

(2018) 10 SHI CK 0017

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 220 of 2008

State of Himachal Pradesh @APPELLANT@Hash Vinay Chandla And Anr

Date of Decision : 22-10-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 154, 378

Indian Penal Code, 1860 — Section 34, 134, 186, 332, 353

Citation : (2019) 1 ShimLC 48

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Shivpal Manhans, S.C. Sharma, Dinesh Thakur, Sanjeev Sood, Neeraj Gupta

Final Decision : Dismissed

Judgement

Sandeep Sharma, J

1. Instant criminal appeal filed under Section 378 of the Cr.PC., is directed against the impugned judgment of acquittal dated 27.11.2007, passed by the

learned Judicial Magistrate, Ist Class, Shimla, District Shimla, H.P., in Cr. Case No. RBT 50/2 of 2006/02, whereby the respondents-accused came to

be acquitted of the offences punishable under Sections 353, 332 and 186 read with Section 34 of the IPC.

2. Briefly stated facts as emerge from the record are that on 10.1.2002, HC Jia Lal got his statement recorded under Section 154 CrPC, alleging

therein that on 10.1.2002, at about 11:40 am, when he was on duty wearing traffic uniform at D.C. Office, Shimla, one Maruti Van bearing No. HP-

03-3018, came from command side with two persons. Since occupants/accused tried to park their vehicle in the no-parking zone, complainant asked

them to take their vehicle back, but accused instead of following the instructions of the complainant, made an attempt to give beatings to the

complainant. Complainant also alleged that other accused namely Janender Nath Chandla after parking the vehicle also came there and started

abusing him. Allegedly, complainant was rescued by persons namely Prem Singh and constable Ramesh Kumar from the clutches of the accused.

Since accused made an attempt to obstruct the complainant from discharging his official duties, he, by way of aforesaid complaint, prayed that case be

registered against both the accused. On the basis of aforesaid statement recorded under Section 154 Cr.PC, FIR Ext.PW6/A came to be registered

against the accused persons. Police after completion of investigation presented challan in the competent court of law, who on being satisfied that

prima-facie case exists against the respondents-accused charged them for having committed offence punishable under Section 353 read with Section

134 of the IPC, to which they pleaded not guilty and claimed trial.

3. Learned trial Court on the basis of evidence adduced on record by the prosecution held the accused not guilty of having committed offences

punishable under aforesaid provisions of law and accordingly, acquitted them vide judgment dated 27.11.2007. In the aforesaid background, being

aggrieved and dis-satisfied with the aforesaid judgment of acquittal recorded by the court below, appellant-State has approached this Court by way of

instant proceedings, seeking therein conviction of the respondent-accused after setting aside the judgment of acquittal recorded by the court below.

4. I have heard the learned counsel for the parties and gone through the records of the case.

5. Having carefully perused evidence, be it ocular or documentary, led on record by the prosecution vis- à-vis impugned judgment of acquittal

recorded by the court below, this Court is not persuaded to agree with contention of Mr. Shivpal Manhans, learned Additional Advocate General, that

court below has not appreciated the evidence in its right perspective, rather this Court is convinced and satisfied that the court below while

ascertaining the guilt, if any, of the accused, has dealt with each and every aspect of the matter meticulously and there is no illegality and infirmity in

the finding recorded by the court below. It is admitted case of the prosecution that alleged incident took place at 11:40 am, near D.C. Office, Shimla

and many people had gathered there. PW1 HC Prem Singh and PW4 Jiya Lal, complainant, categorically deposed before the court below that many

people had gathered at the time of alleged incident, but only one independent witness came to be associated by the prosecution i.e. PW2 Rajinder

Kumar, who also not supported the case of prosecution. Rajinder Kumar PW2 feigned ignorance with regard to the alleged incident. He in his

statement categorically deposed that nothing happened in his presence. Though he was declared hostile, but even cross-examination conducted upon

him nowhere suggests that prosecution was able to shatter his testimony. He in his cross-examination specifically denied that on 10.1.2006, he was at

mall road. He also denied suggestion put to him that there was exchange of hot words between the accused and HC Jiya Lal. He further denied

suggestion put to him that one of the accused had assaulted Jiya Lal complainant, while he was discharging his official duties.

