
(2012) 03 SHI CK 0492

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 243 of 2005

State of Himachal Pradesh

APPELLANT

Vs

Gulsher Ali and Others

RESPONDENT

Date of Decision : 09-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 146
Penal Code, 1860 (IPC) — Section 148, 149, 323, 325, 427

Citation : (2012) 03 SHI CK 0492

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Surinder Singh, Judge

1. The State has challenged the judgment of acquittal passed by the learned trial Court in Criminal Case No. 17/2 of 2000, decided on 21.3.2005 for the offences punishable under Sections 148, 452, 323, 325, 427 & 506 (II) read with Section 149 of the Indian Penal Code on the ground that the learned trial Court did not appreciate the evidence of the prosecution in the right perspective. The brief facts of the case are that PW 1 complainant Santokh Singh alleged that a house in question alongwith 18 biswas of vacant land was purchased by him in the year 1973, since then, he is in its possession. On 25.10.1999, when he was sitting in his courtyard, the respondents formed unlawful assembly armed with sticks, axes, chain etc., attacked him, smashed window panes, broke open the doors and ransacked his house. He raised hue and cry which attracted the neighbours, but in the meantime, the respondents escaped from the spot and had removed his two brief cases, in one of them, he had kept gold bracelet and currency notes worth Rs. 40,000/- .

2. The FIR with respect to the said incident was lodged on the same day by Santokh Singh alleging therein that the respondents had tried to dispossess him from the aforesaid house and landed property illegally.

3. The police took up the investigation, prepared site plan, took photographs of the place of incident and also recorded statements of the witnesses.
4. During the investigation, it had come to light that the complainant had purchased the aforesaid property and was put in its possession. The respondents had tried to dispossess him. The injured Santokh Singh was got medically examined. All the injuries except injury No. 9 i.e. broken tooth of the right upper incisor, were simple having been caused within the duration of 2 to 4 hours. To this effect, Medico Legal Certification Ext. PW 5/A was issued.
5. After completing the investigation, challan was presented in the Court for trial of the respondents. The respondents were chargesheeted, tried and acquitted of the offences aforesaid. Hence, the present appeal.
6. Shri R.P. Singh, learned Assistant Advocate General vehemently argued that the learned trial Court has wrongly appreciated the statement of the injured which is not corroborated the statements of other witnesses and undue importance was recorded to the minor discrepancies.
7. On the other hand, Shri Romesh Verma, learned Counsel for the respondents supported the impugned judgment of acquittal.
8. I have given due consideration to the arguments advanced by both the parties and carefully reappraised the evidence on record.
9. In the FIR, the complainant has mentioned the names of all the respondents, but when examined in the Court, he only imputed allegations of beatings and ransacking his house only against Gulshar Ali, Yusuf Ali, Shamsher Ali and Mehboob Ali and he did not know the names of other accused persons when the matter was reported to the police. Then who referred these names, is not known.
10. Further, the complainant claims to have purchased the land in question in the year 1974 vide registered sale deed from one Noor Mohammad, predecessor of the respondents. He further stated that he was put in possession of the said property, thereafter he went to Nagaland and returned in the year 1987. Then he submitted plan of the house to the Municipal Committee, Paonta Sahib for approval and again went to Nagaland. Later, returned in the year 1988. He was informed by one Shri Jaswant Singh that the land in question was encroached upon by some persons and the foundation of the house was laid. When he visited the site, he saw that the house had already come up, owned by one Ram Saran, Naib Tehsildar, who had shown having purchased the land in the name of his relative from one of the respondents. He also stated that three biswas of land was purchased by Ram Saran from Hanif, son of Shri Noor Mohammad. When he took up the matter with Adrish and Hanif, they admitted their fault and in lieu thereof, gave him possession of 18 biswas of land, which was got fenced by him and plantation was raised.
11. Neither there is any sale deed on the record in favour of the complainant nor any such agreement. The land in question has been reflected in the revenue

record Ext. PW 9/A in the name of the respondents.

12. The record reveals that there has been a dispute over this property since the year 1992. A civil suit was also filed by the complainant in the Court seeking injunction which was dismissed in the month of September, 1999, the photocopy of the judgment is Mark-A on the record. He was not found in possession thereof. Further there is also an order Ext. D4 passed by the learned Sub Divisional Magistrate, Paonta Sahib on 15.3.1993 whereby the suit land was attached u/s 146 of the Code of Criminal Procedure on 13.7.1992 and Tehsildar, Paonta Sahib was appointed as Receiver. Both the parties were directed not to do any construction work on the disputed site till the decree or order of the competent Court determining the rights of the parties or the claim of possession, is obtained. The incident in question had allegedly taken place on 25th October 1999. There is nothing in the evidence of the prosecution that when and how the complainant party came in possession of the disputed site. Even PW 4 Damodar Tikku stated on the last page of his cross-examination that he had witnessed the incident and the lock of the house of the respondents was broken and thrown into the field. The perusal of his statement does not show anywhere that he had witnessed the respondents giving beatings to the complainant. Smt. Suman PW-2, the daughter-in-law of the complainant also did not state the name of any of the respondents having given beatings to the complainant or causing any damage to the house. The another eye witness is PW-6 Gurmeet Singh. He did not support the prosecution case, thus declared hostile. PW 7 Kamlesh Kumar when reached the spot, saw that there were about 50-60 persons on the spot. The number of the assailants also shows considerably varied in the statements of PW 1 and PW 2 aforesaid.

13. Further, PW-9 S.I. Dabe Ram admitted the fact that the land in dispute was recorded in the names of the respondents and the complainant party failed to prove any document regarding their possession. He also stated that the allegations with respect to the removing two brief cases, one containing cash and gold bracelet, were not found to be correct. He further admitted that complainant was non-Himachali and could not have purchased the land without seeking permission from the Government. It has also come in his statement that amongst about 8/10 such gentlemen, Baba Kirpal and Harbhajan Singh of Gurudwara Prabandh Committee were also present.

14. Nothing came in the statements of the complainant party that the complainant had constructed the house. Though, I.O. stated that the complainant is stated to have constructed house after getting approval of the Municipal Committee, but even he could not produce map or permission thereof. Further he stated that during investigation, it came to light that both the parties had a litigation with respect to the possession of the land in question and the suit filed by the complainant was dismissed.

15. PW. 10 Sher Singh could not identify the assailants, though he saw ransacking the alleged house of the complainant. However, according to him, at

that time, Baba Kirpal Singh and Harbhajan alongwith 15/16 gentlemen were also present. Neither they are accused nor witnesses.

16. In view of the aforesaid evidence, in my considered opinion, the offences charged against the respondents are not proved beyond a reasonable doubt. The learned trial Court has considered the evidence led by the prosecution and the findings of acquittal were recorded on the basis of the evidence adduced on record wherein I do not find any perversity. For the aforesaid reasons, the appeal filed by the State is without any merit. Hence, dismissed. The respondents are discharged of their bail bonds entered upon by them at any time during the proceedings of this case.