

**HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr. Appeal No. 430 of 2002**

**Decided on: October 31, 2011**

**State of H.P.**

**...Appellant.**

**VERSUS**

**Budhu Ram & anr**

**....Respondents.**

***Coram***

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

**The Hon'ble Mr. Justice Dev Darshan Sud, Judge**

***Whether approved for reporting?<sup>1</sup> No***

**For the Appellant: Mr. Rajinder Dogra, Addl. AG.**

**For the respondents: Mr. Ashok Sharma, Advocate.**

**Dev Darshan Sud, Judge:-**

The State has appealed against the judgment of learned Additional Sessions Judge, Mandi, HP acquitting the respondents for the offences punishable under sections 307, 506/34 of IPC and Section 30 of Arms Act.

2. Prosecution case, in brief, is that on 31.12.1997 at about 6-7. P.M when (PW-1) Khub Chand, complainant was returning home after visiting his uncle

**Whether the reporters of the local papers maybe allowed to see the judgment?**

Tula Ram (PW-4) and when he was passing through the path of the house of the respondents/accused, their dog started barking aggressively at him. He pelted 3-4 stones at the dog and asked the accused to tie the animal. At this, he heard one of the accused Hira Ram calling out to accused Budh Ram to get the gun from his house. They then flashed a torch light at him and fired in his direction. He saved his life by ducking and hiding behind the Nashpati (peer) tree. Statement under section 154 Cr.P.C was recorded by (PW-11) Vijay Sain on 3.1.1998 and fir Ext PW-6/A was registered. Whereafter investigation commenced.

3. It is an undisputed fact established on the record that it was the pitch dark night when the incident took place. It is also established that there are cross cases filed by the parties, that is to day that the respondents/accused had also instituted a criminal complaint against the complainant Khub Ram with respect to the very same incident. This witness also admits that one Man Dass of his village is also having a similar gun. He does not admit that Man Dass and accused persons often fire on wild animals etc. But this fact has been admitted by the wife of the complaint (PW-12) Gomti Devi and (PW-1) Sunder Lal. The

prosecution then relies on the evidence of (PW-2) Sumo Devi, who has been declared hostile and has witnessed the recovery. We need not advert to her statement. The three witnesses relied upon Smt. Krishna Devi (PW-3) who is Pradan of Gram Panchayat who states that on 31.12.1997, Khub Chand (PW-1) complainant had come to her house and told her that the accused/respondent Hira Ram fired gun shot at him and they along with Budhu had gone to his residence and had threatened to burn him along with the house. In cross-examination she states that she never visited the spot. She is ignorant about the fact whether a counter case had been filed by the respondents. (PW-4) Tula Ram says that the complainant is his nephew. He had heard the gun shot at night after about five minutes when Khub Chand, complainant left his house, but he admits of not being on talking terms with the accused persons as they were involved in land disputes etc.

4. (PW-10) Sunder Lal is the son-in-law of (PW-4) Tula Ram and brother-in-law of (PW-1) Khub Chand, complainant. He is not of much help to the prosecution since he admits in his cross examination that he simply

heard gun fire in the evening at about 7.00 PM. He admits that in the village one Man Dass is also having similar gun. He further admits that when wild animals enter, in order to run them away, people used fire gun shots. This is the entirety of the evidence on record in support of the contention that the respondents had in fact shot at the complainant.

5. We may also advert to one more piece of evidence which is urged by the prosecution to support its case and that is Ex PX, which is the report of the Central Forensic Science Laboratory at Chandigarh. That report is also not of much help to the prosecution, for the reason that it only states that:-

- (a) the gun which has been sent to them for examination had been fired through, before it was received in the laboratory;
- (b) The marks present on wooden pieces could have been caused by firing;
- (c) The pellets, percussion caps and gun powder can be used for firing from the SBML gun.

6. Considering the entirety of the evidence, what we notice is that it was a dark night on which the

incident took place. Khub Ram admits that both the respondents have shouted that a thief was crossing their courtyard, it was snowing at that night and that there was some land disputes between the parties. It is in these circumstances that we called upon to judge as to whether respondents had deliberately shot at the complainant. We find from circumstances as narrated by the prosecution including expert evidence Ex PX, these facts as having not been established in reaching this conclusion. We are also fortified by the fact that baring complainant, none of the other witnesses have actually seen the respondents firing. Even the complainant admits that it was a dark night.

7. In these circumstances, we hold that the learned Additional Sessions Judge has correctly acquitted the respondents of the charges having been not established.

8. There is no merit in this appeal which is accordingly dismissed.

9. The gun which has been seized from the respondents, shall be returned to them on their proof of furnishing of valid fire arm licence. The licence Ex PA be

returned to the respondents. Certified copy of the licence be placed on the record.

10. Bail bonds, furnished are discharged.

**( R.B.Misra ), J.**

**31<sup>st</sup> October, 2011  
(sl)**

**(Dev Darshan Sud ),J.**