

(1990) 06 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 26 of 1981

State of Himachal Pradesh

APPELLANT

Vs

Rattan Chand and Others

RESPONDENT

Date of Decision : 01-06-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 224, 302, 304, 323, 34

Citation : (1990) 1 ILR HP 157

Hon'ble Judges : V.P. Bhatnagar, J; Bhawani Singh, J

Bench : Division Bench

Advocate : M.S. Guleria, Assistant Advocate General, for the Appellant; K.C. Rana, for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, J.—The State of Himachal Pradesh feels aggrieved by the acquittal of accused, who are Police personnel, by the Sessions Judge, Kangra in Sessions Trial No. 29 of 1979, Sessions Case No. 24 of 1978, registered through First Information Report No. 132 of 1978 of Police Station, Palampur. Accused Rattan Chand, Madho Ram and Uttam Chand were proceeded against for offences Under Sections 302/34 and 323/34 of the Indian Penal Code whereas against accused Babu Ram, the charge was u/s 342 of the same code.

2. The incident took place on 28-5-1978 when Manjri Ram (deceased) and Pahdi Ram (P. W.6) were brought to the Police station by Rattan Chand from Maranda where they were found drinking on the road side. They were sent to the Civil Hospital for Medical examination and the report was that they had taken alcohol.

3. During the night, a bottle of liquor, at their expense, was brought. It was consumed by Madho Ram, Rattan Chand and the two Gaddis (shepherds) Manjri Ram and Pahdi Ram. Soon after the meals, Manjri Ram and Pahdi Ram were given beatings as a result of which Manjri Ram sustained larger number of injuries as compared to Pahdi Ram. They were taken out of the Police Station

during the night time and were located next day by their relations including Badri Singh (P.W. 2), brothers-in-law of the deceased and brother of Pahdi Ram, somewhere near the Cinema Hall of Palampur town. The deceased who was found in a bad condition was taken to the residence of the Sub-Judge-cum-Judicial Magistrate, Palampur, who after listening to Badri Singh advised him to take the deceased to the Civil Hospital, Palampur, for treatment. Accordingly, the deceased was taken to the Civil Hospital, Dharamshala where Dr. L.B. Purohit, Medical Officer (P.W. 10), examined him at 11.30 a. m. This examination revealed the following injuries:

1. Lacerated wound 1/4" X 1/4 "on medial malleolus Right ankle joint. Fresh bleeding present Clotted blood also present.
 2. A contusion red brown in colour on skin of right tibia 2" below the knee joint.
 3. Multiple contusions red brown in colour on left knee joint.
 4. A contusion of blue red in colour 4" x 1" oblique from left anterior superior iliac spine towards back.
 5. Abrasions of 3" x 1/2" red in colour, right side of the chest from last rib towards the nipple.
 6. Lacerated wound of U-shaped 2" on right ring finger nail was separating. Clotted blood was present.
 7. Contusion of 1/2" x 1/2" red brown in colour on the right thumb.
 8. Lacerated wound of 1/4" at the base of nail of right finger. Clotted blood was present.
 9. Contusion of 1/4" x 1/4" red brown in colour on dorsum of the right elbow joint.
 10. Contusions of red brown in colour on front of the left elbow joint 1/2" x 1/4".
 11. Lacerated wound of 1/4"x 1/4" on the right side of the chin. Clotted blood was present.
 12. Contusions all over upper eye lid of left eye blue red in Colour.
 13. Patient semiconscious. A smell of alcohol was coming out of mouth. Patient un-cooperative.
4. Pahdi Ram (P.W.6) was also examined by Kuldip Singh Sood, Medical Officer (P.W.-15) on the basis of application (Ex. P-N) moved by the Police. The following injuries were reported as a result of this examination:

1. An abrasion on back of left leg size 4" x 1/4" brown scab formation was present, which was started falling off.
2. An abrasion on right leg on lower side 2" from lateral Malleolus size 1/4" x 1/4" brown scab formed.

3. Another abrasion on right leg on lateral aspect size 1/4" x1/4 brown scab formation.

4. Brownish blue discoloration on back of left pinna, tenderness was present. Injuries were simple in nature and were within 48 to 78 hours duration. The weapon used was blunt.

5. Badri Singh (P.W. 2) submitted complaint (Ex. P-C) to the Superintendent of Police Kangra at Dharamshala complaining not only about the taking away of Rs. 3000/- from the deceased but also the wrongful confinement and merciless beating of the deceased by the Police. The Senior Superintendent of Police directed the Deputy Superintendent of Police to personally enquire and give a report about the matter. It was on the basis of this document (Ex. P-C) that a case was registered and investigated by the Deputy Superintendent of Police himself. Statements of witnesses were recorded, documents collected and recoveries made during the course of this investigation. Finally, a charge for the aforesaid offence was initiated against the accused. The pleas of the accused are that of denial. Evidence in defense has also been produced.

