

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr.A. No. 130 of 2006

Reserved on: 26.2.2014

Decided on: 28 .2.2014

State of Himachal Pradesh

.....Appellant

-Versus-

Madho Ram and ors.

....Respondents

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?¹

For the appellant: Mr. M.A. Khan, Addl. A.G. with Mr. Neeraj K. Sharma and Mr. Vivek Attri, Dy. Advocate Generals.

For the respondents: Mr. Karan Singh Kanwar, Advocate.

Per Rajiv Sharma, Judge:

This appeal is directed against the judgment dated 19.12.2005 passed by learned Judicial Magistrate 1st Class, Court No.2, Paonta Sahib, District Sirmaur in Criminal Case No.45/2 of 2002, whereby accused persons, Madho Ram, Ravi Dutt, Subhash Chand and Sanjay Kumar, who were charged with and tried for offences punishable under Section 452, 323 and 506 read with Section 34 of the Indian Penal Code, were acquitted.

2. Statement of PW1 Hirda Ram complainant was recorded under Section 154 Cr.P.C. According to him, on 10.1.2002 at about 11.00 A.M. when he was giving water to his animals, accused Madho Ram with darat in his hand and Ravi Dutt carrying iron pipe in his hand along with Sanjay Kumar and Subhash Chand came to the spot. Subhash Chand and Sanjay caught hold of him and started giving beatings to him. When the complainant went inside his room,

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

all the accused persons followed him and caused injuries to him with darat and iron pipe. The complainant raised hue and cry. His sister-in-law PW3 Bimla Devi and Aunt Leela Devi reached there. On seeing them, the accused persons ran away from the spot. He was taken to PHC Rajpura by his cousin PW4 Rama Nand. FIR, Ext.PW8/A was registered. The complainant was medically examined vide MLC Ext.PW5/A. Statements of the witnesses were recorded. The investigation as completed and the challan was put up in the trial court after completing all the codal formalities.

3. The prosecution examined as many as eight witnesses in support of its case. The accused persons were examined under Section 313 Cr.P.C.. They denied the case of the prosecution and claimed innocence. Learned trial court acquitted the accused persons vide judgment dated 19.12.2005. Hence, the appeal.

4. Mr. M.A.Khan, learned Addl. Advocate General has vehemently argued that the prosecution has proved its case against the accused persons.

5. Mr. Karan Singh Kanwar, learned Advocate, has supported the impugned judgment dated 19.12.2005.

6. I have heard learned counsel for the parties and have gone through the record carefully.

7. PW1 Hirda Ram, has deposed that on 10.1.2002 he was offering water to his cattle. All of a sudden, Subhash and Sanjay came on the spot and they gave beatings to him. Thereafter, Madho Ram and Ravi Dutt carrying darat and iron pipe in their hands came on the spot. He went inside his house. All of them followed him. Madho Ram and Ravi Dutt gave him blows with darat and iron pipe on his head. His sister-in-law Bimla Devi came on the spot after 2-3 minutes. His aunt Leela Devi also reached the spot. He became unconscious. He regained consciousness after 5-10 minutes. He was

taken to Rajpura Hospital. Police recorded his statement vide Ext.PW1/A. Shirt Ext.P1 was taken into possession by the police vide memo Ext.PW1/B. In cross-examination, he has admitted that a compromise was arrived at before the Gram Panchayat about the incident, which took place on 9.1.2002. The Panchayat had imposed fine upon him. However, no fine was deposited by him. He has admitted that civil litigation is going on between the parties. According to him, he had produced the shirt before the police on 11.1.2002 at about 8.00 A.M.. He has also admitted that his aunt Leela Devi had contested the election against wife of Madho Ram.

8. PW2 Amar Singh has deposed that the complainant has produced his shirt before the Police on 10.1.2002 at 4.00 P.M.. It was taken into possession vide memo Ext.PW1/B.

9. PW3, Bimla Devi, has admitted in her cross-examination that she was sleeping at the time of incident. According to her, neither she saw accused persons nor the complainant on the spot. She did not know duration of quarrel.

10. PW4, Rama Nand, had taken the complainant to the hospital.

11. PW5, Dr. Jagdip Singh, has medically examined the complainant and issued MLC, Ext.PW5/A. According to him, injuries No. 1 to 6 were found simple in nature. In cross-examination, he has admitted that the injuries mentioned in MLC could be received by fall.

1w2. PW6, Dula Ram, has deposed about the recovery of iron pipe. He was declared hostile. According to him, the police had asked the accused to produce the iron pipe. He has admitted in his cross-examination that he had signed recovery memos Ext.PW1/C and Ext.PW1/D at the instance of the police.

13. PW7, HHC Subhash Chand, has deposed about registration of report, Ext.PW7/A.

14. PW8, HC Raj Kumar, has investigated the matter. He has deposed about the registration of the FIR vide Ext.PW8/A. He has prepared the site map vide Ext.PW8/D. He has also made deposition about seizure memos, Ext.PW1/B, Ext.PW1/C and Ext.PW1/D. He has recorded the statements of the witnesses.

15. According to the complainant, his aunt, Leela Devi came on the spot, however, she was not examined. She was material witness. It has come on the record that the Panchayat on the previous date of occurrence i.e. 9.1.2002 had imposed fine on the complainant. He had not deposited the same. The civil litigation is going on between the parties as per the specific admission made by the complainant. According to him, he had produced the shirt, Ext.P1 before the police on 11.1.2002 at about 8.00 A.M., however, Ext.PW1/B seizure memo is dated 10.1.2002. PW2 Amar Singh has deposed that the complainant had produced the shirt before the Police on 10.1.2002 at 4.00 P.M.. It causes doubt the manner in which shirt was recovered. The recovery of iron pipe is also doubtful in view of the statement PW6, Dula Ram, who was declared hostile. According to him, the accused was asked to produce the iron rod. According to him, he had signed the recovery memos, Ext.1/C and Ext.PW1/D at the instance of the police. Contents of these documents were not read over to him. It has also come on record that the complainant has signed the memos Ext.PW1/C and Ext.PW1/D at Police Post Singhpura. The complainant has also admitted that his aunt had contested the election against wife of one of the accused, namely, Madho Ram. PW3, Bimla Devi, in her cross-examination has categorically admitted that she was sleeping at the time of incident. According to her, neither she saw accused persons

nor the complainant on the spot. She even did not know duration of quarrel. Thus, she cannot be termed to be an eye witness and even as per statement of the complainant she reached the spot after 2-3 minutes of the incident. According to PW3, Bimla Devi, she and her mother-in-law reached the spot, however, they have not tried to save the complainant. According to MLC, Ext.PW5/A, the complainant had received simple injuries, which cannot be caused with darat or iron pipe. It has come on record that on 9.1.2002 the accused Madho Ram while escaping had pushed the complainant. The complainant might have received injuries due to fall at that time. It has also come on record that a number of houses were situated nearby the place of occurrence. However, fact of the matter is that no other independent witness was associated by the police. PW3 Bimla Devi is sister in law of the complainant and PW4 Rama Nand is close relative of the complainant. There are material contradictions in the statements of the prosecution witnesses and these statements do not inspire confidence. The prosecution has miserably failed to prove the case against the accused.

16. Accordingly, in view of the observations and analysis, made hereinabove, there is no merit in the appeal and the same is dismissed. Bail bonds are ordered to be discharged. Pending application(s), if any, also stands disposed of. No costs.

(Rajiv Sharma)
Judge

28th February, 2014
(pankaj)