

(2010) 10 SHI CK 0232
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 177 of 2010

State of Himachal Pradesh	Vs	APPELLANT
Subash Chand and Others		RESPONDENT

Date of Decision : 22-10-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 34, 451, 506

Citation : (2010) 10 SHI CK 0232

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Surinder Singh, J.

Cr. M.P.(M) No. 757 of 2010.

1. Reply not filed.

2. There is a delay of nine days in filing the application for leave to appeal. For the reasons mentioned in the application duly supported by the affidavit of Shri S.C. Negi, Principal Secretary (Home) to the Government of Himachal Pradesh, prima facie constitute sufficient cause to condone the delay. Delay in filing the application for leave to appeal is hereby condoned. Application stands disposed of.

Cr. M.P.(M)756 of 2010.

3. This is an application for seeking leave to appeal by the State against the acquittal of the respondents for the offences punishable under Sections 451, 323, 506 read with Section 34 of the Indian Penal Code, passed by the learned trial Court on 18th December, 2009.

4. Heard and gone through the record.

5. In short, the prosecution story is that on 23rd September, 2004 complainant Beli Ram (PW1) was present in his house adjoining to the house of the accused

persons. An electric connection was being provided to the house of the respondents for which two electricians of the Electricity Department namely Bhagi Rath and Dharam Singh were engaged. While laying the electric-wire from the service-pole complainant Beli Ram raised objection and told them to raise its height near his cowshed, which according to the complainant enraged the respondents. They came to the spot and gave Danda blows to the complainant and his wife and also fisticuffed them. The matter was reported to the police. The wife of the complainant PW4 Sandhya Devi also sustained injuries. They were medically examined. The doctor noticed simple injuries on their persons and issued Medico Legal Certificates Ext.PW7/A and 7/B respectively. The police recovered the Dandas which were allegedly used in the incident. On the completion of the investigation, Challan was presented in the Court against the respondents for their trial. At the end of trial, they were acquitted. Hence, this application for leave to appeal.

6. The learned trial Court, from the evidence on record found that the complainant party was already locked in litigation. Thus, on the close scrutiny of the evidence led during the trial, the learned trial Court found that two electricians named above were also present but not examined to lend strength to the prosecution case.

7. The defence raised by the respondents is that the complainant party was inimically disposed of towards the accused persons on account of previous litigation and also that they were not inclined that the electric connection should be provided to the house of respondents. However, with respect to the beatings, there is a complete denial.

8. PW1 Beli Ram admitted that civil litigation was pending between the parties for the last so many years. This fact has been corroborated by PW2 also. He further admitted that PW3 Daulat Ram is a close relative of PW1 Beli Ram. Even P Ws aforesaid also admitted this fact. He stated to have reached the spot after the incident and there were about 20 persons present on the spot. PW5 Krishnu Ram stated that the incident was not witnessed by any other person.

9. Respondent Ramesh Chand and other respondents are the members of the same family. He also admitted that at the time of incident, Dharam Singh and Bhagi Rath, employees of the Electricity Department, were present on the spot. Bhagi Rath is stated to have died, but to corroborate the version of the complainant, in the facts and circumstances of this case, examination of independent witness Dharam Singh was essential.

10. On the critical examination of the evidence aforesaid, it is clearly established that there has been an old litigation inter-se the parties and the complainant party have a motive to lodge a complaint against the respondents. The independent witnesses Dharam Singh and Bhagi Rath of the Electricity Department were present on the spot. Of course, Bhagi Rath is stated to have died, but the prosecution should have examined Dharam Singh an independent

person to lend strength to the case of the complainant. Whereas, the Investigating Officer PW8 ASI Bhakhtawar Singh stated against the established fact that the dispute did not take place in the presence of Dharam Singh and Bhagi Rath which, raised a doubt on the prosecution case. Thus, the benefit of which was rightly extended to the respondents in absence of cogent and reliable evidence. As such, leave to appeal is declined. The application stands rejected.

Cr. Appeal No. 177 of 2010.

11. In view of the above order passed in Cr. M.P.(M) No. 756 of 2010, the appeal is dismissed.