

(2015) 09 SHI CK 0072

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 174 of 2015

State of Himachal Pradesh

APPELLANT

Vs

Rakesh Mehta and Others

RESPONDENT

Date of Decision : 17-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378, 417, 418, 423
Penal Code, 1860 (IPC) — Section 143, 147, 149, 323, 341

Citation : (2015) 3 ShimLC 1520

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Advocate : R.S. Verma, Additional Advocate General, for the Appellant; Amit Himalvi, Advocate vice and B.M. Chauhan, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Karol, J—In connection with FIR No. 55/04 dated 01.06.2004 (Ex. PW.1/A), registered at Police Station, Kumarsain, District Shimla, H.P., under the provisions of Sections 341, 143, 147, 149, 323 and 506 of the Indian Penal Code, in terms of judgment dated 01.05.2008, passed by Sub Divisional Judicial Magistrate, Rampur Bushehar, District Shimla, H.P., in Case No. 116-2 of 2004/06, titled as State of Himachal Pradesh Versus Rakesh Mehta & others all the accused were convicted and sentenced/pay fine as under:--

2. In an appeal filed by the convicts, said judgment stands reversed by the Sessions Judge, Kinnaur Sessions Division at Rampur Bushahr, District Shimla, H.P., vide judgment dated 24.11.2014, passed in Criminal Appeal No. 0100028/2008, titled as Rakesh Mehta & others Versus State of Himachal Pradesh. Accused stand acquitted of all the charged offences. Hence the present appeal filed by the State under the provisions of Section 378 of the Code of Criminal Procedure, 1973.

3. In short, it is the case of prosecution that on 31.05.2004, complainant Yashbir Singh (P.W.1) alongwith his brother-in-law Mool Chand (P.W.8) had gone to

attend the local fair at Tani Jubbad. At about 4.30 PM, accused Suresh caught Mool Chand and started giving him beatings. However, he was rescued by the complainant. Later on at about 6.00 PM, Suresh came with all the accused persons and gave beatings with dandas to the complainant and his brother-in-law. They were rescued by Raju (not examined) and Hari Singh (P.W.3). The incident was witnessed by Surender and Roshan Lal (both not examined). With the registration of FIR (Ex. PW.1/A), injured were got medically examined at CHC, Kumarsain and MLC (Ex. PW.6/B) was issued by Dr. Sumit Attri (P.W.6). Investigation was conducted by Rajender Singh (P.W.7).

4. Notice of accusations were put to the accused for having committed offences punishable under the provisions of Sections 147, 323. 341 and 506 read with Section 149 of the Indian Penal Code, to which they did not plead guilty and claimed trial.

5. In order to establish its case, in all, prosecution examined as many as eight witnesses. Statements of the accused under Section 313 of the Code of Criminal Procedure were also recorded, in which they took plea of false implication.

6. Having heard Mr. R.S. Verma, learned Additional Advocate General, on behalf of the State as also Mr. Amit Himalvi, learned counsel, on behalf of respondent No. 1 and Mr. K.S. Banyal, learned Senior Counsel, assisted by Mr. Virender Katoch, Advocate, on behalf of respondents No. 2, 3 and 4 and having minutely examined the testimonies of the witnesses and other documentary evidence so placed on record by the prosecution, I am of the considered view that no case for interference is made out at all. The judgment rendered by the Appellate Court is based on complete, correct and proper appreciation of evidence (documentary and ocular) so placed on record. There is neither any illegality/infirmity nor any perversity with the same, resulting into miscarriage of justice.

7. It is a settled principle of law that acquittal leads to presumption of innocence in favour of an accused. To dislodge the same, onus heavily lies upon the prosecution. Having considered the material on record, I am of the considered view that prosecution has failed to establish the essential ingredients so required to constitute the charged offence.

