

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA:

Cr.A.No.464 of 2000.

Date of Decision :28th September, 2007.

State of H.P.

...Appellant.

Versus:

Shiv Kumar and another.

..Respondents.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for judgment?¹

For the appellant: Mr.M.A.Khan, Addl. Advocate
General. .

For Respondent. Mr.Rakesh Jaswal, Advocate.

Sanjay Karol, J.

The present appeal arises out of the judgment dated 28th March, 2000 passed by Chief Judicial Magistrate, Ghumarwin in criminal Case No.43/1 of 1997 titled as State of H.P. Vs. Shiv Kumar and another acquitting the accused persons of the charged offence under Sections 353 and 506 of the Indian Penal Code.

On 27th November, 1996 F.I.R.No.138/96 (Ext.PW-1/A) under Sections 353, 332, 504 and 506 I.P.C. was registered with Police Station, Ghumarwin to the effect that the accused persons had entered into the campus of the

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

Government Degree College, Ghumarwin and assaulted Kartar Singh, Lecturer, Political Science.

After completing the investigation the challan was presented in the Court for trial and the charges against the accused persons under Sections 353 and 506 I.P.C. were framed. The accused persons pleaded not guilty and claimed trial.

The prosecution examined as many as eight witnesses. The statements of the accused persons under Section 313 Cr.P.C. were also recorded in which they claimed innocence.

As per the case of the prosecution on 27th November, 1996 at about 2.35 P.M. at Government Degree College, Ghumarwin, the accused persons assaulted and threatened Sh. Kartar Singh, Lecturer, Political Science while he was discharging his duty as a public servant.

The court below after examining the statements of the parties acquitted the accused persons of the offence for the reason that the prosecution has failed to prove its case beyond reasonable doubt. Anil Kumar (PW-4) and Sohan Lal (PW-5) were declared hostile and did not support the case of the prosecution.

As per the version of Kartar Singh (PW-1) on the day of the alleged incident, he visited room No.8 of the College and asked boys and girls sitting in the room to stop making noises. Whereas other students left the room, however, the accused persons started abusing and

assaulting him. Accused Shiv Kumar caught hold of his leg as a result he fell down. Both the accused persons inflicted blows with fist and threatened him with dire consequences. He raised hue and cry and Dr.R.D.Sharma, Sh.Z.R.Sharma (PW-6), Ashok Kumar (PW-3) and Anil Kumar (PW-4) came on the spot. On seeing these persons, the accused fled away from the scene of occurrence after threatening him with dire consequences. The accused persons also pelted stones on him from across the College Gate. This witness has admitted that the campus is very small and the noise is audible in the entire complex of the College. Curiously, he does not remember the name of the peon who had been sent by him to request the students to stop from making any noise. Importantly, none of the teachers made any complaint with regard to the noise. Veracity of his statement is doubtful. Sh. Rameshwar Dutt (PW-2), Lecturer has admitted that no quarrel took place in his presence though he had heard abuses. From his statement it is clear that he reached at the spot after the occurrence of the incident. Therefore his testimony is of no help to the prosecution.

Ashok Kumar (PW-3), Clerk of the College has also not supported the case of the prosecution inasmuch as he has stated that he did not see the occurrence with his own eyes and there were about 40-50 boys who had collected on the spot to attend the National Service Scheme.

Anil Kumar, Peon (PW-4) has been declared hostile and has corroborated the version of Ashok Kumar (PW-3). As per the

version of Sohan Lal (PW-5), the presence of PW-2 and PW-6 at the site becomes doubtful. Further he has categorically stated that he did not see the accused persons inflict any injury on the complainant. Sh. Z.R.Sharma (PW-6), no doubt has corroborated the statement of PW-1 but, however, he has admitted that he did not know the cause of the quarrel nor could he identify one of the accused persons.

As per PW-1, the accused persons were raising noise in room No.8 and PW-6 was taking classes in room No.7. Importantly PW-6 did not make any complaint with regard to the same. The College has not taken any action against the accused persons for un-authorizedly entering the campus. It has come on record that the police did not take any permission of the authority before entering the campus and investigating the matter. Keeping in view the totality of the circumstances, in my view, it cannot be said that the State has been able to prove its case beyond reasonable doubt pointing to the guilt of the accused necessitating interference in an appeal against the acquittal.

The appeal is accordingly dismissed. The bail bonds are discharged.

**(Sanjay Karol),
Judge.**

September 28, 2007(R)

