
(2012) 07 SHI CK 0029
In the High Court Of Himachal Pradesh
Case No : Criminal A. No. 524 of 2005

State of Himachal Pradesh

APPELLANT

Vs

Jagdev Singh, Krishan Chand and Jagdish Chand

RESPONDENT

Date of Decision : 18-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 313
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2012) 3 ShimLC 1496

Hon'ble Judges : Rajiv Sharma, J;Deepak Gupta, J

Bench : Division Bench

Advocate : Vivek Thakur, A.A.G., with Mr. Rajesh Mandhotra, Deputy A.G, for the Appellant; Vibhuti Nakta, Advocate, vice Mr. Anup Chitkara, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Justice Rajiv Sharma, Judge

1. This appeal is directed against the judgment dated 30.07.2005, passed by the learned Presiding Officer, Fast Track Court, Hamirpur (H.P.) in Sessions Trial No. 23 of 2002/39 of 2004, whereby the respondents, who were charged with and tried for offence punishable u/s 302 read with Section 34 of the Indian Penal Code, have been acquitted. Case of the prosecution, in a net-shell, is that on 13.01.2002, at about 7:00 p.m., one Hazara Singh, husband of the complainant Meera Devi, asked the children to sing Lohari songs. The children started singing Lohari songs. Accused Jagdev Singh appeared on the spot and started abusing them. Accused Jagdish Chand also appeared at the spot and they started challenging Hazara Singh to come out of the house. The complainant Meera Devi prevented him from coming out. Thereafter, one Arjun Singh and his son also joined them and all of them started throwing stones. Accused Krishan Chand also joined the other accused and he also started throwing stones. One of the stones hit the head of the deceased Savitri Devi, mother-in-law of the complainant, as a

result of which, she sustained serious injuries and the blood started oozing out from her head. She became unconscious. Thereafter, the accused ran away from the spot. The complainant and her husband picked up the accused and took her to Zonal Hospital, Hamirpur for treatment, from where she was referred to P.G.I., Chandigarh. She breathed her last on the way. The dead body was brought back to the Zonal Hospital, Hamirpur. The complainant reported the matter to the police and her statement Ex. PW-1/A was recorded, which led to the registration of F.I.R., Ex. PW-12/A. Savitri Devi was firstly examined at Zonal Hospital, Hamirpur vide M.L.C. Ex. PW-5/A. After her death, her post mortem was conducted vide post mortem report Ex. PW-4/A. The inquest report is Ex. PW-6/A. The site plan is Ex. PW-14/B. Two stones, Ex. P-1 and P-2 were also taken into possession by the police during the course of investigation. The report of the Chemical Examiner is Ex. PW-14/G. The investigation was completed and thereafter, the challan was put up after completing all the codal formalities.

2. The prosecution has examined as many as 14 witnesses to prove its case. Statements of the accused persons u/s 313 of the Criminal Procedure Code were also recorded. According to them, Hazara Singh was abusing the villagers. They raised objection and requested him not to abuse the villagers. Thereafter, his mother Savitri Devi came out. She fell down and sustained injuries, which led to her death. The accused were tried and the learned trial Court acquitted them vide judgment dated 30.07.2005. Hence, this appeal by the State.

3. Mr. Vivek Singh Thakur, learned Additional Advocate General has strenuously argued that the prosecution has proved its case against the respondents. According to him, the learned trial Court has not correctly appreciated the evidence led by the prosecution.

4. Ms. Vibhuti Nakta, learned vice counsel for the respondents has supported the judgment dated 30.7.2005.

5. We have heard the learned counsel for the parties and gone through the records carefully.

6. PW-1, Smt. Meeran Devi has testified that on 13.01.2002, her family was watching a film on T.V. Hazara Singh (PW-3) asked the children to sing Lohri songs. According to her, their family was boycotted by the villagers for six years, on the pretext that they had placed a retaining wall near the path. When the children started singing Lohri songs, accused Jagdish and Jagdev started abusing him. Her husband was asked by the accused to come out of his house. His husband came out and they started exchanging hot words. On hearing exchange of hot words, her mother-in-law, Savitri Devi, she and PW-2, Smt. Salochana Devi came out to take back Hazara Singh to the house. When they were taking back Hazara Singh, the accused started pelting stones. According to her, one stone pelted by accused Jagdev Singh hit on the head of her mother-in-law and she fell down. Accused Jagdish pelted another stone, but the same did not hit anyone of them. Accused Krishan Chand also threw steel bucket and plastic

