

# IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Appeal No. 211 of 2001.

Judgment reserved on: 14.5.2008

Date of decision: 30.6.2008

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Madan Lal and Ors.

.....Appellants

Vs.

State of H.P.

.... Respondent.

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**Coram**

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

*Whether approved for reporting?* No

For the Appellants : Mr. S.S. Rathore, Advocate.

For the Respondent : Mr. A.K. Bansal, Addl. Advocate General.

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**Kuldip Singh, Judge.**

1. This appeal has been directed by appellants against their conviction and sentence recorded on 3.4.2001 by learned Addl. Sessions Judge-I Kangra at Dharamshala in Sessions Trial No.15-k/98.

2. The prosecution case in brief is that on the basis of rapat No.7 dated 24.3.1997 Ex.PW-8/A, ASI Sureshta Thakur accompanied by constable Kartar Chand proceeded to Sub Divisional Hospital, Kangra where she recorded the statement of PW-6 Sugan Kumar under Section 154 Cr.P.C. Ex.PW-4/A. In the statement Sugan Kumar has stated that he runs a scooter repair shop at 53 miles. Last

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*Whether the reporters of the local papers may be allowed to see the Judgment?* Yes

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year he had difference of opinion on Shivratri day with Madan Lal, Rajesh Kumar, Suresh Kumar, Thipa, and therefore they openly threatened him that at appropriate time they would kill him. He ignored the said threat and did not report anywhere. Due to this reason on 23.3.1997 at about 5.30 PM Madan Lal, Rajesh Kumar, Suresh Kumar, Thipa and Ashok Kumar came to his shop and gave him beatings with kick and fist blows. He did not report the matter anywhere by taking it to be a trivial incident. On 24.3.1997, in the morning at about 9.45 AM he had just opened his shop, he noticed that Madan Lal, Rajesh Kumar, Suresh, Thipa and Ashok Kumar were quarreling with Jaswant Singh three wheeler driver who was hit on his head. All of them after beating Jaswant Singh came in his shop. At that time Madan Lal, Rajesh Kumar, Thipa were armed with khukharies, Suresh was having sword and Ashok Kumar was equipped with hockey. Thipa gave a khukhari blow, he stopped the blow with left hand. He gave khukhari blow with the intention to pierce his liver. In the process his left thumb was chopped off and fell there. He sustained injuries on the palm also. Madan Lal gave khukhari blow on the right side of his stomach. In order to save himself he raised his hand and in the process his right elbow from inside was hit by the blow. Rajesh Kumar, Suresh Kumar and Ashok also gave blows to him but he could not make out who gave which blow and on which side. At that time Jaswant Singh, Ashwani Kumar and driver of tempo No.HP-04-408 were on the spot. They also asked them not to

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give beatings to him. After giving beatings to him all of them ran away from the spot. He sustained injuries in the beatings.

3. On the basis of statement under Section 154 Cr.P.C. Ex.PW-4/A, FIR Ex.PW-4/B was recorded. The injured was medically examined by PW-11 Dr. S.B. Sood, who issued MLR Ex.PW-11/A. The investigation was conducted by PW-8 and PW-10 Prem Singh, spot was inspected and spot map Ex.PW-8/C was prepared. Photographs were taken, takwas Ex.P-5, Ex.P-9, dagger Ex.P-6, hockey Ex.P-7, sword Ex.P-8 were taken into possession vide seizure memos. The statements under Section 161 Cr.P.C. were recorded, report of Chemical Examiner Ex.PX was obtained. On completion of investigation, challan was presented in the Court under Sections 147, 148, 149, 451 and 307 IPC before learned Judicial Magistrate Ist Class, Kangra who committed the case to learned Sessions Judge, Kangra at Dharamshala. The charge was framed on 12.10.1998 under Sections 307, 452, 323 148 and 149 IPC, to which accused pleaded not guilty and claimed trial. The prosecution examined 12 witnesses. The accused were examined under Section 313 Cr.P.C. They denied the prosecution case. After conclusion of trial, on 3.4.2001, learned Addl. Sessions Judge convicted all accused under Sections 326,452 read with Sections 148/149 IPC. All accused were sentenced under Section 326 IPC to three years rigorous imprisonment with a fine of Rs.3000/- each and in default of payment of fine, each accused was directed to further undergo simple imprisonment for three months, under Section 452 IPC each accused

