

(2017) 03 SHI CK 0078
In the High Court Of Himachal Pradesh
Case No : 470 of 2007

State of Himachal Pradesh

APPELLANT

Vs

Ranjeet Singh & Others

RESPONDENT

Date of Decision : 18-03-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#) - Power to examine the accused
[Indian Penal Code, 1860](#), [Section 324](#),
[Section 323](#), [Section 148](#), [Section 149](#), [Section 341](#) - Voluntarily causing hurt by dangerous weapons or means - Punishment for voluntarily causing hurt - Rioting, armed with deadly weapon - Every member of unlawful assembly guilty of offence committed in prosecution of common object - Punishment for wrongful restraint
[Evidence Act, 1872](#), [Section 27](#) - How much of information received from accused may be proved

Citation : (2017) 03 SHI CK 0078

Hon'ble Judges : Sureshwar Thakur

Bench : Single Bench

Advocate : R.S Thakur, N.K Thakur, Divay Raj Thakur

Judgement

1. The instant appeal stands directed against the impugned judgment of 31.5.2007 rendered by the learned Judicial Magistrate, 1st Class, Jogindernagar, District Mandi, H.P., in police challan No. 2- II/2004, whereby the learned trial Court acquitted the respondents (for short "accused") for the offences charged.

2. Brief facts of the case are that on dated 24.2.2003 at about 11.00 P.M. complainant Shri Ravinder Singh was going to drop his driver at place Chapru of Tehsil Jogindernagar. Driver Rabel Singh and Ram Dhan were also sitting in this car No.HP-29-0722. When the car reached near Magru Nalla, driver Rabel Singh said that since it was pitch dark, he could not undertake the journey on foot to his house. Owing to this reason , Rabel Singh changed his mind and advised that all of them to return back. While they were returning, a tractor was found

stationed in the middle of the road in such a manner so as to cause obstruction to the vehicular traffic. The complainant got down from the car and requested all of the persons who were standing near the tractor to give him the way, but accused Ramesh and Rakesh who were holding Khukris started assaulting him with Khukris. The complainant received injuries in the assault aforesaid. The remaining accused were also armed with sticks and they also assaulted the complainant by stick blows. Accused persons, thereafter snatched the key of the complainant's car. Driver Rabel Singh and Ram Dhan cried for help and the accused persons fled away. The complainant approached Police Station during the night and reported the matter at about 1.30 A.M. upon which formal FIR against the accused persons came to be lodged. After completing all codal formalities and on conclusion of the investigation into the offence, allegedly committed by the accused challan was prepared and filed in the Court.

3. The accused stood charged by the learned trial Court for theirs committing offences punishable under Sections 148, 341, 323, 324 readwith Section 149 of Indian Penal Code, to which they pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined 6 witnesses. On closure of prosecution evidence, the statements of the accused under Section 313 of the Code of Criminal Procedure were recorded in which they pleaded innocence besides claimed false implication. However, they did not choose to lead any evidence in defence.

5. On an appraisal of evidence on record, the learned trial Court returned findings of acquittal qua the accused.

6. The learned Additional Advocate General has concertedly and vigorously contended qua the findings of acquittal recorded by the learned trial Court standing not based on a proper appreciation of evidence on record, rather, theirs standing sequelled by gross mis-appreciation of material on record. Hence, he contends qua the findings of acquittal warranted reversal by this Court in the exercise of its appellate jurisdiction and theirs standing replaced by findings of conviction.

7. The learned Sr. counsel appearing for the respondents/accused has with considerable force and vigor contended qua the findings of acquittal recorded by the Court below standing based on a mature and balanced appreciation of evidence on record and theirs not necessitating interference, rather theirs meriting vindication.

8. This Court with the able assistance of the learned counsel on either side has with studied care and incision, evaluated the entire evidence on record.

9. In sequel to victim/complainant Ravinder Pal standing assaulted by co accused Ramesh Chand and Rakesh Chand, by both respectively purportedly wielding "Khukhris? also by co-accused Ranjit Singh by the latter purportedly wielding "sticks?, he sustained injuries on his person, injuries whereof stand reflected in

Ex.PW5/A.

10. With PW-5 Dr. Susheel Chander in his testification occurring in his examination-in-chief deposing qua the injuries noticed by him to be occurring on the person of the victim, injuries whereof stand embodied in Ex.PW5/A, being causable thereon by user of Khukhri (Ex.P-1) which stood shown to him in Court besides with the purported ocular witnesses to the occurrence PW-1 (Ravinder) and PW-2 (Ram Dhan) also deposing with utmost intra se harmony therewith, constrains the learned Additional Advocate General to espouse qua the learned trial Court while returning findings of acquittal qua the accused, its going astray from the evident fact marked by the aforesaid evidence on record.

11. The genesis of the prosecution case embodied in the FIR held in Ex.PW6/B stood enjoined to be lent succor by convincing evidence, bereft of any discrepancies improvements besides embellishments vis?- vis the version(s) held in Ex. PW-6/B, making upsurgings in the testimonies of the ocular witnesses thereto comprised in theirs with intra-se harmony testifying not only with respect to the wielding of "Khukhris? respectively by co-accused Ramesh and by Rakesh but also qua the factum pronounced in the FIR aforesaid qua other coaccused standing armed with "sticks?. In case the version embodied qua the occurrence in the apposite FIR qua accused Ramesh and Rakesh each respectively wielding "Khukhri" with user whereof they inflicted injuries on the person of the victim, remain untestified by the purported ocular witnesses to the occurrence also if the ocular witnesses to the occurrence do not with utmost intra se harmony depose qua other co-accused delivering blows on the person of victim with user of "Sticks", thereupon the veracity of the version qua the occurrence encapsulated in the FIR would stand rendered enfeebled.

