

(2012) 07 SHI CK 0142

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 139 of 2007

State of Himachal Pradesh

APPELLANT

Vs

Manoj Kumar @ Mukhia and Another

RESPONDENT

Date of Decision : 05-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 161, 313
Penal Code, 1860 (IPC) — Section 307, 323, 324, 34

Citation : (2013) 2 Crimes 464 : (2012) 3 ShimLC 1386

Hon'ble Judges : V.K. Sharma, J; R.B. Misra, J

Bench : Division Bench

Advocate : R.K. Sharma, A.A.G. with Mr. J.S. Rana, Assistant A.G, for the Appellant; M.S. Guleria, Advocate, for the Respondent No. 1 and Mr. R.L. Chaudhary, Advocate, for the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Sharma, J.—The State is in appeal against the judgment dated 24.1.2007 of the learned Additional Sessions Judge, Mandi, H.P., in Sessions Trial No. 29 of 2002, whereby, the respondents, who shall hereinafter be referred to as "the accused" and denoted as A-1 and A-2, respectively, were tried for the offences under Sections 307, 323 and 324 /34 of the Indian Penal Code (in short "IPC") and were ultimately acquitted. In brief, the case of the prosecution, as emerges out of statement Ex. PW-1/A of complainant Sukh Pal Singh, recorded by the police u/s 154 of the Code of Criminal Procedure, 1973 (in short "Cr.P.C.") on 31.3.1999 at 8.30 p.m. at Zonal Hospital, Mandi, is that on 31.3.1999 at about 7 p.m., complainant Sukh Pal Singh (PW-1) along with Keshav Ram (PW-10) and Jaswant Singh (PW-12) was present at his Cycle, Tyre and Scooter Repair Shop, situate at Jail Road, Mandi. In the meantime, at about 7.15 p.m., owner of three wheeler, bearing registration No. HP 05-0933, by name Manoj Kumar @ Mukhia, who shall hereinafter be referred to by his proper name, accompanied by three other persons, whose names the complainant did not know but could identify them, came to the shop of the complainant. It is alleged that Manoj Kumar

dragged the complainant out of his shop. Thereafter, all of them started giving beatings to him with fist and kick blows. A-1 Manoj Kumar gave 3-4 blows to the complainant with a knife, causing injuries to him on the back, waist, chest and nose, which started bleeding profusely and as a result, the complainant was drenched in blood. He was rescued by his wife, PW-8 Smt. Gurbax Kaur from the aforesaid assailants, who ran away from the spot scene. According to the complainant, A-1 Manoj Kumar and his associates had attacked him, owing to the dispute concerning shop and rent thereof.

2. The complainant was taken to Zonal Hospital, Mandi for treatment. The medical officer attending gave information to the police at Police Post City, Mandi that the complainant was admitted in the hospital with stab injuries. HC Sanjay Kumar (PW-13), who was already present in the hospital in connection with another case, was deputed by MHC, Police Post City to look into the matter. Accordingly, HC Sanjay Kumar recorded statement of the complainant, Ex. PW-1/A u/s 154 Cr.P.C. and after putting his endorsement, sent the same to Police Station, Sadar, Mandi, based on which FIR Ex. PW-6/A was registered u/s 324/34 IPC. The case was investigated by PW-13 HC Sanjay Kumar. The complainant was medically examined by PW-2 Dr. Anuradha Sharma, who found the following five injuries on his person, as detailed in Certificate Ex. PW-2/C, out of which, whereas injury No. 1 was opined to be grievous and dangerous to life, other injuries were found to be simple:--

1. About 3 cm x 1 cm incised wound present on left side of chest wall in 7th ICS just behind posterior axillary line bleeding present. Direction and depth of the wound can be given only after examination by Surgeon.

2. About 2 and half X 1 cm incised wound on left side of back below left iliac crest about 7 cm lateral to mid vertebral line. Direction and depth of the wound can be given only after examination by Surgeon.

3. Small incised wound about one cm X half cm in forth ICS right chest wall about one cm wide right of sternal border.

4. Complains of epistaxis. Clotted blood present on in both nostrils. No fresh bleedings.

5. Swelling of upper lip present. No other injury on the lip. Teeth were intact except upper lateral incisor which was already broken before the injury mentioned above.

3. Injuries No. 1 to 3 were said to be caused with a sharp edged weapon and the remaining with a blunt object. On the basis of medical report, Section 307 IPC was also added.

4. It was revealed during investigation that A-2 Sher Singh @ Shera, who shall also hereinafter be called by his proper name, had taken on rent a shop belonging to the complainant. However, he had stopped paying rent and was in arrears to the tune of Rs. 20,000/-. The complainant had been asking him time

and again to pay the rent and to vacate the shop, but he neither paid the arrears nor vacated the shop and instead, used to quarrel with the complainant. Owing to this dispute, both the accused had attacked the complainant. It was during the course of investigation that the complainant and his wife stated to the police that A-1 Manoj Kumar and A-2 Sher Singh were responsible for the murderous attack on the former and two other persons referred to in complaint Ex. PW-1/A had not taken part in the said attack and had instead remained sitting in the aforesaid three wheeler.

