

## HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr.A.No. 345 of 2001  
Decided on: 31.3.2008.

.....Appellant.

## Versus

.....Respondent.

*Coram:*

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting? No.

Mr.J.S. Guleria, Law Officer.

Mr.Rakesh Jaswal, Advocate.

**V.K. Ahuja, J:**

This is an appeal filed by the State of Himachal Pradesh against the judgment passed by the learned Additional Chief Judicial Magistrate, Ghumarwin, dated 31.1.2001, vide which the respondent was acquitted of the charge framed against him under Sections 325 and 323 IPC.

Briefly stated the facts of the case are that the complainant PW-1 had alleged that he was working as LHC and on 26.4.1997, when he was coming from his house in the morning at 5.15 a.m., the respondent met him on the way. The respondent was also serving in the Police Department, with whom he had civil disputes. The respondent threw him on the ground, gave him leg, fist blows and blows with stone and he suffered various injuries on parts of his body. The respondent dragged him from his legs upto the house of one Lekh Ram.

<sup>1</sup>. Whether reporters of Local papers may be allowed to see the judgment? Yes.

The complainant alleged that Lekh Ram and his wife tried to rescue him when Munsu Ram reached there and he rescued him from the clutches of the respondent. He also alleged that the uniform worn by him was also torn and the respondent also took Rs.500/- from his pocket and the watch belonging to him. On this report, a case was registered by the police and after investigation the challan was filed before the learned Trial Court who tried the respondent under Sections 325 and 323 IPC leading to his acquittal.

I have heard the learned Law Officer for the State and the learned counsel for the respondent and have gone through the record of the case.

On appraisal of the evidence, it is clear that the complainant had alleged in his first report lodged with the police that he was given beatings with legs, fists and stones. However, when he appeared in the witness box as PW-1, he came up with the plea that the respondent met him alongwith a knife, gave him a blow and he was dragged by the respondent alongwith two other persons. The learned Trial Court had referred to the improvements made by the complainant in his statement since there were no assertions made in the first report lodged with the police about any knife blow or the presence of two other persons. The complainant had alleged that he was rescued by one Lekh Ram, his wife and one Munsu Ram, but none had been examined by the prosecution to substantiate the case of the complainant.

The complainant was not an illiterate person, who was not aware that the correct facts are to be mentioned, but he nowhere mentioned about the knife blow and subsequently when he appeared in the court, he made substantial improvements and came up with the story that he was given the knife blow also. The complainant had admitted about a case pending against him under Section

325 IPC for the same occurrence and it appears that the said case was pending when the statement was made by the witness. According to law, both the cross cases are required to be disposed of at the same time and there is nothing on record to suggest as to the fate of the case pending against the complainant for this very occurrence.

The complainant had admitted that he has a dispute with the accused for the last 4-5 years and the litigation is going on and they are not on talking terms for the last 10-12 years.

Keeping in view the contradictions in the prosecution case, the improvements made by the complainant and the non-examination of the material witnesses by the prosecution, the learned trial court had come to the conclusion that the guilt of the respondent was not established. This conclusion drawn by the learned Trial Court cannot be said to be perverse which does not call for an interference by this Court. Thus, there is no merit in the appeal filed by the State of H.P. and the same is dismissed accordingly. The bail bonds furnished by the respondent shall stand discharged.

**March 31, 2008 (<sup>TILAK</sup>)**

**(V.K. Ahuja), Judge.**