

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Appeal No. 586 of 2002

Decided on 30.9.2009

State of Himachal Pradesh

..... Appellant.

Vs.

Gopal Singh and others.

.... Respondents.

Coram

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

***Whether approved for reporting?* No**

For the Appellant : Mr. R.P.Singh, Asstt. Advocate General.

For the Respondents : Mr. Deepak Gupta, Advocate.

Kuldip Singh, Judge (Oral).

The State has come in appeal against the judgement of acquittal recorded by the learned Addl. Chief Judicial Magistrate, Court No.1, Shimla in Case No. 8/1 of 1996, acquitting the respondents for an offence punishable under Sections 147, 148, 341, 325, 323 read with Section 149 IPC.

2. The prosecution case, in brief, is that PW-4 Ram Dass complainant on 28.4.1996 at about 11.30 a.m. was given beatings by respondents near Bharari after forming unlawful assembly. The matter was reported to the police, injured was got medically examined. On completion of investigation, challan was presented. The respondents were charged for offence punishable under Sections 147, 148, 341, 325, 323 read with Section 149 IPC. They

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

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pleaded not guilty and claimed trial. The prosecution has examined five witnesses and produced some documentary evidence. The statements of respondents were recorded under Section 313 Cr.P.C. They denied the prosecution case. The respondents led no evidence in defence. The learned Additional Chief Judicial Magistrate acquitted the respondents on 12.4.2002, hence the appeal by the State.

3. Heard and perused the record. The learned Assistant Advocate General on behalf of the State has submitted that the learned trial Court has mis-construed and mis-interpreted the oral and documentary evidence on record and has erred in acquitting the respondents. The prosecution has proved the case against the respondents beyond reasonable doubt. He has submitted that respondents may be convicted in accordance with law. The learned counsel appearing on behalf of the respondents has submitted that PW-4 Ram Dass complainant has made self serving statement which has not been corroborated by any other prosecution witness. He has submitted that even as per the prosecution case several persons were present when alleged occurrence took place but no such person was examined by the prosecution. He has submitted that the prosecution has not even examined Investigating Officer which has deprived the respondents to cross-examine him so as to find out real truth. This has caused prejudice to the respondents. He has supported the impugned judgment.

4. Ex.PW-4/A is the statement of complainant Ram Dass recorded under Section 154 Cr.P.C. wherein he has stated that on 28.4.1996 at about 11.45 a.m. he was accompanying his uncle Bhoop

Ram to a marriage. They were way laid by Gopal Singh, Krishan Chand, Jai Chand, Roshan Lal, Vinod Kumar, who were holding dandas, bricks, rods. They all of a sudden attacked the complainant and his uncle with dandas, laid them on the ground. On hearing their cries, Krishan Chand and Ram Dass asked the accused why the complainant and his uncle were being given the beatings. Upon this, the accused left the place. In the beatings the complainant got fractured his right leg and received injuries on the back and chest. Bhoop Ram also received injuries near eye and on the back, hand, neck etc. They were brought to the Rippon Hospital. On this, FIR Ex. PW-5/A was registered.

5. PW-1 Dr. V.P.Madhek has stated that on 28.4.1996 at 3.30 p.m. he examined Bhoop Ram and issued MLC Ex.PW-1/A. He also examined Ram Dass and issued MLC Ex.PW-1/B. After receiving X-ray report, he gave opinion in MLC Ex.PW-1/C. In cross-examination, he has stated that injuries mentioned in the MLCs can be caused by fall on hard surface and on bushes. PW-2 Ami Chand has stated that vide memo Ex.PW-2/A police took into possession danda Ex.P-1, iron rod Ex.P-2, pieces of stone Ex.P-3, pieces of brick Ex.P-4, Chappal Ex. P-5 and Ex.P-6, handle and rod of umbrella Ex.P-7 and Ex.P-8. In cross-examination, he has stated that Ram Dass is his uncle's (Taya) son. He has also admitted that a case for inflicting knife blow was instituted against him and Ram Dass. PW-3 Jeet Ram has stated that in the year 1996 he was SHO, Police Station, Bolieauganj and he prepared the challan in the case.

6. PW-4 Ram Dass complainant has stated that on

28.4.1996 at about 11.30 a.m. Krishan Chand, Jai Chand, Gopal, Roshan Lal etc. caught hold him and gave beatings. On right leg he was hit by iron rod as a result of which his right leg was fractured. Bhoop Ram was also accompanying him and he was also given beatings by the accused. Krishan Chand was also with them. He went to call the brothers of the complainant and on this Dhani Ram, Sudhir, Ami Chand and Uma Dutt came to the spot who took them to Rippon Hospital. He made statement Ex.PW-4/A. In cross-examination, he has stated that Krishan Chand is his uncle's (Taya) son and Bhoop Ram is his real uncle (Chacha). He has stated that there were in all five persons, who gave him beatings but he cannot tell who were holding dandas, bricks and stones. He also cannot tell how many accused were holding dandas and how many iron rods. PW-5 Shyam Lal , retired Inspector has stated that on 28.4.1996 Head Constable Parveen Kumar had recorded statement under Section 154 Cr.P.C. of Ram Dass and thereafter, FIR Ex. PW-5/B was recorded. This is the entire evidence led by the prosecution.

7. PW-4 Ram Dass complainant in his statement before the police has stated that Bhoop Ram, Krishan Chand and Ram Dass S/o Sh. Rangia were on the spot. But the prosecution has not examined anyone of them nor any explanation has been given why these witnesses were not examined. In the statement of PW-4, it has come that Krishan Chand called the brothers of the complainant namely Dhani Ram, Sudhir, Ami Chand, Uma Dutt but in statement under Section 154 Cr.P.C. Ex.PW-4/A the complainant has not stated that Krishan Chand had called the brothers of the complainant.

8. The complainant has named four accused namely Krishan Chand, Jai Chand, Gopal and Roshan Lal but he could not give the name of other assailants. The complainant in his statement has stated that he could not tell who was holding Danda, brick and stones. PW-1 Dr. V.P.Madhek has stated that the injuries found by him in the MLCs can be caused by fall. It is not the case of the prosecution that occurrence took place at an isolated place and no one had seen the occurrence except the complainant. The persons who were allegedly present and seen the occurrence have not been examined by the prosecution. It is not a case of that nature where sole testimony of PW-4 Ram Dass complainant is enough to bring home the charge. In the case in hand, even the Investigating Officer has not appeared in the witness box which has caused prejudice to the respondents as they could not cross-examine him to find out the truth.

9. The learned Additional Chief Judicial Magistrate has taken a possible view from the evidence on record and it cannot be said that the view taken by the learned Court below is perverse and is not at all possible. In appeal against acquittal unless the view taken by the trial Court is found to be perverse or impossible, it is not safe to reverse the finding of acquittal. The learned Assistant Advocate General has failed to make out a case for interference. There is no merit in the appeal which is accordingly dismissed. The bail bonds are discharged.

September 30, 2009.
(GR)

(Kuldip Singh)
Judge.