

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Appeal No.370 of 1999

Decided on: March 28, 2006.

State of Himachal Pradesh

...Appellant.

VERSUS

Jatinder Bakhru & Ors.

....Respondents.

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?¹No

For the Appellant: Mr.J.S.Guleria, Law Officer.

For the respondents: Mr.B.C.Negi, Advocate.

Deepak Gupta, Judge (Oral)

This appeal is directed against the judgment of the Judicial Magistrate 1st Class, Solan dated 18th November, 1998 whereby he has acquitted the accused.

2. The prosecution case, in brief, is that on 5th July, 1994 at about 9 P.M. complainant Keshav Sahni was sitting in his shop along with one Aman Sethi. Two boys came to his shop and asked him for '***Phensedyl Diazepam- Calmpose***'. The complainant refused to give the medicine without prescription from the doctor. After some time two other persons Satish Kumar and Billa came to the shop and again asked for the same medicine. Again the complainant refused and the boys went away. At about 9.20 P.M. four boys, along with Vishal Bakhru and Jitender Bakhru came to his shop and asked for the same

Whether the reporters of the local papers maybe allowed to see the judgment? Yes

medicine and threatened him. When the complainant refused to give the medicine, Jitender Bakhru and Vishal Bakhru came inside the shop, caught hold of the complainant and started beating him. The complainant was dragged outside his shop and again beaten up and Vishal Bakhru threw a cement flower pot (**Gamla**) on the head of the complainant. When Aman Sethi tried to intervene and save the complainant he was also beaten up.

3. On the basis of this complaint, F.I.R. No.100/94 under Sections 147, 149, 452 and 323 I.P.C. was lodged against the accused persons. Investigation was done and the challan was put up against the accused. The accused were summoned. They put in appearance and pleaded innocence and claimed trial. The prosecution examined eight witnesses. The statements of the accused were recorded under Section 313 Cr.P.C. Their case was of total denial and according to them, a false case had been set up against them due to family enmity and the fact that both the parties belong to different political groups. The trial Court acquitted the accused, hence, the present appeal.

4. I have heard Shri J.S.Guleria, learned Law Officer, for the State and Shri B.C.Negi, learned counsel for the accused. I have carefully gone through the entire case file and the evidence.

5. At the outset it may be noticed that according to the complainant as well as Aman Sethi and the Investigating Officer, a large number of persons were present when the occurrence took place. It is also in evidence that a number of other shops and offices of professionals were open when the alleged occurrence took place at about 9 P.M. in the month of July. The occurrence allegedly took place in the middle of a market. However, no attempt was made to associate any independent witnesses with the investigation nor were the statements of the independent witnesses recorded.

6. PW-2, Keshav Sahni, is the complainant. He has obviously supported the case set up by the complainant. He is also supported by PW-3 Aman Sethi. It has come on record that they are related to each other and are also close friends. Therefore, Aman Sethi is an interested witness.

7. An important aspect of the case is that according to PW-3, the complainant's clothes were blood stained and the police had come and taken possession of the blood stained clothes. However, there is no seizure memo with regard to the blood stained clothes and in fact no blood stained clothes have been produced in the Court. On the other hand, complainant Keshav Sahni states that there was no blood on his clothes. This is a major contradiction in the prosecution case. Ext.PW-2/A is the recovery memo of the flower pot (**Gamla**) which was allegedly used by Vishal Bakhru to cause injury on the complainant. PW-3 Aman Sethi clearly states that the seizure memo was prepared in the Police Post. Even PW-4, Ashok Sahni, who was witness to this recovery memo, has stated that the said memo was not prepared on the spot but was prepared in the Police Post. Another interesting fact is that the incident took place on 5th July, 1994 and even PW-4 states that it was prepared on 5th July, 1994 but the seizure memo reveals that in fact the same was prepared on 6th July, 1994.

8. As already observed above, no independent witnesses were examined though a number of them were available. It also appears that material facts have been suppressed or withheld from the Court. The Investigating Officer (PW-6), Sardari Lal, states that he had made no effort to associate other independent witness.

9. It is also doubtful whether there were actually five or more persons when the alleged incident took place. The names of the accused persons were not furnished on the day when the complaint

was filed. The complainant (PW-2) admits that he only gave the names of five persons in the police one day after the occurrence took place. He also states that the name of one of the accused was told to him by Aman Sethi. It is apparent that the complainant neither knew the names nor recognized at least two of the boys. This is total contradicted by the statement of Aman Sethi made to the police. Aman Sethi has admitted that the police had recorded his statement under Section 161 Cr.P.C. He also admits that the said statement Ext.PB has been correctly recorded by the police. In this statement there is mention of only three persons. It is apparent that the names of two of the accused were added later on. As such, it is clear that at a later stage padding was done so as to bring in to aid the provisions of Section 149 I.P.C. Another interesting aspect is that according to PW-3 he went to the spot one month after the occurrence. PW-2 also does not state that he went to the spot with the police. Then who showed the spot to the Investigating Officer?

10. PW-1, Dr.Usha Bhardwaj, has in her statement clearly stated that injury No.1 i.e. the injury on the head of the complainant could not have been caused by the flower pot (**Gamla**). There is only one injury on the head of the complainant. According to the complainant, this injury was caused when Vishal Bakhru hit him on the head with the **Gamla**. The medical evidence clearly rules out this story. Therefore, this version of the complainant appears to be false.

11. There are many other contradictions in the prosecution version and inconsistencies in their statements. The most important witnesses have not been examined. Keeping in view all these facts, I am of the opinion that the learned trial Court rightly acquitted the accused. There is no infirmity in the judgment of the trial Court. The

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appeal is, therefore, without merit and is dismissed. Bail bonds of the accused are discharged.

28th March, 2006.
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(Deepak Gupta)
Judge.

