
(2015) 10 SHI CK 0075
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 8 of 2008

State of Himachal Pradesh

APPELLANT

Vs

Pritam Chand and Others

RESPONDENT

Date of Decision : 28-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 173, 313
Penal Code, 1860 (IPC) — Section 147, 149, 307, 332, 333

Citation : (2015) 10 SHI CK 0075

Hon'ble Judges : Rajiv Sharma and Sureshwar Thakur, JJ.

Bench : Division Bench

Advocate : Ramesh Thakur, Assistant Advocate General, for the Appellant;
Virender Singh Rathore, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J.—The instant appeal is directed by the State of H.P. against the judgment of the learned Additional Sessions Judge-II, Kangra at Dharamshala, H.P. rendered on 17.07.2007 in Sessions Case No. 14-K/VII/2004, whereby, the learned trial Court acquitted the accused/respondents of the charge of theirs having allegedly committed offences punishable under Sections 307, 147, 353, 332, 333, 382 and read with Section 149 of the Indian Penal Code.

2. Briefly stated the facts of the prosecution case are that on 25.5.2003, at about 11.45 p.m. (during night) the police party headed by Inspector/SHO Shri Dinesh Kumar reached in the Sub Divisional Hospital, Kangra, in pursuance of an information recorded into daily diary No. 39 of 24.5.2003 at 1.20 a.m.(night) purveying therein that H.C. Bhag Singh, Investigating Officer along with other police officials had gone on the spot at Kakdoh Mauja Rajol where accused Pritam Chand and others had given beatings and Bhag Chand sustained injuries and thereafter brought to the hospital. The statement of H.C. Bhag Chand was recorded under Section 154 of the Cr.P.C., in which he disclosed that on 24.5.2003 at about 11 p.m. one Varjinder Singh son of Shri Harnam Singh,

resident of Charri Road, Kotwali Bazar, Dharamshala reported offence under Sections 447/147/506 of the IPC vide report No. 22 against Prtim Chand son of Balia Ram and his sons Parveen Kumar and Vinod Kumar besides his wife along with masons and labourers and thereafter the complainant along with HHC Arvind Kumar LHC Sitam Pal, HHG Bachittar along with Varjinder Singh and Balwant Singh went to the spot for investigating at Tikka Kakdoh Mahakali and the complainant directed the accused not to carry out work during night and thereafter, Pritam Chand along with his two sons as well as his wife along with 5-6 other persons immediately pounced upon equipped with lathis and dandas and started giving them beatings and thereby the complainant sustained injuries over his head, arms and other parts of the body along with other police officials who also sustained injuries. The complainant further disclosed in his statement that his uniform was torn off and his belt and cap along with golden chain and wrist watch as well as case file and challan book was snatched and taken away. The complainant further claimed that he was saved by Varjinder Singh and his companion Balwant Singh from the accused and thereafter taken to Sub Divisional Hospital, Kangra. The complainant further claimed that HHC Lal Singh was still missing as he suspected to be caught by the accused or to be thrown out some where. The complainant further claimed the occurrence at about 11.45 p.m., during night as complainant claimed that the accused obstructed him along with other police officials from discharging their public duties. The statement of the complainant was sent to the police station on the basis of which FIR was registered. During the course of investigation, the police obtained the MLC of the complainant, prepared the spot map and recorded the statements of the witnesses as per their versions. The police also took into possession, dandas, darat, sickle, uniform, shirt and pant stained with blood of the complainant. The police also took into possession cap and belt of the complainant vide separate seizure memo. As per the MLC of the complainant, he had sustained grievous injuries on his person.

3. On conclusion of the investigation, into the offences, allegedly committed by the accused/respondents, a report under Section 173 of the Code of Criminal Procedure was prepared and filed in the competent Court.

4. The accused were charged by the learned trial Court for theirs having committed offences punishable under Sections 307/149, 147, 353, 332, 333 and 382 of the Indian Penal Code. In proof of the prosecution case, the prosecution examined 17 witnesses. On conclusion of recording of the prosecution evidence, the statements of the accused under Section 313 of the Code of Criminal Procedure were recorded by the trial Court, in which they claimed false implication. However, no defence evidence was led by them.

5. The learned trial Court on an appreciation of the evidence on record, returned findings of acquittal in favour of the accused.

