

Ramanand Vs. Krishan Chand

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Court : Himachal Pradesh

Decided On : Jan-25-1954

Reported in : AIR1954HP61

Judge : Ramabhadran, J.C.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 154, 367 and 439; ;
[Evidence Act, 1872](#) - Section 1

Appeal No. : Criminal Revn. No. 2 of 1954

Appellant : Ramanand

Respondent : Krishan Chand

Advocate for Pet/Ap. : Man Mohan Nath, Adv.

Judgement :

ORDER

Ramabhadran, J.C.

1. The petitioner filed a complaint under Section 323, I. P. C., against the respondent in the Court of the Magistrate second class, Kasumpti. The Magistrate acquitted the accused. The petitioner then went up in revision to the Sessions Judge of Mahasu, who rejected this petition. He now comes up in revision to this Court and the prayer made therein is that the orders of the two Courts below be

set aside.

2. I have heard learned counsel for the petitioner. The High Court will not ordinarily interfere in revision against an order of acquittal, as was pointed out in an earlier ruling of this Court reported in--'Dhaniah v. Parasram', AIR 1950 Him P 44 (A). This Court will interfere in a revision against acquittal only when there has been, an error of law, or where the lower Court did not exercise a proper judicial mind and has come to a decision, without a proper appreciation of the evidence resulting in a failure of justice. In the present case, the 'complainant's case was that at about midnight, while returning from the latrine, he was hit on his head by a stone thrown by the accused. Medical examination disclosed that an injury was sustained by the complainant on his forehead. The Complainant was sought to be corroborated by two witnesses, Gorkhia and Ramanand. The learned Sessions Judge has rightly pointed out that the names of these two witnesses are not to be found in the first information report lodged with the police the same night, although the complainant's allegation was that these witnesses were only at a distance of ten paces from him.

It is also significant that in the complaint, which, was instituted three days after the occurrence, these two witnesses were not named. Under these circumstances, the Courts below were justified in treating the case as a doubtful one and acquitting the accused. Learned counsel for the petitioner cited--'Emperor v. Kasam Alli Mirza Alli', AIR 1942 Bom 71 (B), where it was held that a delay of two days in going to the police is not remarkable in the case of illiterate persons with no money. Each case has to be decided on its own merits. No hard and fast rule can be laid down. Learned counsel also cited--'Haria Dusadh v. Emperor', AIR 1946 Pat 239 (C), where it was held that the failure to mention a witness's name in the first information report must be kept in mind by the Court, but is not, in itself, a sufficient ground for rejecting the testimony of the witness unless the Court is of the opinion that the witness had some motive for deposing against the accused. Here again, I must remark that each case must be decided on its own merits. If, as is alleged, Gorkhia and Ramanand were only at a distance of ten paces at the time of the occurrence, it is certainly strange that their names did not find a place in the first information report and in the complaint.

The Courts below, therefore, were well within their rights in treating the testimony of these two witnesses as doubtful and expecting some corroboration of the complainant. Sitting as a Court of revision, I am unable to hold that the order of acquittal was perverse and against the weight of the evidence on the record. In the view I have taken, I reject the revision petition.

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