6. True it is that in the instant case, official witnesses PW1 Prem Singh and complainant (PW4) Jiya Lal had corroborated the version of each other,

but since it has specifically come in their statement that aforesaid incident was seen by independent witnesses i.e. PW2 Rajinder Singh, statement, if

any, made by PW2, gains importance and as such, cannot be ignored. PW1 HC Prem Singh stated that in the year, 2002 he was posted as temporary

driver with SP office, Shimla and on 10.1.2002, he had parked the vehicle in question near CTO. He further stated that HC Jiya Lal was on traffic

duty at that time and checking the vehicles. It has also come in his statement that at about 11:40 am, one Maruti Car bearing No. HP -03-3018, , came

from command side with two persons. HC Jiya Lal stopped them from parking their vehicle below the police Gumti, but one of the occupant of the

vehicle took the vehicle away, whereas other person started asking how the other vehicles were parked there. He further stated that in the meantime,

driver of the vehicle also reached there and started manhandling HC Jiya Lal. He also deposed that he along with constable Ramesh rescued HC Jiya

Lal and many people had gathered on the spot. It has also come in his statement that person namely Desh Raj and Rajinder were also present on the

spot, but if the statement having been made by the this witness is perused juxtaposing the statement of PW2 Rajinder Kumar, it totally destroys the

case of the prosecution because PW2 Rajinder Kumar nowhere stated that persons namely Deshraj and Rajinder were also present on the spot. PW1

HC Prem Singh in his examination-in-chief deposed that accused person had threatened HC Jiya Lal, but in his cross-examination he admitted that

incident took place near CTO from where one path leads to mall road and other to the lower bazaar.

7. Leaving everything aside, very presence of HC Jiya Lal i.e.complainant on the spot is itself doubtful. PW5 Constable Hari Krishan while proving on

record Ext.PW 5/A and Ext.PW5/B categorically deposed that on 10.1.2002, HC Jiya Lal was on duty from 8:00am to 8:00 pm near DC Office,

Shimla. He also admitted in cross-examination that name of the complainant Jiya Lal was inserted between Sr. No. 11 and 12 in the duty register. It

has also come in his cross-examination that HHC Bal Mukund and constable Parveen Kumar was on duty with HC Jiya Lal on that day but for the

reasons best known to the prosecution, these officials never came to be examined by the prosecution, who could be the material prosecution witnesses

to the alleged incident. Since it has specifically come in the statement of Hari Krishan that name of the complainant was inserted between Sr. No. 11

and 12 in the duty register, learned court below while ascertaining the guilt, if any, of the accused rightly observed that in view of the specific stand

taken by the accused that they had gone to lodge report with the police with regard to misbehavior of HC Jiya Lal, their statement cannot be ignored,

rather needs to be scrutinized minutely. If the statement of PW5 Hari Krishan, who is an official witness, is taken to be correct, it suggests that HC

Jia Lal was actually not performing his duty at CTO point, the Mall, at that relevant time, rather his name subsequently came to be inserted in the duty

register that too with a view to save him on account of complaint having been lodged against him by the accused. Perusal of Ext.D/A suggests that

statement of both the accused with regard to the alleged misbehavior of HC Jiya Lal was also recorded at 3:30 pm, but PW9 Jagdish Ram

categorically admitted in his cross-examination that he had not made any attempt to investigate the matter from Smt. Harinder, lady named by the

accused in their rapat.

8. Careful perusal of Ext.DA suggests that at the time of alleged incident, lady namely Smt. Harinder was also present but no attempt, if any, was

ever made by the Investigating Agency to associate that lady to ascertain the factum, if any, with regard to the misbehavior of the HC Jiya Lal with

the accused. PW9 Inspector Jagdish Ram feigned ignorance whether complainant had abused the accused persons. He failed to state whether

complainant misbehaved with the accused. He also admitted in his cross-examination that he had not tried to ascertain whether vehicle was having permit of DC office or not. Most importantly, it has come in his statement that vehicle was not challaned on that day. It is not understood that if vehicle was being parked unauthorisedly on the restricted/sealed road by the accused, what prevented HC Jia Lal (complainant) from challaning the vehicle, meaning thereby, false story came to be concocted by HC Jiya Lal after lodging of complaint by the accused with regard to the misbehavior of HC Jiya Lal at 3:30 pm on 10.1.2002.

9. True, it is that testimony of official witnesses cannot be brushed aside solely on the ground of non-association of independent witnesses, but in the instant case, independent witnesses associated by the prosecution have not supported the story of prosecution, rather he has denied the case of the prosecution in toto. Even if the statement of official witnesses are read juxtaposing each other, it creates doubt with regard to the correctness of the story put forth by the prosecution and as such, learned court below rightly held the accused not guilty of having committed offences.

10. Consequently, in view of the detailed discussion made herein above, this Court sees no reason to differ with the well reasoned judgment passed by the learned court below which appears to be based upon the proper appreciation of evidence adduced on record and the same is accordingly upheld. Consequently, the appeal is dismissed being devoid of any merits.