
(2012) 04 SHI CK 0007
In the High Court Of Himachal Pradesh
Case No : Cr.A. No. 473 of 2003

State of Himachal Pradesh

APPELLANT

Vs

Ram Rattan and Dharam Pal

RESPONDENT

Date of Decision : 26-04-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 378
Penal Code, 1860 (IPC) — Section 307

Citation : (2012) 04 SHI CK 0007

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Advocate : Vivek Thakur, A.A.G, for the Appellant; Manoj Pathak, for the Respondent

Final Decision : Dismissed

Judgement

Justice V.K. Ahuja, J.—This is an appeal filed by State of Himachal Pradesh u/s 378 of the Cr.P.C. against the judgment, dated 4.7.2003, passed by learned Sessions Judge, Solan, H.P., vide which the respondents were acquitted of the charge framed against them u/s 307 of the IPC. The prosecution story in brief is that on 16.8.2000, at 3.10 p.m., a statement u/s 154 Cr.P.C. was made by Nasib Kumar, Constable, before ASI, Police Station, Parwanoo. In the said statement, he alleged that today he was on duty from 2.00 p.m. to 6.00 p.m. at the Barrier. At 2.30 p.m., he alongwith other officials was checking the vehicles coming from Kalka side and he heard a noise "bacha lo mujhe mar diya". He turned back and saw that one person was standing stained in blood having injury on his head. When he enquired from the said person, he was told by him that the drivers of truck No. HP-11-1236 had given him beatings. The said person fell on the road and became unconscious. Two persons came running from Parwanoo side. One of them was having a rod of iron and the other was empty handed. They tried to run on seeing the police and he with the assistance of Hemant Kumar and Subhash Chand, Constables, apprehended them and snatched the iron rods. On his asking, they told their names as Ram Rattan and Dharam Pal, who both were

the drivers of the aforesaid truck. The injured was sent to the hospital.

2. On this report, a case was registered and after investigation, the challan was filed before the learned Additional Chief Judicial Magistrate, Kasauli at Solan, who committed the case to the learned Sessions Judge. The learned Sessions Judge tried the respondents under the aforementioned Section, leading to their acquittal.

3. We have heard Mr. Vivek Thakur, learned Additional Advocate General for the appellant and Mr. Manoj Pathak, Learned Counsel for the respondents, and have gone through the record of the case.

4. The injured Bharat Singh has been examined as PW-5 who stated that he was the driver of truck No. HP-09-1127. He was the second driver in the said truck while Ravinder Kumar was the main driver. Truck No. HP-14-3088 being driven by Raju came and he accompanied him in the said truck towards Parwanoo. He further stated that truck No. HP-11-1236 was ahead of them, which was not giving pass. There was a traffic jam near Shivalik Hotel. They stopped the vehicle and asked the driver of the truck No. HP-11-1236 as to why he was not giving the pass. He further stated that he was not knowing him but could recognize and he pointed towards accused Ram Rattan present in the Court. He stated that Ram Rattan started abusing him and when he asked the reason, the other person, (pointed towards Dharam Pal), got down, caught hold of him from his hair and both of them attacked him with iron rod tyre levers. He sustained injuries on his head and various parts of the body. He thereafter ran towards the Police Barrier, Parwanoo where a Constable met him and he informed him about the attack by the drivers. He thereafter became unconscious. He regained senses and found himself in PGI, Chandigarh. The grievance was of the injured PW-5 Bharat Singh as to why the accused was not giving pass and not of the accused persons, as per his version. It was suggested to him that he went to accused Ram Rattan and hurled filthy abuses and asked him to get down and he would teach a lesson. He denied that he was having one of the rods with him and dragged Ram Rattan and gave him blows with the said rod. He is not aware as to how many persons had gathered there. He noticed only one Constable there and his statement was recorded at PGI, Chandigarh on 17.8.2000 i.e. on the next day of the occurrence.

