

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 350 of 1997

Decided on September 30, 2010

State of H.P.

Versus

...Appellant.

Bikram Chand and Another

...Respondents.

Coram

The Hon'ble Mr. Justice R.B. Misra, Judge.

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

Whether approved for reporting?

For the appellant: Mr. Rajinder Dogra, Additional Advocate General.

For respondent No.1: Ms. Vidushi Sharma, Advocate.

Justice R.B. Misra, J.(Oral)

The present Criminal Appeal has come up for adjudication after the grant of leave to appeal under Section 378 (3) of the Code of Criminal Procedure has been granted in reference to judgment dated 10.04.1997, passed by Learned Sessions Judge, Kangra at Dharamshala, H.P., in Sessions Case No. 40-P/VII-1996, under Sections 307 and 324 read with Section 34 of the Indian Penal Code, acquitting the alleged accused/respondents, in reference to FIR No.366 of 1995 dated 24.10.1995.

2. The prosecution case is that on 23.10.1995 at village Machhlana, on the eve of Diwali, accused-respondents alongwith Purshottam, Sarwan Kumar and others have celebrated the festival and were sitting in the house of Hari Singh, father of accused Bikram Singh. They consumed liquor together and started dancing. In the mean while, bucket full of water fell and on this there was heated exchange between accused Bikram and Purhottam and both were throwing blame on each other as to why the bucket full of water was thrown. In the

mean while both the accused and Purshottam grappled with each other. Accused Bikram, after sustaining the injuries, went to his house and brought a knife and gave a stab blow to Pushottam and thereafter to Sarwan. Purshottam became unconscious after receiving the knife blow and he was immediately removed to hospital, where he was operated upon and was saved. The investigating officer gave an application on 23.10.1995 to the Hospital authorities to record the statement of the injured Purshottam but he was not in a fit condition, therefore, his statement could not be recorded immediately. Subsequently, in view of the testimony of Purshottam (injured) FIR was lodged.

3. After investigation, the accused were charged for the aforesaid offences. In order to prove its case, the prosecution has examined as many as 14 prosecution witnesses, whereas, the accused through their statement under Section 313 of Cr.P.C., have shown their innocence and denied the prosecution case.

4. The prosecution examined PW.1 Dr.Karan Singh, PW.2 Dr. K.C. Kalyan, PW.3 Dr. G.C. Sood, PW.4 Dr. Kalpana Mahajan, PW.5 Purshottam Chand, PW.6 Sarwan Kumar, PW.7 Smt. Malti Devi, PW.8 Sh. Kishan Chand, PW.9 Sh. Sanjeev Kumar, PW.10 Manohar Lal, PW.11 Sohan Singh, PW.12 Hari Ram, PW.13 Rajeev Attri and PW.14 Kishan Chand.

5. PW.2 Dr.K.C. Kalyan examined injured Purshottam on 24.10.1995 at about 3.20 A.M., and his observations were as under:-

"There was history of stabbing by knife. The person was crying due to pain. The patient was conscious and cooperative and the smell of alcohol on the breath was present.

A mass of intra abdominal structure had come out of the wound. Shape of the wound through which the structure had come out was like spindle. The wound had clean margins. The size of the mass was 7 x 2 cm. The patient was referred by him to Dr.Karan for further expert opinion and

management and subsequently the nature of injury was found to be dangerous to life.

6. According to PW.2 Dr.K.C. Kalyan when Purshottam Lal was brought to hospital, he sent a rukka to the police station which is Ex.PW.2/B and on the same day i.e. on 24.10.1995 at about 4.35 A.M., the police moved an application Ex.PW.2/C for recording the statement of Purshottam Singh but he was declared unfit to make statement. On 24.10.1995 at about 8.30 A.M., another application Ex.PW.2/D was moved by the police and at that time the injured was declared fit to make statement. He further deposed that injury sustained by injured-Purshottam could be caused with knife Ex.P1. In cross-examination, he admitted that if 5-6 persons after taking liquor grapple with each other, the injuries, mentioned in Ex.PW.2/A, can be caused by Ex.P1 and not by Axe, sharp piece of wood or blade. He has also opined that if the knife is in the hand of the injured and some other person tried to snatch the knife, then the injury, mentioned in Ex.PW.2/A, is possible.

