances of the case in my opinion, though no interference is called for against an order impugned in the present appeal, I am constrained to observe that neither the approach adopted by the learned Magistrate nor by the Sessions Court was in consonance with law and well established principles of criminal jurisprudence.

17. As observed earlier, at the trial, eight prosecution witnesses were examined. Out of them, three were injured witnesses. Evidence of all the three injured witnesses has been kept aside, overlooked and totally ignored by the learned Magistrate just in one sentence that as they sustained injuries, they were "interested witnesses". I am unable to subscribe the view taken by the learned Magistrate. It is also contrary to settled legal position. In my judgment, the law on the point is very well settled that evidence of an injured witness is also an evidence and such evidence cannot be brushed aside by a Court of law on a "spacious plea" of interestedness. The observations made by the learned Magistrate are contrary to natural human conduct and ignores well established principle, judicially recognized that normally an injured person will not allow real culprit to escape and falsely implicate an innocent one. As a general rule,

evidence of an injured witness should be accepted as correct and on the basis of such evidence conviction can be recorded unless the Court is satisfied for good and sufficient reasons that it is not trustworthy or does not inspire confidence in the light of other evidence and surrounding circumstances. In other words, evidence of an injured witness should rather be placed on a higher footing than the evidence of other witnesses.

18. In the instant case, a curious approach has been adopted by the learned Magistrate. He had discussed the evidence of other witnesses in some detail. He has also discussed medical evidence and corroborative evidence and recorded reasons for acquitting the accused. But so far as the evidence of injured witnesses is concerned, he has simply ignored it and left out of consideration on the ground that they were "interested" in the success of the case and hence their sworn testimony cannot be relied upon. No reason whatsoever, much less convincing reason, has been recorded by the learned Magistrate in support of that conclusion or for making "sweeping" observations. In my considered opinion, the observations are not in consonance with law and cannot but be deprecated.

19. Unfortunately, similar is the approach of the learned Sessions Judge in acquitting accused No. 2 on the ground that the learned Magistrate had no jurisdiction to deal with and decide the case. It is not in dispute that all the accused were charged for commission of offences punishable under Sections 147, 323, 506 and 325 read with Section 149 of the Code. At the conclusion of the trial, however, the learned Magistrate acquitted all the accused except accused No. 2, who, on the basis of evidence on record found guilty for commission of an offence u/s 323 of the Code. In an appeal by the said accused, it was urged that since his conviction was u/s 323 of the Code, the learned Magistrate had no jurisdiction as the said offence was cognizable by the Gram Panchayat. Unfounded and ill-conceived contention found favour with the learned Sessions Judge and he upheld it. In doing so in my opinion the learned Sessions Judge has committed clear error of law. Section 35 of the Himachal Pradesh Panchayati Raj Act, 1994 reads as under:

35. If, at any stage of the proceedings in a criminal case pending before a Magistrate, it appears that the case is triable by a Gram Panchayat, he shall at once transfer the case to that Gram Panchayat which shall try the case de-novo.

(Emphasis supplied)

20. The above provision is *pari materia* to Section 203 of the Himachal Pradesh Panchayati Raj Act, 1968 (since repealed). Bare reading of the section leaves no room of doubt that it would apply to offences alleged to have committed and specified in Schedule II. An offence u/s 323 of the Code of voluntarily causing hurt is one of the offences specified in Schedule-II. The learned Sessions Judge, therefore, appears to have been persuaded to hold that an offence was cognizable only by the "Nyaya Panchayat" and not by a Court of Judicial

Magistrate.

21. For taking this view, support was taken by the learned Sessions Judge from a decision in *Smt. Roshni v. State* ILR 1973 HP 55, wherein an accused was alleged to have committed an offence punishable u/s 447 of the Code and was convicted by a Judicial Magistrate, 1st Class and ordered her to pay a fine of Rs. 50 and in default to undergo simple imprisonment for one month. Considering the provisions of Sections 203 and 207 of the Panchayati Raj Act, 1968, this Court held that the Magistrate had no jurisdiction to proceed with the case and the conviction was set aside.

22. In my considered opinion, the learned Sessions Judge has committed an error of law in placing reliance on *Roshni*. The facts in *Rossini* were totally different and the ratio inapplicable. There, the allegation of the prosecution was that the accused had committed an offence punishable u/s 447 of the Code. Conjoint reading of Sections 203 and 207 of the Act made it explicitly clear that certain offences were cognizable only by Nyaya Panchayat. At Sr. No. 31 of Schedule-II an offence of "criminal trespass" punishable u/s 447 of the Code had been mentioned. Obviously in such a situation, the Court of Judicial Magistrate 1st Class had no jurisdiction in the matter.

23. In the instant case, facts were totally different. The accused were not charged for an offence punishable u/s 323 of the Code only. The charge was commission of offences punishable under various Sections (Sections 147, 323, 325 and 506 read with Section 149) of the Code. It is true that at the end of the trial, the learned Magistrate held that none of the accused had committed an offence punishable under Sections 147, 325 and 506 read with Section 149 of the Code, and that accused No. 2 alone had committed an independent substantive offence punishable u/s 323 of the Code. But to me, it is clear that once a case is triable by a competent court and cognizance in accordance with law has once been taken, the said court will not be deprived or ousted of jurisdiction on the ground that the prosecution was unable to establish the offences with which the accused was charged and that he is guilty of any lesser offence. The learned Sessions Judge was, therefore, clearly wrong in holding that the Magistrate had no jurisdiction to deal with the case.

