

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 376/2010
Reserved on: June 29, 2016
Decided on: June 30, 2016

State of Himachal Pradesh Appellant

Versus

Dinesh Kumar and others Respondents

Coram:

Hon'ble Mr. Justice Rajiv Sharma, Judge
Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge

Whether approved for reporting? ¹ yes.

For the appellant : Mr. Parmod Thakur, Additional Advocate General.

For the respondents : Mr. Anup Chitkara, Advocate.

Per Rajiv Sharma, Judge:

The State has come in appeal against Judgment dated 31.12.2009 rendered by the learned Presiding Officer, Fast Track Court, Mandi, District Mandi, HP, whereby respondents-accused (hereinafter referred to as 'accused' for convenience sake), who were charged with and tried for offences under Sections 147, 148, 452, 302, 323 and 506 read with Section 149 IPC, have been acquitted.

2. Case of the prosecution, in a nutshell, is that on 5.11.2008, complainant Hem Raj informed the police on telephone that his mother was killed by 3-4 persons and this information was entered vide *Rapat* No. 8 in Police Station, Padhar. On this information, SI/SHO Sarif Mohammad alongwith

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

other police personnel visited the residential house of the complainant at village Katipari. On visiting the spot, he found that the dead body of Smt. Bimla Devi, mother of the complainant Hem Raj was lying in the gallery of the room and the complainant gave his statement under Section 154 CrPC before SI/SHO Sarif Mohammad to the effect that PW-1 Hem Raj purchased land in the year 1991 from Duryodhan son of Shri Sita Ram resident of village Katipari and to the one side of his land, there was land of Krishan Chand son of Sita Ram and to the other side of the land of Dinesh Kumar alias Babla son of Jiwan Lal. He had filed partition case and the partition had been effected in the year 2006. He had started the work of construction of shop and house adjoining to his already existing house. He had employed Jagat Ram Mason and Jangli Devi as labourer. Construction work was going on. He alongwith mason was working. His mother Bimla Devi was in the house. At 11.30 Am, all the accused came in a Maruti car. They parked the car on the roadside. They started giving beatings with stones, *Danda* and fist blows. Accused Dinesh Kumar alias Babla was having *Danda* in his hand. Accused Virender and Chander Shekhar were having stones in their hands and Krishan Chand and Amro Devi were giving him beatings with kick and fist blows. On hearing noise, his mother Smt. Bimla Devi after stepping down from the stairs came on the spot to rescue him. On this all the accused also gave kick, fist and stone blows to her on the

road. His mother rescued herself from the clutches of the accused and went inside the room. She was followed by the accused. Accused again gave her beatings. His mother fell down and died. Thereafter, all the accused ran away. The incident was seen by Ghan Shyam Dass while accused were fleeing from the spot. He received injuries on his ear, left shoulder and back due to the beatings given by the accused. Case property was taken into possession. Inquest papers were prepared. Post-mortem examination of the deceased was got conducted. According to the opinion given by the Doctor, deceased had died due to head injury leading to subdural haematoma. Investigation was completed. Challan was put in the Court after completing all the codal formalities.

3. Prosecution has examined as many as eighteen witnesses to prove its case against the accused. Accused were also examined under Section 313 CrPC. They pleaded innocence. Trial Court acquitted the accused as noticed above. Hence, this appeal.

4. Mr. Parmod Thakur, Additional Advocate General has vehemently argued that the prosecution has proved its case against the accused persons.