6. The State of H.P. is aggrieved by the findings of acquittal recorded by the learned trial Court. The learned Assistant Advocate General appearing for the

appellant/State has concertedly and vigorously contended that the findings of acquittal recorded by the learned trial Court are not based on a proper appreciation of evidence on record, rather, they are sequelled by gross misappreciation of material on record. Hence, he contends that the findings of acquittal be reversed by this Court in the exercise of its appellate jurisdiction and be replaced by findings of conviction.

7. On the other hand, the learned defence counsel has with considerable force and vigour, contended that the findings of acquittal recorded by the learned Court below are based on a mature and balanced appreciation of evidence on record and do not necessitate interference, rather merit 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 accused/respondents herein are alleged to have by user of darati, Ex. P-5, darat Ex. P-6, hockey, Ex. P-7 and dandas Ex. P-8 to Ex. P-13 recovered under recovery memos Ex. Pw15/F, Ex. PW15/M, Ex. PW15/L, Ex. PW15/E, Ex. PW15/G to Ex. PW15/K respectively, delivered beatings upon the person of the complainant/PW-1 Bhag Chand. The ill-fated occurrence took place on 24.5.2003 at about 11.45 p.m. at Tikka Kakdoh Mahakali. The arrival at the site of occurrence of PW-1 H.C. Bhag Chand, who was preceded by an information purveyed to the police agency concerned by Varjinder Singh qua commission of offences under Sections 447/147/506 of the IPC allegedly by Pritam Chand and his sons Parveen Kumar and Vinod Kumar, besides his wife along with masons and labourers. The information aforesaid purveyed by Varjinder Singh divulging therein the commission of offences by aforesaid under Sections 447/147/506 of the IPC stood entered in report No. 22. The injured/complainant/PW-1 Bhag Chand along with HHC Arvind Kumar, LHC Sitam Pal, HHG Bachhitar along with Varjinder Singh proceeded to Tikka Kakdoh Mahakali. On the arrival of the aforesaid at the place aforesaid, the police party headed by the injured/complainant/PW-1 Bhag Chand directed the accused to not during night carry out any construction. The directions as meted by the injured/complainant/PW-1 to the accused to not proceed to during night carry out any construction as allegedly stood carried at their instance at the site of occurrence, squealed theirs perpetrating an assault on his person by theirs respectively using darati, Ex. P-5, darat Ex. P-6, hockey, Ex. P-7 and dandas Ex. P-8 to Ex. P-13 recovered under recovery memos Ex. Pw15/F, Ex. PW15/M, Ex. PW15/L, Ex. PW15/E, Ex. PW15/G to Ex. PW15/K respectively. In the assault perpetrated by the accused on the person of the injured/complainant/PW-1 his uniform was torn and his belt and cap along with golden chain and wrist watch as well as case file and challan book were snatched and taken away. However, he was saved from the clutches of the accused by Varjinder Singh and his companion Balwant Singh. He was carried to Sub Divisional Hospital, Kangra. The injuries as allegedly meted to the complainant/injured/PW-1 Bhag Chand by the accused stand pronounced in MLC Ex. PW 17/A proven by PW-17 Dr. Rajesh Sharma, who has opined that injuries

as portrayed in Ex. PW17/A are sequel-able by user of blunt weapon, besides he has opined that injury No. 1 unraveled in Ex. PW17/A is dangerous to life.

