
(2011) 07 SHI CK 0202
In the High Court Of Himachal Pradesh
Case No : Cr.A. No. 354 of 2002

State of Himachal Pradesh

APPELLANT

Vs

Gurdas Ram and Others

RESPONDENT

Date of Decision : 21-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 378, 378(3)
Penal Code, 1860 (IPC) — Section 326, 34, 506

Citation : (2011) 07 SHI CK 0202

Hon'ble Judges : V.K. Ahuja, J; R.B. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V.K. Ahuja, J.—This is an appeal filed by State of Himachal Pradesh u/s 378 of the Code of Criminal Procedure against the judgment of the Court of learned Additional Chief Judicial Magistrate, Una, dated 22.12.2001, vide which he acquitted the Respondents of the charges framed against them under Sections 326, 506/34 of the Indian Penal Code.

2. A petition u/s 378(3) Code of Criminal Procedure was filed alongwith the appeal for leave to appeal, which was granted by this Court and the appeal was admitted for hearing.

3. Briefly stated, the facts of the case are that on 6.1.1995, a complaint was made by complainant Rachana Devi to the police u/s 154 Code of Criminal Procedure, in which she alleged that her husband and one Gurdas Ram had purchased land and they were in respective possession thereof. Today, at about 4.30 p.m., Gurdasi Devi, w/o Gurdas Ram and Santoshi Devi were cutting bushes and branches of trees and when the complainant objected to it, they stated that they will cut the same in this manner. They started giving her abuses and also gave a threat to take her life. Thereafter, Santoshi Devi called her father-in-law Gurdas Ram and brother-in-law Shiv Ram. Gurdasi Devi and Santoshi Devi started quarreling with the complainant and threw her on the ground. Thereafter,

Shiv Ram gave a Kassi blow on the head of the complainant and she fell on the ground and blood started oozing out. Gurdas Ram proclaimed that she be killed and that he would see to it. On her cries and alarm, Gurdei, Kishan Dass and Jaspal Singh came there, who saw the occurrence and rescued her. They brought her to CHC, Haroli. On this report, a case was registered and after investigation, the challan was filed before the learned trial Court, who tried the Respondents under the Sections mentioned above leading to their acquittal.

4. We have heard the learned Senior Additional Advocate General for the Appellant and the learned Counsel for the Respondent and have gone through the record of the case.

5. The submissions made by the learned Senior Additional Advocate General appearing for the Appellant were that the statement of the complainant/injured coupled with the medical evidence was sufficient to prove the guilt of the Respondents and the mere fact that the eye witnesses have not supported the complainant's version is not sufficient to disbelieve her statement and, therefore, the findings to the contrary be reversed.

6. On the other hand, the learned Counsel for the Respondents had supported the impugned judgment for the reasons recorded therein.

7. On appraisal of the statement of the complainant Rachana Devi, who appeared in the witness box as PW-1, it is clear that she has materially reiterated the assertions made in the complaint lodged by her with the police and has stated that the blow was given by Shiv Ram with a Kassi. She also named the persons who came there and rescued her. However, PW-2 Gurdei, who was named as an eye witness, has clearly stated that she only saw the complainant having fallen and suffered the injuries on her head. However, she does not know who gave the blow. She also stated that no occurrence was witnessed by her. She was declared as hostile and was allowed to be cross examined by the prosecution. She also denied her knowledge in case two other witnesses, namely, Kishan Dass and Jaspal Singh had also come to the spot. She admitted that the complainant and an accused had a dispute in regard to the land. She clearly admitted her close relationship with the complainant that she was her Devrani, but still has not supported the statement of the complainant. The other witness, namely, Jaspal Singh has also been examined as PW-6, who stated that no occurrence took place in his presence. He was also declared as hostile and was allowed to be cross examined by the prosecution. The third witness, namely, Kishan Dass appears not to have been examined by the prosecution and thus, it is clear that the two eye witnesses, one of them closely related to the complainant, who were named as eye witnesses and had allegedly seen the occurrence, have not supported the statement of the complainant.

8. It is not a case where there were no eye witnesses and the statement of the complainant coupled with medical evidence which corroborates the injuries has to be appreciated by the Court. It is a case where it was specifically alleged that

three eye witnesses had witnessed the occurrence and two of them were also examined, but they did not support the prosecution case and, therefore, the statement of the complainant, in such circumstances, cannot be relied upon and as such the view taken by the learned trial Court that the guilt of the Respondents was not proved, cannot be said to be perverse calling for an interference by this Court.

9. We accordingly hold that there is no merit in the appeal filed by the Appellant, which stands dismissed. The bail bonds furnished by the Respondents shall stand discharged.