

(2011) 03 SHI CK 0226
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 267 of 2005

State of Himachal Pradesh

APPELLANT

Vs

Kewal Singh and Others

RESPONDENT

Date of Decision : 04-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 313
Penal Code, 1860 (IPC) — Section 147, 149, 324, 427, 452

Citation : (2011) 03 SHI CK 0226

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Sharma, J.—The State is in appeal against the judgment dated 24.03.2005, of the learned Addl. Sessions Judge, Fast Track Court, Una, Distt. Una, H.P., in Criminal Appeal No. 9/2003 RBT 26/2004, Kewal Singh and Ors. v. State of H.P., whereby, the appeal filed by the Respondents herein, who shall hereinafter be referred to as "the accused", against their conviction and the consequent sentence of various terms upto six months and fine upto Rs. 1000/-, for the offences under Sections 147, 324, 427 and 452 read with Section 149 Indian Penal Code, by the learned Judicial Magistrate 1st Class, Court No. II, Una, Distt. Una, H.P., was accepted and they were acquitted of the respective charges framed against them.

2. In brief, the case of the prosecution is that whereas the complainant-party belonged to Santokhgarh Co-Operative Society Truck Union, which had also a branch office at Tahliwal, the accused belonged to the rival union known as Tahlliwal Truck Union. It is in evidence that there was pre-existing litigation between the two unions with regard to the area of operation.

3. It was against the above backdrop that PW-1 Himmat Singh, lodged telephonic report with the police, which was taken down vide daily diary report Ex.PW-9/A. Thereafter, police proceeded to the spot and recorded statement of the

complainant u/s 154 Code of Criminal Procedure Ex.PW-1/A, disclosing that he had been working as Clerk with the aforesaid union in its branch at Tahlliwal for the last about two months. On 6.6.1993, at about 5.30 PM, when he along with Prem Chand Pradhan, Mohinder Singh, Karnail Singh, Iqbal Singh, Jagdev Singh, Surjit Singh, Juhar Singh, Tara Singh and others, was sitting in the society office, accused Hakumat Rai, Baldev Chand, Rajinder Kumar, Subhash Chand, Arun Kumar, Atma Ram, Raghubir Singh, Kewal Singh, Chanan Singh and other people came there. They were armed with lathies and iron rods. They started giving beatings to the members of the complaint party. The complainant further disclosed that he along with Prem Chand came out of the office and others remained sitting inside the office. They were beaten by accused Hakumat Rai and Subhash with lathies and iron rods. Thereafter, they also broke head lights and wind screens of the vehicles parked outside the office with iron rods. Mohinder Singh and Karnail Singh belonging to the complainant party sustained injuries. It was further disclosed that furniture of the office of the union was taken away by the accused, who also broke one fan and pitcher and also took away cash worth Rs. 1000/-.

4. The police carried out investigation on the spot. The injured members of the complainant-union were sent for medical examination. On completion of investigation, the accused were sent up to face trial. On being charged, they pleaded not guilty and claimed trial. The prosecution evidence followed. In all, 16 witnesses were examined. On close of the prosecution evidence, the accused were examined u/s 313 Code of Criminal Procedure wherein, their defence was that of total denial, innocence and false implication. In defence, they examined one witness namely, DW-1 Jarnail Singh. After hearing the parties, the learned trial Court proceeded to convict and sentence the accused, as already noticed. On appeal, the learned Addl. Sessions Judge, set aside the judgment/order of conviction/sentence vide the impugned judgment. It is how the State is in appeal before this Court.

5. I have heard the learned Asstt. Advocate General for the Appellant-State, learned Counsel for the complainant and Respondents-accused and gone through the record.

6. It is contended on behalf of the State that a well reasoned judgment of the learned trial Court has been upset by the learned first appellate court on mere conjunctures and surmises and is thus liable to be set aside and that of the learned trial court restored. Per contra, the learned Counsel for the accused has supported the impugned judgment of the learned first appellate court mainly on the grounds that there is no reliable evidence with regard to the identification of the accused; there was pre-existing litigation between the parties, which was the cause for false implication of the accused in the alleged incident and in view of inconsistencies and contradictions in the prosecution evidence, the case of the prosecution has rightly been held not to have been proved, by the learned Addl. Sessions Judge.

7. There is no denying the fact that from the testimonies of the eye witnesses, some of whom have turned hostile, it is made out that the occurrence had in fact taken place, in which some members of the complainant party had suffered simple injuries, as deposed by PW-10 Dr. S. Banial. However, the fact remains that the very genesis of the prosecution evidence becomes doubtful when the evidence of the material prosecution witnesses is considered in its entirety. PW-2 Mohinder Singh, had though turned hostile, yet it is in his statement that there were 200/250 assailants, out of which he was knowing only two or three. Admittedly, the occurrence had taken place at Tahlliwal in Distt. Una. However, all the material witnesses for the prosecution belong either to the State of Punjab or places away from Tahlliwal. Thus, in the absence of any other reliable evidence as to how they were knowing the accused persons, they could not be expected to have identified them, initially on the spot at the time of occurrence and thereafter for the first time in the Court, as admittedly no identification parade was ever held. In such circumstances, when it is matter of common knowledge that in cases arising out of group rivalry, there is tendency to name anyone and everyone and to lay blame on the members of the opposite party, lack of credible evidence with regard to the identity of the accused would go to the very root of the case. Furthermore, in such like disputes having earlier litigation between the parties, tendency of false implication on account of enmity can also not be ruled out.

8. The alleged weapons of offence, i.e lathies and iron rods were also not recovered during investigation. With regard to the alleged allegation of theft of cash worth Rs. 1000/- and records of the society by the accused, even the learned trial court has observed that there is no evidence worth the name in that regard and had accordingly held that the prosecution case to this effect was not proved. This aspect of the mater also casts a serious doubt on the prosecution version.

9. In view of the above, the learned Addl. Sessions Judge, has rightly come to the conclusion that the prosecution was not able to bring home guilt against the accused beyond reasonable doubt and was right in upsetting the judgment of conviction and order of sentence passed by the learned trial court.

10. On appraisal of the evidence on record, I am satisfied that no case is made out for any interference with the impugned judgment of the learned Addl. Sessions Judge. Accordingly, the appeal is dismissed.