
(2010) 04 SHI CK 0033

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 188 of 2003

State of Himachal Pradesh

APPELLANT

Vs

Hans Raj and Others

RESPONDENT

Date of Decision : 09-04-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 323, 506

Citation : (2010) 04 SHI CK 0033

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sanjay Karol, J.—For an offence, which is alleged to have been committed on 23.2.1997, accused was put to trial. In terms of judgment dated 13.5.2002 passed by Additional Chief Judicial Magistrate, Nurpur, District Kangra, H.P. in, titled as State of H.P. v. Hans Raj and Ors., Criminal Case No. 131-II/97 accused persons stand acquitted of the charged offence.

2. It is the case of the prosecution that on 23.2.1997 at about 6.30 p.m. Kaku Ram (PW-1) was called by the accused Hans Raj when accused Mohinder gave him a blow with a danda. The incident was witnessed by Sheela Devi (PW-2), Mangli (PW-5), Kulbhushan (PW-6) and Harnam Singh (PW-9), amongst others. PW-1 reported the matter to the police and FIR (Ext.PW-1/A) dated 23.2.2007 under Sections 147, 148, 149, 323, 506, IPC was registered with Police Station Nurpur. HC Ashok Kumar (PW-8), Investigating Officer got the injured medically examined from Dr. R.K. Chaudhary (Pw-3), who have his Medico Legal Certificate (Ext.PW-3/A). The weapon of offence was taken into possession vide seizure memo (Ext.PW-4/A).

3. With the completion of the investigation, challan was presented in the Court. The accused persons were charged for having committed an offence punishable under Sections 147, 148, 149, 323 and 506, IPC. The accused persons did not

plead guilty and claimed trial. In all prosecution examined nine witnesses. The Court below acquitted the accused persons, hence the present appeal.

4. From the statement of Dr. R.K. Choudhary (PW-3) as also the Medico Legal Certificate (Ext.PW-3/A) of PW-1 and Medico Legal Certificate of Harnam Singh (PW-9), there is no doubt that they suffered injuries on their body. The Doctor has also opined that these injuries could have been sustained by a fall on hard surface. The question, which needs to be examined is as to whether the injuries were in fact inflicted by the accused persons as narrated by the prosecution witnesses.

5. The Court below has succinctly culled out the various contradictions in the statements of the prosecution witnesses.

6. I have gone through the record and I am in total agreement with such findings, which are reproduced as under:

15. There are also contradictions coming in the prosecution case, which have not been properly explained. PW-1 claimed that PW-5 Mangti Devi and PW-6 Kulbhushan were at the spot, but, thereafter his wife (PW-2 Sheela Devi), his daughter and Harnam Singh (PW-9) came to his rescue. PW-2 Sheela Devi did not name PW-5 Mangti Devi to be present at the spot, but claimed that PW-6 came later on, though, as per the F.I.R. PW-5 Mangti and PW-6 Kulbhushan were already at the spot when the alleged occurrence took place. Therefore, the presence of both PW-5 and Pw-6 at the spot and for that reasons of presence of PW-2 also becomes doubtful. Because, PW-2 has claimed that her daughter went to fetch the milk and after returning, she was intimated that her husband was beaten and thereafter, she went to the Mill of Harnam Singh and saw that accused persons were beating her husband. If the statement of this witness is to be believed, then the daughter of complainant would have witness the incident of beating the complainant in the Mill of Harnam Singh and thereafter, she might have went to her house and intimated her mother. Thereafter, her mother would come to the spot. The prosecution case is not that the accused allegedly assaulted the complainant only at the Mill of Harnam Singh. But, it was alleged that after the assault in the Mill of Harnam Singh, PW-1 Kaku Ram was dragged on the road and brought to the Saw Mill of accused. Therefore, by the time PW-2 could reach the spot i.e. the Mill of Harnam Singh. The complainant could not be there as claimed by PW-2, as it could have taken some time for PW-2 to reach the spot. Therefore, the version given by the prosecution witnesses appears to be a make believe story.

16. The complainant also claimed that no person came to the spot except those named by him. But, PW-2 Sheela Devi and PW-6 Kulbhushan claimed that many people had gathered at the spot. But, none appears to have been interrogated by the I.O. in this regard, nor the prosecution has listed any person of the locality as a witness. One more thing deserves to be noted here that the prosecution claim that the daughter of the complainant brought her mother to the spot and

thereafter PW-2 Sheela Devi, her daughter and PW-9 Harnam Singh rescued PW-1 complainant Kaku Ram from the clutches of the accused. But, PW-9 Harnam Singh claimed that only he and the wife of Kaku Ram, namely, PW-2 Sheela Devi, rescued Kaku Ram. Pw-9 has thus, ruled out the presence of the daughter of the complainant at the spot. If this is so, then PW-2 Sheela Devi could not have come to the spot and would not have come to know about the alleged assault on her husband from her daughter.

7. Statement of PW-9 to my mind does not inspire confidence at all. This witness has falsely deposed that there is no litigation pending between the father of the accused Desh Raj and him. The accused persons have placed on record copy of the judgment (Ext.DA) delivered by the learned Sub Judge (II), Nurpur, in this regard. Even on the question of his being medically examined, his statement is not clear. On one hand he denies having been medically examined whereas in the next breath he volunteered that he was in fact got medically examined. He is the owner of the floor mill. The dispute is pertaining to the wages, which were allegedly required to be paid to the accused by the complainant party. The alleged offence has occurred outside the mill of PW-9. There was no occasion for either the complainant or the accused persons to be present at the spot of occurrence i.e. outside the mill of PW-9. for the aforesaid reasons his version cannot be accepted to be true.

8. PW-2 is the wife of PW-1 and PW-6 is the son of PW-9. It has come in the statement of PW-2 that not only there are houses in the close vicinity but also people had gathered at the spot at the time of occurrence of the incident. The Investigating Agency has neither recorded the statement of such persons nor bothered to enquire about the incident from the residents of the houses.

9. The only other independent witness examined by the prosecution is Mangli (PW-5). Incidentally she has not supported the prosecution case at all. She could neither name the ladies present at the spot nor could she state who else was present at the time of occurrence of the incident. She admits that due to her weak eye sight she could not tell as to who was quarrelling. She demolishes the prosecution case at all. The prosecution has failed to prove that the accused persons were in fact the aggressor party and had assaulted the complainant and inflicted injuries on their body.

10. The accused has 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 cannot be said that the Court below has not correctly appreciated the evidence on record or that acquittal of the persons has resulted into travesty of justice. No ground for interference is called for. The present appeal is dismissed. Bail bonds, if any, furnished by the accused are discharged.