
(2000) 07 SHI CK 0019
In the High Court Of Himachal Pradesh
Case No : Crimil Appeal No. 226 of 1997

State of Himachal Pradesh	Vs	APPELLANT
Roshan Lal		RESPONDENT

Date of Decision : 06-07-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 313
Penal Code, 1860 (IPC) — Section 332

Citation : (2000) 2 ShimLC 479

Hon'ble Judges : C.K. Thakker, C.J

Bench : Single Bench

Advocate : Vivek Thakur, Assistant Advocate General, for the Appellant;
Ramakant Sharma, for the Respondent

Final Decision : Allowed

Judgement

C.K. Thakker, C.J.—This appeal is filed by the State against the order of acquittal recorded by Sessions Judge, Hamirpur, on September 26, 1996, in Criminal Appeal No. 22 of 1995. By the said judgment and order, the learned Sessions Judge set aside an order of conviction and sentence recorded by the Additional Chief Judicial Magistrate, Hamirpur, on October 12, 1995, in case No. 32-II of 1994.

2. The case of the prosecution was that on May 22, 1993, PW-1 Rattan Chand was driving a bus belonging to Himachal Road Transport Corporation bearing registration No. HP-22-0579. The Bus was coming from Jangal Beri and was going to Shimla. According to the prosecution, when the bus reached at-village Bihad at about 10.15 a.m., the Respondent-accused, who was on his scooter came from the opposite direction. Though he gave pass to the scooterist, the rider stopped the scooter near the bus and without any reason or cause started giving blows to the complainant on his head and his arm by opening driver window with the result that the complainant-driver sustained injuries on his person and could not ply the bus further. Thus, the accused prevented and

deterred the complainant from discharging his duties as a public servant. The complainant reported the matter to the police by lodging his information, which was registered as First Information Report (Ex PA) u/s 154 of the Code of Criminal Procedure, 1973. On the basis of the said complaint, an offence was registered against the accused. After usual investigation, the Respondent-accused was charged for committing an offence punishable u/s 332 of the Indian Penal Code.

3. The accused appeared before the Court and denied the charge levelled against him of any offence being committed by him. His case was of total denial. In an examination u/s 313 of the Code of Criminal Procedure, 1973, he did not state anything more nor he led any evidence in his defence.

4. The learned Magistrate, on the basis of evidence of prosecution witnesses and arguments of the learned Counsel for the parties, held that it was proved by the prosecution beyond reasonable doubt that the accused deterred and prevented the complainant Rattan Chand from driving a bus belonged to Himachal Road Transport Corporation, Depot at Hamirpur, and also voluntarily caused hurt to him by fist, stick and kick blows on May 22, 1993, and thereby he had committed an offence punishable u/s 332 of the Indian Penal Code.

5. After convicting the accused for the above offence, the learned Magistrate heard the accused as well as his counsel on the quantum of sentence. The accused prayed for mercy and requested for showing leniency. Considering the facts and circumstances as also the act by which a public servant was beaten, the learned Magistrate was of the view that substantive sentence ought to be imposed on the accused. Accordingly, he ordered the accused to undergo rigorous imprisonment for six months and to pay a fine of Rs. 500/-. In default of payment of fine, he also directed the accused to further undergo rigorous imprisonment for one month. The amount of fine was ordered to be paid to the complainant Rattan Chand to defray medical and prosecution expenses.

6. In the opinion of the learned Sessions Judge, however, the learned Magistrate committed an error of fact and of law in convicting the accused. According to him, from the evidence on record, it could not be held that the prosecution was able to prove beyond reasonable doubt that the accused had committed the offence. He was, therefore, entitled to benefit of doubt. Accordingly, the appeal filed by the Appellant-accused was allowed and the order of conviction and sentence was set aside.

7. It is that order passed by the Sessions Judge, which is challenged by the State by filing the present appeal.

8. The appeal was admitted and bailable warrant was also issued. It was called out for hearing on June 23, 2000. It was heard in part and thereafter adjourned to the next week, that is, June 30, 2000. On June 30, 2000, again the matter was called out but on behalf of the Respondent-accused time was sought, which was granted. Today, again the matter was called out. I have heard Mr. Vivek

Thakur, learned Assistant Advocate General, for the Appellant-State and Mr. Ramakant Sharma, learned Counsel for the Respondent-accused.

