IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr. Appeal No. 295 of 2008

Judgment reserved on:16.07.2014

Date of Decision: August 29, 2014

State of Himachal Pradesh ...Appellant.

Versus

Yudhbir Singh & others ...Respondents.

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

The Hon'ble Mr. Justice P.S. Rana, Judge.

Whether approved for reporting?[1] *No.*

For the Appellant: Mr. Ashok Chaudhary, Addl. AG., with Mr.Vikram Thakur, Dy. AG., and Mr. J.S.Guleria, Assistant Advocate General, for the appellant-State.

For the Respondents: Mr. Vinod Gupta, Advocate.

Sanjay Karol, J.

Assailing the judgment dated 27.09.2007, passed by learned Additional Sessions Judge, Fast Track Court, Kangra at Dharamshala, H.P., in Sessions Case No. 21-G/VII/06/05 / Sessions Trial No.18/2007, titled as the State of Himachal Pradesh Versus Yudhbir Singh & others, State has filed the present appeal under the provisions of Section 378 (3) of the Code of Criminal Procedure, 1973.

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[1] Whether reporters of the local papers may be allowed to see the judgment?

2. Facts as emerged from the record reveal the prosecution case to be as follows:-

On 17.10.2003 SHO Sanjeev Chauhan (PW.13) accompanied by Sub Inspector Sureshtha Thakur (PW.14) and ASI Naresh Kumar (PW.15) left from Police Station, Haripur, District Kangra, in a police vehicle driven by Hoshiar Singh (PW.3). Police party was to visit village Khabli in connection with investigation of murder of brother of Naresh Gautam (PW.5), who was also accompanying the police party. At about 10.00 PM, when police party reached near a place known as Bankhandi chowk, they saw two persons standing beside one person lying on the road. On their asking vehicle was stopped. Sanjeev Chauhan alighted from the vehicle and went to see the person lying on the road. Just then, all the three persons on the road asked Sanjeev Chauhan to hand over his valuables. Also one of them gave a blow with a broken bottle (Ex.P5) on the stomach of Sanjeev Chauhan. Police officials sitting inside the vehicle came out when Naresh Kumar (PW.15) was given a blow with a danda (Ex.P3) on his arm. Police party was able to apprehend two of the assailants, whereas, third assailant managed to flee away from the spot. Sanjeev Chauhan went to Police Post, Ranital, where he prepared Rukka

(Ex.PW.9/A) which was taken to Police Station, Haripur, on the basis of which FIR No.98/03 dated 18.10.2003 (Ex.PW.11/A) was registered under the provisions of Sections 307, 353, 332, 382, 511 and 341 read with Section 34 of the Indian Penal Code. Investigation was conducted by ASI Beant Singh (PW.16), who took into possession Jacket (Ex.P2) worn by Sanjeev Chauhan, broken bottle (Ex.P5) and danda (Ex.P3). Dr. Aman Verma (PW.1) medically examined both Sanjeev Chauhan and Naresh Kumar and issued MLCs (Ex.PW.1/A and Ex.PW.1/C respectively). Injuries sustained were simple. With the completion of investigation, which revealed complicity of the accused in the alleged crime, *Challan* was presented in the Court for trial.

3. The accused were charged for having committed offences punishable under the provisions of Sections 307, 353, 332 and 341 read with Section 34 of the Indian Penal Code, to which they did not plead guilty and claimed trial.

4. In order to establish its case, in all, prosecution examined as many as sixteen witnesses. Statements of the accused under Section 313 of the Code of Criminal Procedure were also recorded, in

which they took a plea of innocence and false implication. They did not lead evidence in their defence.

5. Trial Court, after appreciating the testimony of prosecution witnesses acquitted the accused. Hence the present appeal.

6. Having heard learned counsel for the parties as also perused the record, we are of the considered view that no case for interference is made out in the present appeal.

7. It is a settled principle of law that acquittal leads to presumption of innocence in favour of an accused. To dislodge the same, onus heavily lies upon the prosecution. Having considered the material on record, we are of the considered view that prosecution has failed to establish the essential ingredients so required to constitute the charged offence.

