

**Som Dutt Vs. State of H.P.**

**Som Dutt Vs. State of H.P.**

**SooperKanoon Citation :** [sooperkanoon.com/890429](http://sooperkanoon.com/890429)

**Court :** Himachal Pradesh

**Decided On :** Oct-29-2001

**Reported in :** 2002CriLJ1059

**Judge :** M.R. Verma, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 141, 148, 149, 201, 302, 323, 324, 341, 356, 382 and 506; ;Code of Criminal Procedure - Sections 154 and 313

**Appeal No. :** Crl. Revision No. 29 of 1999

**Appellant :** Som Dutt

**Respondent :** State of H.P.

**Advocate for Def. :** P.M. Negi, Asst. A.G.

**Advocate for Pet/Ap. :** Bimal Gupta, Adv.

**Disposition :** Petition allowed

**Judgement :**

ORDER

**M.R. Verma, J.**

1. This revision petition is directed against the judgment dated 7-1-1999 passed by the learned Additional Sessions Judge, Sirmaur District at Nahan whereby the

conviction of the petitioner under Section 323 of the Indian Penal Code and sentence of fine in the sum of Rs. 1000/- has been maintained.

2. The facts giving rise to the present petition, briefly stated, are that Partap Singh (P.W. 1) received a telephonic message on 2-3-1997 from Pariksha Devi (P.W. 3) intimating that they had to go to Shimla to have some urgent discussion with the Minister. P.W. 1 accompanied by Chet Ram (P.W. 2) then left for Chogtali. While on the way, the petitioner, Dev Dutt, Mohan Lal, Narain Dutt, Tara Dutt and Padam Dutt (all accused before the trial Court and hereafter referred to as the co-accused) questioned them as to why they were helping Hira Singh. P.W. 1 denied helping said Hira Singh. However, the aforesaid persons including the petitioner attacked P.W. 1. The petitioner picked up a stone and inflicted a blow therewith on the palm of the right hand of P.W. 1. As a result P.W. 1 sustained injury. Co-accused Narain Dutt and Tara Dutt caught hold of P.W. 2 and in the process right pocket of his coat was torn. P.W. 1 and P.W. 2 had to run for safety. P.W. 1 immediately after the occurrence made a statement to the police under Section 154 of the Code of Criminal Procedure, Ext. P.W. 4/A on the basis of which formal FIR. Ext. P.W. 1/A was registered at Police Station Rajgarh under Sections 147, 149, 341 and 506 of the Indian Penal Code. During investigation P.W. 1 was got medically examined and Dr. Vikas Fotedar (P.W. 5) found a lacerated wound over the right palmer aspect of P.W. 1. The injury so found was simple in nature and its probable duration was one to six hours. It was also opined by P.W. 5 that the injury was caused with blunt weapon. He accordingly issued MLC Ext. P.W. 5/A. After collecting the material and on being satisfied that the petitioner and the co-accused had committed the offences complained against, the officer-in-charge of Police Station Rajgarh submitted a charge-sheet against them. They came to be tried by the learned Sub-Divisional Judicial Magistrate, Rajgarh on a charge under Sections 147, 323, 341, 506 read with Section 149 of the Indian Penal Code. To prove the charge against them the prosecution examined ten witnesses.

3. The petitioner and the co-accused were examined under Section 313 of the Code of Criminal Procedure wherein they denied the prosecution case as a whole and claimed that it was a false case. They, however, did not lead any defence evidence.

4. The learned trial Magistrate held that the offences under Sections 147, 356 read with Section 149 of the Indian Penal Code were not proved against the petitioner and the co-accused and they were accordingly acquitted of the said offences. The petitioner, however, was convicted under Sections 323 and 341 read with Section 149 of the Indian Penal Code and the co-accused were convicted for the offence punishable under Section 341 read with Section 149 of the Indian Penal Code. However, they were acquitted of the offence under Section 323 read with Section 149 of the Indian Penal Code. Sentence of imprisonment, however, was not awarded by the learned trial Magistrate to any of them with a view to afford them an opportunity to reform themselves but the convicts were sentenced to pay fine of Rs. 500/- each for the offence punishable under Section 341 read with Section 149 of the Indian Penal Code and in default to undergo rigorous imprisonment for one month. The petitioner was further sentenced to pay fine of Rs. 1,000/- under Section 323 of the Indian Penal Code and in default of payment of fine to undergo simple imprisonment for a period of two months.

5. Feeling aggrieved all the convicts including the petitioner preferred an appeal which was heard and decided by the learned Additional Sessions Judge, Sirmaur at Nahan by the impugned judgment. He acquitted the petitioner and his co-accused of the offence under Section 341 read with Section 149 of the Indian Penal Code but maintained the conviction and sentence of the petitioner under Section 323 of the Indian Penal Code. Hence, the present revision petition by the petitioner.

