

(2018) 07 SHI CK 0024
In the High Court Of Himachal Pradesh
Case No : Cr. Appeal No. 409 of 2010

State of Himachal Pradesh	Vs	APPELLANT
Rattan Lal & Others		RESPONDENT

Date of Decision : 03-07-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 323, 427, 452, 504, 506
Code of Criminal Procedure, 1973 — Section 154

Citation : (2018) 07 SHI CK 0024

Hon'ble Judges : SANDEEP SHARMA, J

Bench : Single Bench

Advocate : S.C. Sharma, Dinesh??Thakur, Amit Kumar??Dhumal, K.B. Khajuria

Final Decision : Disposed off

Judgement

Sandeep Sharma, J.

1. Appellant-State, being aggrieved and dissatisfied with the judgment of acquittal dated 10th February, 2010, recorded by learned Judicial Magistrate

1st Class, Court No. 2, Ghumarwin, District Bilaspur, whereby learned Trial Court held the respondents-accused (hereinafter referred to as

â??accusedâ??) not guilty of having committed offences under Sections 323 and 427 of the Indian Penal Code (for short, â??IPCâ??) read with

Section 34 of the IPC and accordingly acquitted them, has approached this Court by way of instant proceedings, seeking therein conviction of accused

for having committed aforesaid offences under the aforesaid provisions of law, after setting aside the judgment of acquittal recorded by the learned

trial Court.

2. Precisely, the facts of the case, as emerge from the record, are that complainant, namely, Soma Devi (PW-2) got recorded her statement under

Section 154 of the Code of Criminal Procedure (for short "Cr.P.C.") (Ext. PW-2/B) alleging therein that on 09.08.2005, at about 8.00 a.m.,

accused Rattan Lal started digging land adjacent to the house of the complainant. Since digging was being carried out indiscriminately without leaving any space for use and flow of water etc., complainant requested him to leave some space between her house and the proposed house of accused

Rattan Lal. On this, all accused persons i.e. Rattan Lal, Arun Kumar and Manoj Kumar started abusing the complainant and also assaulted her.

Complainant in order to save herself from the clutches of the accused, went inside her house. However, accused persons followed her and entered

into her house by breaking the door and thereafter attacked her with Kulhari (axe). Kanta Devi, who happens to be the daughter-in-law of the

complainant, made an attempt to rescue her mother-in-law, however, she was also given blows on her legs with bamboo stick and as a result thereof,

she suffered injuries. Allegedly, accused Manoj Kumar hurled stones inside the house of the complainant. On the basis of the aforesaid report, a

formal FIR Ext. PW-10/A came to be registered against the respondents-accused. After completion of investigation, police presented the challan in

the competent Court of law.

3. Learned trial Court after satisfying itself that a prima-facie case exists against the accused, charged them for having committed offences punishable

under Sections 452, 323, 427, 504 & 506 of IPC read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

4. Subsequently, learned trial Court, on the basis of evidence collected on record by the prosecution, held the accused not guilty of having committed

offences punishable under the aforesaid provisions of law and accordingly, vide judgment dated 10th February, 2010 acquitted them. In the aforesaid

background, State has approached this Court in the instant proceedings, seeking therein conviction of the accused after setting aside judgment of

acquittal recorded by the learned trial Court.

5. Mr. Amit Kumar Dhumal, learned Deputy Advocate General, while referring to the impugned judgment recorded by the learned trial Court,

vehemently argued that the judgment of acquittal passed by the learned trial Court is not sustainable in the eyes of law, as the same is not based upon

the proper appreciation of the evidence and as such, the same deserves to be

quashed and set aside. While referring to the evidence led on record by the prosecution, Mr. Dhumal, strenuously argued that the prosecution has successfully proved beyond reasonable doubt that on the date of alleged incident, accused unauthorizedly entered into the house of the complainant and thereafter, gave her beatings mercilessly, as a result of which, she as well as her daughter-in-law (PW-3) Kanta Devi suffered injuries. Mr. Dhumal further contended that if the impugned judgment, in the light of the evidence adduced on record, is carefully examined, it can be safely concluded that the said judgment is the result of mis-reading, mis-appreciation and mis-construction of evidence by the learned trial Court, while ascertaining guilty of the accused. With the aforesaid submissions, learned Deputy Advocate General contended that the impugned judgment of acquittal being contrary to the evidence available on record is not sustainable and the accused deserve to be convicted for having committed offences punishable under Sections 323 & 427 of IPC read with Section 34 IPC.