Babu Ram

6. The case against Babu Ram is u/s 342 of the Indian Penal Code. The allegation is that he was criminally responsible for the illegal confinement of the deceased Manjri Ram and Pahdi Ram. It is true that Babu Ram was discharging the function of Moharir Head Constable on this day whereas Suresh Chand (P.W. 1) was the Naib Munshi. While he was on duty in the Police Station, these two shepherds were brought to the Police Station by Rattan Chand. It was he at whose instance entry in the daily Diary was made and these persons were sent to the Civil Hospital for medical examination through Ex. P-A and Ex. P-B written by Suresh Chand (P.W. 1) at the instance of Babu Ram. Thereafter, his presence at the Police Station appears to be only till their arrival from the hospital since he left the Police Station for his residence. Till this time, these persons were suspected of having committed the crime and that was under investigation. It cannot be said that their confinement was illegal. His absence is further clear from the fact that it was Suresh Chand (P.W. 1) who asked them to furnish sureties for their release. Then Da lip Singh (P.W. 5) a angry (Cook) in the Police Station also states that Babu Ram had left the Police Station before they took meals. Badri Singh (P.W.2) says nothing against Babu Ram accused in his complaint to the Superintendent of Police (Ex. P.C.). It is also in evidence that on the morning of 29-5-1978, he had gone to attend a court case at Nurpur. Pahdi Ram (P.W. 6) also states nothing against him. In these circumstances, it is safe to conclude that Babu Ram is not responsible for the commission of the offence u/s 342 I.P.C. and his acquittal is legally justified.

Madho Ram

7. It appears from the evidence that Madho Ram was somehow or the other known to the deceased and Pahdi Ram. The only thing he said was that the

meals could not be enjoyed without first having drinks. At his suggestion, a bottle of liquor was purchased from the market and it was taken by him, Rattan Chand and the two shepherds. Pahdi Ram (P.W 6) also does not say anything against him. So also Vidya Sagar (P.W. 7). There is no other evidence on the record suggesting that he also gave beatings to the deceased and Pahdi Ram. Consequently, his participation in the commission of the Crime stands eliminated.

Rattan Chand and Uttam Chand.

8. It is true that Rattan Chand was on duty along with other policemen at Maranda but he was the only constable there who came across these shepherds while taking drinks on the roadside. He started abusing and nudging them with a stick. Although an attempt has been made to demonstrate that these shepherds were trying to assault him and in order to relieve him information was sent to the Police Station for deployment of more Policemen at the place but there is no tangible evidence by independent witnesses to support this allegation nor any record to show that Rattan Chand was discharging a lawful duty and the shepherds were creating obstruction in the discharge of the same, so, a case u/s 224/353 of the I.P.C. was registered against them. Further, this kind of obstruction cannot be comprehended from the simple fact that Rattan Chand alone brought these men to the Police Station and that too by bus. This shows meek submission to his action by these shepherds. Further, they were sent to the Civil Hospital for medical checkup in the custody of Rattan Chand and Charan Dass (P.W.16).

9. Rattan Chand took meals along with three others. In the beatings he has been assigned a definite role in the sense that he used stick to beat both of them (Manjri Ram and Pahdi Ram). Injury No. 13 caused to the deceased was inflicted by him with the stick he was using for beating them. Pahdi Ram has stated quite categorically that Rattan Chand started beating with a Danda (being used interchangeably for stick) and it was the result of the Danda blow on the head of the deceased that he became unconscious and fell down saying "Hai Maan Main Mari Ditta". Again he stated that the deceased sustained injuries on his head, backside of his body. Shri KC. Rana counsel for the accused submits that the statement of Pahdi Ram (P.W.6) is not only contradictory but also biased since he is not only a relation of the deceased but also a victim of the alleged assault. It was also submitted that the complaint (Ex. P-C) submitted to the Superintendent of Police, Dharam-shala was written by Badri Singh (P.W.2) at his instance and since the same does not give details of the facts and circumstances of this case, the version given by Pahdi Ram should be considered to be an improvement of his version at the Stage of recording of his evidence in the Court. We are not impressed by any of these submissions of the learned Counsel.

