
(2015) 02 SHI CK 0019
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 570 of 2008

State of Himachal Pradesh

APPELLANT

Vs

Shashi Pal Singh and Others

RESPONDENT

Date of Decision : 27-02-2015

Acts Referred:

Arms Act, 1959 — Section 27, 30, 39
Criminal Procedure Code, 1973 (CrPC) — Section 154, 313
Penal Code, 1860 (IPC) — Section 307, 506

Citation : (2015) 02 SHI CK 0019

Hon'ble Judges : Sureshwar Thakur, J.;Rajiv Sharma, J.

Bench : Division Bench

Advocate : Ramesh Thakur, Asstt. A.G., for the Appellant; Anand Sharma, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—This appeal is instituted against the judgment dated 28.3.2008, rendered by the learned Addl. Sessions Judge, Fast Track Court, Kullu, Sessions Trial No. 34 of 2006, whereby the respondents-accused (hereinafter referred to as the accused), who were charged with and tried for offences punishable under Sections 307, 506 of the IPC and under Sections 27 and 30 of the Arms Act, have been acquitted.

2. The case of the prosecution, in a nut shell, is that complainant Raju Thakur is a resident of Village Banjar. He is owner of Search India Adventure Group at Kasol. Bir Singh happens to be his partner. On 24.7.2005, accused Shashi Pal Singh, Raju and Rajesh alongwith 7 or 8 other persons came to his room located in his complex and administered beatings to him and his friend Dhiyan Singh. This incident was reported to the police by him and case was registered against accused Shashi Pal Singh. On 25.7.2005, accused Shashi Pal Singh sent a message to him through Dinesh Guleria to the effect that he wanted to effect compromise relating to the incident of yesterday night. He was called to Rain

Bow Restaurant by the accused. He alongwith Dinesh, Bir Singh and Lal Chand reached at Rain Bow Restaurant at about 3:30 PM. Accused Shashi Pal Singh came in the upper storey of his house and aimed 12 bore gun at the complainant near the window of the house and threatened the complainant to execute writing to the effect that he would not pursue the criminal case before the police. The complainant told the accused that he should come down in order to settle the dispute. Accused Shashi Pal Singh unloaded the gun and thereafter, loaded "round" in the gun and fired gun shot towards the complainant. The complainant and his companions fled from the scene and took shelter behind the bushes. Accused Shashi Pal Singh threatened to kill the complainant. The gun belonged to the father of the accused. The incident was narrated to SI Joginder Singh by the complainant Raju Thakur, who was present at Kasol in connection with the investigation of occurrence of previous night. The statement of the complainant Raju Thakur was reduced into writing by SI Joginder Singh under Section 154 Cr.P.C. it was sent to PS Kullu. Consequently, FIR was registered. Gun was recovered. The investigation was completed and challan was put up after completing all the codal formalities.

3. The prosecution, in order to prove its case, has examined as many as 11 witnesses. The accused were also examined under Section 313 Cr.P.C. They have denied the prosecution case and their involvement in the incident. The learned trial Court acquitted the accused, as noticed hereinabove.

4. Mr. Ramesh Thakur, learned Asstt. Advocate General, appearing on behalf of the State, has vehemently argued that the prosecution has proved its case against the accused beyond reasonable doubt. On the other hand, Mr. Anand Sharma, Advocate for the accused has supported the judgment of the learned trial Court dated 28.3.2008.

5. We have heard learned counsel for both the sides and gone through the records of the case carefully.

6. PW-1 Raju Thakur, deposed that he alongwith Biri Singh, Dinesh and his friend whose name he had forgotten, had gone to Rainbow Restaurant at about 3:30 PM. When they reached at the Rainbow Restaurant, Shashi was called by him from his house. Shashi opened the window of his house and fired gun shot from his 12 bore gun. Gun shot did not hit them and they were saved. They fled from the spot. Police came on the spot. His statement was recorded vide memo Ext. PA. When the gun shot was fired by accused Shashi Pal Singh, window panes of the Rainbow Restaurant were got smashed. In his cross-examination, he deposed that when they reached at Rainbow Guest House-cum-Restaurant at about 3:30 PM, they were about 5-6 persons. He also deposed in his cross-examination that the distance between the place from where he was standing and accused was standing was about 150 feet. Pellets from the gun had also hit tree near the main gate of the Guest House. The police had also seen the pellets on the tree. The police had met them at Kasol Chowk. The police had also heard the sound of gun shot. The police met them at about 3:30 PM or 4:00 PM. His statement was

recorded by the Police on 25.7.2006 at 8:00 PM.

