
(1990) 09 SHI CK 0023
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 62 of 1987

State of H.P.

APPELLANT

Vs

Inder Singh and Others

RESPONDENT

Date of Decision : 14-09-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 323, 325, 34
Probation of Offenders Act, 1958 — Section 5

Citation : (1990) 2 ILR HP 1153

Hon'ble Judges : Bhawani Singh, J

Bench : Single Bench

Advocate : Ram Murti Bisht, Law Officer, for the Appellant; Vijay Thakur, for the Respondent

Judgement

Bhawani Singh, J.—The present appeal, by the State of Himachal Pradesh, assails the judgment of Judicial Magistrate, Nahan in criminal Case No. 198/2 of 1982, decided on 15-11-1986. It is a case under Sections 325/323 read with Section 34, Indian Penal Code.

2. Briefly, the prosecution case is that all the accused in furtherance of common intention, gave beatings to Smt. Santosh Kaur and Halwant Singh on 18-3-1982 with the result that they sustained simple as well as grievous injuries on their persons. This incident was reported to the Police through Report No. 46 and on that basis, First Information Report (Ext. PW-7/A) was registered against the accused. Place was visited by the Police and the injured were subjected to medical examination. The medico legal certificates from the Doctor are Ext. PW-6/A and Ext. PW6/B. Injured Halwant Singh was X-rayed and these reports are Ext. PW 3/A to Ext. PW-3/D. Sketch map Ext. PW 7/B was also prepared by the Police and after completing the investigation, the accused were prosecuted for the commission of the crime.

3. The accused in their statements u/s 313, Code of Criminal Procedure denied

the prosecution case and their defense appears to be that of false implication due to inimical relations.

4. After examining the witnesses in this case and hearing the parties, the trial Court came to the conclusion that the prosecution failed to substantiate the charge against the accused for the reason that the witnesses for the prosecution gave varied versions of the occurrence and that the possibility of involvement of the accused due to inimical relations could not be ruled out.

5. Now, the state has assailed this finding of the trial Court by way of this appeal. Shri Ram Murti Bisht, Id. counsel for the State, contends very seriously that the acquittal of the accused is thoroughly perverse in view of the fact that the prosecution has completely established their involvement in the commission of the crime. This plea of the State is disputed by Shri Vijay Thakur, Advocate, appearing for the accused in this case. His contention is that the trial Court has dealt with the evidence quite seriously and in accordance with law, therefore, the findings may not be disturbed in this appeal against acquittal. Let the matter be examined to see whether the trial Court has correctly and legally come to the conclusion adverse to the prosecution.

6. The first victim of the assault is Smt. Santosh Kaur. Although, she has died and her statement could not be recorded, however, the prosecution story starts from the facts that this lady was attacked by Smt. Gian Kaur and her sons. On her cries, Shri Halwant Singh came followed by the other accused. All of them gave beatings to the complainants causing number of injuries on their persons. Their medical examinations and the medico legal certificates placed on the record of this case, clearly demonstrate and establish the allegation that they were assaulted as a result of which they sustained injuries-simple as well as grievous. The observations of the trial Court that there is some variation in the statements of the prosecution witnesses as to the participation of the accused and the factum of their assaults are erroneous. There may be some variation on this account; however, it is not of such a magnitude as to lead to the conclusion that the prosecution case is disbelieved. The accused being many in numbers, it is possible that there is some variation in naming certain accused and in not naming the others, quite particularly, by the victim. In such a kind of assault, it is practically difficult for the victim of assault to notice accurately and then to remember the accused as to the exact role played by them. However, the sum total of their evidence clearly points out that all the accused participated in the occurrence. Witnesses like Balbir Singh (PW-1), Milkhi Ram (PW-2) and Kanahia Lal (PW-5) who are independent witnesses to the occurrence, have also supported the prosecution case.

7. The trial Court has not correctly appreciated the prosecution evidence. It has unreasonably attached undue prominence and weight to minor variations in the statements of the prosecution witnesses, which are, as a matter of fact, bound to occur looking to the facts of this case and the stage they gave their statements in the Court. More over, the trial Court should not have made use of applications

Ext. DX and Ext. DY for the purpose of verifying whether all the accused were mentioned in these applications. In addition to this, the first Information Report has been used as substantive evidence which has only value for the purpose of contradiction and corroboration. This sum total of the aforesaid examination of the matter is that the trial Court judgment is quite erroneous and is liable to be set-aside. Accordingly, this appeal is allowed and the judgment is set-aside and the accused are convicted under Sections 325/323/34, Indian Penal Code.

8. Now, the question arises as to what punishment should be awarded to the accused? The Id. counsel for the State submits that: the accused, many in number, assaulted the complainants unjustifiably. They caused number of injuries on the persons of the complainants.

9. On the other hand, Shri Vijay Thakur made compassionate pleas to release the accused under the provisions of Offenders Act on the grounds that the parties belong to the same village and in order to see that they live in the village quite amicably, it is desirable that they are not punished. Moreover, it was also contended that the accused are first offenders and they did not intend to inflict more serious harm which they could otherwise do. Lastly, it was submitted that the incident occurred on 18-3-1982 and more than eight years have passed, therefore, awarding of punishment after such a long lapse of time, is not desirable.

10. Looking to these submissions of the Id. counsel for the accused, instead of awarding the punishment, direct their release on probation of good conduct for a period of two years on their entering into a bond with one surety in each case, to be of good behavior during this period and to appear and receive sentence when called upon to do so during such period. The bond will be filed before the Judicial Magistrate I-Class (1), Paonta-Sahib within two months from today, who will accept the same after receiving report from the Probation Officer concerned.

11. u/s 5 of Probation of Offenders Act, 1958, I direct each accused to pay compensation at the rate of Rs. 300/- to complainant Halwant Singh. This amount be deposited by them in the Court of Judicial Magistrate I-Class (I), Paonta-Sahib within two months and in the event of any one's failure to do so, the defaulting accused will undergo simple imprisonment for a period of three months.