9. The learned Assistant Advocate General submitted that the Sessions Court has committed an error in acquitting the accused and in allowing the appeal filed by him. He submitted that the trial Court, after appreciating the facts and circumstances of the case as also the prosecution evidence, was fully satisfied that it was proved beyond reasonable doubt that the accused had committed an offence. He submitted that the trial Court also considered the fact that the complainant was driving the bus. When the accused came from; the opposite direction and the complainant asked him to drive the vehicle properly, the latter became angry, got down from his scooter and came near the window where the driver was sitting and driving the bus. He assaulted the driver and caused injury on his head with "danda". He also gave fist blows. Considering the evidence of complainant, the trial Court observed that the driver did not exaggerate the story. He frankly admitted in his evidence that he did not note the number of the scooter. He was, therefore, not in a position to give the number. But he specifically and definitely stated that it was the accused who had given him blows and he also identified the accused in the Court.

10. It was, no doubt, contended by the learned Counsel for the Respondent-accused that there were two scooterists and it was quite possible that the incident might have taken place with the other scooterist. It was also contended that the second scooterist was the best witness for the prosecution, who could have thrown light relating to incident in question but he was not examined. No reason was put forward by the prosecution why the said scooterist was not examined. It was also submitted that according to the evidence of PW-1 Rattan Chand, he had already given side to the accused. Thereafter there was no reason for the accused to assault or to beat the driver. The story put forward by the prosecution, therefore, was not natural and could not be accepted.

11. The trial Court, in my opinion, has considered all aspects including the facts that there "was no enmity between the complainant Rattan Chand and the accused; that the complainant had given his evidence in a natural way; that he was sure about the identity of the accused; that the injuries caused to him were duly established and corroborated by medical evidence and that the evidence of complainant Rattan Chand was supported by other witnesses including of PW-10 Milap Chand, conductor.

12. PW-10 Milap Chand, conductor supported and corroborated the testimony of the complainant. He stated that it was the accused who had assaulted and beaten the complainant. The witness also identified the accused in the Court. According to the learned Magistrate, the testimony of PW-10 Milap Chand was natural and he also did not exaggerate what had happened at the time of incident. His evidence was, therefore, accepted by the trial Court.

13. From the cross-examination of both the witnesses nothing could be brought

by the defence either about mistaken identity by the prosecution witnesses or about false implication of the accused.

14. The learned Sessions Judge, in my opinion, by giving too much importance to minor contradictions and omissions, wrongly and illegally set aside a well reasoned order passed by the trial Court. It was observed by the appellate Court that a number of scooter was not mentioned by the prosecution witnesses. It is true. But at the same time, it is also pertinent to note that the question, which was relevant in the present proceedings was not of the number , of scooter but the identity of the accused. As is clear the incident took place when the bus was going towards Shimla and the scooterist was coming from the opposite direction. As soon as the complainant told the scooterist to drive properly, he got enraged, came back and assaulted the complainant. The complainant, therefore, was clearly in a position to identify the person, who assaulted him. In my opinion, the trial Court was wholly right and fully justified in observing that when the complainant did not give the number of scooter in his substantive evidence, he did not want to exaggerate the story but in a natural way, he stated before the Court what he was not knowing. Since he did not note the number of the scooter, he could not give it.

15. The Sessions Judge in the impugned judgment observed that other shopkeepers were there but they were not examined. In my opinion, it was not necessary for the prosecution to examine all the witnesses. In the instant case, the prosecution had examined 12 witnesses including the driver, conductor and some passengers. It is a well settled law that it is the quality and not the quantity of evidence that is material in criminal cases. If the evidence of PW-1 Rattan Chand-driver and PW 10 Milap Chand-conductor is believed, nothing more was necessary. If their testimonies are believed, it was not imperative on the prosecution to examine shopkeepers or other persons.

16. In view of this, the next ground weighed with the learned Sessions Judge that passengers of the bus were not examined is also immaterial. From the evidence, it appears that there were about 70 passengers. It is not expected of the prosecution to examine several passengers. Moreover, the question is of believing or disbelieving the prosecution witnesses.

17. It was also contended that no identification parade was held. In my judgment, it is not necessary to hold identification parade in all cases. In the case on hand, the incident took place in a broad daylight. The person who was beaten, (PW-1 Rattan Chand) was very much certain and definite about the identity of the accused. Similar is the case of PW-10 (Milap Chand), conductor. They had stated before the Court that it was the accused who had beaten PW-1 Rattan Chand and the said version was believed by the trial Court. In my opinion, therefore, it was not incumbent on the prosecution to hold identification parade.