7. PW-2 Dinesh Guleria, deposed that he received a telephonic message from accused Shashi Pal to the effect that he wanted to effect compromise relating to the incident of the previous night. He alongwith Raju Thakur and Bir Singh went to the Rainbow Guest House at about 3:30 PM. Two or three persons also accompanied them. Accused Shashi Pal was present in the second storey of the Guest House. Accused Shashi Pal fired gun shot from the second storey of the Guest House. The pellets did not hit them and they were saved. In his cross-examination, he deposed that the accused had not come down to effect compromise. He was standing in the second storey of the Guest House. According to him also, pellets had hit the tree and bushes. He also disclosed to the police that pellets had hit the tree and bushes.

8. PW-3 Jog Dassi deposed that she alongwith Rattan Lal were called by the police to Rainbow Guest House. One gun was recovered from the house of Kishan Singh by the police. The gun was taken into possession by the police and was sealed in parcel. She identified gun Ext. P-1. In her cross-examination, she admitted that the gun Ext. P-1 was not sealed in parcel by police in her presence. Volunteered that the gun had already been sealed in a parcel. She also admitted that the house of accused Krishan Singh was not searched in her presence. She was not aware about the contents of memos Ext. PD and Ext. PE. She volunteered that memos Ext. PD and Ext. PE were already scribed and her signatures were obtained on the memos.

9. PW-4 Dule Ram has not supported the case of the prosecution. According to him, he was not associated as witness during the investigation by the police. Nothing was recovered in his presence. He was cross-examined by the learned Public Prosecutor. After being declared hostile, he denied the suggestion that one window frame was taken into possession by the police in his presence.

10. PW-5 HHC Jai Kishan, deposed that on 16.4.2006, one sealed parcel containing 12 bore gun and second sealed parcel containing empty cartridge was handed over to him by MHC Jia Lal with the direction to deposit the same at FSL Junga vide RC No. 90/06. He deposited the articles at FSL, Junga on 17.4.2006 under receipt of the same.

11. Statement of PW-6 SI Sohan Lal, is formal in nature.

12. PW-7 HC Jia Lal deposed that on 17.8.2005, SI Joginder Singh deposited one sealed parcel containing SBBL gun and one air gun alongwith one sealed parcel in which empty cartridge had been kept and one window frame with him at PS Kullu. On 16.4.2006, two sealed parcels were sent to FSL, Junga vide RC No. 90/06 through HHC Jai Krishan.

13. PW-8 Sudhir Gautam, deposed that the Superintendent of Police, Kullu had applied to District Magistrate, Kullu seeking sanction to prosecute accused Shashi Pal and the District Magistrate accorded the necessary sanction to prosecute

accused Shashi Pal under Section 39 of the Arms Act.

14. Statement of PW-9 SI Mohinder Kumar is formal in nature.

15. PW-10 Lal Chand deposed that he went to the house of Shashi Pal. Dinesh Guleria, Bir Singh and Raju Thakur were also with him. Accused Shashi Pal fired a shot from his gun but they were saved. Shashi Pal had threatened them that in case they would not accept his terms, he would kill them. They took shelter in the bushes in order to save themselves. Gun shot fired by the accused Shashi Pal had hit window pane. In his cross-examination, he deposed that they had gone to the house of accused Shashi Pal at about 3:00 PM. They were present outside the gate of the house of accused Shashi Pal at the time of the incident. Accused Shashi Pal had come down to the compound of the house when they arrived near the gate of the house of accused Shashi Pal. They had a talk with accused Shashi Pal in the compound of the house.

