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Court : Himachal Pradesh

Decided On : Apr-19-1979

Reported in : 1979CriLJ1176

Judge : H.S. Thakur, J.

Appellant : Roop Kishore and anr.

Respondent : State

Judgement :

H.S. Thakur, J.

1. The learned Additional Sessions Judge, Kangra Session Division, at Dharamsala has convicted the appellants for the offences under Sections 307/34, 451/34, 398/34 and 323/34 I.P.C. and has sentenced them for the said offences. Aggrieved by the said order and judgment of the learned Additional Sessions Judge, they have preferred this appeal to this Court.

2. Briefly, the facts of the case are that on the evening of 31st May, 1978 at about 7 or 7.30 P. M. Shri Lachhman Dass complainant (PW 3) and Anil Kumar (PW. 1) were sitting in their shop in village Chamrara, when the appellant Rup Kishore and another person who was standing at some distance, demanded a bundle of Biri and Anil Kumar handed over the same and received Us price. It is stated that at that time the sun was setting and there was sufficient light. Thereafter, Anil Kumar

is stated to have gone to take his meal and the 4 accused persons headed by Rup Kishore appellant again came to the shop premises. At that time the shop was half closed and Rup Kishore appellant demanded a bundle of Biri frorn the complainant Lachhman Dass, who was then all alone in the shop. The complainant in order to hand over the bundle of Biri extended his hand towards the said appellant. The appellant, Rup Kishore, caught hold of the arm of the complainant and pulled him outside the shop. One of the accused persons is stated to have given him blows with an iron rod on his head and shoulder, whereas another accused person is stated to have given a knife blow on his left side, and both of them demanded the keys of his safe. Thereupon the complainant is stated to have shouted for help saying 'Mar Diya Mar Diya'. The third accused person is stated to have fired a gun shot which hit the complainant in his abdomen, just below the right nipple of his chest. On hearing the shouts Anil Kumar, Roshan Lal and Ram Kishan PWs reached the place of occurrence, but before their arrival the accused persons managed to escape.

3. The F. I. R. was recorded by Shri Shakti Chand M. H. C. of Police Station, Jwalamukhi on the basis of a ruqa Ex. PW-3/A, containing the statement of Lachhman Dass complainant. The ruqa was handed over by Shri Swaran Singh p. W. Lachhman Dass complainant sustained injuries and blood continued to ooze out from the injuries sustained by him on his fore-head, chin and chest. It is stated that the complainant remained in conscious state of mind and on the arrival of the aforesaid persons he narrated the incident to them. Shri Ram Kishan PW immediately rushed to Chintpurani and came back with Dr. B. Prahlad PW, so that urgent medical treatment could be given to the complainant. On his way to Chintpurani, Ram Kishan PW met District Inspector of Police Una, and apprised him about the incident. The District Inspector of Police wanted to record his statement but Ram Kishan told him that the condition of the complainant was serious and that he should reach the place of occurrence as soon as possible. It was on reaching of the Inspector of police on the spot that the statement contained in ruqa Ex. PW-3/A, was recorded by him and the same was sent to the Police Station, for the registration of a case.

4. The site plan of the place of occurrence was prepared and while the statement of the complainant was being recorded by the District Inspector of Police Una, the Doctor handed over a pellet extracted by him from the chest of the complainant, to the District Inspector of Police. During the course of investigation 33 more pellets and a shell of the used cartridge were also taken into possession by the police from the ground adjoining the railings of the shop of the complainant. The bloodstained earth was taken into possession as also a bloodstained vest and a shirt that were produced by the complainant were also taken into possession. A bag, stated to be owned by the accused persons, was, also taken into possession. Recovery memos were prepared on the spot in respect of the recovery of the aforesaid articles.

5. Run Kishore appellant is stated to have been arrested on 12th July, 1978 from Daulatpur Chowk within district Una, whereas Om Prakash appellant, Rah Sahai and Kartar Singh co-accused are stated to have been arrested on the 16th July, 1978, 18th July, 1978 and 20th July. 1978, respectively from their residential houses within the State of Uttar Pradesh. The search of the house of Om Prakash appellant was also made and a country made pistol Ex. P. 9 and two empty cartridges were taken into possession after preparing a recovery memo. A knife Ex. P. 1 was recovered from Ram Sahai accused after he had made a disclosure statement. After completing the investigation a challan was put up against the appellants and 2 co-accused persons, and all the 4 of them were committed for trial to the Sessions Court. After the charges were framed against all the 4 accused persons, including the appellants, they pleaded not guilty to the charges and claimed to be tried.