5. Mr. Anup Chitkara, Advocate has supported the judgment of acquittal dated 31.12.2009.

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

7. Hem Raj (PW-1) is the complainant. According to him, on 5.11.2008, at about 11.30 AM, he was constructing new house. He had employed Jagat Ram as Mason and Jangli Devi as a labourer. Accused Krishan Chand, Amro Devi, Virender, Chander Shekhar and Dinesh, came in a Maruti 800 car. They warned him to stop the construction work or they would kill them. Accused Krishan Chand asked other accused to kill him and bury him in a pit. On this, all the accused pounced upon him and accused Chander Shekhar, Dinesh had beaten him with *Danda* on the back side of neck. He received injury on the back side of his neck. They picked him and threw in the pit. Jagat Ram Mason came and rescued him from the clutches of the accused and also pulled him out of the pit. Accused also pounced upon Jagat Ram. On hearing his cries, his mother Bimla Devi came to the spot. He rescued himself from the clutches of Chander Shekhar, Virender and Babla @ Dinesh. His mother was caught hold by Amro Devi and Krishan Chand. He tried to rescue his mother. Other three accused ran after him. He and Jagat Ram rescued his mother, who was laid down on the ground. All the accused pounced upon him and his mother. Accused Dinesh was holding a *Danda* in his hand and another accused was carrying stones in their hands. None was carrying brick. Cemented stone was in the hands of Virender. He was given beatings on his chest, neck and head with *Danda*. His mother Bimla Devi went to the room through stairs. Accused followed his

mother and ran towards the room after climbing stairs. All the accused entered the room after his mother. Accused gave beatings to his mother in the room. When they entered the room, his mother was lying dead in the room. Accused were pelting stones on him from the lintel of their house. Accused had killed his mother. He called Jagat Ram. Jagat Ram reached the spot. Accused fled from the spot. No other person except him and Jagat Ram had seen the occurrence. Accused fled from the spot in their car. He informed the police. Police reached the spot. His statement Ext. PW-1/A was recorded. In his cross-examination, he has admitted that adjacent to his land, land belongs to accused party. He also admitted that in front of his house, there were two shops, one was of motor mechanic and other was a printing press of Pawan Kumar. He admitted that both the shops were open at the relevant time and their tenants Pawan Kumar and Ghan Shyam were present at the spot. He told the police that all the accused decided to kill him and then bury him in a pit. (confronted with his statement, Ext. PW-1/A, wherein it is not so recorded). He also told the police that the accused gave beatings with *Danda* on his neck. (confronted with his statement Ext. PW-1/A, wherein it is not so recorded). He has told the police that there was a lacerated wound on his forehead. Same was bleeding. (confronted with his statement Ext. PW-1/A, wherein it is not so recorded). The pit where he was thrown was 5 feet deep and 3 $\frac{1}{2}$ feet wide. He remained in the pit for about 4-5 minutes. He

cried. On his cries, Jagat Ram came and pulled him out of the pit. All accused were throwing stones on him during this time. No stone hit his forehead or other parts of the body but the stones were thrown near his feet. He has told the police that all the accused pounced upon Jagat Ram. (confronted with his statement Ext. PW-1/A, wherein it is not so recorded). Scuffle continued for half an hour. He told the police that accused entered the room and after crossing the back door, had gone up to the lintel and from there all started pelting stones. (Confronted with his statement Ext. PW-1/A, wherein it is not so recorded). Many people had assembled on the spot when occurrence took place. Pawan and Ghan Shyam had closed shops after the incident. He told the police that the shops were open and tenants were present. He admitted that all the accused were unarmed. He has told the police that accused Amro Devi and Krishan Chand were carrying stones in their hands. (confronted with his statement Ext. PW-1/A, wherein it is not so recorded). All the accused gave only kick and fist blows. He also admitted that he had inimical relations with the accused.

8. Jagat Ram (PW-2) testified that he was working as a mason for the construction of the house of PW-1 Hem Raj. On 5.11.2008, at about 11.30 AM, all the accused came in a Maruti car to the spot. Accused threw PW-1 Hem Raj in the pit and he cried for help. He went there and pulled him out of the pit. He was given kick and fist blows. He fell on the heap of rock salt. He