24. When a person is charged with more than one offence, one of which is exclusively triable by "Nyaya Panchayat" and the other(s) is (are) by a Magistrate or by a Sessions Court, the competent court has jurisdiction to try such offence.

25. In *Param Dev v. State* ILR 1975 HP 54, this Court stated:

When the two offences were committed in one transaction in my opinion, the Court which could take cognizance of the higher offence was also eligible to take cognizance of the minor offence. If the trials are bifurcated and the Nyaya Panchayat becomes seized of the matter u/s 323 and the other offence u/s 325 is retained by the Magistrate, a conflict of decision is likely to arise. In order to

avoid it the higher court of the Magistrate could as well take cognizance of the other minor offence u/s 323 and in my opinion the provisions of the Himachal Pradesh Panchayati Raj Act, 1968, will not stand in the way.

26. In my view in deciding jurisdiction of a Court or an authority, what is relevant and material is the allegations leveled against a person and charge framed against him and not the final outcome, conclusion or order made at the end of trial. The *raison d'être* is that it is the court, which after a judicial scrutiny, is satisfied on the basis of evidence and materials placed before it that another offence has been committed or made out (vide: Kalpnath Rai Vs. State (through CBI),

27. If the view taken by the learned Sessions Judge is upheld, an anomalous situation is likely to arise in several cases. Let us take a hypothetical case. The accused is charged for an offence punishable u/s 302 of the Code. The case is obviously triable by the Court of Sessions. At the conclusion of the trial, however, the learned Sessions Judge is satisfied that the accused has committed an offence but not of murder punishable u/s 302 of the Code, but a lesser offence, suppose an offence of causing grievous hurt punishable u/s 326 or simple hurt punishable u/s 323 of the Code. Has the Sessions Court no jurisdiction to record a conviction and impose penalty on that basis? Is the Sessions Judge bound to send the matter to the Court of Judicial Magistrate (or to "Nyaya Panchayat")? Certainly not. For the purpose of deciding the jurisdiction, what is to be seen is the charge leveled against the accused and not the final outcome of the trial.

28. In the instant case, as the charge against all the accused was for committing offences punishable under Sections 147, 323, 325 and 506 read with Section 149 of the Code, it has rightly been entertained and tried by the Additional Chief Judicial Magistrate. It is not at all material whether the charge leveled against the accused was established or not or whether any of them was held liable for a lesser offence. The learned Sessions Judge, therefore in my view, committed apparent error and that part of the order cannot be upheld and is hereby held to be contrary to law.

29. I am conscious of the fact that the order passed by the learned Sessions Judge has become final as it has not been challenged in any proceeding either by the State or by any other person. But in view of the fact that as a proposition of law, the learned Sessions Judge has held that the order passed by the learned Magistrate convicting accused No. 2 was without jurisdiction and he had no jurisdiction in the matter, it would be appropriate for this Court as the Apex Court of the State to make the legal position clear so that no misconception would remain.

30. On evidence, however in my opinion, it cannot be held that by acquitting the Respondent-accused, any error had been committed by the Courts below. The material on record shows that the dispute was going on between the parties in connection with water channel. It has also come on record that attempts were

made to get the matter settled and for the purpose, Up-Pradhan Mehar Singh had come to the place on the day of incident. A quarrel took place between two groups, wherein three witnesses on the prosecution side sustained injuries. But it is also on record that accused were injured. In respect of the incident, FIR No. 72 of 1993 was also lodged. The prosecution witnesses had stated nothing about the injuries received by the accused. True it is that in all cases where injuries to the accused have not been explained, the prosecution would not fail. At the same time, however, one of the inferences which can legitimately be drawn by a Court of law from the fact of non-explanation of injuries to the accused may be that the prosecution has not come with full facts and is either suppressing something or not disclosing the part played by them. In such circumstances, the genesis of the prosecution may become doubtful.

31. If, on the basis of non-explanation of injuries to the accused, the learned Additional Chief Judicial Magistrate has extended benefit of doubt to the accused other than accused No. 2 and appeal against conviction of accused No. 2 was allowed by the Sessions Court, it could not be urged successfully that such a view is uncalled for and ought not to have been taken. At the most, other view is possible. But even if two views are possible, it would not be appropriate for this Court while dealing with an appeal against acquittal to interfere with the view taken by the trial Court or by the appellate Court and set aside the acquittal.

32. For the foregoing reasons in my opinion, the appeal deserves to be dismissed and is accordingly dismissed. Bail bonds stand cancelled.

33. The Registry will send a copy of this judgment to the learned Additional Chief Judicial Magistrate, who decided case No. 11-2 of 1994 and to the learned Sessions Judge, who decided Criminal Appeal No. 3 of 1996, wherever they are.