

**(2019) 10 SHI CK 0083**  
**In the High Court Of Himachal Pradesh**  
**Case No : Criminal Appeal No. 534 Of 2008**

State Of H.P.

APPELLANT

Vs

Yoginder Pal

RESPONDENT

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**Date of Decision :** 04-10-2019

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 313, 378  
Indian Penal Code, 1860 — Section 353, 504

**Citation :** (2019) 10 SHI CK 0083

**Hon'ble Judges :** Sandeep Sharma, J

**Bench :** Single Bench

**Advocate :** Sanjeev Sood, Kunal Thakur

**Final Decision :** Dismissed

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## Judgement

Sandeep Sharma, J

1. Instant appeal filed under Section 378 Cr.PC, lays challenge to judgment dated 30.4.2008, passed by the learned Presiding Officer, FTC, Hamirpur, District Hamirpur, H.P., in Criminal Appeal No. 12 of 2007, reversing judgment of conviction dated 31.1.2007, passed by the learned JMIC Nadaun, in Criminal Case No. 106-II-2002, RBT No. 164-II-2003, whereby learned court below while holding the accused guilty of having committed offence punishable under Section 504 IPC convicted and sentenced him with Simple Imprisonment till the rising of the court and fine of Rs. 3,000/- and in default of payment of fine, to further undergo simple imprisonment for one day.

2. Briefly stated facts, as emerge from the record are that Police Station Nadaun received a complaint from medical officer PHC Dhaneta alleging therein that on 30.5.2002, at about 3:15 pm, respondent-accused namely Yoginder Pal (herein after referred to as "the accused") came to the hospital at Dhaneta and not only misbehaved with the patients, but also obstructed the complainant PW1 Dr. Sukhpal from checking the patients. Complainant also alleged that accused

hurled abuses at Smt. Savitri Devi, w/o Sh. Julfi Ram and when aforesaid Julfi Ram questioned the accused, he was also abused by the accused. Complainant also alleged that the accused also abused Smt. Sharda Devi, staff nurse of the Hospital and obstructed/prevented her from discharging the public duty. On the basis of aforesaid complaint made by the complainant PW1, formal FIR Ext.PW8/A came to be registered against the accused under Sections 353 and 504 of IPC. After completion of investigation, police presented the challan in the competent court of law, who on being satisfied that prima facie case exists against the accused, put notice of accusation to him for having committed offence under Section 504 of IPC, to which he pleaded not guilty and claimed trial. Prosecution with a view to prove its case examined as many as eight witnesses, whereas accused in his statement recorded under Section 313 Cr.PC, denied the case of the prosecution in toto. He also led evidence in his support.

3. Learned trial Court on the basis of evidence collected on record by the prosecution though acquitted the accused for commission of offence punishable under Section 353 of IPC, but convicted and sentenced him till the rising of the Court under Section 504 of IPC.

4. Being aggrieved and dissatisfied with the aforesaid judgment of conviction recorded by the court below, accused preferred an appeal in the Court of learned Presiding Judge FTC, Hamirpur, H.P., who while setting aside the judgment of conviction recorded by the court below acquitted the respondent-accused for having committed offence punishable under Section 504 of IPC. In the aforesaid backdrop, 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.

5. Having heard learned counsel for the parties and perused material available on record, this Court finds no force in the argument raised by learned Deputy Advocate General that impugned judgment of acquittal is not based upon proper appreciation of evidence, rather this court on perusal of evidence available on record is of the view that learned first appellate Court has dealt with each and every aspect of the matter meticulously and there is no scope left with this Court to interfere with the same.

6. It is not in dispute that respondent accused was acquitted of offence alleged to have been committed by him under Section 353 IPC and no appeal, whatsoever, ever came to be filed by the appellant-State against the same, rather appeal, if any, came to be filed on behalf of the accused against his conviction recorded by the learned trial Court under Section 504 IPC and as such, this Court at this stage, is only required to see the correctness of findings returned by the court below with regard to offence alleged to have been committed by the accused under Section 504 of IPC.

7. Having carefully perused evidence available on record, be it ocular or documentary, this Court finds that though there is some evidence to the effect

that on the date of the alleged incident, accused caused obstruction to public servants in discharge of their public duty, but as has been noticed herein above, accused already stands acquitted under Section 353 IPC, which finding has attained finality and as such, there is no occasion for this Court to examine the evidence from that angle.

