

BIR SINGH

A

v.

STATE OF HIMACHAL PRADESH

APRIL 25, 2006

[S.B. SINHA AND P.P. NAOLEKAR, JJ.]

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*Penal Code, 1860—Section 307—Grievous injuries sustained by policeman—At police out-post—On account of multiple blows given by a local villager with 'khukhri', a sharp weapon—Conviction for attempt to murder by Courts below—Correctness of—Held, correct since statement of victim was corroborated in material particulars by two witnesses as well as medical evidence—Besides, the accused did not examine any defence witness and did not explain his presence at the police out-post—Investigating Officer too had been immediately informed about the occurrence—Code of Criminal Procedure, 1973—Sections 107 r/w 151—Criminal Trial—Testimony of witness—Medical evidence.*

C

D

Appellant came to a police out-post at about 8:30 p.m. and asked the police personnel to accompany him to his village as a faction fight had been going on threat. But PW1, the Assistant Sub-Inspector, declined to visit the village at time, though he gave assurance that a police party would be sent the next day. On his advise, Appellant too stayed back at the police post building.

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Later during the night, while PW1 was going for meals, Appellant gave a blow on his face with a 'khukhri' followed by another blow resulting in a cut injury on his elbow. PW1 tried to snatch the 'khukhri' but sustained hand injuries. Hearing the noise, four police constables including PW4 and PW5 arrived at the spot and overpowered the Appellant.

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The prosecution, in support of its case, besides examining PW1, the injured, examined the eye-witnesses to the occurrence, viz., PW4 and PW5. Sessions Judge convicted Appellant under Section 307, IPC for attempt to murder and sentenced him to undergo 7 years' Rigorous Imprisonment. On appeal, High Court maintained the conviction but reduced the sentence to 5 years.

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A In appeal to this Court, it was contended that the evidences of PWs 1, 4 and 5 were insufficient to convict Appellant; that PW11, an independent witness, did not support the prosecution case; that despite other independent witnesses being available they were not examined nor cited as prosecution witness; that the prosecution did not explain delayed examination of PW1 and that the genesis of the occurrence, namely, that there had been a free fight at the village of the appellant having not been proved, the prosecution case must be held to have failed to prove the guilt of the appellant.

Dismissing the appeal, the Court

C HELD: 1.1. PW-1 sustained grievous injuries. He stated in great details as to how he had suffered injuries. The injuries suffered by him stand corroborated by medical evidence. He categorically stated that he could not even recognize the accused at the time of incident, but, according to him, he came to know later on that two groups which were reported D by the accused to have been fighting, had approached him earlier in his capacity as in-charge of police force with a complaint of apprehension of breach of peace and on that basis, a proceeding under Sections 107/151, CrPC was initiated by him. [340-F]

E 1.2. The statement of PW1 had been corroborated in material particulars by PW4 and PW5. No material has been shown which would throw any shadow of doubt to disbelieve the statements of the said witnesses. [341-B]

F 2. The appellant has not examined any defence witness. In fact, he has not entered into any particular defence. Why he came to the police post was not explained by him. He interestingly gave a suggestion to the prosecution witnesses that some unknown persons had assaulted PW1 when he went across the road and meanwhile he was passing along that road, he was arrested on suspicion, which clearly establishes his presence at the incident spot. [340-E; 341-E]

G 3.1. The Investigating Officer was informed immediately about the occurrence on the basis whereof a First Information Report was lodged. He had to walk all the way in difficult terrain from the district headquarters to the place of occurrence and thus, he could reach there only in the night of 9th May, 1988. He categorically stated that he could not take any statement from the injured before 21st May, 1988 as he was

not in a position to give the same, although he was talking. [340-H; 341-A] A

3.2. The incident in question was recorded by PW4 in the Daily Diary in great details. It had to be sent to the District Headquarters. The Investigating Officer could come to the place of occurrence only after finishing his work, walking all the way from the District Headquarters to the incident spot, which is also a pointer to the fact that the information to the police was given at the earliest possible opportunity. [341-F] B

4.1. PW11, the Village Pradhan has been declared hostile, as, according to him, PW1 was lying in an injured state near the building of police station, in somewhat unconscious state. He, as would appear from his deposition, deviated from his earlier statement. Both the Sessions Judge as also the High Court opined that only because PW11 was declared hostile, the same by itself would not lead to the conclusion that the statements by the other witnesses were not to be relied upon. [341-C, D] C

4.2. It may be true that PW11 was called, but that would not mean that PW4 and PW5 were bound to call other villagers also. PW11 might have been called to apprise him of the incident. [341-C] D

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 219 of 1999.