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was sentenced to imprisonment for two years with a fine of Rs.2,000/- each and in default of payment of fine, each accused was directed to further undergo two months simple imprisonment, under Section 149 IPC each accused was sentenced to one year simple imprisonment with a fine of Rs.1,000/- each and in default of payment of fine each accused was directed to undergo simple imprisonment for one month. In addition to aforesaid sentences each accused was directed to pay Rs.4,000/- to the complainant Sugan Kumar PW-6 as compensation. The accused have filed the present appeal.

4. I have heard Mr. S.S. Rathore, learned counsel for the appellants and learned Addl. Advocate General on behalf of the State and gone through the record. On behalf of the appellants it has been submitted that appellants have been falsely implicated in the case. The prosecution case is full of infirmities. The prosecution has not examined Jaswant Singh and driver of three wheeler HP-04-408, the alleged eye witnesses of the incident. PW-7 Ashwani Kumar's presence on the spot at the time of occurrence is highly doubtful. The prosecution has not examined any witness from nearby shops shown in spot map Ex.PW-8/C. The weapons of offence named earlier were different from the weapons of offence named later during trial. The manner in which the offence has been committed is highly doubtful. There is no corroboration of the statement of PW-6 complainant from independent witnesses. The accused have been framed merely on suspicion. The learned Addl. Advocate General has supported the impugned judgment of conviction and sentence and has submitted

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that the learned Addl. Sessions Judge has thoroughly gone through the evidence and has properly appreciated the material on record. There is no reason to disbelieve the prosecution case.

5. In order to appreciate the rival contentions, it is necessary to refer to evidence which has come on record. PW-1 Vikrant Kumar is the photographer, who took photographs Ex.P-1 to Ex.P-3 with negative Ex.P-4. PW-2 Budhi Singh is the father of complainant Sujan Kumar, he has stated that on 24.3.1997, he came to know on his way to Kangra that his son Sujan Kumar was attacked. He reached the spot and found his son lying in a pool of blood. He noticed cut injuries on his body, thereafter he took his son to Kangra hospital. He was accompanied by Ashwani Kumar and one more person. He went to Police Station to inform the police and then police came to hospital and recorded the statement of his son. The shirt and pant which were blood stained were taken into possession vide memo Ex.PW-2/A. In cross-examination he has stated that he informed the police about the whole incident but did not disclose the names of accused to the police. PW-3 Desh Raj, Pardhan Gram Panchayat Sadarpur has stated that he, Satish Kumar vice President and Ashwani Kumar had gone to Police Station, Kangra and he noticed that all accused were present in the Police Station. Madan Lal produced Takwa Ex.P-5 which was taken into possession vide seizure memo Ex.PW-3/B. This witness wrongly identified Madan Lal in the Court which has been so observed by the learned Court below. Babu Ram produced dagger Ex.P-6 which was

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taken into possession vide seizure memo Ex.PW-3/D, Ashok Kumar produced hockey Ex.P-7 which was taken into possession vide seizure memo Ex.PW-3/E, Suresh produced sword Ex.P-8 which was taken into possession vide seizure memo Ex.PW3/P , Pika produced takwa Ex.P-9 which was taken into possession vide seizure memo Ex.PW-3/J.

6. PW-4 Rimal Singh has stated that he was posted as I.O. in Police Station, Kangra in the year 1996-97. On 24.3.1997 he received ruka Ex.PW-4/A on the basis of which he recorded FIR Ex.PW-4/B. In cross-examination he has stated that hospital is at a distance of 200-250 yards from the police station. PW-5 Kartar Singh LHC No.710 has stated that he was posted in police station, Kangra in the year 1997. On 27.4.1997 MHC Daulat Ram handed over two sealed parcels to him and vide R.C. No.103/97, he deposited both parcels at FSL, Junga .

