

(2011) 10 SHI CK 0068
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 156 of 2005

State of Himachal Pradesh	Vs	APPELLANT
Jai Singh and others		RESPONDENT

Date of Decision : 24-10-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 162, 313
Penal Code, 1860 (IPC) — Section 147, 149, 324, 325, 451

Citation : (2011) 10 SHI CK 0068

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Surinder Singh, J.—The conviction and sentence of the respondents passed by the learned trial Court under Sections 147, 451, 324, 325, 506 read with Section 149 of the Indian Penal Code, in P.C. No. 85-II of 1999 decided on 12.9.2002/22.10.2002, was set aside by the learned Additional Sessions Judge, in Criminal Appeal No. 30 of 2002 vide its detailed judgment resulting into the acquittal of the respondents. The State felt aggrieved by the impugned judgment in appeal by the learned Additional Sessions Judge, as such filed the present appeal.

2. Shri A.K. Bansal, learned Additional Advocate General, forcefully argued the learned appellate Court wrongly set aside the impugned judgment of conviction and sentence passed by the learned trial Court by setting unrealistic standard to evaluate the direct and cogent prosecution evidence. The statements of the injured witnesses were wrongly discarded on the ground of material improvements and embellishment, whereas there were none. Therefore, prayed for restoring the judgment of conviction passed by the learned trial Court.

3. Contra, Shri K.D. Sood, learned Counsel for the respondents, now to be referred as "accused" hereinafter, supported the judgment of acquittal, as having been based upon the evidence on record.

4. I have given my thoughtful consideration to the rival contentions of the parties and have carefully gone through record.

5. In brief, the facts giving rise to the present appeal can be stated thus. On 6.1.1999, at about 7.00 a.m., the accused armed with DANDAS ransacked the house of the complainant in village Patehar. They also pelted the stones. At that time, complainant Puran Chand was brushing his teeth near the tap of his house and heard the cries of his son, Kuldip Kumar, who was being given beatings in the court-yard of his house. He tried to intervene, but he was also given merciless beatings in the presence of Yashodan Pal, Kamal Kumar, Parveen Kumar, Vijay Kumar, Kusam Lata and another Kuldip Singh. Police was informed telephonically and report No. 23 to this effect was recorded in the daily-diary. However, on reaching the spot, police also recorded the statement of Puran Chand u/s 154 of the Code of Criminal Procedure, which culminated into present FIR. Police prepared the site plan, seized the stones and wooden sticks and DANDAS etc. and got medically examined injured Puran Chand, Kuldip Kumar and Pardeep Kumar and took their MLCs in possession.

6. Finding the involvement of the accused persons for the offences aforesaid, Challan was finalized and accordingly presented in the Court for their trial.

7. The respondents were charge-sheeted for the offences aforesaid. At the end of trial, they were convicted for the said offences, but instead of sentencing them after getting the report of the Probation Officer, the learned trial Court released them on probation on executing personal bond of Rs. 10,000/- each with one surety each in the like amount undertaking to maintain peace and be of good behaviour for period a of two years and each of the convicts were directed to pay compensation of Rs. 1,000/- to injured Kuldip Kumar and a sum of Rs. 500/- to each injured Pardeep Kumar and Puran Chand, thus the total amount of Rs. 12,000/- was ordered to be remitted to the injured as directed but in appeal, the judgment of conviction was set aside on the grounds that the statement Ext.PA of the complainant u/s 154 of the Code of Criminal Procedure was hit by Section 162 of the Code of Criminal Procedure in view of Rapat recorded by the police in the daily-diary, which is to be treated as the First Information Report and also on the grounds that there have been improvements in the statements of the prosecution witnesses which destroy the prosecution case.

8. True, it is that the statement of the complainant u/s 154 of the Code of Criminal Procedure Ext.PW3/A is hit by Section 162 of the Code of Criminal Procedure, in view of Rapat No. 23 which is virtually an FIR disclosing the commission of a cognizable offence, but in no way the police investigation get hampered with. At the most, the statement, Ext.PA, would not be taken into consideration, but if the other evidence on record proves the case nothing debars the Court to convict the accused for the offence(s) proved.

9. The duty of the Court is to find out the truth. In that endeavour the legal evidence has to be considered to come to a rightful conclusion whether the

offences charged have been made out or not.

10. PW1 Puran Chand is himself an injured witness. He supported the case of the prosecution and stated that the accused had ransacked his house and gave axe blow when he tried to intervene. He was injured. Although, he admitted that the witnesses produced are his relatives, but this fact cannot be lost-sight that the injured witnesses themselves are the witnesses of the alleged incident and even close relations who happened to be present at that time and corroborate the case of the prosecution cannot be considered a factor to doubt the prosecution version.

11. PW4 Pardeep Kumar is another injured. He stated that he was also given beatings by the accused persons and the injury was caused to his brother Kuldip Kumar with an axe. He categorically stated that his father was also given beatings and all of them were got medically examined. The only defence raised in his cross-examination is that the accused had purchased the land in the vicinity regarding which the case was pending in the Court.

12. The above versions of the witnesses have been corroborated by PW4 Vijay Kumar, who is from the Bridari of the complainant, but was not related to him. PW5 Kusam Lata and PW6 Kuldip Kumar (injured) are categoric in their statements that the accused persons gave beatings to them.

13. PW8 Dr. D.D. Rana had medically examined injured Kuldip Chand. He noticed as many as four injuries on his person out of these, injury No. 1 was grievous in nature corresponding to the time of the alleged incident. He had also examined injured Pardeep Kumar on the same at 11.15 am and noticed lacerated wound with a sharp edged weapon on the left thigh and the fresh bleeding of the teeth, but the injuries were simple in nature corresponding to the time of the alleged incident.

14. As already stated above, the defence raised by the accused in their statements u/s 313 of the Code of Criminal Procedure is only to the effect that they had purchased the land in that village regarding which civil suit was going on and they were innocent.

15. I do not find any inconsistency, exaggeration or embellishment in the statements of the prosecution witnesses in any manner which could cause a dent in the prosecution case. Rather, the prosecution evidence establishes that on account of the civil litigation with respect to the land the relations inter se the parties were not cordial and in retaliation the accused formed an unlawful assembly and caused injuries to the complainant and his sons as aforesaid. The statement of the injured witnesses cannot be brushed aside on the technical ground that the statement (Ext.PA) of the complainant is hit by Section 162 of the Code of Criminal Procedure in view of Rapat No. 23 aforesaid. The accused ransacked the house of the complainant and pelted the stones. They formed an unlawful assembly and were armed with deadly weapons. They caused injuries to the complainant party in prosecution of common object. As such the findings of acquittal recorded by the learned first appellate Court are perverse, hence set

aside. Consequently, the appellants are held guilty for the offences punishable under Sections 147, 451, 324, 325, 506 read with Section 149 Indian Penal Code. Accordingly convicted. The appeal filed by the State is allowed and the judgment of conviction passed by the learned trial Court while the release of the accused on probation and deposit of compensation by the learned trial Court is restored.

16. The respondents-accused had already executed the bonds before the learned trial Court at the time of their conviction. That period stands already expired and there is nothing on record to show that they committed the breach of bonds. The fine though deposited by them, if returned to the accused persons, be re-deposited before the learned trial Court in terms of its judgment dated 22.10.2002 on or before 30.11.2011 and the compensation amount shall be disbursed in terms of the order of the learned trial Court.

17. In result, the State appeal is allowed to the above extend and is accordingly disposed of.