

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CRMPM No.724 of 2015

Date of Decision : October 30, 2015

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State of Himachal Pradesh

....Petitioner.

versus

Pawan Kumar

...Respondent.

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Coram:

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

For the petitioner : Mr. R.S. Verma, Additional  
Advocate General.

For the Respondent : None.

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Sanjay Karol, Judge

Petitioner-State has filed the present petition under the provisions of Section 378(3) of the Code of Criminal Procedure, seeking leave to appeal against the judgment dated 1.4.2015, passed by Judicial Magistrate 1<sup>st</sup> Class, Indora, District Kangra, Himachal Pradesh, in Criminal Case No.3A-II/2009, titled as *State v. Pawan Kumar*, whereby accused-respondent Pawan Kumar (hereinafter referred to as the accused) stands acquitted of the offence, punishable under the provisions of Sections 323 & 325 of the Indian Penal Code.

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2. In connection with FIR No.217/2008 dated 3.10.2008 (Ex.PW-3/A), registered at Police Station, Indora, District Kangra, Himachal Pradesh, accused Pawan Kumar was charged to face trial, for having committed offences, punishable under the provisions of Sections 323 & 325 of the Indian Penal Code.

3. Briefly stated, case of the prosecution is that on 30.9.2008, at about 9.30 p.m., when complainant Balwinder Kumar (PW-1) was going to his house at Indora, after closing his tailoring shop, accused abused him and also gave beatings with a grip and also fist blows, as a result of which he received injuries to his face and head. On hearing the cries of the complainant, his wife Smt. Shakuntla Devi (PW-2) and other persons reached the spot and on seeing them the accused ran away. The matter was reported to the police, on the basis of which FIR (Ex.PW-3/A) was registered at Police Station, Indora. During investigation, complainant was got medically examined; MLC (Ex.PW-4/A) taken on record; weapon of offence, i.e. Grip (Ex.P-4) and other incriminating articles, i.e. Tooth (Ex.P-1), shirt (Ex.P-2), under-vest (Ex.P-3) were also taken into possession vide seizure memos (Ex. PW-1/A and Ex.PW-1/B). With the completion of

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investigation, which prima face revealed complicity of the accused in the alleged crime, challan was presented in the Court for trial.

4. Based on the testimonies of witnesses and the material on record, trial Court acquitted the accused of the charged offence. Hence, the present petition for leave to appeal by the State.

5. Mr. R.S. Verma, learned Additional Advocate General, has taken me through the record of trial Court, including testimonies of the prosecution witnesses.

6. It is not in dispute that Smt. Shakuntla (PW-2) is the wife, Shri Vijay Kumar (PW-5) and Shri Joginder Paul (PW-7) are nephews, and Shri Jagdish Chand (PW-8) is the real brother of the complainant. Trial Court has found their testimonies not to be inspiring in confidence, apart from the fact that they are interested witnesses. They admit that there has been previous animosity between the parties.

7. In the instant case, their testimonies are uninspiring in confidence. There are contradictions, as pointed out in para-21 of the judgment, by the trial Court.

8. Whether the witnesses were present on the spot or not, at the time of occurrence of the incident,

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itself is in doubt. This is apart from the fact that there are improbabilities in their version. It is not the case of the parties that no independent witness was available on the spot. No endeavour was made to associate any such person. According to the complainant, accused came and without any provocation started giving blows. Hearing his cries, relatives arrived on the spot, meaning thereby that they did not witness the occurrence of the incident.

9. It be also observed that even witnesses to the seizure memos (Ex.PW-1/A and 1/B), Shri Vijay Kumar (PW-5) and Shri Pawan Kumar (PW-6), have not supported the prosecution and despite being cross-examined, nothing fruitful could be elicited from their testimonies.

10. Accused stands given benefit of doubt and this Court, keeping in view the ratio of law laid down by the Hon'ble Supreme Court of India in *Prandas v. The State*, AIR 1954 SC 36, finds no reason to interfere with the judgment of acquittal rendered by the trial Court.

11. Hence, trial Court, in my considered view, rightly acquitted the accused. There is no error apparent on the face of record or illegality or perversity, resulting into miscarriage of justice, in the findings returned by the trial Court, warranting interference by this Court.

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As such, present petition for leave to appeal,  
being without any merit, is dismissed and disposed of.

October 30, 2015<sub>(sd)</sub>

( Sanjay Karol ),  
Judge.