7. PW-6 Sujan Kumar complainant has stated that he was running scooter mechanic workshop at 53 miles since 1987. He knew accused. On 23.3.1997 accused met him at 53 miles, they threatened him and also gave beatings to him. On 24.3.1997 he had gone to his workshop at about 9.30/9.45 AM. He had opened the shop, he heard some noise and noticed Babu Ram accused with khukhari in his hand and he was about to hit him on his chest. He put his left hand in order to ward off the blow of the khukhari, but in this process his left thumb was severed, blood started oozing out from his thumb. Thereafter other accused had also started beating him.

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Madan accused having khukhari type takwa, Rajesh accused was having khukhari, Suresh accused was having sword and Ashok accused was having hockey in his hand. In the incident he had suffered injuries on his fingers, palm, arms and on the legs below knee. Ashwani was present at that time in his workshop who had brought his three-wheeler for repair on 23.3.1997. Blood fell on the floor of the workshop. After giving beatings accused ran towards 53 miles with their weapons. Thereafter his father had also reached and he became unconscious and was removed to hospital Kangra. He regained his consciousness on way to hospital. In the hospital police recorded his statement Ex.PW-4/A. He was medically examined. The blood stained pant and shirt were handed over by him to police during investigation. He remained admitted in Zonal Hospital, Dharamshala for 18 days. He identified takwa /khukhari Ex.P-5, dagger Ex.P-6, hockey Ex.P-7, sword Ex.P-8 and khukhari/takwa Ex.P-9 with which he was given beatings by the accused. In cross-examination he has stated that he remained unconscious for about 5-10 minutes. He did not inform the police that he became unconscious. Even after regaining consciousness he did not inform his father about the assailants. Ashok also hit him with hockey for 2-4 minutes and he also suffered hockey blow. He has admitted that weapons shown to him are takwas and not khukharies. The takwas are Ex.P-5, Ex.P-6 and Ex.P-7. There are 4-5 shops adjacent to his shop. Except the weapons produced in the Court there was no other weapon with any body.

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8. PW-7 Ashwani Kumar has stated that he was driver of three wheeler HP-04-0280 in the year 1997. On 22.3.1997 he had left his three wheeler with PW-6 Sujan for its repair. On 24.3.1997 he had reached the workshop of Sujan at about 9.30 AM and the shop was closed. He remained in his three wheeler. At about 9.45. AM Sujan came and opened his shop. All the accused present in the Court came there, three accused were having khukharries in their hands, one was having sword and the 5<sup>th</sup> one was having hockey in his hand. All accused gave beatings to Sujan Kumar with their weapons and thereafter ran away from there with their weapons. Due to beatings Sujan Kumar suffered injuries on his left arm, leg and foot. The thumb of the Sujan was severed, blood was oozing from the wounds of the Sujan which fell on the floor of the shop. Sujan was lying inside the shop and was unconscious. He informed the father of Sujan who came on the spot and thereafter, they took Sujan to Sub Divisional Hospital, Kangra in a vehicle but clothes which Sujan was wearing were handed over to police by Budhi Singh father of Sujan which were taken into possession vide seizure memo Ex.PW-2/A . In cross-examination he has stated that out of five, he knew only two assailants. He knew the name of Madan who was known to him earlier. He had seen the accused person in the police station 3-4 days after the date of occurrence. He was specifically called by the police and was asked that he should see them properly so that he could identify them in the Court. He was asked in the Court to identify the person who was holding hockey. He pointed out



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towards accused Suresh Kumar present in the Court. The witness was asked to point out the person who was holding the sword, he then pointed towards Rajesh Kumar accused present in the Court. He has also stated that he could identify the khukharies but Ex.P-5, Ex.P-6, Ex.P-9 are not khukharies but are the takwas. On inquiry by Budhi Singh Sugan Kumar did not give the names of the assailants. Sugan Kumar disclosed his name, his father's name and his residence to the doctor. He had gone to the police station along with Budhi Singh. He and Budhi Singh did not disclose the names of the assailants to the police, even name of Madan was not disclosed by them to police at that time

