

(2022) 11 SHI CK 0010
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 302 Of 2010

State Of Himachal Pradesh

APPELLANT

Vs

Kartar Singh And Others

RESPONDENT

Date of Decision : 04-11-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 313

Citation : (2022) 11 SHI CK 0010

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Desh Raj Thakur, Narender Thakur, Mohit Thakur

Final Decision : Disposed Of

Judgement

Satyen Vaidya, J

1. By way of instant appeal, State has taken exception to judgment of acquittal dated 24.04.2010, passed by learned Judicial Magistrate First Class, Court No-2, Ghumarwin, District Bilaspur, H.P., in Criminal Case No. 8/2 of 2008.

2. On 19.02.2008, at about 2:15 PM, FIR was registered at Police Station Bharari, District Bilaspur, H.P. at the instance of complainant Joginder Singh (PW-1) alleging inter alia that on 18. 02.2008, at about 8:30/8:45 PM, he was on way to his home. Accused Kartar Singh blamed him for having stolen his pipes. The complainant refuted the allegation, but accused Kartar Singh came with a stick in his hand, obstructed the path of complainant and gave him beatings with stick. Kuldeep Singh and Kala Devi also came on spot and they also gave beatings to the complainant with fists and kicks. Kartar Singh gave a stick blow on left hand of the complainant. He was threatened and when he raised alarm, the mother and uncle of the complainant reached the spot and saved the complainant. The complainant had received injuries. After investigation, the challan was presented. Prosecution examined total nine witnesses. Complainant was examined as PW-1. The mother and uncle of the complainant were examined

as PW-2 and PW-3, respectively. PW-4, Dr. Bhanu Kanwar was examined to prove the MLC. PW-5, Dev Raj Sharma, Radiographer, proved the X-Ray report Ext. PW5/A. PW-6 to PW-8 were the police officials. Lastly, PW-9 was examined as Investigating Officer.

3. Respondents-accused were examined under Section 313 of Cr.P.C., they did not lead any defence evidence. Respondents were acquitted by learned Trial Court, hence the present appeal.

4. I have heard learned Additional Advocate General for the appellant as well as learned counsel for the respondents and have also gone through the record.

5. Complainant, while being examined as PW-1 had stated that he was given beatings by accused persons as also the wife of accused Kartar Singh. He did not remember the date of incident. According to PW-1, none other had come on the spot. He, however, clarified that his mother had reached the spot on hearing the commotion and then he alongwith his mother had visited police station where FIR Ext. PW1/A was registered. He further stated that accused persons had threatened him of life. He was medically examined at Bharari Hospital. In cross-examination, PW-1 stated that he had consulted his villagers before approaching the police. He admitted that nothing had been recovered by police in his presence. He further stated that first of all, he was beaten by Kartar Singh and seven injuries were inflicted on him with stick. Kuldeep Singh had inflicted 4-5 injuries on him with stick and 3-4 injuries were inflicted by Kala Devi. He stated that none had come on the spot even after hearing his commotion. He denied that the injuries were suffered by him as a result of fall. PW-2, Smt. Satya Devi is the mother of complainant. She stated that about one year prior to making of her statement in the Court, at about 9:00 PM, she and Hoshiar Singh ran towards the spot on hearing commotion, but they came back as noises had stopped. In the meanwhile, PW-1 Joginder Singh met her, who was injured. He had fractured his hand. PW-1 had disclosed her that accused persons and Kala Devi had given him beatings with sticks. In cross-examination, PW-2, admitted that houses of Baldev, Laxman, Lekh Ram, Ishwar Dass and Jagdish were adjacent to the house of accused persons. She also stated that her house was at the distance of ½ Kilometers from the house of the accused. The commotion was heard by many other people. She admitted that she had not noticed the altercation. As per PW-2, her son had suffered 15-20 injuries. PW-3, Hoshiar Singh stated that about 5-6 months before his making statement in the Court, he was asleep in the night. His sister-in-law (Bhabhi) Satya Devi came to him and disclosed that there was some commotion. In the meanwhile, PW-1, Joginder Singh arrived and disclosed that kartar Singh and his family members had given him beatings. He had noticed injury on the hand of Kartar Singh and no other injury was noticed. This witness was declared hostile and was cross-examined by learned Public Prosecutor. On being cross-examined on behalf of the accused persons, PW-3, Hoshiar Singh admitted that 8-10 houses existed near the place of incident. He also admitted that in between the house of accused persons and

his house, there were 8-10 other houses. He further admitted that the place of incident was in the mid of the village.

