

(1996) 09 SHI CK 0004

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 364 of 1990

State of Himachal Pradesh

APPELLANT

Vs

Ram Sarup and Others

RESPONDENT

Date of Decision : 20-09-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 324, 325, 34, 506

Citation : (1997) CriLJ 588

Hon'ble Judges : Arun Kumar Goel, J

Bench : Single Bench

Advocate : M.L. Chauhan, Assistant Advocate General, for the Appellant; Chirag Bhanu Singh, Vice Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Arun Kumar Goel, J.—This appeal has been filed at the instance of the State against the judgment dated 24-3-1990 passed by Shri J. L. Gupta, Chief Judicial Magistrate, Nahan, District Sirmour in Criminal Case No. 33/2. of 1988/New No. 36/2 of 1988. By this judgment, the respondents have been acquitted of the charges under Sections 325/324/506 read with Section 34 of the Indian Penal Code.

2. Respondents were challaned for commission of the aforesaid offences on the allegations that on 18-5-1988 at about 10.00 P.M. Bishan Dutt (PW 1) and Prem Dutt (PW-3) were on their way to their houses in village Charech and when they reached near their houses, the respondents are stated to have attacked them. At such point of time, the respondents were concealing themselves behind the bushes. According to the prosecution before the attack could be made, Prem Dutt had separated from Bishan Dutt but when the respondents gave beatings to Bishan Dutt with sickle and Darat he raised alarm and then Prem Dutt rescued Bishan Dutt from the clutches of the respondents. According to the prosecution, one Roop Ram had reached the spot of occurrence and helped in taking the

injured Bishan Dutt to his house. On the next-day of occurrence, the matter was reported to the police who got Bishan Dutt medically examined and after completion of the investigation, challan was put in Court for prosecution of the respondents. The respondents were charged for having committed the offences under the aforesaid sections of the Indian Penal Code. After conclusion of the prosecution evidence and after recording the statements of respondents u/s 313 Cr.P.C. they have been acquitted. It is this acquittal of the respondents which is impugned in the present appeal by the State.

3. Shri Chauhan, learned Assistant Advocate General, pointed out that in the instant case beating of Bishan Dutt (PW-1) stands proved at the hands of the respondents with sickle and Darat and in respect of his this submission, he has referred to the statements of PW-1 Bishan Dutt, PW-3 Prem Dutt, PW-4 Roop Ram, PW-6 Dr. S.L. Kaushik, Medical Officer, Bagthan and has thus prayed for reversal of the judgment in question. On the other hand Shri Singh, learned counsel for the respondents while controverting the submissions of the learned counsel for the appellant, has pointed out that the respondents are not at all connected in any manner with the commission of the offence. He has further pointed out that the prosecution has miserably failed to identify the respondents in the facts and circumstances of the case. Besides this, he has also referred to the statements of PWs 1,3 and 4 and has pointed out that the statements of these witnesses are at variances in material particulars, particularly after the incident in question.

4. Certain facts need to be noticed which have come on record in the evidence of the prosecution. It is there in the statement of PW-3 Prem Dutt that due to darkness, he could not identify the directions i.e. upward or downward wherein the respondents went. He has also admitted that the night of occurrence was not moon-lit but was a dark. Further when the injured PW-1 Bishan Dutt was sent for medical examination on written application to the Medical Officer, P.H.C. Sarahan, it was stated therein that he has been given beatings by slicks. This was done on the basis of the information provided in F.I.R. Ex. PW-7/A by Bishan Dutt on the next day of occurrence. On the other hand in the medical certificate issued by PW-6 Dr. S. L. Kaushik, it was opined that injury No. 1 on the person of Bishan Dutt could be caused only by a sharp edged weapon.

