
(2015) 07 SHI CK 0082
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 91 of 2008

State of Himachal Pradesh	Vs	APPELLANT
Ratti Ram and Others		RESPONDENT

Date of Decision : 28-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 417, 418, 423
Penal Code, 1860 (IPC) — Section 34, 436

Citation : (2015) 07 SHI CK 0082

Hon'ble Judges : Sanjay Karol, J;Piar Singh Rana, J

Bench : Division Bench

Advocate : Ashok Chaudhary, V.S. Chauhan, Additional Advocates General and J.S. Guleria, Assistant Advocate General, for the Appellant; Anoop Chitkara, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Sanjay Karol, J—State has appealed against the judgment dated 27.8.2007, passed by the learned Sessions Judge, Sirmaur District at Nahan, Himachal Pradesh, in Sessions Trial No. 28-ST/7 of 2006, titled as State of Himachal Pradesh v. Ratti Ram and others, challenging the acquittal of respondents Ratti Ram, Shyam Lal, Chand Ram and Dinesh Sharma (hereinafter referred to as the accused), who stand charged for having committed an offence punishable under the provisions of Section 436 read with Section 34 of the Indian Penal Code.

2. As per prosecution case, complainant Rattan Chand (PW-7) is the resident of village Palog. In the Panchayat election held in December, 2005, complainant allegedly supported Sant Ram, who was elected as the Pradhan of the Panchayat. Rival candidate Rattan Singh lost the election. As such, accused nurtured grudge against the complainant. In December, 2005, residents of the village, including the accused, blocked path of the complainant and prevented him from using the water pond. Complaint was lodged, which was also investigated by the police. On 21.2.2006, accused came to the house of the complainant and enquired about

his whereabouts from his wife Indro Devi (PW-8). Finding the complainant not to be home, they threatened his wife of setting her house on fire. Later in the evening, at 7 p.m., accused actually set the house (cattle shed), where maize grass was stored, on fire. Rattan Chand and his nephew Sahi Ram (PW-9), noticing the house on fire from far off, immediately reached the spot. Though the fire was extinguished, but major portion of the house stood burnt. Same night, Rattan Chand left the village to lodge report with the police. The following morning, on way to the Police Station, he met SI Gurdeep Singh (PW-10) and got his statement (Ex. PA/1) recorded, on the basis of which as also Ruka (Ex. PA), so carried by LHC Iqbal Singh (PW-1), FIR No. 11/2006, dated 22.2.2006 (Ex. PW-2/A), for offence under the provisions of Section 436 of the Indian Penal Code, was registered by HC Kalyan Singh (PW-2), at Police Station, Shillai, District Sirmaur, Himachal Pradesh. Investigation conducted by Gurdeep Singh (PW-10) revealed complicity of all the accused in the alleged crime; hence, challan was presented in the Court for trial.

3. All the accused were charged for having committed an offence punishable under the provisions of Section 436, read with Section 34 of the Indian Penal Code, to which they did not plead guilty and claimed trial.

4. In order to establish its case, prosecution examined as many as ten witnesses and statement of the accused under the provisions of Section 313 of the Code of Criminal Procedure was also recorded, in which they took plea of innocence and false implication. No evidence in defence was led.

5. Based on the testimonies of witnesses and the material on record, trial Court acquitted all the accused persons of the charged offence. Hence, the present appeal by the State.

6. We have heard Mr. Ashok Chaudhary, Mr. V.S. Chauhan learned Additional Advocates General, and Mr. J.S. Guleria, Assistant Advocate General, on behalf of the State as also Mr. Anoop Chitkara, Advocate, on behalf of the accused. We have also minutely examined the testimonies of the witnesses and other documentary evidence so placed on record by the prosecution. Having done so, we are of the considered view that no case for interference is made out at all. We find that the judgment rendered by the trial Court is based on complete, correct and proper appreciation of evidence (documentary and ocular) so placed on record. There is neither any illegality/infirmary nor any perversity with the same, resulting into miscarriage of justice.

7. It is a settled principle of law that acquittal leads to presumption of innocence in favour of an accused. To dislodge the same, onus heavily lies upon the prosecution. Having considered the material on record, we are of the considered view that prosecution has failed to establish essential ingredients so required to constitute the charged offence.

8. In *Prandas Vs. The State*, AIR 1954 SC 36 , Constitution Bench of the apex Court, has held as under:

"(6) It must be observed at the very outset that we cannot support the view which has been expressed in several cases that the High Court has no power under S. 417, Criminal P.C., to reverse a judgment of acquittal, unless the judgment is perverse or the subordinate Court has in some way or other misdirected itself so as to produce a miscarriage of justice. In our opinion, the true position in regard to the jurisdiction of the High Court under S. 417, Criminal P.C. in an appeal from an order of acquittal has been stated in - Sheo Swarup and Others vs. The King-Emperor AIR 1934 227 (Privy Council) , in these words:

"Sections 417, 418 and 423 of the Code 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 be 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 favour 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 to 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 rules and principles well known and recognized in the administration of justice."

9. Prosecution case primarily rests upon the testimonies of LHC Iqbal Singh (PW-2), Rattan Chand (PW-7), Indro Devi (PW-8), Sahi Ram (PW-9) and SI Gurdeep Singh (PW-10).