was crying and his mother came to his rescue. She was given kick and fist blows by the accused. She fell on the stone stairs and sustained injuries on head. Accused Virender, Chander Shekhar and Babla alias Dinesh had given kick and fist blows to Bimla and she sustained injuries on her head while falling on the store stairs. Accused had gone to the side of the house. Bimla Devi died in the gallery of the house. Accused Chander Shekhar had pelted stones in the lintel of the house of PW-1. He had not seen the accused killing Bimla Devi. Hem Raj had given a *Danda* blow on the neck of accused Dinesh alias Babla. He was declared hostile and cross-examined by the learned Public Prosecutor. In his cross-examination, he deposed that the portions 'A' to 'A', 'B' to 'B' 'C' to 'C', 'D' to 'D', 'E' to 'E', 'F' to 'F' and 'G' to 'G' were incorrect. He denied the suggestion that due to the beatings of the accused, Bimla Devi sustained injury on head and died. In his cross-examination by the defence counsel, he categorically deposed that the deceased had sustained injuries on the stone stairs after fall. He also admitted that no weapons like stick, *Danda* and stones were used by the accused persons on the body of the deceased. He admitted that two shops were in front of the alleged place of occurrence. One was occupied by Pawan Kumar and other was occupied by Ghan Shyam Dass and both these persons were sitting in the shops. There were more than 30 persons on the spot, who had seen the occurrence. After he separated the deceased and her son, they left for the room and he

closed the gate from outside after locking it. He admitted that accused had used no weapon throughout the verbal altercation. He admitted that the deceased after fall had struck with stone *danga* on head side and sustained injury on her head. He admitted that none of the injuries caused by the accused were fatal in nature. He has specifically admitted that the deceased fell from stairs and struck her head against stone *Danga*, resulting in head injury. He admitted that none of the accused entered the house of the complainant.

9. Pankaj Kumar (PW-3) deposed that on 9.11.2008, accused Dinesh Kumar made a disclosure statement to the police that the *Danda* with which he had beaten Hem Raj and Bimla Devi had been concealed by him in the bushes in the field of Krishan Chand. *Danda* was got recovered vide memo Ext. PW-3/A. *Danda* is Ext. P5. In his cross-examination, he has admitted that complainant was son of sister of his father. Ext. PW-3/A was prepared in the house of Hem Raj. He admitted in his cross-examination that on 6.11.2008 to 9.11.2008, no discussion took place regarding Ext. P5. It was only on 9.11.2008, that *Danda* came into picture at the time of arrival of police. He admitted that he had seen such type of *Danda* for the first time in his life. Statement of the accused was not recorded under Section 27 of the Evidence Act by the police.

10. Jangli Devi (PW-5) deposed that she was working as a labourer for the construction work of house of Hem Raj. All the

accused came on the spot in a car. Hem Raj was pushed by one of the accused and he fell into a pit. Other accused started filling up the pit. She did not know where the complainant Hem Raj suffered injuries. She was declared hostile and cross-examined by the learned Public Prosecutor. In her cross-examination by the learned Public Prosecutor, she admitted that the accused Dinesh alias Babla had altercation with Hem Raj and accused Virender Kumar and Chander Shekhar pelted stones upon the complainant Hem Raj. Volunteered that the stones were pelted from both the sides but no injury was suffered by the complainant. She denied the suggestion that Hem Raj suffered injuries on his chest, legs and head. She admitted the suggestion that on hearing cries of Hem Raj, Bimla Devi came to the spot to rescue the complainant from the accused. Accused Dinesh was holding *Danda* in his hand and he gave *Danda* blows on the head of Hem Raj and Bimla Devi. Rest of the accused gave kick and fist blows to Hem Raj and Bimla Devi. Accused Dinesh, Chander Shekhar and Virender followed Bimla Devi upto the room and had not entered inside the room. Only three accused had followed deceased Bimla Devi. He denied portions 'B' to 'B', 'C' to 'C', 'D' to 'D', 'E' to 'E', 'F' to 'F' and 'G' to 'G' of his statement recorded under Section 161 CrPC as incorrect. She could not say that due to whose blow/beatings Bimla Devi had died. In her cross-examination by the learned defence Counsel, she admitted that there were about 50-60 persons present on the spot. Bimla Devi

came running and had a fall while going back, head downwards. Accused Amro Devi was sitting only at the shop of Ghan Shyam and her husband was standing at a far place. She admitted that altercation had taken place on account of digging of pits. She also admitted that the stones were being pelted by the complainant also. His mother had come by stairs. She also admitted that story of stick and *Danda* blows was told to her in the Court for the first time at the instance of complainant Hem Raj.