16. PW-11 SI Joginder Singh has carried out the investigation of the case. He recorded the statement of the complainant under Section 154 Cr.P.C. vide Ext. PA. He prepared the site plan. He also took the photographs of the spot. He also searched the house of the accused in the presence of the witnesses Jog Dassi and Rattan Lal. One 12 bore gun was recovered from the almirah of the house of Kishan Chand. Gun was sealed in parcel with the aid of seal impression "B". The gun alongwith the licence was taken into possession and recovery memo Ext. PD was prepared in this connection. In his cross-examination, he deposed that he reached the spot at about 5:00 PM.

17. According to PW-1 Raju Thakur, the accused has fired the shot from 12 bore gun from his house. However, PW-2 Dinesh Guleria deposed that the accused was present on the second storey of his Guest House and he fired the gun shot from the second storey of the Guest House. PW-10 Lal Chand has given entirely a new version. According to him, they were talking with the accused in the compound of the house at the time of the incident. There are contradictions in the statements of PW-1 Raju Thakur, PW-2 Dinesh Guleria and PW-10 Lal Chand. It casts doubt on the case of the prosecution.

18. According to PW-1 Raju Thakur and PW-2 Dinesh Guleria, pellets from the gun had hit the tree. However, the police has not recovered the pellets. According to PW-1 Raju Thakur, the police has also seen the pellets. PW-10 Lal Chand has not testified that either pellets from the gun had hit the tree or the police had noticed the pellets on the tree. According to PW-1 Raju Thakur, the window panes of Rainbow Guest House were smashed. However, PW-2 Dinesh Guleria is ignorant of this aspect.

19. PW-4 Dule Ram has not supported the case of the prosecution. According to him, he was not even associated as a witness during the course of the investigation. He has denied that one window pane of Rainbow Guest House was taken into possession by the police in his presence. PW-1 Raju Thakur, has categorically deposed in his cross-examination that the police has also heard the

gun shot at 3:30 PM. However, PW-11 Joginder Singh deposed that he reached the spot at 5:00 PM. In case the police official/officer had heard the sound of gun shot, he would have definitely reached the spot immediately.

20. Mr. Anand Sharma, Advocate, for the accused has drawn the attention of the Court to the report of the FSL Ext. PS. It is evident from the column No. 4 of Ext. PS that Constable Bahadur Singh No. 167 had taken the gun in question for the purpose of examination to FSL Junga. The Court has already taken into consideration the statement of PW-5 Jai Kishan. The version of PW-5 Jai Kishan is that he has taken the 12 bore gun in one sealed parcel and second sealed parcel containing cartridge vide RC No. 90/06 to FSL, Junga. PW-7 Jai Lal also deposed that he has handed over two sealed parcels to Jai Kishan for handing over the same to FSL, Junga. It makes the version of the prosecution doubtful and the possibility of tampering with the case property can be ruled out. The prosecution has failed to prove the case against the accused beyond reasonable doubt that the gun shot was fired by the accused with the intent to cause death of the complainant Raju Thakur.

21. The prosecution of only Shashi Pal was sanctioned under the Arms Act, 1959, as per Ext. PK by the District Magistrate, Kullu. There was no sanction to prosecute accused Kishan Singh for the alleged commission of offence. There is also, as noticed by us hereinabove, serious doubt whether the gun was used by the accused Shashi Pal in an illegal manner. According to Ext. PS, FSL report, the gun with the empty cartridge was handed over to FSL Junga by Constable Bahadur Singh but as per the statement of PW-7 Jia Lal, the gun and cartridge were handed over to Constable Jai Kishan (PW-5). PW-5 Const. Jai Kishan also deposed that he has taken the gun and the empty cartridge to FSL Junga. In case PW-5 Const. Jai Kishan has taken the 12 bore gun and empty cartridge to FSL, Junga then his name ought to have been mentioned in Ext. PS, report of the FSL instead of Constable Bahadur Singh. Thus, the prosecution has failed to prove the case against the accused.

22. Accordingly, we will not interfere with the well reasoned judgment of the learned trial Court and the appeal is dismissed. Bail bonds are discharged.