

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A. No. 511 of 1999

Date of decision : 28.2.2006

State of H.P. Appellant

Versus

Tara Chand and others Respondents.

Coram

The Hon'ble Mr. Justice : Surjit Singh, Judge

Whether approved for reporting? Yes

For the appellant : Mr. D.S. Nainta, Deputy Advocate General

For the respondents: Mr. S.C. Sharma, Advocate.

Surjit Singh, Judge (Oral)

This appeal, by the State of Himachal Pradesh, is directed against the judgment, dated 26.7.1999, of learned trial Magistrate, whereby respondents Tara Chand, Harish Kumar and Mithni Devi have been acquitted of offences, under Sections 353 and 332 read with Section 34 of the Indian Penal Code, for which they were tried.

2. Case was registered against the respondents on a complaint of one Mathura Prasad, J.E., which he submitted to Assistant Engineer, Electrical Sub-Division on 17.10.1997. It was alleged in the complaint that

Whether reporters of Local Papers may be allowed to see the Judgment? Yes

on 15.10.1997 the complainant (Mathura Prasad) had gone to village Mana in Karsog Tehsil in the company of two other officials of the Electricity Board, namely PW-1 Mast Ram and PW-2 Chet Ram and that when they went to the house of respondent Tara Chand, they noticed that some flexible wire had been fixed to the meter and through that wire electricity was being consumed inside the house. He further complained that when, after removing that wire, he went to village Kelodhar, which is stated to be close to village Mana, and was at the house of one Bega Ram in connection with the checking of the electricity connection installed in that house, respondent Tara Chand, accompanied by the other two respondents, namely Harsih Kumar (his brother) and Mithni Devi (his wife) came there and caught hold of him by his collar from behind and threw him down in a nearby field. He was then given beating by all the three respondents. Thereafter Bego Ram, his son Amar Singh and some other residents of village Kelodhar allegedly intervened and rescued Mathura Prasad. The Assistant Engineer, to whom the aforesaid complaint was submitted by Mathura Prasad, forwarded the same to the Station House Officer, Karsog on the same day. Police registered a case, under Sections 353 and 332 read with Section 34 of the Indian Penal Code, against all the three respondents. Mathura Prasad was got medically examined. One abrasion, measuring 2 X 1 cm, was noticed on his right shin about 10 cm below right patilla and its duration was opined to be within seventy-two hours. Medical examination was conducted on 18.10.1997, per testimony of PW-9 Dr. Ritu Sitak.

3. The respondents took the plea that Mathura Prasad had visited their house in their absence and had tried to molest a handicapped sister of respondents Tara Chand and Harish Kumar and that on coming

to know about the incident, they followed Mathura Prasad and questioned him about his conduct, upon which he (Mathura Prasad) tried to assault them.

4. Learned trial Magistrate, on the conclusion of the trial, has held that the case of the prosecution does not stand established beyond reasonable doubt.

5. I have heard the learned Deputy Advocate General for the appellant as also the learned counsel for the respondents and gone through the record.

6. Undoubtedly, the testimony of Mathura Prasad, examined by prosecution as PW-4, is corroborated by Bega Ram (PW-10), Amar Singh, son of Bega Ram examined as PW-3 and two other officials of the Electricity Board, namely PW-1 Mast Ram and PW-2 Chet Ram, as regards the catching hold of Mathura Prasad by respondent Tara Chand by his collar from behind. The Medical Officer also noticed an abrasion on right shin of Mathura Prasad, which further corroborates the version of Mathura Prasad to the aforesaid extent. But the motive of the alleged crime, as alleged in the complaint, is not testified either by Mathura Prasad himself or by any of the above named four alleged eye witnesses.

7. As already noticed, in the complaint it was alleged that the assault was made because Mathura Prasad and his companions had found some flexible wire fixed with the meter illegally for stealing power and because of the removal of that wire by the Electricity Board officials, Mathura Prasad was followed to the house of Bega Ram and assaulted. However, not even a whisper is there about this alleged motive in the testimony of Mathura Prasad or other witnesses, even those from the Electricity Board. Complete silence of Mathura Prasad and the other

witnesses on this vital aspect of the matter makes it absolutely clear that truth has been suppressed by the prosecution, for the reasons best known to it. This silence probabilises the defence version that motive of the alleged assault was not, as is alleged in the complaint that was submitted to the Assistant Engineer by Mathura Prasad, but the provocation, which Mathura Prasad gave by molesting the handicapped sister of respondents Tara Chand and Harish Kumar.

8. Delay of two days in making the complaint is another factor, which creates serious doubt about the correctness of the prosecution version as to the genesis of the alleged crime and probabilises the defence plea that it was due to the aforesaid provocation that the incident took place.

9. No doubt the respondents did not examine the handicapped girl, who was alleged attempted to be molested by Mathura Prasad, but that cannot plug for the aforesaid lacuna in the prosecution case. It is a matter of common knowledge that even reports are not lodged to the authorities, when honour of a female is involved.

10. In any case there being not even a whisper in the evidence of the prosecution that Mathura Prasad was allegedly assaulted because of his having removed the flexible wire, which had been fixed for allegedly stealing electricity, this cannot be said to be a matter covered by Section 353 or 332 of the Indian Penal Code. Further, Mathura Prasad was not assaulted as per prosecution evidence in the discharge of his duty as a public servant. Though in the complaint it is alleged that he was assaulted at the house of Bega Ram, when he was checking the meter installed in the latter's premises, the witnesses of the prosecution, while in the witness box, including Mathura Prasad (PW-4), have stated that they were

assaulted when they were returning after performing their duty and reached a little short of the house of Bega Ram.

11. Taking into account the above stated position, I do not think that this is a fit case for interfering in the order of acquittal recorded by the trial Court. Consequently the appeal is dismissed.

February 28, 2006 (BC)

(Surjit Singh), J.