5. When the submissions of the learned counsel for the parties are appreciated in the face of above facts, it is clear that the acquittal of the respondents does not call for any interference in the present appeal. It appears that when the F.I.R. was lodged, the complainant had informed the police vide F.I.R. Ex. PW-7/A that he was given beatings with sticks. However, when injury No. 1 was opined to be the result of its being inflicted by a sharp edged weapon, both PW-1 and PW-3 appears to have introduced the story of his having been beaten up with sickle and drat which are further stated to have been recovered by PW-Ranjit Singh. This appears to be purely an afterthought on the part of the complainant when Medico Legal Certificate was given by PW-16 after the examination of Bishan

Dutt injured. In this view of the matter, it is clear that this is an improvement made by the complainant after issuance of Medico-Legal Certificate.

6. PW Bishan Dutt has stated in his statement that he was taken to the house of Roop Ram where he remained for the night and from there he proceeded to the Police Station on the morning of next day. However, on this material particular fact, PW-4 Roop Ram has stated that Bishan Dutt was taken to his own house and while going to his house since he was falling as such the injured was helped by the witness and Prem Dutt. On the other hand, Prem Dutt-PW 3 gives the another version as to the removal of Bishan Dutt after the occurrence in question. He has stated that the injured was lifted by him as well as by Roop Ram. According to this witness he lifted Bishan Dutt from his legs whereas Roop Ram lifted him from his head side and then both of them took him to Bishan Dutt's house. In case these two witnesses were present at the place of occurrence and had been instrumental in taking the injured to his own house or to the house of Roop Ram, there would not have been three versions as narrated here-in-above. This makes the prosecution case highly improbable and also the prosecution story highly doubtful. Another circumstance whereby identity of the respondents does not stand beyond any shadow of doubt, is that it has come on record in prosecution evidence that the night of occurrence was a dark night, how the identity of the respondents was established is not spelt out either by PW-1 Bishan Dutt injured or by PW-3 Prem Dutt. It is not the case of the prosecution that though the night was dark but the respondents were identified either by their voice or otherwise. It remains an unexplained fact that and the prosecution has miserably failed to connect the respondents with the commission of the alleged offence as their identity has not at all been established showing that they are the persons who have committed the offence in question against the person of PW-1 Bishan Dutt. Further there is nothing stated by PWs 1 & 3 to show as to how they identified the respondents or whether they were in a position to identify those in the darkness of night.

7. PW-4 Roop Ram does not appear to be impartial witness vis-a-vis the respondents because it has come in evidence that due to his enmity with the respondents he has no social dealing with them. Similarly, Prem Dutt PW3 is the real uncle of the wife of Bishan Dutt PW-1 injured. In these circumstances both these witnesses also cannot be said to be an independent witness and for this reason it would not be safe to accept the submissions made on behalf of the appellant.

8. Besides this, the view taken by the trial Court is legitimately possible on the evidence produced by the parties on record and the prosecution evidence is also not of such a nature which may point out to only one and irresistible conclusion leading towards the guilt of the respondents. Further unless the findings are demonstrated to be perverse on reading of the prosecution evidence, this Court would not ordinarily interfere in an appeal against acquittal, as in the present case. In this context it may be appropriate to point out that the learned Assistant

Advocate General was not in a position to show anything wrong much less findings being perverse as recorded in the impugned judgment by the trial Court.

9. In taking this view, reference may be made to the judgment of the Apex Court reported in Ramesh Babulal Doshi Vs. State of Gujarat, and relevant extract from the said judgment is (Para 7) :-

...This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate Court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate Court holds for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then and then only reappraise the evidence to arrive at its own conclusions. In keeping with the above principles we have, therefore, to first ascertain whether the findings of the trial Court are sustainable or not.

10. By now it is well settled that when two views on appreciation of evidence are possible, one favourable to the defence needs to be followed. Applying the aforesaid tests to the judgment recorded by the trial Court as well as after considering the evidence on record, it can safely be held that the view taken by the trial Court is balanced, based on proper appreciation of evidence as well as correct application of law, which calls for no interference in the present appeal.

11. As a result of the aforesaid discussion, the present appeal has no merit and the same is dismissed accordingly.