

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 44 of 1995.

Date of decision: 31.10.2008

State of H.P. .... Appellant.

Vs.

Darshan Lal Garg ... Respondent.

Coram

**The Hon'ble Mr. Justice Deepak Gupta, J.**  
**The Hon'ble Mr. Justice V.K.Ahuja, J.**

*Whether approved for reporting?<sup>1</sup> No.*

For the appellant-State: Mr. Rajesh Mandhotra, Dy. Advocate General.  
For the respondents: Mr. Dharamvir Sharma vice Mr. K.D.Batish, Advocate.

**Per Deepak Gupta, J.**

This appeal is directed against the judgement of the learned Sessions Judge, Sirmaur at Nahan, in Sessions trial No. 10-N/7 of 1992 decided on 1.1.1994 whereby the accused was acquitted of having committed an offence punishable under Section 333 IPC.

On 30.11.1989 a complaint was filed by one Umesh Kumar Gupta working as Assistant Manager in United Commercial Bank (UCO Bank), Badripur Branch, Paonta Sahib, in Police Station Paonta Sahib. In the complaint, it was alleged that on 29.11.1989 the accused threatened the complainant but the complainant ignored the said threat. On 30.11.1989 the complainant was working in the Bank at about 10.20 a.m when he noticed that one clerk Shri R.P.Sharma was absent and the accused was sitting on his seat. He inquired from the accused as to where R.P.Sharma had gone on which the accused caught hold of the right hand of the complainant and intertwined his fingers with the fingers of the complainant and pressed the same and caused fracture to the ring finger

<sup>1</sup> ***Whether the reporters of the local papers may be allowed to see the Judgment yes.***

of the complainant. On medical examination a fracture was detected on the ring finger of the complainant. Thereafter, case under Section 333 IPC was registered against the accused. Challan was filed. Accused pleaded not guilty and accused has been acquitted vide the impugned judgement. Hence this appeal.

At the outset, we may notice that there is nothing on record to show that voluntarily hurt was caused to the complainant in the discharge of his duties as a public servant or with intention to prevent the complainant or any other person from discharging the duty. During the course of evidence, the complainant has tried to improve his case by mentioning that he was officiating as the Manager of the Bank on the said date. However, other than the bald statement of the complainant, no other evidence has been led to prove this fact. It is not disputed that even the accused is a employee of the Bank. There is no material on record to show that the fight had any connection with the discharge of the duties of the complainant.

Even otherwise, we are of the opinion that the prosecution has miserably failed to prove its case. Two other employees of the Bank, namely, PW-1 A.K.Bajaj and PW-2 Sawroop Singh have been examined by the prosecution. Both these witnesses have stated that the complainant (PW-6) went to the seat of the accused and inquired as to where R.P.Sharma had gone. On this, the accused told the complainant that he (the complainant) had no authority to make such an inquiry. Thereafter, both the parties hurled abuses at each other and there was an exchange of hot words. These two witnesses alongwith other employees of the bank interceded and tried to pacify the parties. After they had cooled down they again started arguing with each other and a scuffle between the two took place. During this scuffle, complainant and the accused locked their fingers into each other and during this scuffle there

was a low sound of something cracking and then the complainant shouted that his finger has been fractured.

From the evidence, it is abundantly clear that it was the complainant who first exchanged hot words with the accused and thereafter there was a scuffle. It cannot be said that the accused was the aggressor. There is nothing on record to show that it was the accused who used force first. The statement of both the independent witnesses indicates that the scuffle started between the two parties and both used force simultaneously. It has also come in evidence that the complainant is a man of quarrelsome nature and has lodged a large number of complaints against his colleagues in his bank and has also lodged cases against four customers of the bank. He has also lodged a complaint against a doctor. It is also in evidence that the accused and the complainant were not on good terms. The statement made by the complainant in Court does not tally with what he has originally stated in his complaint. He has made many improvements in his statement in Court. Therefore, reliance cannot be placed on his statement. The learned Sessions Judge has rightly acquitted the accused. For the reasons stated above, we find no reason to interfere with the well reasoned judgement of the learned Sessions Judge.

In view of the above discussion, there is no merit in the appeal, which is accordingly rejected. The bail bonds furnished by the accused are discharged.

**(Deepak Gupta), J.**

**October 31, 2008**  
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**(V.K.Ahuja), J.**