5. The complainant in this case Constable Nasib Kumar has been examined as PW-8, who stated that one person embraced him from back and when he turned, he saw that the person was having injury on his head which was bleeding. When he asked the reason, he was told that driver of truck No. HP-11-1236 had attacked him. Then he saw two persons running from upside down. Accused Ram Rattan was having two iron rods and another accused was not having anything. Subhash and Hemant, Constables, were with him and they overpowered the accused persons. He has never stated that the accused gave blows in his presence. He has also not stated that the injured pointed towards the accused that they were the persons who had attacked him before he became unconscious

at the spot. PW-8 Nasib Kumar has further stated that the accused was having two iron rods in his hand, while PW-5 Bharat Singh has stated that he was attacked by both the accused persons with iron rod tyre liners.

6. Constable Hemant Kumar, who also apprehended the accused at the spot, has been examined as PW-2, who stated that one person came running towards Barrier side having injuries on his person and told that drivers of truck No. HP-11-1236 had given him beatings with iron rods. He became unconscious and they saw two persons running from Parwanoo side, out of whom one was having iron rod and they were apprehended. He had neither seen the accused giving blows on the person of the injured PW-5 Bharat Singh nor Bharat Singh pointed out to him that these two accused persons were the persons who were the drivers of the said truck or had given him beatings. The other Constable Subhash Chand, who was present with these Constables, was given up as unnecessary.

7. PW-1 Dr. Brind Kapil had examined the injured Bharat Singh and observed as under:

Patient was not responding to oral commands/painful stimuli, unconscious, B.P. was 120/80 pulse 80p/minute, Breath was smell of alcohol. Lacerated wound with rigid margin, bleeding present on the frontal area, contusion reddish colour on the left shoulder joint, contusion reddish colour on the right thigh, irregular laterally placed no other external injury was seen. Patient was referred to PGI Chandigarh immediately.

As per report from PGI Chandigarh CR.No. 234992, the diagnosis head injury. Mode of injury was physical assault and NCCT was not done as attendant refused. Nature of injury was simple, as no investigation could be done as patient absconded. MLC Ext.PW-1/A is in my hand and bears my signatures.

8. PW-1 Dr. Brind Kapil admitted that injuries could be caused by rods Ext.P-1 and Ext.P-2. Injury No. 1 could be dangerous to life. He further stated that on the same day, he examined Ram Rattan accused, identified him from the mark of identification and injuries mentioned in Ext.PW-1/B were simple in nature, which had to be reproduced in his statement, which was necessary and cannot be just proved as has been done in this case, which procedure can be followed in motor accident claim cases. He stated that clinically there was no fracture in injury No. 1.

9. The accused were not previously known to the injured since they had allegedly attacked him near the Barrier. The injured had not pointed towards the accused persons that these were the persons who had attacked him, when he went to the Constables. The identity of the accused persons was not known to the injured, who had seen him only on that day and thereafter in Court. It was necessary to prove their identification and identification parade should have been got conducted which was not done. The statement of the Constable who apprehended the accused persons does not prove that he had seen the accused persons inflicting blows on the person of the injured or the injured pointed out

towards them at any time and simply they observed that since the accused persons were running with rods also, they were suspected of having given blows at that time. The injuries on the person of accused Ram Rattan, which were also caused on the same day and were simple in nature, were not explained by the prosecution and therefore, the origin of the fight is not known. The possibility that it was a free fight in which both the parties suffered injuries also cannot be ruled out. The solitary statement of the complainant himself in these circumstances cannot be relied upon when the identity of the accused was not established beyond any reasonable doubt.

10. The accused has also examined DW-1 Hari Ram to prove that the complainant quarreled with the accused, was drunk and attacked the accused with an iron rod and they tried to intervene. He stated that the injured was drunk and got a push and fell down in a nali and sustained injuries. The possibility that the injured may have sustained injuries in this manner cannot be ruled out. It follows from the above discussion that the view taken by the learned trial Court holding that the prosecution has failed to prove their case cannot be termed as perverse calling for an interference by this Court. We accordingly hold that there is no merit in the appeal filed by the appellant, which stands dismissed. Bail bonds furnished by the respondents shall stand discharged.