

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No. 53 of 2006

Decided on: 31st October, 2012.

State of H.P.

.....Appellant.

Versus

1. Vijay Singh, son of Sh. Devi Singh r/o vill. Bakholi, Teh. Chirgaon, Distt. Shimla.
2. Rajesh Thakur, son of Sh. Bhagat Singh r/o vill. Jhalwari, Teh. Chirgaon, Distt. Shimla.
3. Pratap Sharma son of Sh. Barkhan Dass r/o vill. Nandla, Teh. Chirgaon, Distt. Shimla.
4. Balwant Singh, son of Sh. Ranvir Singh r/o vill. Thali, Teh. Chirgaon, Distt. Shimla.
5. Sohan Lal, son of Sh. Karam Singh r/o vill. Thali, Teh. Chirgaon, Distt. Shimla.

..... Respondents

Coram

The Hon'ble Mr. Justice Dharam Chand Chaudhary, Judge.

For the appellant : Mr. Rajinder Dogra, Addl. A.G.

For the respondents : Mr. Lalit Sharma, Advocate

Justice Dharam Chand Chaudhary, Judge (oral)

Aggrieved by the judgment dated 28.7.2005 passed by learned Sub Divisional Judicial Magistrate, Rohru in Crl. Case No. 36-2 of 2004/2003 whereby the respondents (hereinafter referred to as accused persons) have been acquitted from the charge under Sections 147, 353, 332, 506 read with Section 149 IPC, the State has come up in appeal to this Court.

2. The prosecution case as disclosed from the police report and also the documents annexed therewith in a nutshell is that on 25.9.2003 around 12.15 p.m. while on duty at Jangla, Tehsil Chirgaon, Distt. Shimla,

the accused persons Vijay Singh and Sohan Lal administered fist and kicks blows to PW-1 Dr. Jawahar Lal Sharma, complainant and as a result thereof he sustained serious injuries on his face, arms, legs, nose, head and other parts of the body whereas their co-accused Balwant Singh, Pratap Sharma and Rajesh Thakur threatened him with dire consequences.

3. In order to bring the guilt home to the accused the prosecution including the complainant Dr. Jawahar Lal Sharma and eye witnesses namely Inder Dev and Sunny Kumar, PW-2 & PW-3 respectively has examined 10 witnesses in all and also placed reliance on the documentary evidence. The statements of the accused persons under Section 313 Cr.PC were also recorded.

4. After holding full trial and taking into consideration the evidence available on record, learned trial Magistrate has arrived at a conclusion that the prosecution has failed to prove its case against the accused persons beyond all reasonable doubts and acquitted them of the charge under Sections 147, 353, 332, 506 read with Section 149 IPC framed against each of them.

5. The legality and validity of the impugned judgment has been questioned before this Court on the ground inter alia that the same is based on hypothesis, surmises and conjectures. Also that the Court below has failed to appreciate the evidence available on record in its right perspective and gave undue weightage to the minor contradictions occurred in the evidence produced by the prosecution.

6. I have heard Sh. Rajinder Dogra, learned Additional Advocate General and Sh. Lalit Sharma, learned counsel representing the accused persons and also gone through the entire record.

7. To decide the fate of this appeal reappraisal of the evidence consisting of oral as well as documentary is required.

8. The immediate version of the occurrence mentioned in rapat roznamcha (Ext.PW-7/A) entered in the roznamcha on the same day around 3.15 p.m. reveals that Chief Minister Himachal Pradesh and Smt. Asha Kumari, Education Minister Himachal Pradesh had visited village Jangla on 25.9.2003 and the complainant being duly invited had also attended the function presided over by the Chief Minister. When the function was over, the Education Minister had visited Adarsh Sanskrit Mahavidyalaya, Jangla of which complainant was Principal. After her visit, he went to see her off at Bus Stand, Jangla. There he allegedly was assaulted by accused Vijay Singh and his co-accused Sohan Lal at the pretext that he had been managing the affairs of the College at his whims and fancies and not giving any importance to the Committee of which they (the accused) were also members in running the affairs of the College. He allegedly suffered injuries in his hand, nose, face and blood started oozing from wounds. There co-accused Rajesh Thakur, Pratap Sharma and Balwant Singh threatened the complainant with dire consequences.

9. Another version qua the manner in which the occurrence took place finds mention in the complaint (Ext.PW-1/A) filed by PW-1 under Section 156(3) Cr.PC before learned Judicial Magistrate, Rohru camp at Jubbal. The contents thereof reveal that the accused had formed an unlawful assembly on 25.9.2003 around 12.15 p.m and when the complainant was discharging his official duty they being the member of such assembly and in furtherance of the common object of such assembly assaulted him. Accused persons Vijay Singh and Sohan Lal gave fist and

kicks blows to the complainant due to which he sustained serious injuries on his face, arms, legs, nose and other parts of the body. The other accused besides threatening the complainant with dire consequences and hurling filthy abuses, also instigated their co-accused Vijay Singh and Sohan Lal to thrash the complainant. Complaint (Ext.PW-1/A) was filed in the Court of Judicial Magistrate on 27.9.2003 i.e. 3rd day after the occurrence.

