

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 345 of 1999.

Reserved on : 24.3.2006

Date of decision: 28.4.2006.

State of H.P.

... Appellant

Versus

Thakar Dass & Ors.

... Respondents

Coram :

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

Whether approved for reporting?¹ No.

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

For the respondents: Mr. Sunil Chaudhary, Advocate.

Deepak Gupta, J.:

This appeal by the State is directed against the judgment of the learned Judicial Magistrate Ist Class, Court No.1, Mandi, in case No. 257-II of 1995, decided on 26.11.1998, whereby he has acquitted the respondents – accused for having committed offences under Sections 325,323,341 and 147 I.P.C.

The prosecution case in brief is that on 28.5.1995, at about 4.00 P.M. the accused persons in concert with each other caused grievous hurt to Gorkhia and Smt. Indira Devi at place Kummi. It is alleged that when Ram Singh was working in his field accused Lala Ram alias Lal Singh came on the spot and started uprooting the 'Beer' (boundary of the field) of the complainant. When Ram Singh objected,

¹Whether reporters of Local Papers may be allowed to see the judgment? Yes.

Lala Ram attacked him with a danda. Later the other accused also joined him and gave beatings to Ram Singh. When Ram Singh raised an alarm, Gangi Devi, Dropti Devi, Gorkhia and Indira Devi came on the spot to save him. These persons were also attacked by all the accused. Gorkhia, father of the complainant Ram Singh was given a danda blow on his face causing grievous injuries. The other persons were also injured. Ram Singh lodged a complaint on the same day and F.I.R. Ext. PW15/B was registered against the accused.

The accused were summoned and were charged for having committed offences under Section 325.323/34 I.P.C. They pleaded not guilty and claimed trial.

The learned trial Court came to the conclusion that the case against the accused persons has not been proved beyond reasonable doubt and that there were material contradictions in the testimonies of the witnesses and acquitted the accused, Therefore, this appeal by the State.

PW-1 Ram Singh in his statement stated that when he was working in his field, accused Lala Ram came and uprooted the 'Beer' (boundary of the field). When the witness objected, then Lala Ram hit him with a danda. The other accused also came to the spot and beat him. When Ram Singh raised an alarm then his mother Gangi Devi came to rescue him and she was also hit by Lala Ram with danda. According to him, his wife was also hit by the accused and thereafter, his father Gorkhia Ram came. Gorkhia Ram begged for mercy from the accused and then the accused slapped him. Since this witness was injured, his wife took him to the house. Medical of this witness was done. This witness admitted in cross-examination that 60-70 people had collected on the

spot. He also states that after he was taken home, he does not know what happened at the spot.

PW-2 Indira Devi has supported the prosecution case. She in her cross-examination has stated that the fight continued for a long time and the accused also abused them. Dhian Chand is PW-5. He is an eye witness to the incident. According to him, accused Lala Ram, Thakur Dass and Chhotu Ram were fighting with Ram Singh and some ladies. Lala Ram and Vijay accused were armed with dandas and they were hitting the complainant side with dandas. PW-6 Dropti Devi and PW-7 Gangi Devi have also made a similar statement.

PW-8 is Gorkhia father of complainant Ram Singh. According to him, the accused were beating his son. Then this witness came to the spot and he begged the accused persons for mercy and told them not to beat up his son. Then Lala hit him with a danda on his jaw and he fell down. PW-10 is Dr. Jai Ram who examined Gorkhia who was referred to him from C.H.C. Ratti. According to him, there is fracture of the anterior region of the jaw. PW-13 is Dr. S.K. Malhotra. On 31.5.1995 he has examined the x-ray of Indira Devi and gave his report Ext.PW13/B which showed that there was no fracture. PW-14 is Dr. G.D. Saini. According to him, he had examined Ram Singh on 28.5.1995. He proved the MLC Ext.PW14/A. On the same day, he examined Gangi Devi and she also had some simple injurious and her MLC is Ext. PW14/B. He also examined Dropti Devi, but did not find any physical injuries on her person. He also examined Gorkhia and he found that Gorkhia had bleeding from the left central incisor lower jaw and the tooth had become shaky. He accordingly referred the patient to the Dental Surgeon and a fracture of mandible injury was detected and it was found to be a grievous injury.