10. The genesis of the prosecution case stands pronounced by the injured/complainant/PW-1. The testimony of PW-1 has been lent corroboration by PW-2 on whose information to the former qua the commission of offences at the instance of the accused/respondents under Sections 447, 147 and 506 of the IPC arising from theirs purportedly carrying out unauthorized construction which stood entered in report No. 22 led the PW1/complainant/injured to proceed to the site of occurrence. He has in his recorded deposition on oath unequivocally voiced therein the factum of the accused having with the user of darati, Ex. P-5, darat Ex. P-6, hockey, Ex. P-7 and dandas Ex. P-8 to Ex. P-13 recovered under recovery memos Ex. PW15/F, Ex. PW15/M, Ex. PW15/L, Ex. PW15/E, Ex. PW15/G to Ex. PW15/K respectively, perpetrated an assault on the person of PW-1. The testimonies of PW-1 and PW-2 while theirs rendering with intra se corroboration proof to the genesis of the prosecution case, it would acquire further momentum only in the face of the witnesses to the recoveries of Belt, Ex. P-3, cap Ex. P-4, burnt ash as also burnt pieces of case file and challan book, Ex. P-18 and P-19, darati, Ex. P-5, darat Ex. P-6, hockey, Ex. P-7 and dandas Ex. P-8 to Ex. P-13 recovered under recovery memos, Ex. PW15/B, Ex. PW15/C, Ex. PW15/F, Ex. PW15/M, Ex. PW15/L, Ex. PW15/E, Ex. PW15/G to Ex. PW15/K respectively, having proved the factum of the recoveries of the items/articles depicted therein having been effected by the Investigating Offer at the instance of the accused in a legally efficacious manner. However, the witnesses to the recoveries of Belt, Ex. P-3, cap Ex. P-4, burnt ash as also burnt pieces of case file and challan book, Ex. P-18 and P-19, darati, Ex. P-5, darat Ex. P-6, hockey, Ex. P-7 and dandas Ex. P-8 to Ex. P-13 recovered under recovery memos, Ex. PW15/B, Ex. PW15/C, Ex. PW15/F, Ex. PW15/M, Ex. PW15/L, Ex. PW15/E, Ex. PW15/G to Ex. PW15/K respectively, by the Investigating Offer at the purported instance of each of the accused, have in their depositions of oath denied the factum of the aforesaid items/articles reflected in the aforesaid recovery memos having come to be recovered in the manner as recited therein. In the face of the witnesses to the recoveries of Belt, Ex. P-3, cap Ex. P-4, burnt ash as also burnt pieces of case file and challan book, Ex. P-18 and P-19, darati, Ex. P-5, darat Ex. P-6, hockey, Ex. P-7 and dandas Ex. P-8 to Ex. P-13 recovered under recovery memos, Ex. PW15/F, Ex. PW15/M, Ex. PW15/L, Ex. PW15/E, Ex. PW15/G to Ex. PW15/K respectively, recovered by the Investigating Offer at the purported instance of the accused, having denied the factum of the items depicted therein having stood recovered at the instance of the accused, necessarily then, the recoveries attributed to the accused by the prosecution cannot gain legal leverage for anvilling thereupon a from conclusion that the accused either with the user by each of them respectively of darati, Ex. P-5, darat Ex. P-6, hockey, Ex. P-7 and dandas Ex. P-8 to Ex. P-13 recovered under recovery memos, Ex. PW15/B, Ex. PW15/C, Ex. P18, Ex. PW15/F, Ex. PW15/M, Ex. PW15/L, Ex. PW15/E, Ex. PW15/G to Ex. PW15/K respectively, perpetrated an assault on the person of the

injured/complainant/PW-1 nor also it can be concluded that his torn uniform, belt and ashes and burnt pieces of challan book and case file were linkable to the accused, inasmuch as theirs having been recovered by the Investigating Officer at the instance of the accused. Naturally then the squealing effect thereof is that the testimonies of both PW-1 and PW-2 qua the genesis of the prosecution version besides, the factum of user by each of the accused of darati, Ex. P-5, darat Ex. P-6, hockey, Ex. P-7 and dandas Ex. P-8 to Ex. P-13 recovered under recovery memos, Ex. PW15/F, Ex. PW15/M, Ex. PW15/L, Ex. PW15/E, Ex. PW15/G to Ex. PW15/K respectively, to perpetrate an assault upon the complainant/injured/PW-1 stands not efficaciously proved. In aftermath, the strength of the genesis of the prosecution case to which succor is lent by the depositions of PW-1 and PW-2 gets enervated. A further accentuation to the aforesaid inference is derivable by the factum of the witnesses to the recovery memos aforesaid having in their respective depositions denied the factum of each of the accused to whom recoveries of items depicted respectively in the recovery memos prepared qua them attributed, having made any disclosure statement preceding the recoveries. Necessarily then, when recoveries of the items/articles under various recovery memos stood not preceded by any disclosure statement made by each of the accused, renders the effect, if any, of the recoveries of items/articles under recovery memos aforesaid to stand vitiated. Apart therefrom, a further galvanization to the inference aforesaid is reared by the factum of PW-12 in his deposition having admitted that the injuries observed by him on the person of the injured/complainant were not by user of any sharp edged weapon. Consequently, recoveries of sharp edged weapons purportedly at the instance of the accused under recovery memos in consonance thereto are contrived as their purported user at their instances did not on the person of the victim/complainant sequel any injury in commensuration with their user thereon.