5. On completion of investigation/the accused were sent up to face trial. On being charged, they did not plead guilty and instead claimed trial. The prosecution evidence followed, which examined as many as 14 witnesses.

6. On close of the prosecution evidence, the accused were examined u/s 313 Cr.P.C., wherein they pleaded innocence and stated that a false case has been foisted against them by the complainant, who wanted to get the shop vacated. However, they did not lead any evidence in defence.

7. We have heard the learned Senior Additional Advocate General for the appellant-State and the learned Counsel for the respondents-accused and perused the record.

8. We have no hesitation to say at the very outset that though no doubt, the complainant had suffered grave injuries in the alleged occurrence, yet in view of the glaring omissions, improvements, contradictions and embellishments in the evidence of material prosecution witnesses, which go to the root of the case and cannot be lightly overlooked, the learned trial Judge had rightly come to the conclusion that the prosecution was not able to bring home guilt to the accused, entitling them to acquittal. The reasons to arrive at this inference are set out hereinafter.

9. The earliest version about the occurrence finds mention in the statement made by the complainant to the police u/s 154 Cr.P.C., Ex. PW-1/A. According to the complainant, the murderous attack was led against him by four persons, one of whom was A-1 Manoj Kumar. He did not know the names of the other three, whom, however, he could identify. The motive for the attack was stated to be the dispute, concerning shop and rent thereof. Even as per the complainant, the shop was rented out to A-2 Sher Singh, who had stopped paying rent and was in arrears, amounting to Rs. 20,000/-. In his deposition as PW-1, the complainant has named Sher Singh as a co-accused. According to him, he (Sher Singh) alongwith A-1 Manoj Kumar had come to his shop in a three wheeler, whereafter "accused Manoj Kumar dragged me outside the shop, firstly both the accused gave beatings with fist and leg blows and Sher Singh caught hold of me from my arm and accused Manoj alias Mukhia took knife from his pocket and gave knife blows on my chest, on back side of left shoulder and near stomach on the left side and my wearing clothes were smeared with blood and blood also fell on the ground." Thus, in case A-2 Sher Singh had in fact come to the shop of the

complainant alongwith A-1 Manoj Kumar and had attacked the complainant in the manner stated by him hereinabove, it was reasonably expected out of him to have mentioned his name in statement, Ex. PW-1/A. However, the fact remains that name of A-2 Sher Singh does not find mention in the said statement and instead, it is stated therein that except A-1 Manoj Kumar, he was not knowing the other three, but could identify them. Thus, the very presence of A-2 Sher Singh on the spot scene at the suggested time and his taking part in the alleged occurrence, becomes highly doubtful and for this reason alone, the very genesis of the prosecution case becomes shrouded in grave suspicion.

10. Further more, in his statement Ex. PW-1/A, the complainant had stated to the police that after he was dragged out of his shop by A-1 Manoj Kumar, he alongwith his three other associates, had led the attack on him (complainant) with fist and kick blows and thereafter A-1 Manoj Kumar had given the knife blows to him. However, as already observed, during investigation, both the complainant and his wife PW-8 Smt. Gurbax Kaur stated to the police that A-1 Manoj Kumar and A-2 Sher Singh alone had taken part in the murderous attack, led on him and the remaining two persons, accompanying them, had not participated in the same and had instead, remained sitting in the aforesaid three wheeler. This contradiction is also very material and casts a serious doubt on the prosecution version relating to the occurrence.

11. Still further, whereas the complainant has stated that the occurrence had taken place outside his shop after he was dragged out from there by A-1 Manoj Kumar, the deposition of his wife PW-8 Smt. Gurbax Kaur, would go to show that according to her, the occurrence had taken place inside the shop. This contradiction can also not be lightly overlooked and moreso, when her statement u/s 161 Cr.P.C. was recorded by the police on 8.8.1999, that is, after more than four months from the date of the alleged occurrence. It being so, the very presence of PW-8 Smt. Gurbax Kaur to have witnessed the alleged occurrence, also becomes doubtful.

12. PW-10 Keshav Ram and PW-12 Jaswant Singh were named as eye witnesses in complaint, Ex. PW-1/A. However, both of them have not supported the case of the prosecution on its material particulars. According to them, they had reached the spot scene after the alleged occurrence was already over. They were declared hostile and were cross examined by the learned Public Prosecutor, but nothing material could be elicited out of them to show that they were suppressing the truth and telling lies. It shall be pertinent to notice that whereas PW-10 Keshav Ram was working with the complainant as a servant, PW-12 Jaswant Singh was his tenant. It being so, it was not expected out of them to have deposed falsely to let the assailants of their master/landlord go scot free from punishment.

13. It is in evidence that the shops, opposite to the shop of the complainant, were open and some persons were present there, but none out of them, who could be said to be independent witnesses, was joined by the police during investigation, so as to lend assurance to its case. For the foregoing reasons, we

do not find any lawful cause or basis for any interference with the impugned judgment of acquittal, rendered by the learned trial Judge and accordingly proceed to dismiss the appeal.