9. PW-8 Sureshta Thakur ASI has recorded the statement Ex.PW-4/A of Sugan. She took into possession blood stained pant and shirt of Sugan Kumar. She prepared spot map Ex.PW-8/C and took photographs of the spot through PW-1 photographer. She thereafter handed over the investigation to Prem Singh. In cross-examination she has stated that Budhi Singh had come to police station before she went to civil hospital. PW-9 Rabinder Kumar is the brother of Jaswant Singh who has produced blood stained shirt to the police which was taken into possession vide seizure memo Ex.PW-9/A. The statement of this witness is not relevant. PW-10 Prem Singh has stated that he took over the investigation from ASI Sureshta Thakur. The accused Madan Lal had produced khukhari/takwa, accused Suresh had produced sword Ex.P-8, accused Rajesh had produced khukhari/takwa Ex.P-9, accused

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Ashok Kumar had produced hockey Ex.P-7 and accused Babu Ram alias Thipa had produced khukhari type of dagger Ex.P-6. In cross-examination he has stated that PW-6 in FIR had mentioned khukaries only. In this case only takwas were recovered. The accused never made disclosure statements when they were in police custody. He has stated that the takwas were not blood stained and were not sent for chemical examination nor sword and hockey were sent for chemical examination.

10. PW-11 Dr. S.B. Sood had examined PW-6 Sujan Kumar and issued MLR Ex.PW-11/A and found six injuries on the person of Sujan Kumar. The injury No.1 according to doctor was grievous and rest of the injuries were simple. According to PW-11 all injuries were caused by sharp edged weapons. The injuries mentioned in Ex.PW-11/A are possible from weapons Ex.P-5,Ex.P-6,Ex.P-8 and Ex.P-9. He has stated that details given in Ex.PW-11/A were supplied by Sujan. He has stated that injuries mentioned in Ex.PW-11/A can not be caused by blunt weapons.

11. PW-12 Daulat Ram ASI has stated that he remained posted as MHC at Police Station, Kangra during the year 1996-97. The case property was deposited with him which he deposited in the malkhana. He had sent those parcels to FSL Junga through constable Kartar Chand.

12. The accused were examined under Section 313 Cr.P.C. wherein they have denied the prosecution case and pleaded their innocence and stated that they have been falsely implicated in the

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case. PW-6 Sugan Kumar complainant has stated in his statement that he regained his conscious on way to hospital. PW-11 Dr. S.B. Sood has stated that the details given in MLR Ex.PW-11/A were supplied by Sugan. PW-8 ASI Sureshta Thakur has stated that she submitted application, copy Ex.PW-8/B for obtaining fitness certificate from doctor pertaining to injured Sugan, the doctor certified that Sugan was fit to make a statement. It means, when PW-6 Sugan complainant reached the hospital after the incident he was fit to make statement. As per prosecution PW-2 Budhi Singh father of complainant, Sugan Kumar and PW-7 Ashwani Kumar took Sugan to hospital. In the normal course Sugan Kumar injured was expected to disclose the names of assailants at least to his father PW-2 Budhi Singh who accompanied him from the place of incident to the hospital. PW-7 Ashwani Kumar has stated that even on inquiry by Budhi Singh, Sugan Kumar did not disclose the names of assailants. As per Prosecution PW-7 Ashwani Kumar is an eye witness who has stated that he knew Madan and one more accused. PW-2 Budhi Singh and PW-7 Ashwani Kumar came to police station, Kangra and on the basis of information given by PW-2 Budhi Singh, rapat No.7 dated 24.3.2001 Ex.PW-8/A came to be recorded.