pitcher towards them, but the same also did not hit them. She raised hue and cry and then, the accused went inside their house and switched off lights. They took her mother-in-law inside the room and thereafter she was taken to hospital at Hamirpur. The Medical Officer informed the police on telephone. Thereafter, the police visited the hospital. Her statement Ex. PW-1/A was recorded by the police. Thereafter, her mother-in-law was referred to P.G.I., Chandigarh. According to her, her mother-in-law died on way to P.G.I. According to her, the distance between their house and house of the accused is 10-12 yards. In her cross-examination, she had admitted that the bucket and pitcher, which were pelted by the accused fallen in their courtyard. These were lifted by the police and kept near the tap. According to her, some dent appeared in the bucket. She has admitted that at the place of occurrence, there were pegs for tethering the cattle. She self stated that they were at some distance from the place where her mother-in-law received injuries. She has denied the suggestion that there was an iron peg which was about 1 inch in dia at the place of occurrence. She has admitted that she named Arjun Singh and his son before the police, who pelted stones on them alongwith the accused. She also admitted that the house of Ranjit Singh is situated around about 40/50 feet in front of the courtyard of their house. She also admitted that the house of one Shakti Chand is by the side of path adjoining the house of Ranjit Singh. She also admitted that next to the house of Pritam Singh is the house of Jagdev Singh accused. She further admitted that the distance between the house of Jagdev and their Courtyard is about 70/80 feet. She further stated that the accused pelted the stones from the house of Ranjit Singh. She also admitted that the surface of their courtyard is hard, since it is strewn with stones. She also admitted that the stones were identified by her and the same were kept by her inside the house. She again reiterated that she did not lift those stones and the same were kept as it is and were lifted by the police. There were blood stains on these stones. According to her, exchange of words between Hazara Singh and accused continued for about 10 minutes and the accused were abusing from the house of Ranjit Singh. She further stated that the accused brought the stones from nearby kachha house owned by Thenu Ram.

7. PW-2, Smt. Salochana Devi has deposed that at about 7:00 p.m., Hazara Singh asked the children to sing Lohri songs. Thereafter, accused Jagdev and Jagdish started taunting. The accused persons also started hurling abuses. According to her, Hazara Singh requested them not to do so. There was exchange of hot words between Hazara Singh and accused. On hearing it, her mother-in-law, she and PW-1, Smt. Meeran Devi came out of the house. According to her, a stone pelted by Jagdev hit on the head of her mother-in-law. Her mother-in-law fell down and sustained contusion on her head. Accused Kishan Chand was also present with the accused. He also hurled bucket on them, but the same did not hit them. The blood started coming out from the head of her mother-in-law. Thereafter, she was taken to Zonal Hospital, Hamirpur for treatment. On the next day, the police visited the spot. The police lifted blood

stains from the spot as well as from the room of their house. The police also took into possession two stones lying on the spot. She identified these stones. The stones were sealed by the police in a cloth parcel on the spot vide memo Ex.PW-2/A. In her cross-examination, she has categorically stated that the accused pelted stones from the lintel of their house. She saw the accused persons sitting on their lintel. According to her, the exchange of words between Hazara Singh and accused Jagdev and Jagdish took place for about 15/20 minutes. According to her, one Arjun Singh and Ashok were also with the accused persons, but she did not see them pelting stones on them. She has denied the suggestion that there were no pegs in their courtyard. According to her, accused Krishan Chand hurled a plastic pitcher and a bucket on them, which fell in their courtyard. The bucket was retained by them and the pitcher was taken by some villagers, to whom it was belonging. According to her, the bucket was their, therefore, they retained it. She did not know, as to whether anybody else lifted the stones Ex. P-1 and P-2 from the spot. The stones, Ex. P-1 and P-2 were produced by her before the police. The stones were smeared with blood. She also stated that there was heavy rain during the night.

