
(2018) 07 SHI CK 0001
In the High Court Of Himachal Pradesh
Case No : Cr. Appeal No. 546 of 2008

State of Himachal Pradesh

APPELLANT

Vs

Madho Ram And Others

RESPONDENT

Date of Decision : 06-07-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 173, 313

Indian Penal Code, 1860 — Section 34, 323, 324, 336, 341, 451, 504, 506

Citation : (2018) 07 SHI CK 0001

Hon'ble Judges : SURESHWAR THAKUR, J

Bench : Single Bench

Advocate : Hemant Vaid, Y.S. Thakur, Vikrant??Chandel, Kishore Pundir, Ajay Sharma

Final Decision : Disposed of

Judgement

Sureshwar Thakur, J.

1. The instant appeal stands directed by the State of H.P., against, the judgment rendered on 23.04.2008, by the learned Presiding Officer, Fast Track

Court, Hamirpur, H.P., in Criminal Appeal No. 11 of 2007, whereby, he set aside the judgement of conviction, and, sentence recorded, upon, the

accused/respondents herein, by the learned trial Court.

2. The facts relevant to decide the instant case are that complainant Sh. Subhash Chand, who is running a shop at Kuthera, reported the matter to the

Police Station, Sadar, Hamirpur, that on 2.1.2005, at about 9.15, p.m. when he was present in his house, he heard some noise towards the house of

accused Madho Ram. On hearing this noise, he started towards the house of Madho Ram, but accused Manjeet Singh met him on the way and

stopped him from proceeding further and he saw accused Madho Ram and Saina

Devi were beating his brother Sunil Kumar. When he questioned the accused why they were beating his brother, in the meantime, accused Manjeet Singh, who was having a darat in his hand, inflicted darat blow on the left side of his forehead. Thereafter, he raised hue and cry and other persons from the village gather there, who also witnessed the beatings by the accused. However, none of them, came to the rescue of the complainant and his brother. It was further reported that when the complainant was coming back home from the place of occurrence, he was again restrained by accused Manjeet Singh and also gave fist blows to him and threatened him to do away with his life. It was also reported that when accused Manjeet Singh stopped the complainant, again accused Madho Ram and Saina Devi gave fist blows to him. Upon this information, FIR Ex.PW1/A was registered against the accused. Thereafter, the police police completed all the codal formalities.

3. On conclusion of the investigations, into the offences, allegedly committed by the accused, a report under Section 173 of the Code of Criminal

Procedure was prepared and filed before the learned trial Court.

4. The accused/respondents herein stood charged by the learned trial Court for theirs committing offences punishable under Sections 323, 324, 341,

504, 506 read with Section 34, IPC. In proof of the prosecution case, the prosecution examined six witnesses. On conclusion of recording of the

prosecution evidence, the respective statement(s) of the accused under Section 313 of the Code of Criminal Procedure were recorded by the learned

trial Court, wherein, each of the accused claimed innocence and pleaded false implication in the case. They also examined two witnesses in their

defence.

5. On an appraisal of the evidence on record, the learned trial Court, returned findings of conviction upon the accused/respondents herein, for theirs

committing offences punishable under Sections 323, 324, 341 read with Section 34 of the IPC. In an appeal preferred therefrom, by the

accused/respondents herein, before, the learned Appellate Court concerned, the latter reversed the apposite findings of conviction, and, sentence

recorded in the judgment pronounced by the learned trial Court.

6. The State of H.P. stands aggrieved by the findings recorded by the learned Presiding Officer, Fast Track Court concerned, findings whereof, are, in

dis-concurrence vis-a-vis the judgment, of conviction recorded against them, by the learned trial Court. The learned Addl. Advocate General

appearing for the appellant herein, has concertedly and vigorously contended qua the findings of acquittal, recorded by the learned Presiding Officer,

Fast Track Court concerned, standing not based on a proper appreciation by him, of the evidence on record, rather, theirs standing sequelled by gross

mis-appreciation, by him, of the material on record. Hence, he contends qua the findings of acquittal rather warranting reversal by this Court in the

exercise of its appellate jurisdiction, and, theirs being replaced by findings of conviction.

7. On the other hand, the learned defence counsel has with considerable force and vigour, contended qua the findings of acquittal recorded by the

learned Presiding Officer, Fast Track Court concerned standing based on a mature and balanced appreciation, by him, of the evidence on record, and,

theirs not necessitating any interference, rather theirs meriting vindication.

8. This Court with the able assistance of the learned counsel on either side, has, with studied care and incision, evaluated the entire evidence on record.

9. The learned Additional Advocate General has contended with vigour (a) that with the testifications rendered by the ocular witnesses qua the

genesis, of, the occurrence, not, carrying, any, gross improvements, and, embellishments, vis-a-vis, their previously recorded statements in writing,

hence, it was inappropriate, for the learned Appellate Court, to not, mete credence thereto, (b) and, he also placed reliance, upon, the testification

rendered by PW-6, who, during the course of his examination-in-chief, has, tendered and proven, Ex.PW6/A, exhibit whereof comprises the MLC

issued, vis-a-vis, injured Subhash Chand, especially, when therein he has also, with, utmost candour rather echoed of the injuries noticed by him, upon,

the person of the injured, being causable, by user of â??Daratâ?, Ex.P-4. (c) he has further placed reliance, upon, apposite recovery memo borne in

Ex.PW2/A, to, therefrom contend, that the findings of acquittal, recorded by the learned Appellate Court, vis-a-vis, the respondents herein, hence,

warranting interference.