13. It appears the prosecution has not placed true facts. It is not believable that PW-6 Sugan Kumar would not disclose the names of assailants to his father PW-2 Budhi Singh, more particularly, when it is the case of PW-6 Sugan Kumar that he knew the accused. PW-2 has stated that he had informed the police about the whole incident

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and the incident includes the names of the assailants also then why the names of assailants were not recorded in the rapat No.7 dated 24.3.1997 Ex.PW-8/A that has not been explained satisfactorily. In addition, PW-7 Ashwani Kumar alleged eye witness of the incident knew the name of Madan Lal and he accompanied PW-2 Budhi Singh for giving information to the police. In these circumstances at least why the name of Madan was not disclosed to the police and so recorded in rapt No.7 that has also not been explained. This creates suspicion in the prosecution case.

14. In Ex.PW-4/A statement under Section 154 Cr.P.C, PW-6 Sujan Kumar has stated that when he opened his shop, he noticed Madan Lal, Rajesh, Suresh, Thipa and Ashok Kumar quarreling with Jaswant Singh driver of three wheeler and hitting him on his head. Thereafter they came in his shop. Madan, Rakesh and Thipa were armed with khukharies, Suresh was having sword and Ashok Kumar was equipped with hockey . He has further stated that Thipa gave khukhari blow, as a result of which his left thumb was chopped off and fell down, Madan Lal gave blow on the right side of his stomach, but he raised his hand and he sustained injury on his right elbow. Rakesh, Suresh and Ashok Kumar also attacked him. He has stated that Jaswant Singh, Ashwani Kumar and driver of tempo HP-04-408 were present on the spot. The accused after giving him beatings ran away from the spot. PW-6 Sujan Kumar in his statement in the Court has nowhere stated that Jaswant Singh and driver of tempo HP-04-408 were also present on the spot at the time

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of incident. PW-6 however, stated that Ashwani Kumar was present on the spot. In his statement PW-6 has explained the presence of Ashwani Kumar on the spot on the ground that Ashwani Kumar had brought his three-wheeler for repair on 23.3.1997, but PW-7 Ashwani Kumar has contradicted PW-6 and has stated that he had brought his three wheeler for repair on 22.3.1997. PW-6 or PW-7 have not stated that PW-6 had asked PW-7 to come to the shop of PW-6 on 24.3.1997 in connection with repairs of three wheeler. PW-7 has not supported PW-6 regarding commission of the offence as stated by PW-6. PW-7 has vaguely stated that all accused gave beatings to Sujan Kumar without specifying the part played by each accused. PW-6 in his statement under Section 154 Cr.P.C. has stated that Ashwani and two others were present on the spot also and they asked the accused not to give beatings to the injured, but this is not so stated by PW-7 in his statement in the Court. PW-7 has not stated that Jaswant Singh and driver of tempo HP-04-408 were present on the spot. Thus keeping in view the facts and circumstances of the case the presence of PW-7 on the shop at the time of incident is doubtful.

15. The prosecution has not examined Jaswant Singh who according to PW-6 was also attacked by accused before they allegedly gave beatings to the complainant. The driver of the three wheeler HP-04-408 has not been identified nor examined by the prosecution who was allegedly present at the time of incident. It appears PW-7 Ashwani Kumar did not know any assailant, in case he

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knew accused Madan then why the name of Madan Lal was not disclosed by him to Budhi Singh who reported the matter to the police by way of rapat Ex.PW-8/A. PW-7 Ashwani Kumar has specifically stated that he had seen the accused in the police station 3-4 days after the day of occurrence and he was asked by the police that he should see the accused properly so that he could identify them in the Court. In these circumstances, it is reasonable to infer that since police had shown the accused to PW-7 Ashwani Kumar in the police station after the incident, therefore, he has named Madan as assailant in his statement in the Court. According to PW-6 Ashok Kumar was equipped with hockey but PW-7 in the Court has pointed towards accused Suresh who was holding hockey. PW-6 in his statement Ex.PW-4/A has stated that accused Suresh was armed with sword but PW-7 in the Court has pointed towards accused Rajesh Kumar who was armed with sword. This makes clear that statement of PW-7 Ashwani Kumar can not be relied for identifying the assailants. PW-6 has named weapons of offence khukharis, sword and hockey in his statement under Section 154 Cr.P.C. He has not named any dagger or takwa as weapon of offence. The police has taken into possession two takwas, sword, dagger and hockey but no disclosure statements under Section 27 of the Indian evidence Act of the accused were recorded before taking into possession takwa, sword, dagger and hockey. The complainant in his statement under Section 154 Cr.P.C. has not named use of any takwa or dagger. No recovery of any khukhari has been made. PW-

