

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA**

Cr.Appeal No. 67 of 2002.

Judgment reserved on: 26.02.2009.

Date of decision: 27.02.2009.

State of H.P.

.....Appellant

Vs.

Gita Devi & Ors.

.....Respondents

Coram

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

Whether approved for reporting?

**For the Appellant : Mr. A.K. Bansal, Additional
Advocate General.**

For the Respondents : Ms. Jyotsna Rewal Dua, Advocate.

Kuldip Singh, Judge.

This appeal has been directed against the judgment of acquittal recorded by learned Additional Sessions Judge, Sirmour District at Nahan on 23.08.2001 in Criminal Appeal No. 6-N/10 of 2001, reversing judgment of conviction and sentence dated 31.01.2001 passed by learned Additional Chief Judicial Magistrate, Court No.1, Paonta Sahib, in Criminal Case No.255/2 of 1996.

2. The brief facts of the case are that P.W.-2, Smt. Raj Rani, complainant, while on her way to home from Paonta Bazar on 27.02.1996 at about 11:00 A.M. at Yamuna bridge crossing, was intercepted by respondent No.3 and questioned why she had given a

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

statement against her in a liquor case. In the meantime, respondent No.2 accompanied by her accomplice Seema, appeared on the scene and gave a stick blow on her back. Naveen Kumar alias Lucky also came there and joined hands with co-accused in assaulting her. He pelted a stone which hit her nose which started bleeding profusely. On the intervention of P.W.-3 Mahinder Kaur and P.W.-6 Jaswant Singh alias Dhannu, she was rescued from the clutches of the assailants. Raj Rani approached the Police and lodged a report. She was medically examined. Her nasal bone was found to have been fractured. On completion of investigation, challan was presented in the Court. The respondents were charged for offences punishable under Sections 323 & 325 read with Section 34 I.P.C., to which respondents pleaded not guilty. The prosecution has examined seven witnesses and produced documents. The respondents were examined under Section 313 Cr. P.C., they denied the prosecution case. On conclusion of trial, the learned Additional Chief Judicial Magistrate convicted the respondents, but in appeal learned Additional Sessions Judge acquitted the respondents, as noticed above, hence this appeal.

3. I have heard Mr. A.K. Bansal, learned Addl. Advocate General for the appellant and Ms. Jyotsna Rewal Dua, Advocate, learned counsel for the respondents and have gone through the record. Mr. Anshul Bansal, has submitted that learned Additional Sessions Judge has erred in setting aside well reasoned judgment of conviction and sentence dated 31.01.2001 of learned Additional Chief Judicial Magistrate. He has submitted that prosecution has proved the case against the respondents by leading oral and documentary evidence. PW-2, PW-3 and PW-4, Dr. R.K. Dhiman, have proved the case of the prosecution. The learned Additional Sessions Judge has

not properly appreciated the evidence on record. In the facts and circumstances of the case, the judgment of acquittal dated 23.08.2001, is not sustainable. The learned counsel for the respondents has supported the impugned judgment and has submitted that there are material contradictions in the prosecution case. The learned additional Sessions Judge has rightly acquitted the respondents and the judgment of acquittal is in accordance with the facts and law.

4. P.W.-1 Adarsh Bhatnagar, Radiographer, has proved X-Ray film Ext. PW1/A of Raj Rani. P.W.-2 Smt. Raj Rani, complainant has stated that on 27.2.1996 at 11:00 A.M., she was on her way to home from Paonta bazar. At Yamuna bridge crossing, Satya Devi emerged and asked her why she gave a statement against her in a liquor case. In the meantime, Geeta Devi also came there with *danda*. She was accompanied by Bimla Devi, Seema and Lucky. Geeta Devi inflicted *danda* blow which landed on her arm. Bimla caught hold her from her hairs, the other women gave her beatings with kick and fist blows. Lucky pelted stone which hit her nose. She raised alarm and on this, Mahinder Kaur and Dhannu came on the spot and rescued her. She reported the matter to the police vide Ext. PW2/A. She handed over bloodstained shirt Ext. P-1 to Police. The *danda* Ext. P-2 was produced by Geeta Devi. In cross-examination, she has stated that near to the place of occurrence there are sale tax and toll tax barriers as well as Police Post. The place of occurrence is visible from the barrier. She had altercations with assailants for half an hour. She reported the matter against Seema Devi also. The stone which hit her nose, was not taken into possession by the Police.