11. The injured/complainant/PW-1 had proceeded to the site of occurrence on receiving an information from PW-2 qua the accused/respondents having proceeded to unauthorizedly raised construction upon the land owned by the latter, yet he in his deposition has with candor divulged therein that before proceeding to the site of occurrence he had not ascertained from the revenue papers whether PW-2 was the exclusive owner in possession of the disputed property whereupon the accused/respondents were alleged by PW-2 to be carrying out unauthorized construction. He has also with candor in his deposition recorded on oath disclosed that he was not authorized by any order of the Court to stop the construction, if any, unauthorizedly carried out at the site of occurrence by the accused/respondents. The underscoring by him of the aforesaid facts in his deposition renders vulnerable to skepticism his movement to the site of occurrence. It appears that he to facilitate PW-2 through the deployment of police manpower proceeded to the site of occurrence to dissuade the respondents/accused from carrying out construction, if any, upon the land not proved by PW-2 to be exclusively owned and possessed by him. Consequently, it appears that PW-1 wantonly and grossly abused the police

manpower to purportedly make an impermissible request upon the accused/respondents for their purportedly desisting from carrying out construction, if any, raised by them, purportedly upon their own land, especially when neither PW-1 nor PW-2 were assured by revenue papers that PW-2 was the owner in possession of the land where construction, if any, was purportedly raised by the accused/respondents, hence, theirs being dissuaded by the police force headed by PW-1 from carrying it out or executing it, was imperative.

12. Be that as it may, even the attribution on oath by PW-1 to each of the accused of theirs carrying respective weapons of offence with whose user they respectively delivered injuries on the various portions of his body acquires the taint of improvements as well as embellishments especially when the said attribution on oath by him with specificity to each of the accused stands not previously recorded at his instance by the Investigating Officer. Consequently, the deposition of PW-1 qua the accused having with the user by each of them of darati, Ex. P-5, darat Ex. P-6, hockey, Ex. P-7 and dandas Ex. P-8 to Ex. P-13 recovered under recovery memos, Ex. PW15/F, Ex. PW15/M, Ex. PW15/L, Ex. PW15/E, Ex. PW15/G to Ex. PW15/K respectively having perpetrated an assault on his person becomes suspect more so in the face of his having deposed that they were not known to him prior to the date of occurrence. In face thereof and when he in his cross-examination concedes to the fact that none of the assailants on the spot even when the police officials reached were known to him, entailed upon the Investigating Officer to, on information having been purveyed to him by PW-1 qua the key characteristic identifiable features of the accused to facilitate the carrying out of a test identification parade, in the legally ordained manner to enable the complainant/injured/PW-1 to hence therein identify the accused/respondents to be the persons, who perpetrated an assault on his person. However, with no test identification parade having been carried out immediately subsequent to the occurrence, besides when the occurrence took place at night, hence, defacilitated the injured/complainant to observe their key, identifiable features for empowering him to identify them subsequently. Cumulatively then, the prosecution has not been hence able to firmly establish the accused to be the persons, who perpetrated assault, if any, on the person of the complainant/injured/PW-1.

13. Moreover, PW-17, Dr. Rajesh Sharma, who issued MLC Ex. PW 17/A portraying therein the injuries entailed upon the person of the complainant/injured/PW-1 in sequel to the assault allegedly perpetrated by the accused upon his person, in his cross-examination has deposed that during the period when treatment was meted by him to PW-1, the latter though was conscious yet omitted to disclose the names of the assailants. The aforesaid deposition comprised in the cross-examination of PW-17 stands to throttle the espousal by the prosecution that the injured/complainant was in the know of the names and identity of the accused, hence, his identification of the accused in Court is not to be thrown overboard. Contrarily, the deposition of PW-1 rather underlines the factum in coagulation with the omission on the part of the Investigating Officer

arising from non purveying to him by the injured/complainant/PW-1 the key characteristic and identifiable features borne by the accused/respondents to hence facilitate their identification by PW-1 in the test identification parade carried out in accordance with law necessarily then, renders the identification, if any, subsequently by PW-1 in Court of the accused to be the persons, who perpetrated an assault on his person to be wholly surmised as well as conjectural on which no reliance can be placed by this Court.

14. For the reasons which have been recorded hereinabove, this Court holds that the learned trial Court below 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 trial Court does not suffer from any perversity or absurdity of mis-appreciation and non appreciation of evidence on record, rather it has aptly appreciated the material available on record.

15. In view of the above, we find no merit in this appeal which is accordingly dismissed. In sequel, the impugned judgment is affirmed and maintained. Record of the learned trial Court be sent back forthwith.