7. PW.3 Dr.G.C. Sood, examined accused Bikram Chand on 24.10.1995 at about 10 P.M. and his observations were as under:-

- 1. There was four abrasions 1 cm x 1 cm each on posterior aspect of left elbow and they were brownish red in colour*
- 2. There were four dark coloured abrasions on posterior aspect of left shoulder measuring 2 cm x 1 cm and 1.5 x 1 cm each.*
- 3. There was another abrasion over left scapula 2 cm x 1 cm in size and was dark red in colour.*
- 4. There was dark red contusion lateral to left scapula and was running vertically it was 8 cm x 1 cm in size with inter vaning skin normal.*
- 5. There was vertical contusion extending from inter-scapular region to sceral bone. It was dark red with inter vanning skin normal.*
- 6. There was dark red contusion on the back of right chest and it was 8 x 3 cm in size.*
- 7. There was dark red abrasion over right scapular which was 1.5 cm x 1 cm in size.*
- 8. There was oblique red coloured contusion on lateral aspect of left thigh with inter vanning skin normal.*

9. *Red coloured contusion on the back of left pinna.*

10. *Red coloured abrasion on left partial region. It was 4 cm x 5 cm in size.*

As per testimony of PW.3, all the injuries were simple in nature caused with blunt weapon. He issued MLC Ex.PW.3/A.

8. PW.4 Dr.Kalpna Mahajan, who medically examined Sarwan Kumar on 24.10.1995 with a history of stab injury and her observations were as under:-

"The patient was fully conscious and cooperative. There was small sharp wound covered with blood clot dark red in colour, dry on right side of the abdomen amount 2 cm on middle to interior superior iliac pine. Size was about .25 x .2 cm. Tenderness around the wound was present. The patient was kept under observation for two days and thereafter was discharged from the hospital. The injury was simple in nature. She issued MLC Ex.PW.4/A. According to her the injury could have been caused with knife Ex.P1."

9. PW.5 Purshottam, in his endeavour to support the prosecution case, has deposed that on 23.10.1995 on the eve of Diwali, his uncle Hari Singh invited him to his house at about 10.30 P.M. his uncle Hari Singh, Bikram and Subhash were taking liquor and he too was served liquor. In the mean while one bucket, full of water, lying by his side fell down when he got up. On this, accused Bikram questioned him as to why he threw the bucket full of water. PW.5 then came out side, accused Bikram also followed him and they started quarrelling & grappled with each other. Accused Bikram gave blows to him and he too gave blows to Bikram. PW.5 further deposed that accused Bikram took out the chain but in the mean while the same was snatched by his Bhabi Jagtamba, Sureshta, Anjana and Malti. Thereafter, his brother Sarwan also came for his rescue, when Sarwan Kumar tried to save Purshottam, accused Bikram gave a

knife blow in the stomach of Purshottam and he fell down unconscious. According to PW.5 accused Subhash assisted his brother but he did not give any blow to him.

In cross-examination PW.5 has stated that he did not know if Madan Lal was also sitting with Hari Singh and Bikram. Sarwan Kumar, Kishan Chand and Gian Chand were his brothers. PW.5 has further stated that after taking the liquor, they all started dancing & singing. When stab blow was given to him, the electricity was off and there was complete dark. In his presence only one bottle of Rum was served. According to PW.5, when he was grappling with accused Bikram, Hari Singh came to their rescue and when they were grappling the knife Ex.P1 was in his hand and he sustained injury when the knife was snatched from his hand.

10. PW.6 Sarwan Kumar deposed in the same lines by stating that when he heard loud voice of his brother Purshottam, Bikram and Subhash, he went to the spot and he gave blows to accused Bikram after he had stabbed Purshottam. Thereafter, accused Bikram also stabbed him. PW.6 further deposed that in his presence accused Bikram made a disclosure statement that he had hidden the knife in the house of his maternal uncle at Sullah. On the basis of said statement, the knife was got recovered and taken into possession vide memo Ex.PW.6/A.

11. PW.7 Malti Devi deposed that on the alleged day Hari Singh had organized a party to celebrate Diwali and had invited Purshottam Chand to his house. On hearing the noise, she alongwith Sureshta, Jagtamba and Anjana went to the house of Hari Singh and snatched the chain from the hands of accused Bikram, they also gave fist blows to Bikram. Thereafter, Bikram went to his house and brought out a knife and gave a blow to Purshottam and thereafter to Sarwan Kumar, who had come for

the rescue of Purshottam. It has subsequently been stated by PW.7 that at that time there was no electricity, however, there was lamp light inside the room. She identified chain Ex.P6 which was taken into possession vide memo Ex.PW.7/A. PW.7 has further stated that she went to the spot after hearing the noise and when she reached, Bikram was possessing a chain in his hand, which was snatched by them.

12. PW.8 Kishan Chand deposed that accused Bikram was interrogated in his presence by the police and accused Bikram made a disclosure statement Ex.PW.8/A and in pursuance of that, knife Ex.P1 was got recovered, which was taken into possession vide memo Ex.PW.6/A. PW.9 Constable Sanjeev Kumar, PW.11 Head Constable Sohan Singh, PW.12 Constable Hari Singh, PW.13 Sub Inspector Rajeev Attri and PW.14 Inspector Kishan Chand in due discharge of their official duty have endeavoured to support the prosecution case, however, they were not very material as they have not seen the occurrence.