He proved Ext. PW14/D the MLC relating to Gorkhia. On the same day, this witness also examined Indira Devi and found simple injuries on her person and issued MLC Ext. PW14/E. The only suggestion put to this witness is that the injuries given in Exts. PW14/B, PW14/D and PW14/E could have been caused by a fall.

The learned trial Court has acquitted the accused persons mainly on the ground that a cross case was also registered against the complainant and his family with regard to the same incident. This fact is not disputed. According to the trial Court, there were major discrepancies in the statements of the witnesses. According to the trial Court, PW-1 Ram Singh had stated that Gorkhia had been slapped, whereas according to Gorkhia, he had been hit by a danda causing injuries on his jaw. In my opinion, the learned trial Court has not read the entire evidence of PW-1 in the proper perspective. This witness has also stated that soon after he was injured, he was taken away from the spot. In fact by the time Gorkhia Ram arrived, the complainant was being taken home by his wife since he had suffered injuries. He obviously does not know what happened thereafter. It is true that no injuries were found on the body of Ram Singh and Dropti Devi by the Doctor. However, Gorkhia Ram had suffered a grievous injury on his jaw and the other injured persons had also received injuries, though they were simple in nature. There is no contradiction between the statements of the medical expert and the statements of the injured persons.

The learned trial Court has also totally misread the evidence in holding that Dhian Chand examined as PW-5, Nirmala Devi as PW-9 and Sewak Ram examined as PW-12 who are independent witnesses, had not clearly identified the accused persons. PW-5 Dhian Chand

clearly states that Lala Ram and Vijay were armed with dandas and they were using the dandas to beat up the complainant party. PW-9 Nirmala Devi states that when she reached at the spot Ram Singh was taken to the house by his wife. Indira Devi was also taken home by two ladies. The accused were present at the spot and they were armed with dandas. According to her, blood was coming out of Gorkhia's mouth. She however could not identify who had hit Gorkhia. It is true that Sewak Ram has not supported the prosecution case totally. He however does state that Gorkhia came and begged that the accused should not beat up his family when one boy came with a danda and hit Gorkhia Ram. He however did not identify who had hit Gorkhia Ram.

Even if the entire prosecution version is not believed, the evidence of the witnesses is absolutely clear that Gorkhia Ram was hit by a danda on his jaw. It is also clear that Gorkhia Ram was attacked by Lala Ram alias Lal Singh. Gorkhia's statement is absolutely clear that when he was begging for mercy then accused Lala Ram who was armed with a danda attacked him and hit him on the jaw. Even if the case of the accused is accepted that there was a fight, as far as the attack on Gorkhia is concerned there was no justification for the same. It is clear that after he came, he was apologising to the accused and begging them for mercy. He was an elderly person aged 55 years. Instead of listening to him, accused Lala Ram alias Lal Singh hit him with a danda. Therefore, I am convinced that as far as attack on Gorkhia Ram is concerned, the prosecution has proved beyond reasonable doubt that Gorkhia was hit without any provocation and without any rhyme or reason by Lala Ram alias Lal Singh. The injuries caused to him is a

grievous injury and therefore, Lal Singh is convicted for having committed an offence under Section 325 I.P.C.

It was then contended on behalf of the accused that the incident has occurred many years back and therefore, this Court may treat Lal Singh alias Lala Ram leniently. I have considered the entire facts and in my opinion, Lal Singh alias Lala Ram though may be treated with leniency, cannot be totally absolved from undergoing a substantial sentence. He has attacked an old man with danda when that old man was begging for mercy.

In view of the above discussion, the judgment of the trial Court in so far as the acquittal of Thakar Dass, Chhout Ram, Dharam Chand, Chuni Lal and Biri Singh is concerned, is upheld. However, the judgment of the trial Court in so far as it acquits accused Lala Ram alias Lal Singh, is set aside and he is convicted for having committed an offence under Section 325 I.P.C. and sentenced to undergo rigorous imprisonment for a period of six months and to pay fine of Rs.5000/-. In default of payment of fine, he shall undergo further imprisonment for a period of three months. The fine if paid, shall be paid to Gorkhia Ram. Accused Lala Ram alias Lal Singh is directed to surrender before the trial Court on or before **31st May, 2006** to undergo sentence failing which the surety furnished by him shall stand fortified and the learned trial Court shall take appropriate action in accordance with law.

April 28, 2006
(BSS)

(Deepak Gupta),
Judge