18. It is also equally important to note that there was no enmity between the complainant PW-1 Rattan Chand and PW-10 Milap Chand on the one hand and

the accused on the other hand. It was not even alleged by the defence. It is also a relevant circumstance, inasmuch as normally a person who is a victim or an injured would not allow a real culprit to go and falsely implicate an innocent person. There may be circumstances under which, a Court may not be able to form an opinion that the accused had committed an offence. In such cases, it may be relevant to consider other evidence corroborating or supporting the prosecution. In the present case, however, considering the version given by the prosecution witnesses, particularly PW-1 Rattan Chand and PW-10 Milap Chand, if the trial Court was convinced that the prosecution was able to prove the case beyond reasonable doubt, it could not be said that such a view was uncalled for or could not have been taken. In my considered opinion, therefore, the Sessions Judge committed a clear error in allowing the appeal and in setting aside the order of conviction.

19. For the foregoing reasons, in my view the judgment and order of acquittal recorded by the learned Sessions Judge deserves to be quashed and set aside by restoring the order of conviction recorded by the Additional Chief Judicial Magistrate.

20. In the result, the present appeal is allowed. The order passed by the learned Sessions Judge is set aside and the order of the trial Court is restored.

21. The question then remains, about sentence to be awarded to the accused. The learned Counsel for the accused submitted that the accused is not a hardened criminal and the offence in question was his first offence. He is aged about 55 years having settled in his family with his wife and two children—a son and a daughter. If substantive sentence is imposed on the accused, not only he will have to go to jail, but his family will also suffer. The counsel, therefore, submitted that liberal and lenient view may be taken by giving the accused benefit of probation.

22. Mr. Thakur, learned Assistant Advocate General, on the other hand, submitted that in the facts and circumstances of the case, substantive sentence may be imposed. He also submitted that it cannot be said that the trial Court by awarding rigorous imprisonment of six months and a fine of Rs. 500/-, any illegality was committed by the trial Court. The counsel, therefore, prayed that the sentence and fine imposed by the trial court may be ordered to be maintained.

23. Dealing the quantum of sentence, the trial Court observed:

The convicted accused and his counsel heard on quantum of sentence. They prayed for leniency. Undisputedly, the antecedents of the convicted accused are reported to be clean as no previous conviction is alleged or proved against him. Thus, taking into consideration the magnitude of offence involved and the fact that the convicted accused is a mature person and he could foresee the consequences of his illegal act but he voluntarily picked up quarrel with the public servant and it is only due to his illegal act that the passengers of the bus

were made to suffer untold agony. I am of the opinion that the convicted accused does not deserve judicial sympathy otherwise it would be misplaced sympathy. Therefore, I sentence the convicted accused to undergo rigorous imprisonment for six months and to pay a fine of Rs. 500/- for the offence proved against him. The amount of fine is ordered to be paid to the complainant Rattan Chand to defray medical and prosecution expenses. In default of payment of fine the convicted accused shall further -undergo R.I. for one month. A copy of this judgment be given free of charges to the convicted accused. The file after completion be consigned to the record room.

24. In my considered opinion, in the facts and circumstances, it is not appropriate to extend benefit of probation to the Respondent-accused. The way in which he behaved, assaulted and injured a public servant who was discharging his duties, cannot be taken lightly. Therefore, substantive sentence should be imposed on him. At the same time, however, taking into account family circumstances as also certain additional factors, such as, the incident was of 1993; conviction was recorded by the Additional Chief Judicial Magistrate in October, 1995, which was set aside by the learned Sessions Judge in September, 1996, and about four years have passed thereafter. Considering the totality of facts, in my considered opinion, the ends of justice would be met, if the Respondent-accused is directed to undergo rigorous imprisonment for three months and to pay a fine of Rs. 500/-, imposed by the trial Court and was ordered to be paid to the complainant. In default of payment of fine, the accused shall, further undergo rigorous imprisonment for 15 days.

25. For the foregoing reasons, the appeal is allowed, the order of acquittal passed by the learned Sessions Judge is set aside and the order of learned Additional Chief Judicial Magistrate, Hamirpur, convicting the accused is confirmed. It is, however, modified as far as the sentence is concerned and it is ordered that the Respondent-accused shall undergo rigorous imprisonment for three months. Order of payment of fine passed by the trial Court is restored. The appeal is, accordingly, disposed of.