

IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

Cr. A. No. 657 of 2000

Decided on: 30.9.2010

State of H.P.

.....Appellant

Versus

Nirmala Devi & Ors.

.....Respondents

Coram

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

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

Whether approved for reporting?¹

For the appellant : Mr. R.K. Sharma, Sr. Addl. A.G. with Mr.
Rajinder Dogra, Addl. A.G.

For the respondents : Mr. Lovneesh Kanwar, Advocate.

R.B. Misra, J. (Oral)

The present criminal appeal has come-up for consideration after leave to appeal, under Section 378(3) of the Code of Criminal Procedure has been granted, in reference to the impugned judgment dated 11.7.2000, passed by learned Sessions Judge, Mandi, H.P., first appellate Court, in Sessions Case No. 36 of 1997, acquitting the respondents-accused for the offences, under Sections 326 read with Section 34 IPC, while adjudicating the criminal appeal, under Section 374 of the

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

Code of Criminal Procedure against the judgment dated 24.6.1997 of learned Additional Chief Judicial Magistrate, Sarkaghat, whereby, the respondents-accused have been convicted for the offence under Section 326 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for a term of six months each and to pay a fine of Rs. 1,000/- or in default of payment of fine to undergo simple imprisonment for a term of 15 days each.

2. The prosecution case is that respondent-accused Nirmla Devi, younger Sister of respondent-accused Kashmira Devi, is married to Biri Singh, younger brother of Ram Singh, husband of Kashmira Devi, respondent-accused and they alleged to have voluntarily caused simple hurt to Smt. Kashmira Devi, wife of Mangat Ram and injury to Mangat Ram, elder brother of their husbands (respondents-accused). After investigation, respondents-accused were charged for the aforesaid offences and the case was tried by learned Additional Chief Judicial Magistrate, Sarkaghat, whereby aforesaid sentence was awarded.

3. In order to prove its case, prosecution examined as many as six witnesses, whereas, the respondents-accused through their statements, under Section 313 Cr.P.C., denied the prosecution case and examined DW-1 Ramesh Chauhan, in defence.

4. On analysis of prosecution witnesses and materials on record, we notice that the first appellate Court has acquitted the respondents-accused on the ground that the injury on the body of Kashmira Devi has not been explained. Eye witnesses,

named in the FIR, have not been examined by the prosecution, in order to support its case, for the reasons best known to it and the weapon of offence has not been recovered. On scrutiny of prosecution witnesses, we also notice that the alleged injury could not be co-related with the weapon having been used by the respondents-accused persons and the prosecution witnesses are not inspiring confidence, therefore, benefit of doubt, in the facts and circumstances, has rightly been given in favour of the respondents-accused when the ocular witnesses and medical report are not in-coherency. As such, doubt is created in the prosecution case.

5. In these facts and circumstances, prosecution cannot be said to have brought the guilt of the respondents-accused. Accordingly, the appeal, being devoid of merit, is dismissed.

6. Bail bonds, furnished by the respondents-accused are hereby discharged.

(R.B. Misra), Judge.

September 30, 2010
(vs)

(V.K. Sharma), Judge.