10. Rattan Chand wants the Court to believe that the accused persons were harbouring animosity against him, for having supported rival candidate in the Panchayat election, held in December, 2005. Significantly, the incident in question took place on 21.2.2006. Now what transpired between December and February, has not come on record, save and except that HC Baldev Singh (PW-5), who investigated the earlier complaint of the complainant being prevented from using the water body, we find no conclusion could be arrived by the police, with regard to correctness thereof. On the contrary, HC Baldev Singh admits his investigation to have revealed that "Rattan Chand used to insist to pass through the path on private land of other persons". It be also observed that other than filing of this complaint, matter was never brought to the notice of the Panchayat by the complainant. As such, genesis of the prosecution story of the accused harbouring animosity against the complainant does not appear to be true. In fact, in the previous complaint, accused persons were not arrayed as party.

11. That apart, version of Rattan Chand (PW-7) of the accused having set his

house on fire is hearsay in nature. He admits to have reached the spot only at 8 p.m., which is one hour after the house was allegedly set on fire by the accused. He never reported the matter to the Panchayat or the village head.

12. Perusal of his testimony reveals his version of having reported the matter to the police on 22.2.2006 to be doubtful. He states that on 21.2.2006, he left the village to report the matter to the police. Initially, he states that he left alone but then qualifies by stating that he left with Sahi Ram (PW-9), which version stands contradicted by Sahi Ram himself.

13. Further, according to SI Gurdeep Singh, Rattan Chand met him at Naini Dhar. Police official happened to be on patrol duty at that place. He states that statement (Ex. PA/1) was recorded on 22.2.2006 at 2.30 p.m. Thereafter, he visited the spot at 4-4.30 p.m. and completed the necessary proceedings. We do not find this version to be true, for the reason that the FIR itself was registered on 22.2.2006 at 6.30 p.m. Admittedly, as has come on record from the version of LHC Iqbal Singh, Police Station was at a distance of 24 kms from Naini Dhar. It is admitted case of the parties that both the police officials together visited the spot. Now, if this were so, then how is it that FIR could have been registered same day, with Iqbal Singh returning to the spot, after covering a distance of more than 60 kms. Iqbal Singh wants the Court to believe that from Naini Dhar, he walked upto the Police Station and returned in a private vehicle. For a person to walk 24 kms, in a hilly terrain, and then travel back in a private vehicle, in less than six hours, is humanly impossible. The contradiction is apparent from the fact that according to Investigation Officer Gurdeep Singh, same day he reached the spot of the incident at 4-4.30 p.m. and returned at 7 p.m. itself. Even such version stands contradicted by the complainant, according to whom police party reached his house at 3.30 p.m. and left at about 4 p.m. The contradictions are galore with regard to the place, the time and the manner in which the incident was reported by the complainant.

14. But what totally knocks down the prosecution case is the otherwise uninspiring and contradictory statement of Indro Devi (PW-8), according to whom, the house was set on fire by the accused. The witness admits that at that time she was inside the kitchen. This is where the complainant party resides. It be only observed that, as is evident from the site plan, the place where she had stacked maize grass in a separate house, is not visible from the kitchen. Also, it is admitted by the complainant that in the village there is no light. Then how is it that in a cold wintry evening, when it had become dark, in the absence of light, the witness could notice the accused set her house on fire by lighting matches. Her suspicion, against the accused, arose on the basis of the alleged threats extended to her during the day, of setting her house on fire. It be only observed that despite such threats, she never informed the villagers of such fact or sought intervention of the Panchayat. It is not that the house was situated in a lonely place and none in village were available.

15. In fact, we find the prosecution to have given up two witnesses, namely

Nikka Ram and Ratti Ram, residents of the same village, for the reason that their testimonies would have been repetitive in nature. In fact, they were the best persons, who could have thrown light with regard to the exact incident, which took place at the spot, at the relevant time.

16. Independent witness Sahi Ram (PW-9) also does not advance the case of prosecution, for his testimony is not only hearsay in nature, but being the nephew of the complainant, he is not only an interested witness but also is not a permanent resident of the village. In fact, for the last 25 years, he is residing in village Ronhat and had no reason or occasion to be present in village Palog. His presence on the spot appears to be doubtful.

17. Hence, it cannot be said that prosecution has been able to prove its case, by leading clear, cogent, convincing and reliable piece of evidence so as to prove that the accused persons, in furtherance of their common intention, set the house and cattle shed of complainant Rattan Chand on fire, with an intention to cause destruction.

18. For all the aforesaid reasons, we find no reason to interfere with the judgment passed by the trial Court. The Court has fully appreciated the evidence so placed on record by the parties.

19. The accused have had the advantage of having been acquitted by the Court below. Keeping in view the ratio of law laid down by the Apex Court in *Md. Ankoos and Others Vs. The Public Prosecutor, High Court of A.P.*, AIR 2010 SC 566 : (2010) CLT 222 : (2010) CriLJ 861 : (2009) 14 JT 6 : (2009) 13 SCALE 584 : (2010) 1 SCC 94 : (2009) 15 SCR 616 : (2009) 10 UJ 4781 , it cannot be said that the Court below has not correctly appreciated the evidence on record or that acquittal of the accused has resulted into travesty of justice. No ground for interference is called for. The present appeal is dismissed. Bail bonds, if any, furnished by the accused are discharged.

Appeal stands disposed of, so also pending application(s), if any.