12. On traversing through the deposition of Ram Dhan, a purported ocular witness to the occurrence, it stands unveiled qua his deposing qua co-accused Ramesh and Rakesh inflicting blows of "Khukhri" upon the person of the complainant whereupon he succors the version qua the aforesaid factum pronounced in the FIR yet when in the later part of his examination-in-chief he was shown Ex.P-1 recovered under memo Ex.PW1/A whereat though he identified it to be same which stood used by the accused aforesaid for inflicting injuries on the person of the victim nonetheless thereat both the learned Public Prosecutor also this witness maintained reticence qua user thereof by either accused Ramesh or by accused Rakesh. Also both the learned APP concerned and this witness maintained reticence nor obviously made any narration in consonance with the recitals recorded in the FIR qua both accused Ramesh and Rakesh wielding "Khukhris", non-emanation whereof from PW Ram Dhan renders it befitting to conclude qua the deposition of PW-2 Ram Dhan, a purported ocular witness to the occurrence wandering astray besides not pin pointedly as disclosed in the apposite FIR, making unveilings qua both accused Ramesh and Rakesh wielding "Khukhris" also his hence not corroborating the factum held in the apposite FIR qua both aforesaid accused at the relevant time of occurrence

theirs respectively wielding "Khukhris" whereupon the factum aforesaid enunciated in the FIR loses its tenacity whereupon the prosecution case staggers.

13. Also, PW-3 (Rabel Singh), the other purported eye witness to the occurrence in departure to the factum pronounced in the FIR qua each accused Ramesh and Rakesh wielding "Khukhri? at the site of the occurrence, discloses in his testification only qua Ramesh wielding "Khukri? with user whereof he inflicted injuries on the person of the complainant. Also he deposes qua other accused by user of "sticks? hence inflicting injuries on the person of the complainant. The deposition of PW-3 Rabel Singh contradicts the version recorded by PW-2 Ram Dhan with respect to :- (a) user by both co-accused Ramesh and Rakesh of "Khukhri?;

(b) also with respect to the ascription by PW-3 of an inculpatory role qua other co-accused comprised in their delivering injuries on the person of the complainant with user thereon of "Sticks?, factum whereof remains un-testified by PW-2.

14. The aforesaid contradictions inter-se the testifications of PW- 2 and PW-3 both purported eye witnesses to the occurrence, contradictions whereof arise from theirs not hence deposing in conformity with the crucial factum embodied in the apposite FIR qua user of weapon of offence respectively by the accused also theirs hence deposing with an inherent intra-se contradiction qua the user of weapon(s) of offence respectively by co-accused Ramesh and Rakesh, gives impetus to an inference qua their testimonies not holding any creditworthiness, for thereupon this Court holding with aplomb qua the entire genesis of the prosecution version embodied in the apposite FIR standing clinchingly proven.

15. Moreover, the Investigating Officer concerned stood enjoined with a dire legal necessity, to prior to effectuate recovery of weapon of offence, his during the course of holding the accused to custodial interrogation, his recording the disclosure statement of the accused, holding unfoldments therein qua the place of its concealment or hiding by him, necessity whereof stands cornered within the domain of Section 27 of the Indian Evidence Act, 1872, provisions whereof stand extracted hereinafter also therein it stands propounded qua thereupon an admissible besides a relevant custodial confessional statement of accused assuredly making its emergence, in sequel whereto, the subsequent recovery of the weapon of offence, at the instance of the accused would hold immense evidentiary clout, contrarily when without preceding thereto, the apposite statutorily warranted custodial confessional disclosure statement of the accused remained unrecorded, thereupon any bald recovery of any weapon of offence by the investigating Officer at the instance of the accused would be hence wholly naked nor would it be construable to be an admissible besides a relevant piece of incriminatory evidence vis-?-vis the accused, significantly when the mandate of law warrants effectuation of the relevant recovery at the instance of the accused not under an apposite recovery memo rather warrants recording prior thereto an

admissible custodial disclosure statement of the accused. In other words, the recording of a disclosure statement of the accused by the Investigating officer prior to his effectuating any recovery at the instance of the accused, is preemptory, its embodying the custodial confessional statement of the accused, omission to record whereof renders inconsequential besides inadmissible any recovery under a naked bald recovery memo. "27. How much of information received from accused may be proved- provided that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proven."

16. Hereat, tritely with the Investigating Officer concerned prior to his effectuating recovery of weapon of offence not recording an apt custodial admissible disclosure statement of the accused renders the indispensable canon held within the domain of Section 27 of the Indian Evidence Act qua the accused prior to his facilitating, the Investigating Officer to effectuate recovery of the purported weapon of offence, his making an admissible relevant custodial confessional statement, remains wholly un-satiated hence rendering recovery, if any, at the instance of the accused, of the purported weapon of offence to hold no probative vigor nor also it can be concluded qua the prosecution thereupon proving qua "Khukhri? with purported user whereof injuries stood sustained by the victim standing used thereon by the accused.

17. A wholesome analysis of evidence on record portrays qua the appreciation of evidence as done by the learned trial Court does not suffer from any perversity and absurdity nor it can be said qua the learned trial Court in recording findings of acquittal hence committing any legal misdemeanor, in as much, as, its mis-appreciating the evidence on record or its omitting to appreciate relevant and admissible evidence. In aftermath this Court does not deem it fit and appropriate qua the findings of acquittal recorded by the learned trial Court meriting any interference.

18. In view of the above discussion, I find no merit in this appeal, which is accordingly dismissed and the judgment of the learned trial Court is maintained and affirmed. Record of the learned trial Court be sent back forthwith.