8. PW-3 Sh. Hazara Singh has also made statement on the lines of PW-1 and PW-2. According to him, accused Jagdev started abusing him. His brother accused Jagdish also appeared from his house. According to him, the wife of Jagdish also came out from her house and took Jagdish inside the house. His mother also came out. Thereafter, the accused Jagdev pelted a stone, which hit his mother on the left side of her head. She fell down. According to him, the house of the accused is at a higher elevation. Accused Kishan Chand also hurled bucket, pitcher and stones on them, but the same did not hit them. He and his wife took their mother to Bhotia Hospital, where the doctor advised them to take her to Zonal Hospital, Hamirpur. They took her to Zonal Hospital Hamirpur. Thereafter, she was referred to P.G.I., Chandigarh. His mother breathed her last on the way at Ropar. According to him, two stones, Ex. P-1 and Ex. P-2, which were lying on the spot, were also taken into possession by the police. He also admitted in his cross-examination that the accused were on their lintel. He also admitted that they used to peg their cattle near their courtyard. According to him, there are two pegs at a distance of 5 feet from the place of occurrence. According to him also, the stones were smeared with blood. These were lifted at the instance of PW-2 by the police. According to him, accused Kishan Chand hurled pitcher and bucket full of stones over the fencing, which they have placed near the tap. He further stated that both bucket and pitcher belongs to Shakti Chand. On the next day, when the police visited the spot, Shakti Chand lifted the pitcher and bucket in their presence. According to him, no dent appeared in the bucket and pitcher.

9. PW-4, Dr. Wattan Singh, Medical Officer, Zonal Hospital, Hamirpur, H.P. conducted the post mortem on 15.01.2002. According to him, the deceased died due to head injury leading to shock and death. He issued post mortem report Ex. PW-4/A. According to him, there were three injuries on the person of deceased

viz. on the face and head.

10. PW-5, Dr. N.S. Dogra has examined Smt. Savitri Devi on 13.01.2002. He has issued M.L.C. Ex. PW-5/A. PW-7, Om Prakash was not on the spot on 13.01.2002. He received a message that his mother was injured with the stones by accused Jagdev, Jagdish and Krishan Chand. He has admitted that the accused persons were having inimical relations with them on the boundary dispute and construction of retaining wall. According to him, the house of accused Jagdev was at a distance of about 20/30 feet from the courtyard of their house.

11. According to PW-10, Shri Gian Chand, the house Pritam Chand adjoins the house of Ranjit Singh and thereafter the house of Jagdev Chand accused also adjoins the house of Pritam Chand. According to him, the distance between the courtyard of complainant party and the house of accused persons is about 100 feet. He has also admitted that at the place of occurrence, there were so many stones lying and there were also iron peg and wooden peg.

12. PW-11, Sh. Balbir Singh has admitted that in the house of the accused and PW-1, there are no electric bulbs outside their houses.

13. The investigation was carried out by PW-14, Sh. Mehar Chand, who was posted as SHO in Police Station, Sadar Hamirpur. According to him, the stones, Ex. P-1 and Ex. P-2 were identified by PW-2, Smt. Salochna Devi and these were taken into possession vide memo Ex. PW-2/A. In his cross-examination, he has admitted that so many stones were lying on the spot besides these two stones, i.e., Ex. P-1 and Ex. P-2. He has categorically stated that the stones, which were recovered by him, were not having blood stains. He has also admitted that at the place of occurrence, there were pegs for pegging the cattle. He has also admitted that there was an iron peg on the spot and there were blood stains nearby the iron peg. He also admitted that according to his investigation, Smt. Savitri Devi (deceased) had sustained injuries with two stones. He has admitted that it has not come in his investigation that which stone hit the deceased and by which of the accused it was pelted. He has admitted that no pitcher and bucket was shown to him at the spot.

14. DW-1, Lekh Raj has testified that the distance between the house of accused persons and complainant was not less than 60 feet. According to him, he and the villagers had requested the complainant not to abuse as it was auspicious occasion of Lohri festival.

