

(2011) 12 SHI CK 0247
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 189 of 2005

State of Himachal Pradesh

APPELLANT

Vs

Ram Swaroop Chauhan and Sh. Sunil Kumar Chauhan

RESPONDENT

Date of Decision : 22-12-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378(3)
Penal Code, 1860 (IPC) — Section 323, 325, 326, 34, 341

Citation : (2011) 12 SHI CK 0247

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.B Misra, J.—The present criminal appeal has come up for consideration after leave to appeal u/s 378(3) of the Code of Criminal Procedure has been granted in reference to the impugned judgment dated 17.1.2005, passed by the learned Judicial Magistrate, Ist Class, Court No. (V), Shimla, acquitting the respondents/accused for the offence under Sections 341, 342, 323, 326, 325 read with Section 34 of Indian Penal Code.

2. The Prosecution case, in brief, is that on 21.9.2001 Narain Singh made a complaint that he was retired from Army, and on 21.9.2001 at about 7.00 p.m. when he reached to his fields from his house, accused persons restrained him on the way stating that he takes much interest in construction of temples and claims to be brave person of Kargil war. The complainant was teased without any reason and was dragged inside the room and was locked and beaten up with legs blows and dandas. Accused Sunil and Ram Swaroop hit him with stone on his head. Victim was rescued by Satish Kumar and Rajiv Kumar and had sustained injuries on his both arms, head and hands. After investigation, accused were charged for the aforesaid offences.

3. In order to prove its case, prosecution examined as many as twelve witnesses, whereas, accused-respondents, through their statements u/s 313 Cr.P.C. denied

the prosecution case.

4. PW-1 Narain Singh who is the victim, has stated that on 21.9.2001 at about 7.00 p.m. when he was going to his fields, Sunil Kumar and Ram Swaroop caught hold of him by his arms and dragged him towards their courtyard and locked him inside the kitchen of their house. They started beating him with danda, however, he does not know much because he had gone under an operation and is hard of hearing. In cross-examination he stated that he was made to understand about the complaint by police after narrating about the incident to him. He has denied any litigation between the accused persons. He also admitted that there is a ten feet high wall around the house of the accused persons. As revealed from the testimony of victim/injured/Narain Singh/PW-1 that whether both Sunil Kumar and Ram Swaroop were carrying dandas with them and how many blows were given and where the quarrel took place, he does not know much because of his having undergone an operation and as he was hard of hearing and he also does not know about the conversation made by accused persons with him. In his cross-examination, he stated that the whole narration was read and made to understand, is contrary to the fact that, he was heard of hearing.

5. PW-2 Satish Kumar stated to be a spot witness, has stated that on 21.1.2009 at about 8.00 p.m. (i.e a cutting and intercalation of timings) while he was going to his fields Ram Swaroop and victim were discussing, sunil was besides them. He stated that the accused persons were telling the victim that he was supposed to have much money and has returned as a brave person from Kargil war. Both of the accused persons dragged the victim inside their kitchen and started beating him with danda. At that time, Rajiv was also besides Satish Kumar on the spot. He and Rajiv Kumar got the victim freed from the clutches of accused persons and noticed that blood was oozing out from head, hands of the victim and his clothes were sustained with blood.

6. In his cross-examination, he stated that they are not in good terms with the accused persons for the last three years as they are in litigation. He has further admitted in his cross-examination that a court case has been registered against him before SDM, Shimla at the instance of accused persons. He further stated that ten feet concrete wall is around the house of the accused and there is one gate to come inside. As stated by Satish Kumar, he has observed from path that accused persons were quarrelling with victim and at that time accused and victim were inside the room and door of the room was closed. This is contrary the testimony of PW-1 that he was dragged inside the kitchen and was locked inside.

7. As per the testimony of Satish Kumar(PW-2) made in cross-examination, that the gate of the house of the accused was open and Rajiv Kumar had already come inside the gate and at that time accused persons were giving beatings to victim and both of accused persons were having dandas with which they were beating the victim. PW-2 Satish Kumar, categorically stated that when he reached on the spot the quarrel was already going on and thereafter, both the accused persons dragged the victim inside their house and PW-2 has also

accepted that when quarrel was taking place Rajiv Kumar was also present on the spot. After making some improvements, PW-2 has stated in his cross-examination that both the accused persons were quarrelling with the victim and he tried to intervene and save the victim from the clutches of the accused persons. Thereafter, accused persons dragged the victim inside the house and PW-2 also accompanying the victim while he was being taken inside the house. He also stated that he went inside the house when victim was being beaten up by the accused persons there. As per the statement of PW-2 made in cross-examination, the quarrel took place for 10 minutes and at that time there was dark outside.

8. On the analysis of testimony of PW-2, it appears that either he was not present on the spot or he had not seen the occurrence as he has given a different version of the instance. Somewhere he has stated that he had observed from the path that the victim was being beaten and he has also accepted that there is 10 feet high wall around the house of accused persons, then how he could have observed from outside only by saying that the door was open which is contrary to the statement of victim (PW-1) that he was locked inside the kitchen. PW-2 has given a different version that he also came inside the house of the accused persons along with victim and on the other hand he has also stated that he observed from the path that the victim was being beaten up in the house of the accused persons. PW-1, however, has not stated that at the time of incident, Satish Kumar and Rajiv were present on the spot.

9. On the analysis of testimony of PW-5 Rajiv Chauhan, stated that at about 7.15 p.m. when he came from cow-shed the victim was passing through the road and accused persons made comments that he claims to be a constructor of temple and they will teach the victim a lesson and both the accused persons dragged the victim inside the room and had beaten the victim with hands, legs and dandas. Accused Sunil was carrying danda and thereafter he, PW-5, PW-2 got the victim released from the clutches of the accused. PW-5 has also admitted in cross-examination that he is one of the accused in a case in which accused persons are plaintiffs.

10. Analysis of testimony of PW-5 also does not reveal the true picture, whether he was present on the spot and has given a true narration of incident, whereas, contrary to the statement of PW-1/victim, he also claims to be present on the spot along with PW-2 Satish Kumar. As per the testimony of PW-5, only accused Sunil was carrying danda, whereas, in view of testimony of PW-2/Satish, both were carrying dandas.

11. PW-3 Lekh Raj has stated that complainant was beaten up by legs and fist blows. In cross-examination, he claims to be the relative of victim. PW-4 has however turned hostile. PW-6 the Investigating Officer, has supported the prosecution case along with PW-7 but could not bring home the guilt to the accused persons.

12. PW-8 Dr. Ashwani Tomar has opined that fracture could be caused by way of fall on hard surface. PW-9 in his cross-examination stated that he has not examined the accused with regard to consuming of alcohol. PW-2 and PW-5 appears to be the inimical witnesses and we have noticed contradictions and inconsistencies in the testimony(s) of PW-2 and PW-5.

13. PW-1 has given a different version of the incident and has not at all indicated that he was beaten up by legs and hands and has also not deposed as to whether both the accused persons were carrying dandas contrary to the alleged spot

14. On analysis of prosecution witnesses, we find that the prosecution has failed to bring home the guilt against the accused/respondent. In these circumstances, criminal appeal being devoid of merit is dismissed. Bail bonds, if any, furnished by the accused are discharged.