8. Dr. Sukhpal while deposing as PW1 deposed that on 13.5.2002, when he was on duty in the OPD at PHC Dhaneta, at about 3:15PM, accused came there and asked him to check/examine him. Complainant checked/examined him and thereafter, accused left the hospital. He further deposed that after about ten minutes, accused again came and asked him to check him again. Since at that time, another patient namely Savitri was being checked up by the complainant, accused allegedly asked above named patient to stand up from the stool and when she refused to do so, accused allegedly misbehaved with her. This witness further deposed that accused also misbehaved with Smt. Sharda Devi, staff nurse of the hospital, whereafter he reported the matter to the police vide Ext.PW1/A. This witness also admitted that few days back, accused was medically examined by him at the instance of the police and he had rendered opinion vide MLC Ext.PW1/B.

9. Interestingly, careful perusal of version put forth by this witness nowhere discloses offence, if any, under Section 504 IPC because main allegation of this witness is that while he was checking the accused, accused misbehaved with him. He has nowhere stated that what kind of abuses were hurled at him. Moreover, if aforesaid version of this witness is read juxtaposing his initial complaint Ext.PW1/A, there are lot of contradictions and inconsistencies. In complaint Ext.PW1, this witness simply alleged that accused abused him without stating therein that what sort of abuses were hurled upon him by the accused, whereas this witness while deposing before the court below simply stated that he was asked by the accused to check him twice and he misbehaved with him. If the statement of the complainant made before the court is perused, this Court is in total agreement with the finding returned by the learned first appellate Court that mere statement of the complainant that the accused misbehaved with him is not enough to hold the accused guilty of having committed offence punishable under Section 504 IPC. In order to constitute an offence under Section 504 IPC, complainant is /was necessarily required to state/disclose kind of abuses hurled at him.

10. PW2 Julfi Ram, husband of Savitri Devi (patient) deposed that the accused started arguing with him when he asked him that why accused asked his wife to get up from the stool. He also failed to mention that what sort of abuses came to be hurled upon him by the accused.

11. PW4 Smt. Sharda Devi i.e. staff nurse of the hospital stated that accused was hurling abuses at the complainant, but this witness also failed to depose specifically with regard to kind of abuses allegedly hurled by the accused upon the complainant.

12. PW5 Smt. Savitri Devi, who happened to be wife of PW2 also made a general statement that the accused abused the complainant.

13. Aforesaid statements made by these witnesses, if are read in conjunction juxtaposing each other, clearly suggest that accused requested the complainant to check him twice since he was not satisfied with the treatment given to him at the first instance. Statements made by these aforesaid prosecution witnesses reveal that complainant-doctor was humiliated/misbehaved by the accused, but that is not sufficient to constitute offence punishable under Section 504 IPC. There are material contradictions and inconsistencies in the statement of PW1 (complainant) and as such, no much reliance could be placed upon the same while determining the guilt, if any, of the accused.

14. Having carefully perused the evidence available on record, this Court is persuaded to agree with the contention of learned counsel representing the respondent-accused that since there are material contradictions in the statements made by prosecution witnesses, learned court below rightly did not place reliance upon same. Reliance is placed on Judgment passed by the Hon'ble Apex Court in C. Magesh and Ors. v. State of Karnataka (2010) 5 SCC 645, wherein it has been held as under:-

"45. It may be mentioned herein that in criminal jurisprudence, evidence has to be evaluated on the touchstone of consistency. Needless to emphasise, consistency is the keyword for upholding the conviction of an accused. In this regard it is to be noted that this Court in the case titled Suraj Singh v. State of U.P., 2008 (11) SCR 286 has held:- (SCC p. 704, para 14)

"14. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witness is held to be creditworthy. The probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation."

46. In a criminal trial, evidence of the eye witness requires a careful assessment and must be evaluated for its creditability. Since the fundamental aspect of criminal jurisprudence rests upon the stated principle that "no man is guilty until proven so", hence utmost caution is required to be exercised in dealing with situations where there are multiple testimonies and equally large number of witnesses testifying before the court. There must be a string that should join the evidence of all the witnesses and thereby satisfying the test of consistency in evidence amongst all the witnesses."

15. Consequently, in view of the detailed discussion made herein above as well as law laid down by the Hon'ble Apex Court, this Court sees no reason to differ with the well reasoned judgment passed by the learned first appellate Court below which otherwise appears to be based upon the proper appreciation of evidence adduced on record and the same is accordingly upheld. Accordingly, the appeal is dismissed being devoid of any merits.