11. Duryodhan (PW-7) deposed that he had sold the land to the complainant Hem Raj for a sum of ₹90,000/-. Land was surrounded by lands of Jiwan and Krishan. In his cross-examination, he has admitted that when he sold the land, land was joint, un-partitioned. He had sold the share and no specific number was shown and no *Tatima* was annexed with the sale deed.

12. Dr. Yamini Vaidya (PW-8) examined the complainant Hem Raj. She issued MLC Ext. PW-8/B. She noticed the following injuries:

- “1. Abrasion with contusion size approximately 4x 5 over frontal portion of chest just below the superasternal notch.
2. contusion of size 2 x 3 cm over the left side of cheek.
3. Small abrasion with fresh blood over the left side of scalp.
4. A patterned contusion 4 x 1 cm over the back side on both left and right side of infrascapular region.
5. Another contusion obliquely pattern contusion over the lower back both on left and right side.
6. Tenderness over the chest and right side.”

13. Dr. Nag Raj Pawar (PW-9) has conducted the post-mortem examination on the body of the deceased Bimla Devi. According to him, he noticed following injuries on the body of the deceased:

1. Grazed abrasion present over the left knee reddish brown in colour with dried blood over it.
2. Contusion of size 2 x 2 cm present over manubrium sterni, colour is reddish brown, on dissections the area blood and clots present underneath area of contusion over lying the cartilages and adjoining muscles.
3. Superficial laceration of size 1 x 1 cm present over palmer aspect of left hand over lying hypothenar area with reddish brown dried blood present over it.
4. Lacerated wound of the size 2 x 1.5 cm present over right parietal area with contusion of 3 x 3 cm present over the area of lacerated wound. On dissection and opening of cranial cavity there is subdural haematoma of the size 5 x 5 cm present below the injury and about 50 cc of fluid blood present over occipital lobe of right side.
5. Lacerated wound of the size 1 x 0.5 cm present over left frontal area of scalp over lying the area middle of left frontal bone with contusion of reddish brown colour over and around this injury. The size of contusion is 2 x 1.5 cm.
6. Contusion of 2 x 1 cm present over right occipital region of the scalp, linear anterioposterior. On dissection blood present underneath the injury.

Scalp

Injuries already mentioned on page No. 1 & 2 of P.M. report.

Skull and Vertebrae

No fracture of cranial vault seen. Vertebrae are normal.

Membranes-Brain

Subdural Haematoma present over right parietal area and fluid blood over right occipital lobe already mentioned in injury No. 4 page 2 of post-mortem reports.

Membranes are intact.

Spinal cord
Normal"

14. In his opinion, the deceased died due to head injury leading to subdural haematoma. The injury due to which deceased died, could be caused with blow of weapon like Ext. P4. In his cross-examination by the learned defence Counsel, he admitted that as per spot position as reflected in photograph Exts. P6 and P7, the injury suffered by the deceased on her parietal region could be sustained by her after fall from stairs. He admitted that as per photographs Exts. P6 and P7, stones had been stored beneath the staircase. He admitted the suggestion that injury No.1 seemed to be result of fall. In case, deceased had been hit with some substance, then there should have also been associate contusion which was not present in injury No. 1. Injuries No. 2, 3, 5 and 6 were simple in nature and not fatal. The *Danda*/stick Ext. P5 was not shown to him at the time of conducting post-mortem on the body of deceased. No opinion was sought by the police from him to the effect whether injury No.4 could be caused with Ext. P5. He also admitted that as per report of FSL, no blood was detected on Ext. P4.

15. HC Krishan Kumar (PW-14) deposed that on 8.11.2008, accused Dinesh alias Babla disclosed that he had

thrown *Danda* in the field of Krishan Chand and could get it recovered as he had the exclusive knowledge of the same. In his cross-examination, he has admitted that accused Dinesh had not told the police that he had concealed the *Danda* at a place which was only known to him. He did not remember the date on which accused Dinesh was associated.