6. Mr. K.B. Khajuria, learned counsel representing the accused, while supporting the impugned judgment of acquittal, vehemently argued that there is no illegality and perversity in the impugned judgment passed by the learned trial Court and as such, the same deserves to be upheld. He further contended that bare perusal of the statements having been made by the prosecution witnesses, nowhere suggests that on the day of alleged incident complainant and her daughter-in-law (PW-3) Kanta Devi were given beatings by the accused. While refuting the aforesaid contentions having been made by the learned Deputy Advocate General, Mr. Khajuria, invited attention of this Court to the statements of the prosecution witnesses to demonstrate that none of the prosecution witnesses was able to state specifically that at what time and under what circumstances, accused entered into the house of the complainant and thereafter gave beatings to her and her daughter-in-law (PW-3) Kanta Devi. He further contended that as per material available on record, property in question is still joint inter-se the parties and as such, the learned trial Court rightly came to the conclusion that no case has been made out under Section 452 IPC against the accused. He further stated that the prosecution has failed to associate any independent witness in order to support its case. While referring to the statements of the complainant and her daughter-in-law PW-3 Kanta Devi, Mr. Khajuria

made serious effort to prove that due to prior enmity inter-se the parties, accused were falsely implicated in the prosecution case and they were rightly acquitted by the learned trial Court.

7. I have heard learned Counsel for the parties and have gone through the record carefully.

8. After having carefully perused the evidence adduced on record by the prosecution, viz-a-viz the impugned judgment, this Court is not inclined to

agree with the contention of Mr. Amit Kumar Dhumal, learned Deputy Advocate General, that there is mis-reading, mis-appreciation and

misconstruction of evidence. Rather, this Court is convinced and satisfied that the prosecution has not been able to prove its case beyond reasonable

doubt that on the alleged date of incident, accused unauthorizedly entered into the house of the complainant and thereafter, gave beatings to her and

her daughter-in-law (PW-3) Kanta Devi. Though, in the instant case, the prosecution, with a view to prove its case, examined as many as 10

witnesses, but the statements of complainant (PW-2) Soma Devi and PW-3 Kanta Devi are material for proper adjudication of the case.

9. PW-2 Soma Devi deposed that on 9th August, 2005, at about 8.00 a.m., accused Rattan Lal, who happened to be her son, indiscriminately started

digging foundation of her house and when she inquired as to why he was doing so, accused Rattan Lal not only started abusing her, but also gave her

beatings. It has also come in the statement of PW-2 Soma Devi that when accused Rattan Lal was abusing her, her daughter-in-law, i.e. PW-3 Kanta

Devi, came on the spot and tried to rescue her from the clutches of the accused, but they also gave beatings on the legs of her daughter-in-law with

bamboo sticks. It has further come in the evidence of PW-2 Soma Devi that she and PW-3 Kanta Devi went inside their house in order to save

themselves from the clutches of the accused and closed the door, however, the accused appeared with sticks and Kulhari (axe) and broke open the

door and came inside the house. She also deposed that she filed complaint Ext PW-2/A to the Gram Panchayat and complaint Ext.PW-2/B to the

police. However, PW-1 Om Prakash, who was Up -Pradhan of Gram Panchayat, Dadhol, nowhere stated that complaint Ext. PW-2/A was filed by

complainant PW-2 Soma Devi to Gram Panchayat.

10. PW-3 Kanta Devi deposed that she, after having heard noise, went outside

her house and found that accused Rattan Lal was assaulting her mother-in-law Soma Devi with Kulhari (axe). She further deposed that she came to rescue her mother-in-law and caught hold of Kulhari (axe). But, in the meantime, she was also given beatings by accused Arun Kumar.

11. If the statements of PW-2 and PW-3 are read in conjunction, this Court finds favour with the contention of Mr. Khajuria, learned Counsel for the

accused, that there are material inconsistencies and contradictions, as have been noticed above. PW-2 Soma Devi nowhere stated that she was

attacked with Kulhari (axe) and sticks, while she was outside her house, rather she very candidly stated that when she came inside her house and

bolted the door from inside, all the accused entered into their house forcibly after breaking the door and thereafter, they assaulted her with Kulhari

(axe). She further stated that she was rescued by her daughter-in-law Kanta Devi (PW-3) from the clutches of the accused. But if the statement of

PW-3 Kanta Devi is perused, she has given altogether different version by stating that she, after having heard noise, went inside her house and found

that her mother-in-law PW-2 Kanta Devi was being attacked with Kulhari (axe) by accused Rattan Lal.

12. PW-4 Ramesh Kumar, who happened to be the son of the complainant, also gave altogether different version. He stated that he had gone to work

in his field and found that accused were giving beatings to his mother and wife. This witness has also stated that accused Rattan Lal was armed with

Kulhari (axe) and accused Arun was having stick in his hand and when he came on the spot, he saw that his mother and wife had gone inside their

house and accused were forcibly breaking the door. Allegedly, alleged incident occurred first outside the house and thereafter inside the house of

complainant, but PW-4 has nowhere disclosed/stated that how he came on the spot when he was working in the fields. He has also not stated that he

after having been informed by somebody reached at the spot.

