
(2012) 03 SHI CK 0260
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 363 of 2005

State of Himachal Pradesh

APPELLANT

Vs

Rajinder Singh and Others

RESPONDENT

Date of Decision : 15-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 149, 323, 326, 451

Citation : (2012) 03 SHI CK 0260

Hon'ble Judges : Sanjay Karol, J; R.B. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Justice Sanjay Karol, Judge

1. For an offence, which is alleged to have been committed on 26th January, 1999, accused persons were put to trial. In terms of judgment dated 31st May, 2005, passed by learned Chief Judicial Magistrate, Kinnaur at Rekong Peo, in Criminal Case No. 134-2 of 1999, titled as State of Himachal Pradesh versus Rajinder Singh and others, accused persons stand acquitted of the charged offences. It is the case of the prosecution that Shri Pawan Kumar (PW-1) was working in the Canteen run by Shri Rajiv Mahajan (PW-5) at Bhaba Nagar. On 26th January, 1999 at about 8.15 p.m., while Shri Pawan Kumar was having dinner in the house alongwith Shri Rajiv Mahan and Shri Trilok Singh, accused persons came and gave beatings. Accused Shri Rajinder Singh gave a blow with a "danda" (Ex. P-1) to Shri Pawan Kumar. One amongst the assailants gave a blow with a sharp-edged weapon on the head of Shri Trilok Singh, who sustained injuries in his eye. Local persons gathered at the spot and rescued the injured from the assailants. Shri Pawan Kumar lodged report (Ex. PW-3/A) with the police on 26th January, 1999. Injured Shri Trilok Singh was medically examined alongwith the complainant at Project Hospital at Bhabanagar. Dr. B.S. Negi (PW-2) issued MLC (Ex. PW-2/A) with respect to Shri Pawan Kumar and MLC (Ex.

PW-2/B) with respect to Shri Trilok Singh. Since Shri Trilok Singh sustained injuries, which were grievous, he was further referred for further treatment to a specialist at the hospital at Rampur Bhshahr, where Dr. Rajan Bisht (PW-8), after examining the injured, issued MLC (Ex. PW-8/A). Police formally registered FIR No. 24 of 1999, dated 17th April, 1999 (Ex. PW-6/A) at Police Station Bhabanagar. Shri Gian Chand (PW-6) and Shri Chhering Dorje (PW-7) investigated the matter. Weapon of offence was recovered from the spot; statements of the witnesses were recorded; necessary investigation was completed; and challan was presented in the Court for trial.

2. Accused persons were charged for having committed offences punishable under Sections 147, 451, 326 & 323, all read with Section 149 of the Indian Penal Code, to which they pleaded not guilty and claimed trial.

3. In order to prove its case, prosecution examined as many as 8 witnesses and statements of the accused persons u/s 313 of the Code of Criminal Procedure were also recorded, in which they pleaded false implication.

4. Appreciating the evidence adduced on record, Court below acquitted the accused persons of the charged offences. Hence, the present appeal.

5. We have heard Shri R.K. Sharma, learned Senior Advocate/Senior Additional Advocate General, assisted by Shri J. S. Guleria, Assistant Advocate General on behalf of the State as also Shri Anup Chitkara, Advocate, on behalf of the accused persons. We have also minutely examined the testimonies of the witnesses and other documentary evidence placed on record by the prosecution. Having minutely examined the record, we are of the considered view that no case for interference is made out at all. We find that the judgment rendered by the trial Court is well reasoned and is based on complete and proper appreciation of evidence (documentary and ocular) placed on record. There is neither any illegality/infirmity nor any perversity in the same.

6. Noticeably, in this case Shri Rajinder Singh (accused No. 1) and Shri Raj Guru (accused No. 2) have expired. Hence, appeal qua them stands abated.

7. With regard to the remaining five accused persons, i.e. Shri Vine Singh, Sri Pravinder Singh, Shri Jagdish Singh, Shri Pawan Kumar and Shri Ashwani Kumar, we find that there is no iota of evidence against them.

8. We also find that the person who sustained grievous injuries, i.e. Shri Trilok Singh, has not been examined by the prosecution during trial for reasons best known to them.

9. We find that independent witnesses Shri Satish Kapil (PW-4) and Shri Rajiv Mahajan (PW-5) have not supported the prosecution in Court. They were extensively cross-examined by the Public Prosecutor and in spite thereof, nothing fruitful could come out in their testimony which could remotely link the accused to the alleged crime. Here we may also clarify that even deceased accused Shri Rajidner Singh and Shri Raj Guru have not been implicated by these witnesses.

10. We find that the incident took place on 26th January, 1999, injured were got medically examined on 27th January, 1999, and one of the injured was further examined at Rampur on 16th April, 1999. Significantly, even in the FIR names of the assailants, other than Shri Rajinder Singh, are not mentioned. There is also an inordinate delay in registration of FIR. Offence took place on 26th January, 1999, whereas FIR was registered on 17th April, 1999. This delay remains unexplained. Also, testimony of PW-1 is uninspiring in confidence and no case is made out by him against the remaining respondents.

11. Prosecution has failed to show as to how the remaining accused persons were identified and linked to the incident in question. In this regard Shri Satish Kapil (PW-4) and Shri Rajiv Mahajan (PW-5) have not supported the prosecution at all.

12. We further find that the "danda" (Ex. P-1) was recovered by the police vide recovery Memo Ex. PW-1/A, dated 17th April, 1999. Prosecution wants us to believe that the "danda" was lying at the spot for nearly three months. It is only a reflection of the manner in which police has conducted the investigation.

13. Thus, it cannot be said that the prosecution has been able to prove its case beyond reasonable doubt by leading clear, cogent, convincing and reliable piece of evidence so as to prove the charged offences. For all the aforesaid reasons, we find no reason to interfere with the well reasoned judgment passed by the trial Court. The Court has fully appreciated the evidence placed on record by the parties.

The accused have had the advantage of having been acquitted by the Court below. Keeping in view the ratio of law laid down by the Apex Court in Md. Ankoos and Others Vs. The Public Prosecutor, High Court of A.P., , it cannot be said that the Court below has not correctly appreciated the evidence on record or that acquittal of the accused has resulted into travesty of justice. No ground for interference is called for. The present appeal is dismissed. Bail bonds, if any, furnished by the accused are discharged.