16. Lekh Raj Patwari (PW-15) deposed that he prepared spot map/ Aks *Tatima* Ext. PW-15/A. He had also issued Nakal *Jamabandis* Ext. PW-15/B and Ext. PW-15/C. In his cross-examination, he has admitted that when Ext. PW-15/A was prepared, none of accused or their family members were summoned/associated. He also admitted that *Tatima* as per the nature of Ext. PW-15/A was prepared as per rules in the presence of the owner of the land but this practice was not followed in this case. On the spot, there was a boundary dispute inter se accused and complainant. No notice was served to the accused regarding demarcation. He also admitted that in case of boundary dispute, both the parties are heard on the spot and only then the land is demarcated.

17. Sarif Mohammad (PW-18) has carried out the investigation. He prepared inquest report Ext. PW-18/A. He got post-mortem examination conducted. Case property was taken into possession. Spot map was prepared. In his cross-examination, he has admitted that on arrival on the spot, both the shops in front of place of occurrence being run by the Pawan

and Ghan Shyam were closed. He admitted that both Pawan and Ghan Shyam told him during the course of investigation that shops were closed on 5.11.2008. They had not seen the occurrence. It had also come in the investigation that when some trouble started at the spot, both Pawan and Ghan Shyam ran away from the spot. It has come in the investigation that Hem Raj was thrown into the pit and thereafter stones were pelted on him. He has not shown Ext. P5 to the autopsy surgeon since it was recovered on 9.11.2008. He also admitted that the complaint had not told him that the accused alarmed and declared that they would kill them both. Complainant Hem Raj has not told him that accused gave beatings on neck with *Danda* Ext. P5. Complainant had not told that there was a lacerated wound on his forehead and blood was oozing out from that. He had not seen any lacerated wound on the forehead of the complainant on his arrival. It was also not disclosed to him that Hem Raj was pulled out of the pit by Jagat Ram. It was also not disclosed to him by the complainant that all the accused entered the room and after crossing the back door had gone upto the lintel and from there all of them started pelting stones. Complainant had also not told him during the course of investigation that two shops in front of the place of occurrence were open and Ghan Shyam and Pawan Kumar had seen the occurrence. As per spot position, there was steep stair case. Stones, which were pelted on Hem Raj were not taken into possession by him. He admitted

that there was no pit at the place of occurrence. Had there been one, he would have shown it in the spot map.

18. According to PW-1 Hem Raj, accused have visited the spot. They have administered beatings to him. His mother came to the spot. She was also beaten up. She went to the room. Accused followed her in the room where she was again given beatings leading to her death. In his cross-examination, PW-2 Jagat Ram has admitted that adjacent to the land of complainant, land of accused party was also there. He admitted that two shops being run by Pawan and Ghan Shyam were open at that time. However, neither Ghan Shyam nor Pawan was cited as witness. In his examination-in-chief, PW-1 complainant deposed that he received injuries on neck and forehead but in Ext. PW-1/A, it is no so stated. According to him, he was pushed into the pit by the accused. It is not so stated by the Investigating Officer. He has deposed that there was no pit on the spot. Had it been so, he would have shown it in the spot map. PW-1 Hem Raj has not stated in Ext. PW-1/A that he was thrown into the pit. It has come on record that more than thirty persons had assembled on the spot but they were not associated as witnesses. He has also admitted that all the accused were unarmed. All the accused had given only kick and fist blows. He has admitted his inimical relations with the accused. PW-2 Jagat Ram is a material witness. Though initially he supported the case of the prosecution in the opening paras of examination-in-chief but