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6 has stated that he was given beatings by Ex.P-7 hockey also but, PW-11 Dr. S.B. Sood has stated that all injuries were caused by sharp edged weapons. Therefore, the statement of PW-6 to this extent is belied by the doctor PW-11. The PW-6 has made improvements, deviations in his statement in the Court over his statement under Section 154 Cr.P.C. Therefore, it is not safe to rely PW-6 without corroboration.

16. PW-6 in his statement under Section 154 Cr.P.C. has attributed the motive to accused on the grounds that a year prior to the incident on Shivratri day he had difference of opinion with the accused and on that day the accused threatened to kill him at appropriate time. In that statement he has also stated that accused on 23.3.1997 in the evening came in his shop and gave him beatings. The complainant did not report the matter to the police regarding the earlier threat extended by the accused nor he reported to the police regarding the incident dated 23.3.1997. The prosecution has not examined any independent witness regarding the incident dated 23.3.1997 to corroborate the version of complainant that incident infact had taken place on 23.3.1997 as alleged by prosecution. The complainant in his statement in the Court has not given any reference of the Shivratri day incident. The motive is always not necessary in a criminal case but in the present case motive to commit offence has been imputed to accused for the commission of offence, hence, proof of motive becomes relevant. Therefore, in absence of proof of motive prosecution case becomes doubtful.

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17. It has come on record that adjacent to the workshop of PW-6 there are other shops as shown in spot map Ex.PW-8/C. No witness from the adjoining shops has been examined by the prosecution nor any explanation has been given why the natural witnesses such as occupiers of the shops shown in Ex.PW-8/C were not joined in the investigation and examined in the Court. PW-6 has stated that his left thumb was chopped off and fell down. Some witnesses have stated that blood oozed out from the wounds of the complainant and fell down on the floor but during investigation chopped off left thumb and blood allegedly fell on the floor in the workshop of the complainant were not collected. The alleged weapons of offence were not sent to chemical examiner in order to obtain his opinion whether such weapons had stains of human blood on them. PW-2 Budhi Singh has stated that when he went to police station he disclosed the entire facts to the police regarding the incident except the names of the assailants. In these circumstances before recording statement Ex.PW-4/A, under Section 154 Cr.P.C. the police was already informed of the incident by PW-2. Therefore, Ex.PW4/B based upon Ex.PW-4/A statement under Section 154 Cr.P.C. strictly speaking is not first information to the police, and what was disclosed to the police by PW-2 that has not seen the light of the day. The prosecution case for these reasons is also doubtful. The prosecution case is full of infirmities, doubtful and does not inspire confidence. In the circumstances of the case it is not safe to rely on the statement of PW-6 Sujan Kumar complainant without corroboration more particularly when presence of PW-7 Ashwani Kumar on the spot at the time of occurrence is doubtful.



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18. In view of discussion made above, the learned Addl. Sessions Judge has not properly appreciated the material on record and has not noticed various infirmities noticed above in the prosecution case. The prosecution has failed to prove charge against all accused beyond reasonable doubt, the appellants are entitled to benefit of doubt, hence impugned judgment of conviction and sentence is not sustainable and is liable to be set aside.

19. No other point was urged.

20. The result of the above discussion, the appeal is allowed, judgment of conviction and sentence dated 3.4.2001 passed by learned Addl. Sessions Judge-I Kangra at Dharamshala in Sessions Trial No.15-k/98 is set aside. The appellants are acquitted of the charge, fine and compensation amount, if any, deposited by the appellants be refunded to them. Bail bonds are discharged.

( Kuldip Singh )  
Judge

June 30, 2008  
(sks)