From the Judgment dated 26.7.1996 of the High Court of Himachal Pradesh in Cr. A. No. 386/1990. E

Vijay K. Mehta, A.C. for the Appellant.

J.S. Aattri for the Respondent. F

The Judgment of the Court was delivered by

S.B. SINHA, J. The appellant herein has been convicted by the courts below for alleged commission of an offence punishable under Section 307 of the Indian Penal Code on the charge of attempt to commit murder of one Shri Harjit Ram, an Assistant Sub-Inspector of Police attached to a police out-post situate at Jahlama. The appellant herein is a resident of village Rape. Jahlama police out-post is situated at a distance of about 3 kms. from the said village in one of the remote districts in the State of Himachal Pradesh. He came to the said police out-post at about 8.30 p.m. and asked the police personnel to accompany him to the village Rape as, allegedly, a faction fight had been H

- A going on threat. In the said out-post, apart from - A.S.I. Harjit Ram, other two constables, namely, PW4 - Devi Singh and PW5 Tashi Dorje were also present besides two other constables, namely, Bhim Singh and Dile Ram. On his request to visit the said village, the injured allegedly declined to accede to his request stating that as it was late in the night and the road as well as the path leading to the village were sloppy and also not in good condition
- B because of the nullahs having been spate due to heavy flow of water, it would not be safe to undertake any journey at that hour of the night. He was assured that police party would be sent to the said village early in the morning on the next day. The appellant was also advised not to go back at such time and stay at the police post. He is said to have complied with the said request. The
- C building, wherein the police post is situated, is a double storeyed one. On the ground floor, the office of the police was housed, whereas on the first floor, there was the kitchen. The informant asked the appellant to accompany him to take his meals. While going from the office room to the kitchen, the injured started climbing the ladder at that time. He was allegedly given a blow by the appellant with his 'khukhri' on the right side of his face below the eye starting from rear of the nose extending right up to the lobe of the ear. When he looked back, another blow was hurled on him resulting in causing a cut injury on his right elbow horizontally. With a view to snatch the said khukhri from the hand of the appellant, the informant sustained injuries in his hands. Hearing the noise, PW4 and PW5, together with other
- E two constables, arrived at the spot running and overpowered the appellant. The injured snatched the khukhri from his hand. He was, thereafter, shifted to the room of the upper floor of the building. The appellant was said to have been detained in the office room. There was a small hospital at a place known as Shansha, which was situated at a distance of 3 to 4 kms. from Jahlama. A doctor from the said hospital was summoned through a constable who reached the police post at about 12.00 O'clock in the night. The wounds of the injured were stitched. The Pradhan of the village was said to have been summoned. The said incident was recorded in the Daily Diary and PW4 - Devi Singh took the same to the District Headquarter situated at Keylong, which is said to be situated at about 26 kms. away from Jahlama. The
- G Investigating Officer, PW9 - Shobha Ram, visited Jahlama on the night of 8/9th May, 1988 and started investigation. On the next morning, the injured was sent to the Hospital at Shansha. He was thereafter referred to the District Hospital at Keylong.

H Upon completion of the investigation, a charge-sheet was filed under

## Section 307 of the Indian Penal Code.

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The injuries sustained by PW1 are as under:

1. An incised wound oblique in direction from inner corner of right eye extending to below right ear. Size 15 cm. long 1 cm. deep  $\frac{1}{2}$  cm. wide. B
2. An incised wound over right side of head from the side of forehead to upward and backward. 10 cm. long  $\frac{1}{2}$  cm. wide and  $\frac{1}{2}$  cm. deep. C
3. An incised wound behind right ear obliquely placed.  $4\frac{1}{2}$  cm. long  $\frac{1}{2}$  cm. deep and  $\frac{1}{2}$  cm. wide. C
4. An incised wound over right ear. 1 cm. long and  $\frac{1}{2}$  cm. deep. C
5. Incised wound between first and second finger. 7 cm. long  $\frac{1}{2}$  cm. long 1 cm. deep  $1\frac{1}{2}$  inch long. C
6. 1 cm. long incised wound,  $\frac{1}{2}$  cm. deep at the base of left thumb. D 1  $\frac{1}{2}$  cm. long,  $\frac{1}{2}$  cm. deep incised wound. D
7. On the back of right shoulder there was incised wound of 2 cm. long,  $\frac{1}{2}$  cm. deep vertically placed. D

The injured was examined on 9.5.1988 by PW2 Dr. Namgayal. E

E

The prosecution, in support of its case, besides examining PW1, the injured, examined the eye-witnesses to the occurrence, *viz.*, PW4 and PW5.

