

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

**Cr. Appeal No.153 of 2001.
Judgment reserved on 28.12.2007.
Dated of Decision: December 31st, 2007.**

State of H.P. Appellant.

Versus

Pardeep Kumar and others. Respondents.

Coram

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant : Mr. D.S. Nainta, Dy. Advocate
General.

For the Respondents : Mr. Virender Singh, Advocate.

Surinder Singh, J:

Respondents were tried and acquitted by the trial court for the offence punishable under Sections 452, 323, 147, 148, 149 and 506 of the Indian Penal Code.

Heard and gone through the record.

In brief, the prosecution story has been that on 12.7.1996, the father of the complainant Kultar Chand Rana was working in his field and he was allegedly given beatings. On this, said Kultar Chand Rana had gone to report the matter to the police at Dharamshala. The complainant Parminder Rana came to his house. It is alleged that on the same day, at about 7.45 P.M., when he was studying in his room, respondents Pardeep Kumar and his brother, Onkar Singh, Subhash and Pritam and one more person, who was unknown

Whether reporters of local papers may be allowed to see the judgment? Yes.

to him entered his room and gave beatings to him. Thereafter, he was dragged out of the room and Pradeep gave him a blow with some weapon on his face and he became unconscious. His mother Sudershana and sister Namrata raised hue and cry and the respondents ran away from the spot. At that time, Bihari and Des Raj had witnessed the occurrence. On the basis of this statement, the FIR Ex.PW1/A was registered and police visited the spot, prepared site plan Ex.PW10/A and got the complainant Parminder Rana medically examined. There was only one injury on his person, which was a cut on the right side below the right eye with a sharp weapon, but it was simple in nature. After recording the statements of the witnesses, challan was presented in the court for trial. The respondents were charge-sheeted for the aforesaid offence, to which they pleaded not guilty and claimed trial. At the end of the trial, the respondents were acquitted and their acquittal has been challenged in this appeal.

It is pertinent to note that initially, the name of Pardeep Kumar respondent was mentioned in the complaint and the name of his brother was not given by the complainant. The third person was not identified by him. In all, according to the first version given to the police there were only three persons, but the case was prepared against five persons, who are the present respondents.

PW-11 Bihari Lal, who is alleged to have witnessed the occurrence has turned hostile and did not support the case of

the prosecution. Similarly PW-4 Raj Kumar also turned hostile. Des Raj, another eye witness was not examined.

To prove the injuries on the person of the complainant, PW-6 Dr. Amarjit Singh, was examined. However, neither the complainant was got identified by him nor the weapon of alleged offence was not shown to him. There is a reference in Medico Legal Certificate of the complainant that the complainant was involved in the fight on 12.7.1996 at 9.45 P.M., but there was no history of alleged assault by the respondents. According to PW-1 Parminder Rana, all the respondents entered his room but this deposition is against his initial version as revealed in the FIR, wherein he has imputed the allegations against only three persons. It is further stated by him that he was hit by Pardeep Kumar respondent with a knife, whereas, in the FIR, there was no reference of hitting him with a knife. On the top of it he has admitted that their relations with the respondents were not cordial as the respondents had been damaging their crops. In the earlier statement Ex.PW1/A of the complainant, it was not recorded that the respondent Pardeep Kumar, Raj Kumar, Onkar Chand, Subhash and Pritam Chand had entered his room.

His sister Namrata (PW2) and PW-3 Sudershana, the mother had given a different story about the alleged occurrence that about 6.00 P.M., when PW-3 was cooking the food, PW-5 came with bleeding injury on his head. On being asked, he informed that the respondents had given beatings to him and thereafter her father went to lodge a report alongwith

her brother and during the same night at about 8 P.M., respondents entered in the room of her brother, when she was cooking the food. The respondents asked about her father and started beating her brother with kicks and blows. In her cross-examination, PW-2 aforesaid stated that the respondents were nourishing the grudge against their family.

PW-5, the father of the complainant was not on the spot when the complainant was allegedly beaten, but according to him, there has been a dispute between both the parties on damaging the crops.

In the instant case the FIR was lodged on 13.7.1996, but it was received by the Magistrate concerned on 17.7.1996 at 10.00 A.M., which goes to show that it was lodged much after the alleged incident and the complainant party had enough time for deliberations, thus the actual story was kept hidden.

On the critical examination of the above evidence, it is apparent that both the parties are daggers-drawn on account of the damage caused to their crops. The independent witnesses have not supported the case of the prosecution and there is only conflicting and contradictory evidence of the complainant and his family on record, which cannot be relied upon to sustain the conviction of the respondents. The improved versions in the Court, non-disclosure of the weapon of offence and the names of other respondents than Pardeep Kumar in the earlier version also cast a serious doubt on the authenticity of the prosecution case.

Thus, on the careful perusal of the testimonies of the witnesses and the grounds for acquittal recorded by the learned trial court, I do not find any perversity in the impugned judgment of acquittal, therefore, the appeal is dismissed.

The respondents are discharged of their bail bonds entered upon by them at any time during the proceedings of the case.

Send down the records.

December 31st, 2007.
(Pds)

(Surinder Singh)
Judge.