
(2012) 02 SHI CK 0052

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 223 of 2005

State of Himachal Pradesh

APPELLANT

Vs

Sunka Ram @ Sunku and Others

RESPONDENT

Date of Decision : 28-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 323, 324

Citation : (2012) 02 SHI CK 0052

Hon'ble Judges : Sanjay Karol, J;R.B. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Justice Sanjay Karol, J.—For an offence, which is alleged to have been committed on 15/16th May, 2000, accused were put to trial. In terms of judgment dated 28.9.2004 passed by Judicial Magistrate, Ist Class, Baijnath, District Kangra, H.P. in Cr. Case No. 121 II of 2000, titled as State of H.P. Vs. Sunka Ram & others, accused stand acquitted of the charged offences. It is the case of prosecution that on 15th May, 2000 at about 5.00 P.M., complainant Roop Lal (PW-1) asked his son Raj Kumar (PW-2) and grandson Ajay Kumar (PW-7) to visit the house of Sunku Ram (Accused No. 1) for recovering a sum of Rs. 2,000/-, which had been borrowed by Sunku Ram from the complainant. Accordingly, they went to the house of Sunku Ram but did not return till the following morning. At about 2.00 P.M. on 16th May, 2000, complainant along with Vinod Kumar (PW-4) and Kashmir Singh (not examined) went to the house of Sunku Ram to look for Raj Kumar and Ajay Kumar and were informed that Sunku Ram had confined them in his house. Roop Lal asked Sunku Ram to release the said persons from his custody. In the meanwhile, Vinod Kumar (PW-4) opened the door of the room, where Raj Kumar and Ajay Kumar were kept in confinement. Ajay Kumar fled away from the spot and Raj Kumar was found in an injured condition. Roop Lal immediately took Raj Kumar to the Community Health Centre, Chadhiar, where he was attended to by Dr. Roshan Lal (PW-8). Injured was given medical

treatment and MLC (Ex. PW-8/A) prepared by the doctor. On 17th May, 2000, Roop Lal filed complaint (Ex. PW-1/A), on the basis of which, FIR No. 49 of 2000, dated 17.5.2000 (Ex. PW-5/A) was registered at Police Station, Baijnath against the accused. The investigation was conducted by Mool Raj (PW-6) and other police officials. During the course of investigation weapons of offence i.e. rod (Ex. P-4), dandas (Ex. P-5 to P-8) were recovered and police also took into possession the blood stained clothes (Ex. P-2 to Ex. P-4) of Raj Kumar. With the completion of investigation, challan was presented in the Court for trial.

2. The accused were charged for having committed offences punishable under Sections 147, 148 and Sections 323, 324, 326 read with Section 149 of the Indian Penal Code, to which they did not plead guilty and claimed trial.

3. In order to establish its case, prosecution examined as many as nine witnesses and statements of the accused u/s 313 Cr.P.C. was also recorded, in which they took up defence of false implication.

4. Appreciating the evidence adduced by the parties on the record, trial Court acquitted the accused on all counts, hence the present appeal.

5. We have heard Sh. R.K. Sharma, learned Senior Additional Advocate General, duly assisted by Mr. J.S. Guleria, Assistant Advocate General on behalf of the State as also Mr. M.S. Guleria, Advocate on behalf of the accused. We have also minutely examined the testimonies of the witnesses and other documentary evidence placed on record by the prosecution. Having minutely examined the record, 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 well reasoned and is based on complete and proper appreciation of evidence (documentary and ocular) placed on record. There is neither any illegality/infirmity nor any perversity in the same.

6. It appears that the accused have been falsely implicated in the instant case. To begin with, we refer to the testimony of complainant himself i.e. Roop Lal (PW-1). He admits that his sons were harbouring animosity against the accused. Now animosity is a double edged sword. In the instant case it cuts the prosecution case. We find that injured Raj Kumar was taken to the Community Health Centre where he was administered treatment on 16th May, 2000 at 3.00 P.M. MLC (Ex. PW-8/A) is evidently clear in this regard. Significantly, both Sh. Roop Lal (PW-1) and Sh. Vinod Kumar (PW-4) have deposed that they themselves took the injured to the Hospital for treatment. Now MLC (Ex. PW-8/A) records that Raj Kumar suffered injuries by falling from height of 25-26 feet when he was possessing a sharp edged weapon in his hand. Raj Kumar himself signed such statement of fact recorded by the doctor on the MLC. In Court he admits his signatures to be there below the said statement. Not only that there is also an un-rebutted testimony of the said doctor i.e., Roshan Lal (PW-8), who in no uncertain terms has unambiguously deposed that Raj Kumar was brought to the hospital by his father and it was disclosed to him that the injured sustained

injuries on account of fall from a slanting height at a time while he was holding a sharp edged weapon in his hand. Significantly, MLC shows that the injured suffered seven injuries and PW-8 has deposed that some of the injuries were sustained about 30-40 hours prior to examination. Now it has come in the testimony of Sh. Roop Lal (PW-1), Sh. Raj Kumar (PW-2), Ajay Kumar (PW-7) and Sh. Vinod Kumar (PW-4) that Raj Kumar and Ajay Kumar had visited the house of Sunku Ram only in the evening of 15th May, 2000. If this were so, then prosecution has not sufficiently explained the injuries suffered by Raj Kumar prior thereto.

7. We further find that there is inordinate delay in reporting the matter to the police. Significantly, it is not the case of the prosecution or any one of the private witnesses, that the witnesses/complainant were prevented from reporting the matter to any one of the statutory authorities. The matter was also not brought to the notice of local Panchayat. It was only on 17th May, 2000 and that too at about 6.50 P.M., that Sh. Roop Lal filed a complaint with the police. What prevented Sh. Roop Lal from immediately reporting the matter to the police has not been explained. Hence possibility of due deliberation and/or falsely implicating of the accused person in the alleged crime cannot be ruled out.

8. We further find that testimonies of the relevant prosecution witnesses do not inspire confidence. There are material contradictions in their statements, which render the prosecution case to be extremely doubtful, if not false. According to the complainant, it was he who had sent Raj Kumar and Ajay Kumar to the house of Sunku Ram, which version stands materially contradicted by Raj Kumar and Ajay Kumar, according to whom, they had gone to the market and on their way back, were asked by Sunku Ram to come to his house, where they were illegally confined by the accused. Also there is nothing on record to justify presence of these persons on the spot. In any event why did the complainant not search for his son in the night of 15th May, 2000 itself. He waited for more than 12 hours to inquire about the whereabouts of Raj Kumar and Ajay Kumar. All this render his testimony to be doubtful and untrue.

9. We also find that prosecution has not examined all the witnesses and more particularly Sh. Kashmir Singh, who allegedly went along with Sh. Roop Lal to the house of Sunku Ram on 16th May, 2000. Sh. Vinod Kumar is son of Sh. Roop Lal. He is an interested witness. Hence examination of Sh. Kashmir Singh as an independent person was wrong as he would have thrown true light of the actual events which transpired on the spot at the relevant time.

10. For all the aforesaid reasons we find that no case for interference is made out and it cannot be said that prosecution has been able to prove its case, beyond reasonable doubt, by leading cogent, convincing, material and reliable piece of evidence and establish the charges framed against the accused. 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.*, it cannot be said that the Court below

has not correctly appreciated the evidence on record or that acquittal of the accused persons 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 persons are discharged.