5. PW-3, Smt. Mahinder Kaur has stated that about three years ago on second of the month, at 11 A.M., she was in her shop, she heard the noise and saw that the respondents were beating the complainant. The assailants were Satya, Geeta, Seema, Bimla and Lucky. Geeta was having a *danda* in her hand and she gave beatings to complainant with *danda*. Lucky hit the complainant with stone on her nose and blood oozed out from the nose. She reached the spot and rescued the complainant. In cross-examination, she has stated that at the time of occurrence, Policemen were on the barrier. The quarrel continued for one hour. Geeta Devi hit the complainant with *danda* on her legs. All assailants gave beatings to the complainant after holding her.

6. PW-4, Dr. R.K. Dhiman has stated that he examined Smt. Raj Rani on 27.2.1996 and proved MLC Ext. PW4/A, according to him, injury No.1 was grievous while injury No.2 was simple. He has proved X-Ray film Ext. PW4/B and report Ext. PW4/C of Dr. G. Narang, Radiologist. According to him, the injuries mentioned in MLC Ext. PW4/A can be caused with *danda* blow. In cross-examination, he has stated that injury Non.1 can be caused by fall but not injury No.2. P.W.-5 Ajay Kumar has proved Rapat No.-13 Ext. PW2/A. Thereafter Raj Rani was medically examined and FIR Ext. PW5/A was registered. PW-6 Jaswant Singh has not supported the prosecution and was declared hostile. He was cross-examined by the prosecution, but there is noting in the cross-examination of this witness which helps the prosecution. PW-7, Som Lal is the Investigating Officer. The respondents in their statements under Section 313 Cr.P.C., have denied the prosecution case.

7. Ext.PW2/A is the Rapat No.13, dated 27.2.1996 which was recorded at the instance of PW-2 Raj Rani. In Ext. PW2/A, Raj Rani has stated that Geeta Devi gave *danda* blow on her back. She has not stated in Ext. PW2/A that she raised any alarm. She has stated that Lucky gave beatings alongwith other women and he also hit her with a stone on her nose, as a result of which, blood oozed out from the nose.

8. P.W.-2 has stated that Seema was also with the respondents, she reported against Seema Devi also, but Seema Devi is not an accused. It means, story of PW.-2, Smt. Raj Rani to this extent was not accepted by the prosecution. In the Court, she has stated that when she raised alarm, then Mahinder Kaur and Dhannu came on the spot and rescued her. Mahinder Kaur was examined as P.W.-3. She has nowhere stated that on hearing the alarm, Dhannu also came on the spot. Dhannu is noneelse, but PW.-6, Jaswant Singh, as per list of witnesses attached with the challan presented by the prosecution in the Court. P.W.-6 has not supported the prosecution. The complainant in the Court, has stated that Geeta Devi inflicted *danda* blow which landed on her arm, in Ext. PW2/A complainant has stated that *danda* blow was given on her back. PW.-3, Mahinder Kaur has stated that Geeta hit complainant with *danda* on her legs. P.W.-3 has named Seema also as one of the assailants, but Seema is not an accused in the case. The complainant has stated that quarrel took place for half an hour, whereas, PW-3 has stated that quarrel continued for one hour. It has come on record that Policemen were nearby on the barrier and from there the place of occurrence was visible. It is not believable that even though quarrel continued for half an hour to one hour as stated by P.W.-2 and P.W.-3, but Policemen

on duty on the barrier ignored and did not come for the rescue of the complainant where beatings were allegedly given to her by the respondents. P.W.-4, Dr. R.K. Dhiman, has stated that injury No.1 mentioned in M.L.C. Ext. PW4/A can be caused by fall, but medical evidence is not much help to prosecution in absence of proof how complainant has sustained injuries.

9. In view of material contradictions in the statements of P.W.-2, Raj Rani and P.W.-3, Mahinder Kaur regarding the manner in which incident took place, it is doubtful that P.W.-3, Mahinder Kaur was present on the spot at the time of occurrence. In these circumstances, the statement of P.W.-2, Raj Rani is left without corroboration. This is not a case where witnesses were not available. It is not the case of prosecution that occurrence took place at an isolated place. The prosecution case is that occurrence took place at 11:00 "O" Clock during the day at Yamuna crossing which is near to Sales tax and Toll tax barriers and some shops. The prosecution has failed to give plausible reason why witnesses from Sales tax, Toll tax barriers and shops were not associated and examined in the Court. This creates a doubt regarding the prosecution case. It is not a case where sole testimony of P.W.-2 without corroboration is sufficient to convict the respondents. The learned Additional Sessions Judge has properly appreciated the material on record in acquitting the respondents. On behalf of appellant, no cause has been made out to take a contrary view. In the facts and circumstance of the case, the appeal is liable to be dismissed.

10. No other point was urged.

11. In the result of above discussion, the appeal fails and is accordingly dismissed, bail bonds discharged.

(Kuldip Singh)
Judge.

February 27, 2007
(bhupender)