
(2013) 05 SHI CK 0076
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 94 of 2006

State of Himachal Pradesh

APPELLANT

Vs

Jhor Singh and Others

RESPONDENT

Date of Decision : 27-05-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 313, 378
Penal Code, 1860 (IPC) — Section 147, 149, 435, 451, 506

Citation : (2013) 05 SHI CK 0076

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Advocate : R.S. Verma, A.A.G, for the Appellant;

Final Decision : Dismissed

Judgement

Sanjay Karol, J.—Assailing the judgment dated 26.10.2005, passed by learned Sub Divisional Judicial Magistrate, Chachiot at Gohar, District Mandi, H.P. in Police Challan No. 179-I/04/36-II/04, titled as State of Himachal Pradesh Vs. Jhor Singh and others, State has filed the present appeal under the provisions of Section 378 of the Code of Criminal Procedure, 1973. It is the case of the prosecution that on 14.3.2004 at about 7:00 p.m., the accused persons entered the shop of the complainant by breaking open the wooden plank. Thereafter, they removed articles from his shop and threw it outside. When the complainant tried to intervene, he was threatened by the accused. They also threatened to burn his shop. Feeling afraid, complainant left the spot. However next day, he found his shop to be completely burnt. He reported the matter to the police and his statement u/s 154 Cr.P.C. (Ex. PW1/A) was recorded by H.C. Sanjeev Kumar (PW-5), on the basis of which, F.I.R. No. 33/04 dated 15.3.2004 (Ex. PW5/A) was registered at Police Station, Aut, District Mandi. Police conducted investigation and with the completion of same, Challan was presented in the Court for trial.

2. The accused persons were charged for having committed offences punishable

under the provisions of Sections 147, 451, 435, 506 all read with Section 149 of the Indian Penal Code, to which they did not plead guilty and claimed trial.

3. In order to establish its case, in all, prosecution examined as many as five witnesses. Statements of the accused persons u/s 313 of the Code of Criminal Procedure were also recorded, in which they pleaded false implication.

4. Appreciating the testimony of the prosecution witnesses, trial Court acquitted accused persons of the charged offences, hence, the present appeal.

5. In the instant case, it is seen that independent witnesses Shri Chet Ram (PW-2) and Shri Hem Raj (PW-3) have not supported the prosecution case at all. These witnesses, according to the prosecution, had witnessed the occurrence of the incident but despite their detailed cross-examination by the Public Prosecutor nothing fruitful has come out in their testimony.

6. However, even the testimony of the complainant does not inspire confidence and as such it cannot be said that prosecution has been able to prove its case beyond reasonable doubt.

7. Having minutely examined the testimonies of prosecution witnesses, I am of the considered view that no ground for interference is made out in the present appeal.

8. Testimony of Shri Tara Chand (PW-1) is full of contradictions, embellishments and improvements. To begin with, PW-1 does not even remember the number of shops which are there within the vicinity where the incident took place. He does not even remember the names of the persons who reside close by. He states that when the accused persons entered his shop he got scared and therefore did not raise any hue and cry. Now significantly this version of his does not inspire confidence as the incident took place at 7:00 p.m. in the month of March when it is not so late for the shops to close down. It has come on record that there are seven shops at the place where the incident took place. He did not seek help from there. He also did not inform anyone at his house or neighborhood. The factum of the accused pulling wooden plank and throwing it away has not been so stated by him in his complaint. To the same effect is his testimony in Court, where he has attributed various acts of criminal intent of each of the accused persons. The complainant was confronted with his earlier statement and these facts do not find mention there. Significantly in the complaint, he states that only he and the accused were present on the spot at the time of occurrence of the incident. Now if that be so, then obviously the case of prosecution that the incident was witnessed by PW-2, PW-3 and PW-4 makes the prosecution version to be doubtful if not false and the testimony of this witness, to the said effect, untrue.

9. There is yet another weakness in the prosecution case. The alleged incident took place in the evening of 14.3.2004. Complainant went to his shop the following morning and saw his shop and articles burnt, yet F.I.R. was got

registered only at 6:15 p.m. on 15.3.2004. The delay has not been sufficiently explained.

10. It has come on record that the complainant had taken an unauthorized electric connection, by setting a temporary wire, from the shop of one Dhoor Singh. The Trial Court has come to the conclusion that possibility of fire, on account of electric short circuit, cannot be ruled out.

11. Having perused the testimonies of the prosecution witnesses on record, it cannot be said that prosecution has been able to prove its case, beyond reasonable doubt, by leading clear, cogent, convincing and reliable material on record. The accused persons have had the advantage of having been acquitted by the lower appellate Court. Keeping in view the ratio of law laid down by the Apex Court in Md. Ankoos and Others Vs. The Public Prosecutor, High Court of A.P., it cannot be said that the trial Court has not correctly appreciated the evidence on record or that acquittal of the accused has resulted into travesty of justice.

With the aforesaid observations, present appeal, being devoid of merit, is dismissed, so also the pending application(s), if any. Bail bonds furnished by the accused are discharged. Records of the Courts below be immediately sent back.