8. In *Prandas v. The State*, AIR 1954 SC 36, Constitution Bench of the apex Court, has held as under:

> "(6) It must be observed at the very outset that we cannot support the view which has been expressed in several cases that the High Court has no power under S. 417, Criminal P.c., to reverse a judgment of acquittal, unless the judgment is perverse or the subordinate Court has in some way or other misdirected itself so as to produce a miscarriage of justice. In our opinion, the true position in regard to the jurisdiction of the High Court under S. 417, Criminal P.c. in an appeal from an order of acquittal has been stated in – 'Sheo Swarup v.

Emperor', AIR 1934 PC 227 (2) at pp.229, 230 (A), in these words:

> "Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognized in the administration of justice." "

9. It is a settled proposition of law that sole testimony of police official, which if otherwise is reliable, trustworthy, cogent and duly corroborated by other witnesses or admissible evidence, cannot be discarded only on the ground that he is a police official and may be interested in the success of the case. It cannot be stated as a rule that a police officer can or cannot be a sole eye-witness in a criminal case. It would always depend upon the facts of a given case. If the testimony of such a witness is reliable, trustworthy,

cogent and if required duly corroborated by other witnesses or admissible evidences, then the statement of such witness cannot be discarded only on the ground that he is a police officer and may have some interest in success of the case. It is only when his interest in the success of the case is motivated by overzealousness to an extent of his involving innocent people; in that event, no credibility can be attached to the statement of such witness.

10. It is not the law that Police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption applies as much in favour of a police officer as any other person. There is also no rule of law which lays down that no conviction can be recorded on the testimony of a police officer even if such evidence is otherwise reliable and trustworthy. Rule of prudence may require more careful scrutiny of their evidence. If such a presumption is raised against the police officers without exception, it will be an attitude which could neither do credit to the magistracy nor good to the public, it can only bring down the prestige of police administration.

11. Wherever, evidence of a police officer, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and absence of some independent witness of the locality does not in any way affect the creditworthiness of the prosecution case. No infirmity attaches to the testimony of the police officers merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. Such reliable and trustworthy statement can form the basis of conviction.

> [See: *Govindaraju alias Govinda v. State by Srirampuram Police Station and another,* (2012) 4 SCC 722; *Tika Ram v. State of Madhya Pradesh,* (2007) 15 SCC 760; *Girja Prasad v. State of M.P.,* (2007) 7 SCC 625); and *Aher Raja Khima v. State of Saurashtra,* AIR 1956].

12. Apex Court in *Tahir v. State (Delhi)*, (1996) 3 SCC 338, dealing with a similar question, held as under:-

> "6. ... .In our opinion no infirmity attaches to the testimony of the police officials, merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. The Rule of Prudence, however, only requires a more careful scrutiny of their evidence, since they can be said to be interested in the result of the case projected by them. Where the evidence of the police officials, after careful

> scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case."

13. Significantly incident took place on 17.10.2003 at about 10.00 PM, but Sanjeev Kumar and Naresh Kuamar were medically examined only on 18.10.2003 and that too at 3.30 PM. What transpired between the time of incident and the time of medical examination, remains unexplained. After all Sanjeev Chauhan was the SHO of the Police Station and was familiar with law. No explanation is forthcoming either through the testimony of injured or the Investigating Officer (PW.16) for this delay in getting the injured medically examined. It is not that they were otherwise busy with the investigation of some case or were called for some urgent duty. We are conscious that this fact by itself is not fatal to the prosecution case, but when viewed in totality, it gains significance, rendering the prosecution story to be doubtful, if not false.