10. The Complaint (Ex. P-C) need not have contained the details comprehensively. However, it refers to the incident of beating by the Police of Police Station Palampur and taking away of Rs. 3000/- from the deceased. The complaint gives account of the incident to a reasonable extent and it seeks the

investigation of the matter at the earliest and to bring the defaulters to book. Statement of Pahdi Ram (P.W. 6) recorded in the Court is quite elaborate and gives a detailed account of the incident. He has been subjected to cross-examination by the accused. However, no dent has been created in the prosecution case. Minor contradictions like giving of slaps instead of Danda blows and those relating to their passing the night near the Cinema Hall or away from it are quite insignificant and do not in any way harm or minimize the strength of the fundamental allegations against the accused. The Police have not registered any case of running away from the lawful custody. So the allegation that these shepherds ran away from the Police Station secretly during the night is thoroughly baseless. It has been set up simply to avoid the allegation that after beating these shepherds, the Police kicked them but of the Police Station or left them at the Cinema Hall or somewhere nearby. Charan Dass (P.W. 16) was a constable at the Police Station during this time? He did not support the prosecution and resiled from his version recorded u/s 161 Code of Criminal Procedure with the result that he was cross-examined by the prosecution. In view of other cogent and convincing evidence available on the record, his version cannot be termed to be truthful. His purpose is to support a co-constable.

10. Regarding Uttam Chand he admits that the shepherds were given slaps and were abused. Although he denies that they were kicked but admits that they were pushed out of the Police Station. Suresh Chand, Naib Moharir (P.W. 1) states that on the morning of 29-5-1978 Tulsi Ram Constable told him that "Uttam Singh Constable No. 372 Ne Dhakke Aur Maar Peet Karke Gaddion Ko Bahir Nikal Dia." Although Tulsi Ram while appearing as P.W. 19 has denied it but the denial may be to help a comrade in distress. Pahdi Ram (P.W. 6) has specifically stated that Uttam Chand also participated in the beatings and gave kick blows and slaps to the deceased. Although there is evidence against Suresh Chand (P.W. 1), however, we say nothing since he has not been added as one of the accused in the case. However, his intriguing role in this incident does not exclude or minimize the participation and criminality of these two accused. There is sufficient evidence to conclude that these accused were responsible for beating the deceased and Pahdi Ram (P.W. 6) and the contention of their counsel that no case is made out is untenable and is liable to be rejected. Similar is our view relating to the contention that Pahdi Ram (P.W. 6) is a relation of the deceased and was injured in the alleged incident since he is a natural witness and cannot be discarded on the ground of relationship and involvement in the incident. He has narrated the incident quite clearly and elaborately. So, there is no reason to disbelieve and discard him.

11. The learned Sessions Judge has not only misread the evidence but also appreciated the same quite incorrectly thereby came to wrong conclusions, causing complete miscarriage of justice. Further, it is very difficult to accept, despite evidence to the contrary on the record, that the shepherds left the Police Station during the night time and sustained injuries by falls, being under intoxication. Could any one sustain such kind of injuries and those too, to this

extent? Certainly not, since such a conclusion would not only be hazardous but without any cogent and convincing evidence supporting the same.

12. It was next contended that this Court may not set aside the acquittal and convict the accused unless there is perversity or unreasonableness in the approach of the trial court in dealing with the case. The power of the appellate court while dealing with an order of acquittal has come for examination on number of occasions. It is profitable to refer to some out of the large number of decisions in this connection. The Privy Council in *Sheo Swarup and Others vs. King Emperor* observed as follows:

There is in their opinion no foundation for the view, apparently supported by the judgment of some Courts in India that the High Court has no power or jurisdiction to reverse an order of acquittal on a matter of fact, except in cases in which the lower Court has "obstinately blundered" or has "through incompetence, stupidity or perversity" reached such "distorted conclusions as to produce a positive miscarriage of justice", or has in some other way so conducted itself as to produce a glaring miscarriage of justice, or has been tricked by the defense so as to produce a similar result. Sections 417, 418 and 423 of the Code of 1898 give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power unless it is found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favor of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused at the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To State this, however, is only to say that the High Court, in its conduct of the appeal should and will, act in accordance with the rules and principles well known and recognized in the administration of justice.

13. Again in *Sanwat Singh v. State of Rajasthan* AIR 1961 S.C. 713 the Supreme Court summarized the legal position as follows:

1. An appellate court has full powers to review the evidence upon which the order of acquittal is founded.
2. The principle laid down in *Sheo Swamp's* case 61 Ind App 398 *Sheo Swarup and Others vs. King Emperor* afforded a correct guide for appellate court's approach to a case disposing of such an appeal.
3. The different phraseology used in the judgments of this Court such as: (a) "substantial and compelling reasons", (b) "good and sufficiently cogent reasons" (c) "strong reasons" are not intended to curtail the undoubted power of

an appellate court in the appeal against acquittal to review the entire evidence and to come to its own conclusions, but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal but should express the reasons in its judgment which led it to hold that the acquittal was not justified.

