

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Cr.Revision No.27 of 2011.
Date of decision: 31.03.2011.

Sunil Kumar @ Monu and Others **Petitioners**

Versus

State of H.P. ... Respondent

Coram

The Hon'ble Mr. Justice Dev Darshan Sud, J.

Whether approved for reporting ?¹ Yes.

For the Petitioners: Mr.Vishal Bindra, Advocate.

For the Respondent: Mr.P.K. Sharma, Additional Advocate General with Ms.Shubh Mahajan, Deputy Advocate General.

Dev Darshan Sud, J.

The petitioners are aggrieved by the judgment and sentence of the two Courts below for offences under Sections 325, 323 read with Section 34 IPC.

2. The learned trial Court, convicted the petitioners for the offences aforesaid, to undergo simple imprisonment for a period of one year and fine of Rs.2000/- each for offence under Section 325 IPC and in default of payment of fine, simple imprisonment of three months. The sentence of three months simple imprisonment and fine of Rs.500/- was also imposed for commission of offences under Section 323 IPC. In

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

Yes.

default of payment of fine, they were directed to undergo simple imprisonment for three months.

3. The petitioners being dis-satisfied with the findings of the learned Courts below, appealed and while up-holding the conviction of the petitioners, the sentence was modified to the extent that the appellants would be imprisoned till rising of the Court and pay a fine of Rs.2000/- each under Section 325 IPC and in default simple imprisonment for one month and for offence under Section 323 IPC again imprisonment till rising of the Court and fine of Rs.500/- each and in default of payment, to undergo seven days simple imprisonment. Out of the fine realized a sum of Rs.5000/- was to be paid as compensation to the injured PW-2 Kishan Singh.

4. The genesis of the entire case is that the petitioners were charged for the offences on the allegations that complainant PW-2 Kishan Singh was traveling in a bus which was plying from Hamirpur to Delhi. When he alighted from the bus at about 7.45 P.M. at Barsar Chowk, one Jugal Kishore met him there and told him that he can give him a lift up to his house. The case is that when the complainant was traveling in this vehicle all the persons who were standing on the side of the road, started beating up the complainant, delivering kicks and fist blows to him. As a consequence, he suffered grievous injuries on his left ear which has impaired his hearing. In

order to prove its case, nine witnesses were examined by the prosecution. All the important witnesses, i.e. the complainant who appeared as PW-2, PW-4 Suresh Kumar, PW-5 Jugal Kishore, two doctors, PW-1 Dr.K.S. Dogra, PW-6 Dr.Manisha Mahajan, have proved the injuries sustained by the complainant. In addition, Soma Devi, wife of the complainant, appeared as PW-3. One of the points urged before the learned Courts below was that the prosecution witnesses have not supported the case of the prosecution by establishing assault on the petitioners. It was urged that since two of the witnesses have turned hostile, their evidence cannot be relied upon. The learned trial Court, relying upon the decision of the Supreme Court in **Appabhai and another vs. State of Gujarat, AIR 1988 SC 696**, holding that:-

"11. It is no doubt true that the prosecution has not been able to produce any independent witness to the incident that took place at the bus stand. There must have been several of such witnesses. But the prosecution case cannot be thrown out or doubted on that ground alone. Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but

it is there everywhere whether -in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability, if any, suggested by the accused. The Court, however, must bear in mind that witnesses to a serious crime may not react in a normal manner. Nor do they react uniformly. The horror stricken witnesses at a dastardly crime or an act of egregious nature may react differently. Their course of conduct may not be of ordinary type in the normal circumstances. The Court, therefore, cannot reject their evidence merely because they have behaved or reacted in an unusual manner. In *Rana Pratap v. State of Haryana* (1983) 3 SCC 327 : (AIR 1983 SC 680) O. Chinnappa Reddy J. speaking for this Court succinctly set out what might be the behaviour of different persons witnessing the same incident. The learned Judge observed (at p. 330) (of SCC : (at 682 of AIR) :

"Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to

appreciate evidence in a wholly unrealistic and unimaginative way."

12. There maybe some of the reactions. There may be still more. Even a man prowess may become pusillanimous by witnessing a serious crime. In this case, the courts below, in our opinion, have taken into consideration of all those aspects and rightly did not insist upon the evidence from other independent witnesses. The prosecution case cannot be doubted or discarded for not examining strangers at the bus stand who might have also witnessed the crime. We, therefore, reject the first contention urged for the appellants.

13. On the second contention, the learned counsel highlighted many of the contradictions in the evidence of Devji (PW- 4) as against his previous statement; one recorded by the Executive Magistrate (Exh. (66) and another by the Police during the investigation. We have, however, also examined the relevant evidence. It is true that there are many contradictions in the evidence of Devji. He has not attributed overt acts to individual accused in his statement before the police whereas he has attributed such overt acts in his evidence before the Court. But that is no ground to reject his entire testimony. It must not be forgotten that he was a victim of the assault. Fortunately he has survived. He must, therefore, be considered as the best eye-witness... .." (PP 699-700)

5. People have generally become insensitive when a crime is committed even in their presence. After

relying upon the witnesses of the complainant, the Court convicted the petitioners.

6. In appeal, the learned appellate Court relied upon the decision in ***Appabhai's*** case *supra*, affirmed the decision of the learned trial Court and further fortified its order with the ratio in the judgment of ***Chittar Lal vs. State of Rajasthan, (2003) 6 SCC 397*** to hold that it is not the number of witnesses, who are important to establish the occurrence, but the quality of the evidence.

7. I have gone through the judgments as also the reasoning of the two Courts below.

8. I cannot persuade myself to hold that the conclusions arrived at by the Courts below are perverse or that the evidence which has been recorded does not establish the incident. I fail to comprehend as to how the evidence of the complainant cannot be relied upon when he has vividly described the incidence and the manner in which he has been assaulted. There is, thus, no merit in this petition which is dismissed.

March 31, 2011
(aks)

(Dev Darshan Sud)
Judge.