6. The prosecution produced 16 witnesses in support of their case whereas the accused persons examined 2 D. Ws. The learned Additional Sessions Judge, after appraising the evidence produced by the prosecution, acquitted the accused persons Ram Sahai and Kartar Singh but convicted the appellants for the aforesaid offences The appellants were ultimately convicted and sentenced under Sections 307/34 I.P.C. to undergo rigorous imprisonment for 7 years and to pay a fine of Rs. 2000/- and in default of payment of fine to undergo further rigorous imprisonment for a period of one year. They were also convicted for the offences

under Sections 451/34 I.P.C. and sentenced to undergo rigorous imprisonment for a period of 2 years and to pay a fine of Rs. 500/- and in default of payment of fine to undergo further rigorous imprisonment for a period of 6 months. They were further convicted for the offences under Sections 398/34 I.P.C. and sentenced to undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs. 1000/- and in default of payment of fine to undergo rigorous imprisonment for a period of one year. Both the appellants were also convicted for the offences under Sections 323/34 I.P.C. and sentenced to undergo rigorous imprisonment for a period of one year and also to pay of fine of Rs. 100/- and in default of payment of fine they were to suffer rigorous imprisonment for a period of 3 months. All the sentences were, however, ordered to run concurrently.

7. Shri S. S. Ahuja, the learned Counsel for the appellants has mainly confined his arguments to the plea that the identity of the appellants had not been conclusively established by the prosecution, and accordingly the order of conviction and sentence passed by the learned Additional Sessions Judge cannot be sustained. He has further contended that on the same evidence, two of the accused persons have been acquitted whereas the appellants have been convicted and on this account also the conviction of the appellants could not legally be maintained. On the contrary it is urged by Shri H. K. Bhardwaj, the learned Counsel appearing for the State, that the prosecution has fully established the offences alleged against the appellants and the order passed by the learned trial court is perfectly legal and proper.

8. As stated, earlier above, the crucial point which falls for determination in this appeal is whether the identity pf the appellants connecting them with the offences is established or not. So far as this aspect of the matter is concerned there are 3. material witnesses who have been examined by the prosecution. They are PW-1 Anil Kumar, PW-3 Lachhman Dass complainant and PW-7 Asa Ram, who is a Lamberdar and Up-Pradhan of the area. It is necessary to discuss the testimony of these witnesses.

9. Anil Kumar PW-l has stated that the accused identified as Rup Kishore had purchased a bundle of Biri from him and he had seen Ram Sahai accused (who

has been acquitted) at some distance. According to him the accused identified as Ram Sahai was at a distance of about 5 or 6 furlongs. Later on, this witness stated that the said accused was at a distance of about 70 yards. Such an identification of these two accused persons relates to the time prior to the incident. The learned Additional Sessions Judge has not believed the statement of this witness so far as it relates to Ram Sahai accused (who has been acquitted) whereas he has partly relied on his statement for the purpose of convicting Rup Kishore appellant. He has also not given any description about the identity of any of the accused persons though he has stated that at that time there was sufficient light. PW-3 Lachhman Dass complainant, regarding the description of the accused persons, so as to establish their identity, has not stated anything. He has, however, stated that it was the person identified as Rup Kishore accused appellant in the court, who had pulled him by catching hold of his arm and who was also holding iron rod in his hand and attacked him with the same. He a'fter pointing out towards Om Parkash accused appellant, stated that he had fired the gun shot at him. The said witness also pointed out towards Kartar Singh accused and stated that after he was pulled out from the shop, he was caught hold of by him and Ram Sahai accused. The witness further goes on to state that Rup Kishore accused-appellant besides having iron rod was also holding a knife in his hand and that the said accused-appellant not only attacked him with the iron rod but also with the knife. The witness has further admitted that he had not given description of the particulars of the accused persons to the police at any time though the police had asked him regarding the height etc. of the accused persons, during investigation. He also states that he could not see the accused person to whom Anil Kumar PW-1 had previously sold a bundle of biri. According to him he saw Rup Kishore accused-appellant for the first time on the day of occurrence and for the second time in the court. The witness has denied the suggestion that the police took the accused persons to his village and showed them to PW-1 and others. PW-7 Asa Ram, who is a Lamberdar of the village is an old man of about 70 years. He has only stated that he saw the 4 accused persons. sitting at the platform (Meghu Da Atiala) which is a place- within his Lambardari. He further states that he had a talk with these persons for a long time and suspected them to be outsiders and belonging to a province other than Himachal Pradesh. He saw them on 31st May, 1978. On the