14. In Ramaphupala Reddy and Others Vs. The State of Andhra Pradesh, Hegde, J. speaking for the Court, after reiterating the legal position as laid down in Sanwat Singh's case (supra) said:

To these tests we may add, as laid down by this Court in several decisions that the appellate Court should also bear in mind the fact that the trial court had the benefit of seeing the witnesses in the witness box and the presumption of innocence is not weakened by the order of acquittal. If two reasonable conclusions can be reached on the basis of the evidence on record, the appellate Court should not disturb the finding of the trial court.

15. These principles were followed again in Solanki Chimanbhai Ukabhai Vs. State of Gujarat, and many other later decisions. On the basis of evidence, on record, we feel that the approach of the trial Judge has been quite erroneous and it is difficult to support the conclusions drawn by him. The Judgment, in these circumstances, is, therefore, set aside.

16. Now the question is what offence has been committed by the accused and what sentence is to be awarded to them.

17. It was argued that the accused are, at the most, liable for individual acts and Section 34 of the Indian Penal Code is not applicable. An offence u/s 323 can be stated to have been committed and instead of sentencing them, they may be released after giving them benefit under the Probation of Offenders' Act, 1958. Another fact stressed for showing compassion was the long lapse of time that has taken place from the date of the incident to the day of hearing of this case.

18. Perusal of the evidence on record completely demonstrates the high handedness of the cops in dealing with these two shepherds. It has been established quite satisfactorily that they were given severe beatings, more particularly the deceased, as is apparent from the medical reports. Rattan Chand used stick to beat them whereas Uttam Chand kicked and slapped them. The deceased was beaten to such an extent that he became semi-conscious and remained in the same state till he died. This all was done in the Police Station where there was none to protect them. The cause of death, according to Dr. Bhargawa, was head injury causing intracranial tension by clot and blood. As a matter of fact, besides this injury No. 13, all parts of the body of the deceased were affected". In this view of the matter, it may not be a case of murder but it is definitely culpable homicide not amounting to murder falling for punishment u/s 304 Part-II of the Indian Penal Code for the reason that intention required u/s 304 Part-I may be wanting, but knowledge that their acts were likely to cause

death or such bodily injury as was likely to cause death, is clearly attributable to the accused. Secondly, only one of the blows landed on the head. The case, therefore, comes within the parameters of this provision.

19. Since both the accused gave beatings simultaneously "and inflicted number of injuries in the same process, common intention can be easily inferred. Section 34 I.P.C. applies when criminal act is done by several persons in furtherance of common intention which may be the result of reconverge or may develop at or during the course of incident. In the case of a person assailed by many accused; the criminal act is the offence which finally results; the achievement of the criminal act is the result of action of several persons. Individuals participating in criminal act may use different modes but collectively their responsibility for the final criminal act, in case their intention is common, the whole of the result perpetrated by them is attributable to each offender notwithstanding that individually they may have done separate acts, diverse or similar. In *Barendra Kumar v. Emperor* the Judicial Committee observed:

Section 34 I.P.C., deals with the doing of separate acts, similar or diverse, by several persons; if all are done in furtherance of a common intention, each person is liable for the result of them all as if he had done them himself. "That act." and then again "it" in the latter part of the section must include the whole of the action covered by the criminal act in the first part of the section:

20. The fact situation, the place of occurrence and the manner of beatings clearly establish the application of Section 34 of the Indian Penal Code and make both the accused collectively responsible for the result of the beatings.

21. It is true that almost a period of 12 years has passed. This factor is not sufficient to allow the accused the benefit of the benevolent provisions of Probation of Offenders' Act, 1958. Cops in uniform, meant for the protection of general public, committing such a serious crime, cannot be treated with compassion. This incident, involving these shepherds, from that strata of society which has not seen the sight of literacy and growing consciousness, would have been buried within the four corners of the Police Station itself where the incident took place but for the coming in picture of Badri Singh (P. W. 2) an army man who reported the matter to the Chief Minister, Inspector General of Police, Himachal Pradesh, Deputy Commissioner and the Superintendent, of Police, Kangra at Dharamshala, and the prompt and co-operative attitude of the Senior Superintendent of Police who got the matter investigated through a senior officer.

22. Accordingly, there is merit in this appeal by the State of Himachal Pradesh and the same is allowed. The accused Rattan Chand and Uttam Chand are convicted u/s 304 part-II read with Section 34 of the Indian Penal Code. They are sentenced to undergo rigorous imprisonment for a period of three years. They are stated to be on bail. Their bail bonds are cancelled to enable them to serve the sentence.