

(2012) 01 SHI CK 0043
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 340 of 2005

State of Himachal Pradesh

APPELLANT

Vs

Ranjeet Singh, Raj Kumar, Rajesh Kumar Sharma and Suresh Kumar

RESPONDENT

Date of Decision : 10-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 201, 332, 333, 34, 341

Citation : (2012) 01 SHI CK 0043

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

Justice Sanjay Karol, J.—For an offence, which is alleged to have been committed on 30.9.2002, accused were put to trial. In terms of judgment dated, 31.3.2005, passed by the Ld. Addl. Sessions Judge, Fast Track Court, Shimla, H.P. in S. Trial No. 3-S/7 of 2004/03, titled as State of H.P. versus Ranjeet Singh and others, all the accused persons stand acquitted of the charged offences.

2. It is the case of prosecution that complainant Sh. Milap chand (PW-2) was deputed as a driver on the bus owned by Himachal Pradesh Road Transport Corporation, Rohru Region. On 30.9.2002 he was asked to take the vehicle i.e. bus No. HP 10-0374 from Chajpur to Chandigarh. Sh. Rajesh Kumar (PW-5) was posted as conductor of the bus. When the bus reached near Gajehari, vehicle (canter) No. HP 15-3468 came from Theog side. There was not sufficient place for the bus to cross which resulted into heated arguments between the drivers of both the vehicles. Accused namely Ranjeet Singh, Raj Kumar, Rajesh Kumar and Suresh Kumar alighted from the canter, came to the door of the bus and started pulling down the complainant from the bus. However, with the intervention of passengers matter was resolved. Canter was reversed and bus was allowed to pass by. After the complainant had covered distance of two kilometers he saw

the canter from which accused waved a danda in an intimidating manner. As such he lodged a report with the police at Police Station Theog. Wireless message was also flashed to the police at Police Post Fagu. At about 11.15 a.m. when the complainant reached near Nangal Devi he noticed that accused had parked the canter in the middle of the road. As such bus had to be stopped. Accused Raj Kumar came with a danda and broke the window pane and then hit the complainant on his right arm. Thereafter all the accused persons entered the bus and started hitting him with dandas and also gave blows with fist and kicks. With the intervention of passengers complainant was rescued. He then went to Police Station Theog and lodged F.I.R. No. 130/2002 (Ext. PW 2/A), dated 30.9.2002 under Sections 341, 353, 332, 201/34 IPC. ASI Bali Badhar (PW-11) commenced investigation. Complainant was got medically examined from Dr. Kuldeep Kanwar, (PW-1) who issued M.L.C. (Ext. PW 1/A). Statements of witnesses were recorded. Photographs of the spot were taken. Accused Raj Kumar produced danda (Ext. P1), to the police which was taken into possession vide memo (Ext. PW 2/B). On 10.10.2002, complainant identified the accused at Police Station Theog. With the completion of investigation challan was presented in the Court for trial.

3. Accused were charged for having committed offences punishable under Sections 341, 332, 333 all read with Section 34 IPC to which they did not plead guilty and claimed trial.

4. In order to prove its case, in all prosecution examined fourteen witnesses and statements of the accused u/s 313 Cr. P.C. were also recorded.

5. Court below acquitted the accused of the charged offences, hence the present appeal.

6. In order to establish its case prosecution has to prove, beyond reasonable doubt, by leading clear, cogent, convincing evidence that the accused conspired with each other to wrongfully restrain the complainant and also voluntarily caused hurt/grievous hurt and desisted him from discharging his public duties.

7. From the testimony of Dr. Kuldeep Kanwar (PW-1) and medical record produced it is quite evident that complainant received simple as well as grievous injuries.

8. We find that independent witnesses namely Sh. Deep Ram (PW-3), Sh. Kashmir Singh (PW-4), Sh. Gurnam Singh (PW-12), Sh. Roshan Lal (PW-13) and Sh. Budh Ram (PW-14) have not supported the prosecution case at all. These witnesses were cross examined by the learned Public Prosecutor after being declared hostile. They had no interest in deposing in favour of the accused. Nothing fruitful could come out in their testimonies in support of the prosecution.

9. We find that investigation of the case is seriously flawed. However then this by itself cannot be a ground to acquit the accused.

10. But we find that testimony of the complainant (PW-2) and also the conductor

(PW-5) does not to inspire confidence. There are serious contradictions, improvements and embellishments in their versions.

11. Version of PW-2 that he reported the matter to the police, in relation to the first incident stands materially contradicted by the Investigating Officer (PW-11) who states that no complaint was lodged with the police prior to recording of F.I.R. (Ext. PW 2/A).

12. Danda (Ext. P1) is stated to have been seized by the police in the presence of Sh. Deep Ram (PW-3) who also does not support the prosecution. He does not know who handed over danda to the police.

13. According to the complainant, accused Raj Kumar gave blow with a danda on his head and arm which resulted into fracture of his bone. Now the Investigating Officer (PW-11) admits that this version during investigation was found to be incorrect. Also witness Sh. Dharam Pal (PW-10) has placed on record log-book (Ext. PW 10/A) which shows that the complainant had in fact driven the bus for a distance of 190 kilometers following the day of incident. Now this totally shatters the prosecution case and renders the material placed on record by the prosecution to be doubtful.

14. Most importantly complainant (PW-2) admits that he was not aware of the names of the accused persons. He also does not mention their names in the F.I.R. According to PW-11, on 10.10.2002 accused themselves came to the police station where complainant identified them. At that time eight persons present. Now why would the accused visit the police station on that date? This fact has not been explained. Also Investigating Officer admits that no test identification parade was got carried out. Also there were no independent witnesses present in the police station at the time when complainant identified the accused. Now if identity of the accused was not known to the police or complainant was not knowing them from before then how is that test identification parade was carried out. Complainant does not describe them in the complaint.

15. We find that there is contradiction in the statement of the conductor (PW-5) and the driver (PW-2) of the bus with regard to the person who was driving the canter. According to the complainant (PW-2) it was accused No. 1 who was driving the vehicle at the relevant time. Whereas, according to the conductor (PW-5) it was accused No. 2 who was driving the same. Thus identity of the person who allegedly gave the blow itself is in doubt.

16. Even with regard to seizure of danda (Ext. P1), prosecution case appears to be doubtful. According to independent witness danda was not sealed but when produced in Court it was found the other way.

17. Significantly in F.I.R. (Ext. PW 2/A) there is no reference that accused had tried to drag the complainant out of the bus.

18. When viewed in totality, contradiction, which though appears to be minor stands magnified rendering the testimonies of the prosecution witnesses to be

doubtful and unworthy of credence.

19. The accused have had the advantage of having been acquitted by the Court below. Keeping in view the ratio of law laid down in *Md. Ankoos and Others Vs. The Public Prosecutor, High Court of A.P.*, it cannot be said that the Court below has incorrectly appreciated the evidence on record or that acquittal of the accused has resulted into travesty of justice. No ground for interference is called for. Present appeal is thus dismissed. Bail bonds, if any, furnished by the accused are discharged.