10. However, all the aforesaid espousal(s) addressed, before this Court by the learned Additional Advocate General, do not carry any vigour, (i) given,

upon, a, close scanning of the deposition of PW-1, hence, emerging, qua his, while rendering his testification on oath, his making gross departure(s), from, his previously recorded statement in writing, apposite digressions, whereof, are comprised in (a) of, though his, in, the FIR making a echoing qua, upon, his hearing outcries emerging from, the house of accused Madho Ram, his proceeding towards the house of the accused, and, enroute his being stopped, by accused Manjeet Singh, and, thereafter his noticing, qua accused Madho Ram and accused Saina Devi, hence belabouring PW-2, one Sunil Kumar, (b) yet in open digression therefrom, he in his testification also added the name of accused Manjeet Singh, and, further ascribed qua him the incriminatory role, of his belabouring PW-2. The effect of PW-1, though omitting, to, in the FIR hence ascribe any incriminatory role, vis-a-vis, accused Manjeet Singh, qua, his being seen by him, to belabour PW-2, whereas, in blatant improvement therefrom, his, in his testification, rather attributing qua him, an incriminatory role, qua, his delivering, a darat blow on the left side of his forehead, obviously does comprise a blatant visible gross improvement, and, embellishment vis-a-vis his previous statement recorded in writing, (c) and, also hence the factum of the narrative, borne in FIR qua his noticing Madho Ram and Saina Devi, belabouring PW-2, being also concomitantly belied. Consequently, the effects thereof, being, of the embodiments, occurring in the apposite MLC being also belied. Furthermore, PW-2, has also rendered, the prosecution case to stand ingrained with a pervasive falsity, comprised in PW-2, in his testification, articulating qua his being also delivered 2-3 blows of darat, by the accused, hence, when for lending succor thereto, it was imperative, for his being subjected to medical examination, and, yet his remaining not medically examined, reiteratedly, hence, renders the aforesaid testification, to be ridden, with, a gross pervasive falsity.

11. Be that as it may, both PW-1 and PW-2 are real brothers, and, they are also evidently holding inimicality, vis-a-vis, the accused, (i) even then their purportedly interested version qua the occurrence may have carried some aura of truth, yet, with, theirs while testifying on oath, hence making the aforesaid rife contradictions, and, embellishments, vis-a-vis, their previous statements recorded in writing, does imminently surge forth, an inference qua, hence, their testifications, qua the genesis of the prosecution case, being rendered unamenable, for, meteing, of, any credence thereto, (ii) and,

also with the independent ocular witness to the occurrence, reneging, from, his previous statement recorded, in writing, besides on his being declared

hostile, and, hence his coming to be held, to, cross-examination by the learned APP, his not making any echoings, in, support, of, the genesis of the

prosecution case, thereupon, the entire substratum, of, the genesis of the prosecution case, is capsized.

12. Nowat, the efficacy, if any, of preparation, of, recovery memo, borne in Ex.PW2/A, whereunder, darat Ex.P-4, stands recovered, not, at the

instance of the accused, rather it being handed over tot he Investigating officer, by PW-1 Subhash Chand, is ipso facto, hence, for non effectuation of

recovery thereof, at the instance of the accused, rather is construable, to stand eroded, of, its probative vigour. Assumingly, if veracity is to be

imputed, qua the factum of Ex.P-4, being handed over by PW-1, to the police, and, also assumingly, if, all recitals apposite thereto, as, borne in

Ex.PW2/A, also carry any aura of veracity, yet all the recitals in respect thereto, borne in Ex.PW2/A, are, shred of their vigour and veracity, (i) given,

PW-1 making a disclosure of the darat, being taken into possession, from the spot by the police, and, thereat one Baldev, and, three other aged

women,being present. The aforesaid apparent contradictions, inter se, the manner of taking into possession of Ex.P-4, as embodied in Ex.PW2/A, vis-

a-vis, the one disclosed by PW-1, also renders, the recovery of Ex.P-4, to be neither efficacious nor it constitutes any evidence, of, any probative

vigour.

13. Even otherwise, as deposed by DW-1, with respect to the same occurrence, an FIR borne in Ex.DW-1/A, embodying therein, commission of

offences constituted under Sections 451, 323, 506, 336, of the IPC, stood, lodged with the police station concerned, by the accused herein. Hence,

when investigations thereinto, were, enjoined to be carried conjointly along with investigations into the extant FIR, whereas, both remaining not

conjointly investigated, thereupon, it is also concluded, qua the Investigating Officer holding skewed, and, slanted investigations, vis-a-vis, the extant

FIR, whereupon, it is not deemed fit to impute sanctity, to the prosecution case.

14. For the reasons which have been recorded hereinabove, this Court holds that the learned Appellate Court, has, appraised the entire evidence on

record in a wholesome and harmonious manner, apart therefrom the analysis of

the material on record, by the learned Appellate Court, does not suffer from any gross perversity or absurdity of mis-appreciation, and, non appreciation of germane evidence on record.

15. Consequently, there is no merit in the instant appeal and it is dismissed accordingly. In sequel, the judgment rendered by the learned Presiding Officer, Fast Track Court, Hamirpur, in Criminal Appeal No. 11 of 2007, on 23.04.2008 is affirmed and maintained. All pending applications also stand disposed of. Records be sent back forthwith.