

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 82 of 2004

Date of decision: 30.09.2010

State of H.P.	... Appellant
Versus	
Sadik and others	... Respondents

Coram :

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

Whether approved for reporting?¹ No.

For the appellant: Mr. J.S. Guleria, Assistant Advocate General.

For the respondents: Mr. Karan Singh Kanwar, Advocate, Advocate.

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

This is an appeal filed by the State of H.P. under Section 378 Cr.P.C. against the judgment of the Court of learned Judicial Magistrate 1st Class, Court No. 2, Paonta Sahib, dated 21.11.2003, vide which the respondents (21 in number), were acquitted of the charge framed against them under Sections 147, 447 and 379 read with Section 149 I.P.C.

2. Briefly stated, the facts of the case are that on 5.4.1999, complainant Salim Ali, lodged a report with the police that he had grown wheat crop in the land, which had come to his father’s share and 21 accused persons named by him, entered the land on 5.4.1999, at about 8 A.M. and cut the crop from the land measuring 3

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

Bighas. His brother Khurshid had seen the occurrence from a distance and he informed him and then lodged the complaint that the accused persons had cut 4½ quintals wheat crop from the land of the complainant. On this report, a case was registered and after investigation, the challan was filed as against the respondents.

3. I have heard learned counsel for the parties and have gone through the record of the case.

4. On perusal of the record of the case, it is clear that complainant Salim Ali PW-1 had not himself witnessed the occurrence, but he was informed by his brother Khurshid and then he lodged the report with the police. In the complaint lodged with the police, the complainant had not mentioned the Khasra Numbers and the land in possession from which wheat crop was cut by the accused persons. Even in the charge framed against the respondents by the learned trial Court, the Khasra Numbers of the land in question have not been alleged and it is only mentioned that the crop was cut from 3 Bighas of land of the complainant. However, it was required that the Khasra Numbers owned and possessed by the complainant should have been mentioned in the charge also to ascertain as to from which land the accused persons had cut the wheat crop.

5. Coming to the evidence, complainant Salim Ali appeared in the witness box as PW-1 and has clearly stated that the land was in their possession measuring 17/18 Bighas, which they got and it was in their possession. However, he did not specify the Khasra Numbers of the land in question. He also stated that he had not witnessed the occurrence, but was informed by his brother Khurshid, who saw the accused persons cutting the crop. The brother of complainant

Khurshid Ali, who informed the complainant has also appeared in the witness box as PW-2, who stated that he saw the accused persons cutting the crop and he came to the house and informed the family members and then the report was lodged. In examination-in-chief, he could only name six persons out of the respondents about whom he stated that they were present at the spot. He did not name all the 21 accused persons, who have been tried in the case. He stated that he did not go near the fields, since there were many persons who were having daratis and dandas in their hands. He admitted in his cross-examination that the case pertaining to Khasra No. 149/90/10/3 is pending in Court No. 1, but he denied that a compromise was effected in that case. He denied the suggestion that the accused persons had cut the crop from their own land comprised in Khasra No. 149/90/10/1.

6. PW-3 Yasin, who was examined as an eye witness, stated that he was accompanied by Khurshid. The accused persons were having daratis in their hands and were taking wheat crop to their house, but no proceedings were held in their presence when the police came. He did not name the accused persons or identify them and he was declared as hostile by the prosecution. In the cross-examination, he also stated that he cannot name the accused persons who were cutting the crop. PW-4 Yamin, who has been examined as another eye witness, has stated that he alongwith Khurshid saw the accused persons cutting the crop, but he could not name the accused persons, who were cutting the crop.

7. The statements of other witnesses are not very material except PW-8 Kaushal Dutt, Field Kanungo, who had gone to the spot and stated that he demarcated the land comprised in Khasra No. 149/90/10/3, but he did not state as to who was in possession of this Khasra Number. There is nothing in his statement to show that the wheat crop was cut from these Khasra Numbers.

8. Thus, the witnesses examined by the prosecution have not established the identity of the accused persons by naming them or identifying them in Court. The accused persons have taken the plea that a civil dispute was going on in between them. The accused persons have also tendered in evidence Ex.DA to show that a case was pending in between the parties and a compromise deed Ext. C-1 was executed and Munshi Khan and Yamin were declared as owners in possession of the land as per the compromise, comprised in Khasra Number 149/90/10/1 measuring 2 Bighas, who are not the accused persons. Ext. DB is a copy of decree sheet and the copy of the compromise is Ext. DC. A perusal of the above discussion shows that there a dispute in between the parties in regard to the land in question and there is nothing on record to establish that the complainant party was owner in possession of the land from which the wheat crop was cut by the respondents. The identity of the accused also was also not established from the evidence and, therefore, the final verdict recorded by the learned trial Court leading to the acquittal of the respondents, cannot be said to be perverse, calling for an interference by this Court.

9. In view of the above discussion, I accordingly hold that there is no merit in the appeal filed by the appellant, which is dismissed accordingly. The bail bonds furnished by the respondents shall stand discharged.

September 30, 2010
(BSS)

(V.K. Ahuja),
Judge