subsequently, he was declared hostile and cross-examined by the learned Public Prosecutor. According to him, portions 'A' to 'A', 'B' to 'B', 'C' to 'C', 'D' to 'D', 'E' to 'E', 'F' to 'F' and 'G' to 'G' of his statement were incorrect. He has categorically deposed that deceased had sustained injury after fall from stairs. No weapons like *Danda* and sticks were used by accused. There were two shops in front of the alleged place of occurrence. One was occupied by Pawan Kumar and other was occupied by Ghan Shyam. Both were sitting in their shops. According to him, he separated the deceased and her son. Both of them left to the room and he had closed the gate from outside after locking it. He also reiterated that deceased died after fall when her head struck with stone Danga on head side and sustained injury on the head. No fatal injury was caused by accused. He also deposed that none of the accused entered the house or verandah of the complainant. PW-5 Jangli Devi is also a material witness. According to her, accused came in a car. Hot words were exchanged. She was declared hostile and cross-examined by the learned Public Prosecutor. In her cross-examination by the Public Prosecutor, she deposed that the accused pelted stones upon the complainant. Stones were pelted from both the sides. No injury was suffered by the complainant. She further deposed in the cross-examination by the Public Prosecutor that accused Dinesh alias Babla, Chander Shekhar and Virender had followed Bimla Devi however, they did not enter the room and only three accused

had followed Bimla Devi upto the room. In her cross-examination by the learned defence Counsel, she admitted that the story of *Danda/sticks* was told to her for the first time at the instance of complainant Hem Raj. There was an old dispute between the parties. The land which was sold to the complainant was not partitioned as per statement of PW-7 Duryodhan. No specific number was shown, and no *Tatima* was prepared. According to PW-9, Dr. Nag Raj Pawar, as per spot position, reflected in Exts. P6 and P7, injuries sustained by the deceased on parietal region can be sustained due to fall from stairs. Stones were stored beneath the stair case. Injury No. 4 sustained by the deceased was not fatal injury. He also admitted that injury No. 1 seemed to be result of fall and in case deceased had been hit with some substance then there should have been associate contusions which were not present on injury No. 1 observed by him. Nature of injuries No. 2, 3,5 and 6 was simple. *Danda*, Ext. P5 was not shown to him at the time of post-mortem examination of the body of deceased. No blood was detected on Ext. P4 as per the report of FSL. No opinion was sought by the police from him whether injury No.4 could be caused with Ext. P5. Prosecution case has not been supported by PW-2 Jagat Ram and PW-5 Jangli Devi, who were present at the spot. According to the statement of PW-5 Jangli Devi, deceased had sustained injuries by fall from stair case. Statement of PW-5 Jangli Devi gets credence from the statement of PW-9 Dr. Nag Raj Pawar, who has also opined that

injury No. 1 could not suffered by deceased on her parietal region by fall from stairs. PW-1 Hem Raj (complainant) has made various improvements in his statement as discussed herein above, about the manner in which incident has taken place. Ghan Shyam and Pawan Kumar were present on the spot at the time of occurrence and more than thirty people had assembled on the spot. According to PW-1 Hem Raj, Ghan Shyam had seen the accused running away. However, fact of the matter is that neither Pawan Kumar nor Ghan Shyam who were sitting in their shops were examined by the prosecution. According to PW-5, Jangli Devi, only hot words were exchanged. PW-1 Hem Raj admitted that the accused were unarmed.

19. Procedure for conducting demarcation has not been followed. Families of accused were not involved at the time of demarcation. PW-2 Jagat Ram has not seen the accused hitting Bimla Devi rather his statement is to the effect that deceased has sustained injuries from the stone stair case after fall. PW-2 Jagat Ram has also deposed that he separated the complainant from the accused and thereafter he closed the gate. Thus, there was no possibility for the accused to enter the room or verandah of the house of complainant. It has come on record that the relations between complainant and accused were inimical. Complainant party tried to raise construction on the disputed piece of land. Complainant party was asked by the accused not to raise construction. Complainant refused to stop the construction,

which led to the incident on 5.11.2008. Accused had a right to protect their property and injuries inflicted upon complainant were simple in nature. There is sufficient material on record to come to the conclusion that the probable cause of the death of the mother of complainant was falling from the stairs and striking her head against stone wall, resulting in head injury.

20. Thus, the prosecution has failed to prove its case against the accused beyond all reasonable doubt.

21. Accordingly, we find no occasion to interfere with the well reasoned judgment passed by the learned trial Court. The appeal is thus dismissed. All pending applications, are also disposed of. Bail bonds of the accused are discharged.

(Rajiv Sharma)
Judge

(Chander Bhusan Barowalia)
Judge

June 30, 2016
(vikrant)