13. PW-5 Banta Singh, who at the relevant time was working in the house of Hem Raj, stated that when he heard noise from the house of Ramesh

Chand and Rattan Lal, he alongwith Tilak Raj went to the spot and found that accused Rattan Lal, Manoj and Arun Kumar were giving beatings to the

complainant. He also stated that when Kanta Devi came to rescue the complainant, she was also given beatings by the accused persons. Thereafter,

Kanta Devi and Soma Devi went inside their house. PW-2 Soma Devi and PW-3 Kanta Devi have nowhere stated in their statements that at the time of alleged incident, any other person except them, was present on the spot. Thus, the claim put forth by PW-4 Ramesh Kumar and PW-5 Banta Singh, does not appear to be trustworthy.

14. PW-6 Tilak Raj also claimed that at the relevant time, he was in the house of Hem Raj. He further stated that when he heard noise from the house of accused Rattan Lal, he alongwith Banta Singh, went to the spot and found that accused Rattan Lal was carrying Kulhari (axe) and accused Arun was having stick in his hand. He further stated that accused Rattan Lal was assaulting his mother with Kulhari (axe), however, complainant went inside her house. He also stated that accused Manoj Kumar was pelting stones.

15. On close scrutiny of aforesaid statements having been made by the material prosecution witnesses, it is evident that there are material contradictions and inconsistencies in their statements. Thus, this Court is of the opinion that the learned trial Court has rightly given no much relevance to their statements. Admittedly, the complainant party and the accused persons are closely related to each other as they are the members of one and the same family and are having still joint property, as has been concluded by the learned trial Court on the basis of the material on record. Cross-examination conducted by the learned defence Counsel clearly suggests that there is prior enmity between the complainant and accused Rattan Lal and there is/was dispute pending inter-se them in the competent court of law. Similarly, PW-5 Banta Singh and PW-6 Tilak Raj, who were sought to be cited as independent witnesses by the prosecution, also admitted in their cross-examination that they had dispute with accused Rattan Lal on account of a path and in this regard, matter is pending in the competent Court of law. PW-5 Banta Singh though in his cross-examination denied that he, Dhyani Ram and Tilak Raj etc. had filed a complaint before S.D.M, but admitted that this complaint was filed regarding path. The aforesaid submissions clearly suggests that PW-5 Banta Singh and PW-6 Tilak Raj were interested witnesses, as such, the learned trial Court has rightly not placed much reliance on their statements. Otherwise also, these witnesses are the chance witnesses because admittedly, they had no occasion to see

the alleged incident. Though, they claimed that they were present on the spot, but in their examinations-in-chief they have stated that when they came

on the spot after hearing cries, by that time, the complainant as well as her daughter-in-law Kanta Devi had gone to their house and bolted the door.

16. In the case at hand, entire story put forth by the prosecution appears to be untrustworthy and full of contradictions. The Honâ??ble Apex Court

has repeatedly held that since the fundamental aspect of criminal jurisprudence rests upon the well established principle that â??no man is guilty until

proved soâ?, utmost caution is required to be exercised in dealing with the situation where there are multiple testimonies and equally large number of

witnesses testifying before the Court. Most importantly, the Honâ??ble Apex Court has held that there must be a string that should join the evidence

of all the witnesses and thereby satisfying the test of consistency in evidence amongst all the witnesses. In nutshell, it can be said that evidence in

criminal cases needs to be evaluated on touchstone of consistency. Reliance is also placed on Judgment passed by the Honâ??ble Apex Court in C.

Magesh and Ors. v. State of Karnataka, (2010) 5 SCC 645, wherein it has been held as under:-

â??45. It may be mentioned herein that in criminal jurisprudence, evidence has to be evaluated on the touchstone of consistency. Needless to

emphasise, consistency is the keyword for upholding the conviction of an accused. In this regard it is to be noted that this Court in the case titled Suraj

Singh v. State of U.P., 2008 (11) SCR 286 has held:- (SCC p. 704, para 14)

14. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witness is

held to be creditworthy. The probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation.

46. In a criminal trial, evidence of the eye witness requires a careful assessment and must be evaluated for its creditability. Since the fundamental

aspect of criminal jurisprudence rests upon the stated principle that ""no man is guilty until proven so"", hence utmost caution is required to be exercised

in dealing with situations where there are multiple testimonies and equally large number of witnesses testifying before the court. There must be a

string that should join the evidence of all the witnesses and thereby satisfying the test of consistency in evidence amongst all the witnesses.â??

17. Consequently, in view of the detailed discussion made herein above as well as the law laid down by the Honâ??ble Apex Court, this Court sees no reason to interfere with judgment dated 10th February, 2010, passed by learned Judicial Magistrate 1st Class, Court No.2, Ghumarwin, District Bilaspur, Himachal Pradesh in Case No. 168/2 of 2005, which is accordingly upheld. In result, appeal fails and is accordingly dismissed. Bail bonds furnished by accused are discharged. Pending applications, if any, are disposed of.