following day, it is stated by the witness that he left for Delhi for his treatment and stayed there for about a month. On his return, it is stated by him that he came to know about the occurrence and disclosed the fact of the presence of the accused persons, as stated above. He further stated that on seeing the accused persons he. could identify them. The learned trial court has hot believed the testimony of this witness regarding the identity of Kartar Singh accused. This is the only relevant evidence regarding the identity of the: accused persons.

10. It is relevant to point out that the police Wanted to establish the identity of all the accused-persons by holding identification parade. While the accused; persons came to know about it, they submitted an application from the judicial lock-up to the learned Magistrate concerned that they were not prepared to get themselves identified by holding an identification parade as they had already been shown to the witnesses and otherwise also the witnesses had seen them while they were brought to the court of the learned Magistrate and taken back to the judicial lock-up. It was on account of this that the identification parade was not held. As such the accused persons had only been identified during the course of trial While the statements of the prosecution witnesses were being recorded. A perusal of the aforesaid evidence of the 3 relevant PWs regarding the identity of the accused persons shows that they are at variance with each other so as to conclusively establish the identity of not only the accused, who have been acquit-ted, but also of the accused-appellants. In the first instance, if an accused person is only identified when he is facing the trial, such an identification in the court is not of much evidentiary value and no conviction can ordinarily be based on such an evidence relating to identification. At the same time if the accused gives a reasonable and proper explanation, it is for the prosecution to prove affirmatively that the explanation is false. In a criminal trial, it is not at all obligatory on the accused to produce evidence in support of his defence and for the purpose of proving his version he can rely on the admissions made by the prosecution witnesses or on the documents filed by the prosecution. A court has to probe and consider the materials relied upon by the defence instead of raising an adverse inference against the accused, for not producing evidence in support of his defence, because the prosecution cannot derive any strength or support from the weakness of the defence case. The prosecution has to stand on its own legs, and

if it fails to prove its case beyond reasonable doubt, the entire edifice of the prosecution will crumble down. The accused-appellants, as also the accused persons, who have been acquitted, have denied the allegations made against them. It is, however, stated by Rup Kishore accused-appellant that his sister is married to one Rachhpal Singh and he had come to the house of his sister on 25th June, 1978. It is further stated by him that he was arrested on 9th July, 1973 and was brought to the place of occurrence and that one Shri Birbal who was on inimical terms with his brother-in-law Rachhpal Singh got him implicated in the case. He has also stated that he had disclosed the names of the co-accused, because he had a dispute with them. Om Prakash accused-appellant has also stated that he had beaten Rup Kishore appellant on account of cycle dispute and, therefore, he had falsely implicated him in the case.

11. I have thoroughly gone through the documents and other evidence oft record and have also heard the learned Counsel for the parties at length. After a careful consideration of the facts and circumstances of the case and bearing in mind the principles of law of evidence to establish the identity of the accused-persons, I am of the view that the identity of the accused-appellants connecting them with the commission; of the offence has not been established beyond a reasonable doubt. As such I have no other alternative but to accept the appeal and to reverse the order and judgment of conviction and sentence passed by the learned Additional Sessions Judge and to acquit the appellants, giving them the benefit of doubt.

12. In view of the above conclusion the appellants are ordered to be released forthwith in case they are not required in any other case. The case property, however, is ordered to be kept in safe custody pending the decision of appeal if any, that may be filed within limitation. The bail bonds of the appellants in the case are also discharged.

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