6. I had heard the learned counsel for the petitioner and the learned Assistant Advocate General for the respondent and have also gone through the records.

7. It may be pointed out at the very outset that the respondent has not preferred any appeal against the acquittal of the petitioner and his co-accused under Sections 147, 323, 341 and 506 read with Section 149 of the Indian Penal Code. Therefore, their acquittal for the said offences had become final.

8. It may also be pointed out here that no substantive charge under Section 323 of the Indian Penal Code was framed against the petitioner but he was charged with the aid of Section 149, IPC. A perusal of the charge against the petitioner and

others reveals that in the charge it has not been specified as to who had caused hurt to Pratap Singh. Instead the charge states that one of the member of the unlawful assembly consisting of the petitioner and his co-accused caused simple hurt to Pratap Singh. Thus, even in the charge, as framed, there is no specific allegation that simple hurt was caused to said Pratap Singh by the petitioner. Even otherwise the charge is not properly framed inasmuch as three heads of charges have been put together under one head of charge. When a charge is to be framed for commission of more than one offence, a separate head of charge must be distinctly and precisely framed so that no prejudice is caused to the accused in defending himself. Therefore, the question, which arises for determination, is whether in the given circumstances conviction of the petitioner can be sustained.

9. The answer to the aforesaid question is to be found in Subran alias Subramanian v. State of Kerala, 1993 Cri LJ 1387 : (1993 AIR SCW 1014). In the said case, charge under Sections 302, 324, 323, 201, 148 read with Section 149, IPC was framed against six persons. The trial Court found Subran alias Subramanian guilty of the commission of an offence punishable under Section 302, IPC and sentenced him to rigorous imprisonment for life. The remaining accused were held guilty of the offence under Section 326 read with Section 149, IPC and each one of them was sentenced to undergo rigorous imprisonment for three years. In appeal, the High Court affirmed the conviction and sentence of four accused including said Subran alias Subramanian and acquitted two accused. On further appeal before the Hon'ble Supreme Court, it was held as under at Page 1391; of Cri LJ:--

Since, appellant No. 1 Subran had not been charged for the substantive offence of murder under Section 302, IPC, even the trial Court, which tried the six accused persons, was not justified in recording a conviction against him for the substantive offence of murder punishable under Section 302, IPC after framing a charge against him for the offence under Section 302 read with Section 149, IPC only. A person charged for an offence under Section 302, IPC read with Section 149 cannot be convicted of the substantive offence under Section 302, IPC without a specific charge having been framed against him as envisaged by law. Conviction for the substantive offence in such a case is unjustified because an accused might

be misled in his defence by the absence of the charge for the substantive offence under Section 302, IPC. Appellant No. 1, Subran, was never called upon to meet a charge under Section 382, IPC simpliciter and, therefore, in defending himself he cannot be said to have been called upon to meet that charge and he could very well have considered it unnecessary to concentrate on that part of the prosecution case during the cross-examination of the prosecution witnesses. Therefore, the conviction of the first appellant for an offence under Section 302 was not permissible.

10. In view of the above ratio, it can be safely concluded that the petitioner, who was not mentioned in the charge as the person who actually caused simple hurt to Pratap Singh and was not charged for the substantive offence under Section 323, IPC, could not have been convicted for such offence. Therefore, the conviction of the petitioner under Section 323, IPC is illegal and cannot be sustained.

11. Even on merits, it is not proved that the petitioner caused hurt to P.W. 1. As per the contents of Ext. P.W. 1/A the occurrence was witnessed by Basti Ram and Nisha Devi (P.W. 7). Basti Ram has not been produced by the prosecution P.W. 7 has not supported the prosecution version. Lekh Ram (P.W. 6) has been examined by the prosecution as an eye-witness of the occurrence though not mentioned as such in the F.I.R. In his examination-in-chief he has not supported the prosecution version and denied having seen the occurrence. When cross-examined by the Public Prosecutor he stated that the petitioner hit P.W. 1 with stone but when cross-examined by the petitioner he stated that he has not seen anyone hitting with the stone. Thus, the self contradictory and self destroying version of this witness is utterly unacceptable as eye account of the occurrence, P.W. 1 the injured is the only witness who has supported the version that the petitioner hit him with a stone. Even P.W. 2 the alleged other victim of assault has not stated about the petitioner causing hurt to P.W. 1 with stone. The sole statement of P.W. 1, who has been disbelieved about the complicity of co-accused Tara Dutt etc. in the commission of the offences is not enough to prove commission of offence under Section 323. IPC by the petitioner.

12. In view of the above discussion and reasons, the impugned conviction and sentence deserve to be set aside.

13. Resultantly, this petition is allowed. The impugned conviction and sentence are set aside and the petitioner is acquitted of the offence under Section 323, IPC. Fine if recovered, be refunded to the petitioner.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**