13. On analysis of the prosecution witnesses and materials on record, we notice that in view of testimony of PW.2 5-6 persons after consuming liquor grappled with each other, the injuries mentioned in Ex.PW.2/A can be caused with knife Ex.P1. PW.2 has also stated that if the knife is in the hand of an injured person and other person tries to snatch the knife, then this type of injury is possible. So far as the injury to Sarwan Kumar is concerned, PW.4 Dr. Kalpana Mahajan deposed that this type of injury can be caused by a sharp edged wooden piece and also by some foreign object. The injuries sustained by Purshottam and Sarwan Kumar as well as accused Bikram are proved by PW.1, PW.2, PW.3 and PW.4, Doctors Karan Sharma, K.C. Kalyan, G.C. Sood and Kalpana Mahajan.

14. The prosecution story is that liquor was being consumed on 23.10.1995 at the house of Hari Singh. This story is falsified by Sarwan Kumar-injured (PW.6), wherein he made a statement to the police that liquor was consumed in the house of Madan Lal and not in the house of Hari Singh. So, the Investigating Officer tried to screen the real offender as well as the real place of occurrence. PW.6 Sarwan Kumar himself admitted that a chain was snatched from the hands of accused Bikram and he left the place. There was complete darkness as is clear from the prosecution evidence. So, it was not possible to identify that who has come back from his house, because it was darkness and all were under the influence of liquor. Males and females were dancing. In the pitch of darkness it was not possible to notice that who came from the house of Bikram, whether it was Bikram or Jagdish. Knife was got recovered from the house of Jagdish who is brother of Bikram. The prosecution has to stand on its own legs that it was only the accused Bikram, who brought the knife from his house and then caused stab injury to Purshottam and Sarwan.

15. In the light of above, testimony of PW.11 Sohan Singh is very important. PW.11 Sohan Singh admitted that he visited the hospital and close relatives of injured Purshottam were present in the hospital during night also. PW.11 did not record the statement of close relations who were present on the day of occurrence i.e. on the eve of Diwali when alleged quarrel took place in the night. PW.11 also admitted that none was sure as to who caused the stab injury, meaning thereby that the investigating officer was himself not sure as to who caused the injury to Purshottam, otherwise all the witnesses who were present in the hospital and none of them disclosed the name of accused Bikram and later on deposed that it was Bikram who

gave the blow. Madan Lal in whose house the liquor was being consumed on the alleged day, has not been examined. Sarwan Kumar himself admitted that liquor was consumed in the house of Madan Lal, whereas, the case of the prosecution is that liquor was taken in the house of Hari Singh which is not a true and real story.

16. PW.7 Malti Devi, the real sister of Purshottam herself admitted that there was complete darkness when the scuffle took place and 5-6 persons were grappling with each other, under the influence of liquor. This fact of grappling has been admitted by the investigating officer PW.13 Rajiv Attri himself as well.

17. PW.6 Sarwan Kumar has stated that he went to the spot when he heard the cries of his brother and he did not take liquor in the house of Hari Singh or Madan Lal. However, he admitted the presence of Madan Lal, Bikram and Subhash at the spot alongwith Sureshtha, Jagtamba and Malti. But PW.7 Malti Devi admitted that Sarwan has also gone to take liquor in the house of accused. PW.11 Sohan Lal, who was the first person to reach the hospital, failed to record the statement of any of the person present there for the reason that none was sure as to who caused the stab injury to Purshottam.

18. On analysis of the prosecution witnesses and materials on record, we notice that 5-6 persons were grappling and ladies were also trying to rescue them in the darkness then there was no occasion to anyone to notice that who brought the knife from his house and caused injuries to Purshottam and Sarwan. The prosecution has failed to examine Madan Lal at whose house liquor was consumed due to the reason best known to the prosecution. Investigating officer PW.13 Rajiv Attri had also admitted that knife was recovered from the house of Purshottam who is injured and not from the house of Bikram.

PW.13 has also admitted that during the investigation he found that there were 4-5 persons who grappled among themselves in the darkness.

19. The aforesaid narrations, also create doubt about the prosecution case and the recovery of knife by which Purshottam was injured as the same was not recovered from the place of accused Bikram and when 5-6 persons were grappling in the darkness and ladies were trying to rescue, definitely nothing could be inferred who inflicted injuries. In these circumstances, prosecution cannot said to have proved its case beyond reasonable doubt, since one of the accused Subhash Chand has already died, therefore, in the present case Bikram cannot be held guilty to the aforesaid offences. In our considered view the prosecution has failed to bring home the guilt to the accused and there is no scope of interference in the findings given by learned Sessions Judge. In view of the aforesaid facts and circumstances, the present criminal appeal, being devoid of any merit, is dismissed.

20. The bail bonds furnished by the accused/respondents are hereby discharged.

(R.B. Misra)
Judge

September 30, 2010
(Purohit)

(V.K. Sharma)
Judge