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Upon recording a judgment of conviction, the learned Sessions Judge sentenced the appellant to undergo 7 years' Rigorous Imprisonment and a fine of Rs. 2,000. On an appeal made therefrom, the High Court maintained the said conviction, but, reduced the sentence from 7 years to 5 years, but imposed a fine of Rs.5,000/- upon him.

Mr. Vijay K. Mehta, learned counsel appearing on behalf of the appellant, in support of the appeal, would submit that both the learned Sessions Judge as well as the High Court committed manifest errors in arriving at a finding that the evidences of PW1, PW4 and PW5 were sufficient to arrive at a finding of guilt as against the appellant herein. According to the learned counsel, the prosecution failed to analyze the evidence in a holistic manner. It was urged that the learned courts below failed to consider the fact that independent witness, *viz.*, Hira Lal, who was the Village Pradhan, did not H

- A support the prosecution case and was declared hostile. The prosecution furthermore did not, it was submitted, explain as to why the injured was examined by the Investigating Officer, PW9, Shobha Ram, for the first time on 9.5.1988. It was also submitted that in view of the materials brought on records by the prosecution itself, it would appear that other independent witnesses were available in the village, but, despite the same, neither any other person in the village was examined by the Investigating Officer nor any of them were cited as prosecution witness. The genesis of the occurrence, namely, that there had been a free fight at the village of the appellant, *i.e.*, Rape, having not been proved, the prosecution case must be held to have failed to prove the guilt of the appellant.
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- C The learned counsel for the State, on the other hand, supported the impugned judgment.

- D Before advertiring to the contentions raised in this appeal, we may notice certain peculiar features of the case. The fact that the appellant was resident of village Rape is not in dispute. It is furthermore not in dispute that PW-1, ASI Harjit Ram, sustained grievous injuries. The appellant is said to have been arrested at the police post situated at Jahlama. If this Court is to believe the prosecution case, the occurrence took place after 8.30 p.m. at the police post itself. The appellant has not examined any defence witness. In fact, he has not entered into any particular defence. Why he came to the police post
- E was not explained by him.

- F PW1 stated in great details as to how he had suffered injuries. The injuries suffered by him stand corroborated by medical evidence. He categorically stated that he could not even recognize the accused at the time of incident, but, according to him, he came to know later on that two groups which were reported by the accused to have been fighting, had approached him earlier in his capacity as in-charge of police force with a complaint of apprehension of breach of peace and on that basis, a proceeding under Sections 107/151 of the Criminal Procedure Code was initiated by him.

- G The night was dark. There was no electricity in the office. The injured and the other constables had lit candles.

- H It has not been disputed that the Investigating Officer was informed immediately about the occurrence on the basis whereof a First Information Report was lodged. It has furthermore not been in dispute that the Investigating Officer had to walk all the way in difficult terrain from the district headquarters

to the place of occurrence and thus, he could reach there only in the night A of 9th May, 1988. He categorically stated that he could not take any statement from the injured before 21.5.1988 as he was not in a position to give the same, although he was talking.

The statement of PW1 had been corroborated in material particulars by PW4 - Devi singh and PW5 Tashi Dorje. We have not been shown any B material which would throw any shadow of doubt to disbelieve the statements of the said witnesses.

It may be true that PW11, the Village Pradhan, Hira Lal was called, but, that would not mean that PW4 and PW5 were bound to call other villagers also. The Village Pradhan might have been called to apprise him of the incident. PW11, the Village Pradhan, has been declared hostile, as, according to him, PW1 was lying in an injured state near the building of police station, in somewhat unconscious state. He, as would appear from his deposition, deviated from his earlier statement. Both the learned Sessions Judge as also the High Court opined that only because PW11, Village Pradhan, was declared hostile, the same by itself would not lead to the conclusion that the statements by the other witnesses were not to be relied upon. C D

The appellant interestingly gave a suggestion to the prosecution witnesses that some unknown persons had assaulted PW1 when he went across the road and meanwhile he was passing along that road, he was arrested on suspicion, which clearly establishes his presence at Jahlama. E

The incident in question was recorded by PW4 - Devi Singh in the Daily Diary in great details. It had to be sent to the District Headquarters at Keylong. The Investigating Officer could come to the place of occurrence only after finishing his work, walking all the way from Keylong to Jahlama, which is also a pointer to the fact that the information to the police was given at the earliest possible opportunity. F

For the reasons afore-mentioned, we do not find any merit in this appeal. The appeal is dismissed. The appellant is on bail. He is directed to surrender immediately. The trial court is directed to take steps in this behalf. G

B.B.B.

Appeal dismissed.