

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 369 of 2001

Date of decision: 30.04.2008

State of Himachal Pradesh

... Appellant

Versus

Uttam Chand & Ors.

... Respondents

Coram :

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

Whether approved for reporting?¹ No.

For the appellant: Mr. J.S. Guleria, Law Officer.

For the respondents: None for the respondents.

V.K. Ahuja , J. (Oral):

This is an appeal filed by the State of H.P. against the judgment of the Court of learned Judicial Magistrate Ist Class, Dharamshala, dated 13.2.2001, vide which the respondents were acquitted of the charge framed against them under Sections 324, 323, 506 read with Section 34 I.P.C.

Briefly stated the facts of the case are that on 28.2.1999, at about 9.45PM, a report was lodged with the police by one Subhash Chand that he is doing the work of carrying articles on mule and at about 7.30PM, he had gone alongwith one Hakam Chand to purchase some article from a shop at Tillu. When he reached there accused persons came

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

there started giving him beatings and he was inflicted a blow with a sharpedged weapon on his private part and was also given beatings with legs and fists and he suffered injuries. He was rescued by Hakam Chand who was accompanying him and other villagers. On this report, a case was registered and after investigation, the challan was filed before the learned trial Court who tried the respondents resulting in their acquittal.

I have heard learned counsel for the parties and have also gone through the record.

On a perusal of the report lodged by the complainant, it is clear that the complainant has clearly stated that he was accompanied by PW Hakam Chand when he was purchasing the articles. He was also present when the blow was given by the respondents and the said Hakam Chand had also rescued him at that time apart from the other persons present there. Thus the most material witness can be said to be PW Hakam Chand who was not examined by the prosecution but was given up as having been won over by the accused persons.

No inference can be drawn that said Hakam Chand, if examined in the Court, would not have supported the prosecution case truthfully on the basis that he was won over by the accused persons. Being an eye witness he should have been produced in the Court, subjected to examination-in-chief and cross-examination and then the Court could form an opinion whether his statement could be relied upon or not. The other witnesses were not named by the complainant who had rescued him at that time, but the prosecution had examined PW-1 Mohinder Awasthi, PW-2 Sushil Kumar and PW-6 Desh Raj as eye

witnesses. All these witnesses when examined turned hostile and did not substantiate the prosecution story that they witnessed any quarrel or that in their presence blows were inflicted on the person of the complainant.

Thus, trial Court was left with the solitary statement of complainant himself, who was examined as PW-3. In his statement he did not mention the date or month of the occurrence. He also did not state that any blow was given over his penis with any sharpedged weapon. He simply stated that he was given blows with legs and fists and he is not aware that with what object he was hit by the accused nor he stated that it was slate or knife and, therefore, his statement is not specific in regard to the number of blows given on him or whether any blow on the private part was also given. Therefore, injury No. 7 was a blow given with sharpedged weapon does not stand corroborated by the statement of complainant himself. The Medical Officer has admitted that all these injuries are possible including injury No. 7 by fall on a sharpedged weapon. The Investigating Officer PW-7 S.I. Karam Chand had prepared site plan at the instance of the complainant and surprisingly he has also shown that the complainant had allegedly fallen during the quarrel on the slate. He did not specifically state that this version was given by him at the instance of the complainant but has stated that he prepared the site plan Ext. PW7/B at the instance of the complainant.

From the above discussion, it is clear that the solitary statement of the complainant has not been corroborated by other PWs who were present and that was not such which could be relied upon by the Court coupled with the medical evidence to hold that the guilt of the

respondents was established beyond any reasonable doubt. The final findings recorded by the learned trial Court cannot be said to be perverse calling for an interference by this Court and as such, there is no merit in the appeal filed by the appellant, which is dismissed accordingly. Bail bonds furnishes by the respondents are discharged.

(V.K. Ahuja)
Judge

April 30, 2008
(BSS)