10. It is seen from rapat roznamcha (Ext.PW-7/A) and complaint (Ext.PW-1/A) that the complainant has improved his version as there is nothing suggesting therein that the occurrence took place at such a time when after attending the programme in the College ground and the visit of Education Minister to college premises, when he was away to Bus Stand to see her off at Bus Stand, he was assaulted by the accused party. Rather in the complaint there is no mention qua the visit of the Chief Minister and the Education Minister to Jangla and that the complainant being duly invited attended the function in the school ground presided over by the Chief Minister.

11. If coming to the evidence as has come on record by way of own testimony of the complainant while in the witness box as PW-1 and that of the so called independent witnesses PW-2 Inder Dev and PW-3 Sunny Kumar, the occurrence took place at two different places and on two different occasions that is firstly during the inspection of Sanskrit College, Jangla of which the complainant was Principal, by the Education Minister when accused Vijay Singh and Sohan Lal entered in the College premises and scuffled with the complainant and secondly when the complainant went to see off the Education Minister and after seeing her off was again assaulted by both the accused with fist and kicks blows in the presence of

independent witnesses and other persons whereas there co-accused threatened him with dire consequences. Therefore while in the witness box the complainant and so called independent witnesses came forward with altogether different story. Above all what was the motive in assaulting the complainant remained unexplained as neither the complainant nor the independent witnesses uttered even a single word in this behalf while in the witness box. There is no legal and acceptable evidence suggesting that the accused persons firstly formed themselves into an unlawful assembly with common object i.e. to assault the complainant and that in furtherance of such common object, assaulted him. What to speak of cogent and reliable evidence there is not even whisper also qua this part of the prosecution case in own statement of the complainant and that of the so called independent witnesses PW-2 & PW-3. Thus no case for the commission of an offence under Sections 147 & 149 of the Indian Penal Code is made out.

12. The complainant even in his cross-examination has also failed to disclose the name of the accused persons who had given him fist and kicks blows, as to the suggestion that who inflicted blows on his nose he expressed his ignorance. The version of PW-2 in his cross-examination that the names of accused persons were disclosed to him by the students of the College leads to the only conclusion that he was not on the spot nor knowing the accused persons personally and who were those students who disclosed him the names of the accused persons were not associated in the investigation of the case. On the other hand, the version of PW-3 Sunny Kumar in his cross-examination reveals that the names of the accused persons were disclosed to him by the complainant. Such improvements and the contradictions in the evidence produced by the prosecution go to the

very root of the case. As a result thereof, no findings of conviction can be based thereupon.

13 It is also significant to note that an offence punishable under Sections 332 & 353 of the Indian Penal Code could have been said to be made out had cogent and reliable evidence suggesting that the complainant was given beatings at such a time when he was with the Education Minister during the inspection of the college, she conducted, been available on record. When he had already seen off the Education Minister at bus stand when assaulted, he cannot be said to be discharging any duty attached to his office at that time. On this score also no case against the accused persons under Sections 332 & 353 IPC is made out.

14. No doubt the prosecution has relied upon the medical evidence as has come on record by way of testimonies of Dr. Ravinder Sharma, Dr. Sumeet Sood and Dr. Suresh Thakur, PW-4, PW-8 & PW-10 respectively. However, the evidence i.e. MLC (Ext.PW-4/A) and Skiagrams (Ext.PW-4/B & Ext.PW-4/C), X-Ray report (Ext. PW-4/D) and OPD slip (Ext.PW-1/E) could have been termed as link evidence, had the prosecution been otherwise able to prove the manner in which the occurrence took place by producing cogent and reliable evidence. Above all, in the opinion of PW-4 Dr. Ravinder Sharma, nature of the injuries on the person of the complainant can be caused by way of strike against hard surface. Thus, the medical evidence as has come on record is not conclusive and clinching in nature so as to form an opinion that the injuries on the person of the complainant were inflicted by the accused persons alone and not caused due to any other and further reason. As regards PW-5 Smt. Pushpa Sharma, PW-6 Subhadra Vekta, PW-7 LC Rajinder Kaur and PW-9 HC

Pratap Singh, they being official witnesses and remained associated during investigation of the case being formal witnesses could have also been material witnesses in this case had the prosecution been otherwise able to bring the guilt home to the accused beyond all reasonable doubts.

15. The reappraisal of the prosecution evidence hereinabove leads to the only conclusion that the trial Court has appreciated the same in its right perspective and not committed any illegality and irregularity while holding that the improvements/contradictions in the prosecution evidence render the entire prosecution story doubtful. The submissions to the contrary in the present appeal carry no substance. The same in all fairness and in the ends of justice deserves dismissal and is hereby dismissed. Bail bond furnished by the accused be cancelled and the surety discharged.

31st October, 2012
(rana)

(Justice Dharam Chand Chaudhary),
Judge.