8. In *Prandas Vs. The State*, AIR 1954 SC 36 , Constitution Bench of the apex Court, has held as under:

"(6) It must be observed at the very outset that we cannot support the view which has been expressed in several cases that the High Court has no power under S. 417, Criminal P.c., to reverse a judgment of acquittal, unless the judgment is perverse or the subordinate Court has in some way or other misdirected itself so as to produce a miscarriage of justice. In our opinion, the true position in regard to the jurisdiction of the High Court under S. 417, Criminal P.c. in an appeal from an order of acquittal has been stated in - "*Sheo Swarup and Others vs. The King-Emperor* AIR 1934 227 (Privy Council) , in these words:

"Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognized in the administration of justice." "

9. Evidently as has come through the testimonies of Dr. Sumit Attri (P.W.6) complainant Yashbir Singh (P.W.1) sustained injuries on his index finger and elbow. There was a small lacerated wound and some abrasions. Medical evidence belies the version of the complainant and the spot witnesses with regard to the assailants attacking the complainant with a sharp edged weapon such as sickle. Lacerated wound is not caused by the weapon of offence proved on record.

10. It has come on record, as is so admitted by the spot witnesses, that there were 70-80 persons present on the spot.

11. Having perused the testimonies of complainant party Yashbir Singh (P.W.1) and Mool Chand (P.W.8), and other witnesses one finds there are major contradictions rendering their version to be extremely doubtful, if not false. Their version is not consistent, clear or cogent rendering their testimonies to be uninspiring in confidence and the witnesses to be unreliable.

12. Yashbir Singh (P.W.1) states that at Tani Jubbad, it was accused Suresh, who caught Mool Chand (P.W.8) from the neck and give beatings. But Mool Chand wants the Court to believe that even other accused persons were present, which in fact is not the case of prosecution. With regard to the second incident, which took place at 6.00 PM, near Jarol Mod, Yashbir got recorded that he was beaten up by 7-8 boys. However, prosecution chose to prosecute only five persons. Who are these remaining persons is a mystery. Witness Sadhu Ram (P.W.2), who is a relative of the complainant states that he tried to save the complainant from the clutches of the accused. So is the version of Hari Singh (P.W.3). However, even their version cannot be said to be believable, for according to Hari Singh, the incident took place inside the hotel of one Roshan Lal, who has neither been examined nor is there any reference of such place/person in the FIR. Hari Singh states that accused dragged complainant Yashbir out of the hotel and then gave danda blows, which is not the version of either the complainant or Sadhu Ram. It appears that the witnesses were not present and were introduced only to lend

credence to the shaky version of the complainant.

13. Smt. Sushita (P.W.4), who allegedly witnessed the first occurrence at 4.30 PM, records presence of another person alongwith accused Suresh. She does not categorically record such other person to be one out of the accused persons. Who is this other person? Why was his identity not disclosed or action taken against him, remains un-established on record. Either some of the assailants stand shielded or accused stand falsely implicated or witnesses have been propped up only to lend credence to the version of the complainant. Why is it that the complainant did not report the matter immediately after the occurrence of the first incident remains unexplained by him.

14. Sanjeev Kumar (P.W.5) wants the Court to believe that he saw accused Suresh, Mahesh, Rakesh, Sudhir and Vijay Kumar and "2-3 other persons" armed with dandas, who gave blows to the complainant. I find that in the FIR, his name as a spot witness is not disclosed. Allegedly he was first one to have witnessed the incident. Also who were these other 2-3 persons, he does not name. None of other independent witnesses have referred to the presence of this person on the spot. Hence his presence on the spot appears to be doubtful.

15. The lower Appellate Court, in my considered view, has correctly and completely appreciated the evidence so placed on record by the prosecution. It cannot be said that judgment of lower Appellate Court is perverse, illegal, erroneous or based on incorrect and incomplete appreciation of material on record resulting into miscarriage of justice.

16. The accused persons have had the advantage of having been acquitted by the lower Appellate Court. 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., AIR 2010 SC 566 : (2010) CLT 222 : (2010) CriLJ 861 : (2009) 14 JT 6 : (2009) 13 SCALE 584 : (2010) 1 SCC 94 : (2009) 15 SCR 616 : (2009) 10 UJ 4781 , since it cannot be said that lower Appellate Court has not correctly appreciated the evidence on record or that acquittal of the accused has resulted into travesty of justice, no interference is warranted in the instant case.

For all the aforesaid reasons, present appeal, being devoid of merit, is dismissed, so also the pending application(s), if any. Bail bonds furnished by the accused are discharged. Record of the trial Court be immediately sent back.