

# IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Appeal No.383 of 1999

Decided on: March 30, 2006.

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State of Himachal Pradesh

...Appellant.

**VERSUS**

Amar Nath

....Respondent.

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**Coram**

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

*Whether approved for reporting?<sup>1</sup>*

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

For the respondent: Ms.Bindiya Sharma, vice Ms.Rama Mehta, Advocate.

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**Deepak Gupta, Judge (Oral)**

This appeal by the State is directed against the judgment of the Judicial Magistrate, Barsar in Criminal Case No.38-1-95/130-11-97/109-11-1998 decided on 29<sup>th</sup> May, 1999 whereby he has acquitted the accused of the alleged offence committed by him under Sections 323, 325 IPC.

2. The prosecution case, in brief, is that on 19<sup>th</sup> June, 1995 complainant Bimla Devi was sitting in her house when her husband Bihari Lal had gone to the fields. She heard some commotion from the side of the fields and when she reached the place of occurrence she saw that Amar Nath was beating up her husband. Thereafter, she, along with Purshotam (PW-2) and Rikhi Ram, rescued her husband. When she rescued her husband, the accused asked her why she had come to the spot. She told the accused that she had come to rescue her husband. Upon this, the accused picked a stone and threw it at her and caused injury on her left ear. The ear started bleeding. Thereafter

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

she became unconscious and was taken to the Hospital by Purshotam and Rikhi Ram.

**3.** On these allegations, the F.I.R. was lodged and the investigation done and after completion of the investigation, the challan was filed in the Court. The accused were summoned and they put in appearance and pleaded not guilty. Number of witnesses were examined and the learned trial Court has acquitted the accused. Hence, the present appeal by the State.

**4.** The complainant Bimla Devi appeared as PW-1 and supported the case of the prosecution and, therefore, it is not necessary to repeat her entire statement. However, it is not very clear from her statement whether her husband Bihari Lal was present when she was hit by the stone or not. PW-2 is Purshotam. He does support the prosecution insofar as it relates to the throwing of stone is concerned. He, however, has not uttered even a word that any altercation between the complainant and accused took place. He states that Amar Nath threw a stone which hit the complainant. This witness is the first cousin of Bihari Lal, husband of the complainant. As per the complainant, it was Purshotam (PW-2) and Rikhi Ram who took her to the Hospital but this witness states that it was Bihari Lal and he who took her to Hospital. Though this witness is closely related, his statement was never recorded by the Police and his presence on the spot is doubtful. Rikhi Ram was not examined by the prosecution. Similarly, Bihari Lal was not cross examined by the prosecution. These were two important witnesses who could have shed some light on the incident.

**5.** Another important factor is that even the complainant is unable to give the reason for the quarrel. She in her cross examination states that she cannot say why the fight took place. Sonu (PW-3) is alleged to have witnessed the entire incident. In his examination-in-

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chief he does state that he saw the accused throwing the stone which hit the complainant on her left ear. However, in his cross examination, he has clearly stated that he was not present on the spot when the incident took place and it was only lateron that he was told as to how the incident had occurred. It is obvious that this witness is not an eye witness but came to the spot lateron.

6. The manner in which the investigation was conducted and the way in which only the witnesses who were closely related to the complainant were examined, clearly shows that the prosecution has been unfair. No reliance can be placed on the statements of PW-2 Purshotam and PW-3 Sonu. No independent witness was examined to support the version of the complainant even though admittedly a number of persons had witnessed the occurrence. Further as per the complainant, her clothes were blood stained with the blood which came out of her ear which was hit by the stone. These clothes were not taken into possession by the police. In fact, as per the complainant, the police visited the spot after 15-20 days. Keeping in view the material contradictions between the statements of the witnesses and the fact that the statements of PW-2 and PW-3 cannot be relied upon, in my view, the learned trial Court was justified in holding that it would not be appropriate to convict the accused on the sole uncorroborated testimony of the complainant.

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

**30<sup>th</sup> March, 2006.**  
(soni)

**( Deepak Gupta )**  
**Judge.**