6. From perusal of statements of PW1 to PW-3, a lot of inconsistencies are noticeable. According to PW-1, his mother PW-2 had reached the spot, but PW-2 stated differently that she alongwith PW-3 had started towards the spot, but had met PW-1 on the way. PW-3 made altogether a different version. According to him, PW-2 had waken him up from sleep and in the meanwhile PW-1 Jogiinder Singh had also arrived. Further, PW-2 and PW-3 have admitted that there are many houses around the house of accused persons, which was stated to be place of incident. According to PW-2, her house was at the distance of ½ kilometers from the house of the complainant/accused persons. PW-2 and PW-3 had also admitted that there were many houses in between the house of accused persons and their houses. According to PW-2, she had heard commotion, while she was at her home. In case, the noise could be heard at a distance of ½ kilometers, the same would have been heard by the residents of the houses which were quite close to the place of incident. Strangely, none from such houses has been examined as witness. It is unexplained, whether the Investigating Officer had examined any of the residents of the area to verify the allegation levelled by complainant.

7. The incident had allegedly occurred at 8:30 PM on 18. 02.2008, but the FIR was registered on the next date at about 2:15 PM. There is no explanation, as to why, such delay had occurred. The matter could have been reported telephonically. PW-2 specifically admitted in her cross-examination that there were 6-7 telephones in the village.

8. PW-4 admitted in his cross-examination that the injuries found on the person of PW-1 could be suffered as a result of fall from stairs.

9. The reading of statements of PW-6 and PW-8 reveal that as per these witnesses, the police had recovered weapon of offence i.e. stick from Kartar Singh on 21.02.2008 from the spot. Whereas, PW-9, ASI Ram Dass, Investigating Officer of the case categorically stated that accused had presented the stick in police station.

10. Thus, there were many gaps in the prosecution story which remained unexplained. The prosecution carries a heavy burden to prove its case beyond all reasonable doubts. The evidence produced on record by prosecution was not convincing for the reasons noticed above.

11. Learned Trial Court extended the benefit of doubt to the accused persons by taking into consideration the contradictions, improvements and embellishments in the statements of prosecution witnesses. Learned Trial Court also noticed that non association of independent evidence was sufficient to create doubt about veracity of prosecution case. It was also noticed that as per MLC Ext. PW4/B, seven injuries were found on the person of PW-1, whereas according to him many more injuries were inflicted upon him by accused persons.

12. Another fact which needs notice is that during investigation police had not found any material to implicate the wife of respondent-Kartar Singh. She was not impleaded as accused. This by itself is sufficient to doubt the prosecution version as the complainant had levelled allegations against her also. It is not understandable, as to why, the same allegations were disbelieved, insofar as those related to the wife of accused Kartar Singh, as were believed against the respondents.

13. The view taken by learned Trial Court is borne out from the evidence as a possible view. It is trite that if two reasonable conclusions are possible on the basis of evidence on record, the view favoring accused is to be preferred. It is also settled that if the view taken by learned Trial Court is a possible view. The Appellate Court should not reverse the acquittal merely on the premise that the other view could have been taken. Reference can be made to judgment passed by Hon'ble Supreme Court of India in Chandrappa and others Vs. State of Karnataka (2007) 4 SCC 415, in which it was observed as under:-

"42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

14. In State of Rajasthan Vs. Kistoora Ram, AIR 2021 SCC 766, Hon'ble Supreme

Court has reiterated as under:-

"8. The scope of interference in an appeal against acquittal is very limited. Unless it is found that the view taken by the Court is impossible or perverse, it is not permissible to interfere with the finding of acquittal. Equally if two views are possible, it is not permissible to set aside an order of acquittal, merely because the Appellate Court finds the way of conviction to be more probable. The interference would be warranted only if the view taken is not possible at all."

15. Thus, keeping in view the facts of the case and weighing them as against the exposition of law noticed above, I find no merit in the appeal and the same is dismissed. The judgment of acquittal dated 24.04.2010, passed by learned Judicial Magistrate First Class, Court No-2, Ghumarwin, District Bilaspur, H.P., in Criminal Case No. 8/2 of 2008, is affirmed.

16. Accordingly, the appeal is disposed of, so also the pending miscellaneous application(s), if any,