14. It has come on record through the testimony of Hoshiar Singh (PW.3) and Naresh Gautam (PW.5) that on the spot Sanjeev Chauhan, SHO (PW.13) fired shots from his gun in the air. Silence on the part of Sanjeev Chauhan on this aspect, renders him to be a witness not

worthy of credence for he concealed a relevant fact. Why is that he fired a gun shot and that too in the air and not on the body of any one of the accused, who attempted a murderous assault with a broken bottle and that too on the vital part of his body remains unexplained. Undisputedly, there were only three persons on the spot, who attacked the police party, who were five in number. Version of prosecution that accused attacked the police party consisting of five persons does not appear to be probable.

15. What further falsifies the prosecution case is the absence of conduct of test identification parade. It has come in the testimony of spot witnesses Hoshiar Singh (PW.3), Naresh Gautam (PW.5), Surestha Thakur (PW.14) and Naresh Kumar (PW.15) that though they there were three assailants, one managed to escape. It is not the case of prosecution that identity of the third assailant was disclosed to them by either of the assailants who were apprehended by the police. Sanjeev Chauhan admits that accused were seen with the light of the vehicle. PW.3 only states that he did not disclose the identity of third assailant. Even Sanjeev Chauhan does not state that he knew the third assailant from before. In fact, according to him, assailants were absolute strangers. Hence then on what basis was the

third assailant identified and arrested. This fact has not been established or proven on record. Also which of the two assailants, so nabbed by the police give blow with a danda or bottle has not been established on record through the testimonies of police officials (PW.13, PW.14 and PW.15). Police has not been able to establish as to which of the accused persons assaulted which of the police officials with which of the weapons of offence. All this, to a limited extent, probablize the defence of the accused of false implication. Also it stands admitted by Sanjeev Chauhan that in relation to crime of murder, which took place on 10.10.2003, present accused were interrogated. If that were so, then version of police officials that they did not know the accused is obviously false. Further, on the point of interrogation of accused in relation to the crime of murder, we find there is contradiction in the testimony of PW.13 and PW.14. We find that on the question of identity of the accused, even Naresh Gautam (PW.5) has not supported the prosecution case. He was declared hostile and cross-examined, but nothing fruitful could be elicited from his testimony.

16. Version of Sanjeev Chauhan (PW.13) that one of the accused gave a blow with a broken bottle (Ex.P5) on a vital part of his body i.e. stomach does not

appear to be convincing at all. For had it been so, it would have definitely caused injury. As per medical record, so proved by Dr. Aman Verma (PW.1), Sanjeev Chauhan suffered the following injuries:-

> "1. Swelling and pain over dorsum of right hand, 4 x 3 cm in size.
> 2. Swelling and pain over base of left thumb movements restricted. Advised X ray of left hand.
> 3. Abrasion over forearm left 6 x 2 cm in size with clotted blood over it."

17. Medical evidence renders the version of Sanjeev Chauhan (PW.13) to be further doubtful, according to whom, he was given only one blow and that too on his stomach with an empty bottle. Then how is it that he suffered injuries on his hands and arm.

17. In view of the improbabilities, contradictions, improvements and discrepancies in the testimonies of the prosecution witnesses rendering them to be absolutely shaky and unreliable, no interference is warranted.

18. The Court below, in our considered view, has correctly and completely appreciated the evidence so placed on record by the prosecution. It cannot be said that judgment of trial Court is perverse, illegal, erroneous or based on incorrect and incomplete

appreciation of material on record resulting into miscarriage of justice.

19. The accused has had the advantage of having been acquitted by the Court below. Keeping in view the ratio of law laid down by the Apex Court in *Mohammed Ankoos and others* versus *Public Prosecutor, High Court of Andhra Pradesh, Hyderabad (2010) 1 SCC 94*, since it cannot be said that trial Court has not correctly appreciated the evidence on record or that acquittal of the accused has resulted into travesty of justice, no interference is warranted in the instant case.

For all the aforesaid reasons, present appeal, being devoid of merit, is dismissed, so also the pending application(s), if any. Bail bonds furnished by the accused are discharged. Record of the trial Court be immediately sent back.

(Sanjay Karol),
Judge.

(P.S. Rana),
Judge.

August 29, 2014.
(Purohit)