15. Stones, Ex. P-1 and Ex. P-2 were not sent to F.S.L., Junga. The size and weight of Ex. P-1 and Ex. P-2 have not been given by any of the prosecution witnesses. The size and weight ought to have been given by the prosecution, since the stones as per the case of the prosecution, have been pelted by the accused persons from the lintel of their house, which is situated at a distance of more than 80 feet.

16. PW-1, Smt. Meeran Devi has deposed that the house of Ranjit Singh is situated around 40-50 feet in front of the courtyard. According her, the distance between the house of Jagdev and their courtyard is about 70-80 feet. According to her, the stones were pelted from the house of Ranjit Singh. However, according to PW-2, Salochana Devi, the accused pelted the stones from lintel of their house. She saw the accused sitting on their lintel. According to her, the distance between their courtyard and house of accused was 20 meters. According to PW-3, Sh. Hazara Singh, the accused were on their lintel.

17. According to PW-10, Sh. Gian Chand, the distance between courtyard of complainant party and the house of the accused is about 100 feet. He is an independent witness. Thus, there is variance in the statements of PW-1, PW-2, PW-3 and PW-10 so far as the distance between the courtyard of the complainant and the accused party is concerned. The only witness with regard to the distance is PW-10, Sh. Gian Chand. According to him, the distance between the courtyard of the complainant party and the house of the accused was 100 feet. It makes the story of the prosecution doubtful.

18. There are also inherent contradictions in the statements made by the witnesses, the manner in which the stones were identified and taken into possession by the police. According to PW-1, the stones were identified by her and the same were kept by her inside her house. Then she improved her statement and said that she did not lift those stones and the same were lifted by the police. However, it has come in the statement of Investigating Officer that the stones Ex. P-1 and P-2 were identified by PW-2, Smt. Salochana. According to PW-1, the stones were stained with blood. PW-2 also deposed that the stones were smeared with blood. It rained heavily during the night. According to PW-14, no blood stains were found on Ex. P-1 and P-2. PW-14 has also stated that many stones were lying on the spot. Besides Ex. P-1 and Ex. P-2, it has come on records that in the courtyard, there was an iron peg, fixed for pegging the cattle. The blood was also noticed during the course of investigation by PW-14, Sh. Mehar Chand. It has come in the statement of PW-14 that it did not come in his investigation which stone hit the deceased and by which of the accused it was pelted. He has also admitted that no pitcher and bucket was shown to him at the spot. There is also variance in the statements of PWs. with regard to the use of pitcher and bucket. According to PW-2, the bucket was retained by them and the pitcher was taken by some villagers, to whom it was belonging. According to PW-3, both bucket and pitcher belongs to Shakti Chand. According to him, when the police visited the spot next day, Shakti Chand lifted the pitcher and bucket in their presence. However, it is contrary to the statement made by PW-14, Sh. Mehar Chand. According to PW-14, Sh. Mehar Chand, neither bucket nor pitcher was shown to him on the spot. According to the statements of the witnesses who were closely related to Savitri Devi (deceased), only one stone was pelted. However, Savitri Devi (deceased) has received three injuries. As per the medical opinion, in case one stone has been used, it cannot cause three injuries. Therefore, the possibility of Savitri Devi (deceased) receiving these injuries, by

way of fall on hard, rough and irregular surface cannot be ruled out, but the same were required to be proved by the prosecution. Moreover, in her statement recorded u/s 154 of the Criminal Procedure Code, it is nowhere stated that accused Jagdev pelted a stone, which hit Savitri Devi (deceased). It is only a general statement that the accused persons started pelting stones and one stone which was pelted by Jagdev Chand, has missed the target. There is another flaw in the case of the prosecution. The incident, according to the prosecution case, has happened at 7:00 p.m. on 13.01.2002. According to PW-11, Balbir Singh, there was no electric bulb outside the house of the complainant and the accused. In these circumstances, it was impossible for the witnesses to identify the accused persons. In view of the abovesaid position, we see no reason to interfere with the judgment of the trial Court. Hence, the appeal is dismissed. Bail bonds are ordered to be discharged.