

State of H.P. Vs. Muni Lal

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Court : Himachal Pradesh

Decided On : Nov-25-2005

Reported in : 2006(1)ShimLC216

Judge : Surjit Singh, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 323, 325 and 506

Appeal No. : Criminal Appeal No. 190 of 1999

Appellant : State of H.P.

Respondent : Muni Lal

Advocate for Def. : Rajiv Jiwan, Adv.

Advocate for Pet/Ap. : D.C. Pathik, Additional Adv. General

Judgement :

Surjit Singh, J.

1. The State of Himachal Pradesh is aggrieved of the judgment of the learned trial Magistrate, whereby respondent Muni Lal, who was tried for the offences punishable under Sections 325, 323 and 506 of the Indian Penal Code on police report, has been acquitted.

2. One Smt. Kamla Devi lodged a report with the police that on 17.3.1996 at 8.30 p.m., when she went to her khokha to serve tea to her husband, she saw that respondent Muni Lal was trying to outrage the modesty of a girl, to which she objected to and due to such objection, the respondent caught hold of her by her arm and started giving beating, as a result of which one of her upper teeth was broken. Police registered a case and got the lady medically examined. The medical examination showed that there was laceration of upper lip and the tooth just behind the lacerated portion of the lip had broken. On completion of the investigation, report was filed against the respondent. The learned trial Magistrate charged the respondent with the offences, punishable under Sections 325, 323 and 506 of the Indian Penal Code, and ultimately acquitted him with the finding that the evidence is doubtful. Reasons recorded by the learned trial court are that as per version of the complainant, one Prem Chand was also there, but had been withheld by prosecution and two other persons examined by the prosecution as eye witnesses (in addition to the injured) are named in the F.I.R. and are interested witnesses, being close relatives of the injured.

3. Grievance of the appellant is that the evidence on record has not been appreciated by the learned trial Magistrate, in the right perspective. It is alleged that the testimony of the injured lady is fully corroborated by the testimony of her husband, who was very much present on the spot as also by the medico legal evidence.

4. I have gone through the record and heard the learned Additional Advocate General as also the learned Counsel for the respondent.

5. Complainant Kamla Devi appeared as PW-1 and testified in no uncertain terms that she was given a fist blow on her mouth, as a result of which she sustained bleeding injury on her upper lip and a tooth in the upper jaw touching the hit portion of lip was broken. She has stated that at the time when the incident took place, her husband was there. Her husband Bilbhader (PW-2) has corroborated her aforesaid version, PW-3 Santosh Kumari, a daughter of the complainant stated that when on hearing cries of her mother, she went to the spot she saw the respondent going towards his house and while he was so going, he was hurling

abuses. She also stated that she saw that her mother's mouth was bleeding. PW-4 Smt. Sunita, the daughter-in-law of the complainant has also made a statement similar to that of PW-3 Santosh Kumari.

6. Dr. Manish Sharma examined as PW-5, testified that he conducted the medico legal examination of the complainant and noticed three injuries on her person, including one on the upper lip and that a tooth in the upper socket was dislocated and gum of the tooth was tender and its colour had turned blue. He stated that the complainant was referred to the Dental Surgeon for expert opinion and on the basis of the opinion of the Dental Surgeon, injury of the tooth was opined to be grievous, as there was dentaoalveolar fracture of the right upper central incisor. PW-6 Dr. T.D. Tandon, who examined the dental injury, has stated that there was fracture of right upper central incisor.

7. The testimony of the injured is fully corroborated by the testimony of her husband, namely PW-2 Bilbhadar and the medico legal evidence, referred to above. Observation made by the learned trial Magistrate that the husband of the complainant is not named as a witness in the F.I.R. is incorrect, because in the F.I.R. it is very much mentioned that the husband of the complainant was in the khokha when the incident took place.

8. Learned counsel for the respondent argued that the prosecution was liable to an adverse inference for not examining Prem Chand, who was allegedly there. The argument is without merit. Firstly, it is clear from the testimony of the complainant and her husband Bilbhadar that Prem Chand had left the khokha as soon as the complainant came there and therefore, he cannot be said to be a witness to the aforesaid occurrence. Secondly, Prem Chand was accompanying the respondent and according to the testimonies of complainant and her husband, he consumed liquor in the khokha of the husband of the complainant in the company of the respondent, despite objection by her husband and therefore he was not supposed to speak against the respondent.

9. Learned counsel for the respondent also drew the attention of the court to certain contradictions in the testimony of the complainant and the earlier version given by her to the police and submitted that the contradictions made the case

doubtful. The contradictions pointed out by him, are immaterial as the same pertain to the prelude to the actual incident. In the F.I.R., it is mentioned that the respondent was trying to outrage the modesty of a girl and when objected to by the complainant, he assaulted her. In her testimony, however, it has come that the respondent was insisting upon her husband partaking the drinks. This contradiction in no way weakens the evidence of the prosecution with respect to the giving of a fist blow by the respondent on the mouth of the complainant leading to the breaking of a tooth.

As a result of the above discussed position, the appeal is partly accepted, judgment of the trial court acquitting the respondent of the charge is set-aside and consequently, the respondent is convicted of the offence under Section 325 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for six months and to pay fine of Rs. 1,000/- failing which he shall undergo simple imprisonment for a further period of two months. His acquittal in respect of the remaining two counts is, however, upheld.

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