

State of Himachal Pradesh Vs. Bimla Devi Alias Bhago Devi

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Court : Himachal Pradesh

Decided On : Dec-23-2005

Reported in : 2006CriLJ2050

Judge : Abhilasha Kumari, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Section 325; ;Code of Criminal Procedure (CrPC) - Sections 181 and 313

Appeal No. : Crl. Appeal No. 412 of 1999

Appellant : State of Himachal Pradesh

Respondent : Bimla Devi Alias Bhago Devi

Advocate for Def. : Rakesh Jaswal, Adv.

Advocate for Pet/Ap. : Som Dutt Vasudeva, Addl. Adv. General

Disposition : Appeal dismissed

Judgement :

Abhilasha Kumari, J.

1. The present appeal has been filed by the State of Himachal Pradesh (hereafter referred to as 'the appellant'), having been aggrieved by the judgment of learned Additional Chief Judicial Magistrate, Ghurnarwin, District Bilaspur, in Case No.

24/1 of 1996, decided on 30-3-1999, whereby accused Bimla Devi alias Bhago Devi (hereafter referred to as 'the respondent') has been acquitted of the offence under Section 325 of the Indian Penal Code.

2. Briefly stated, the case of the prosecution is that on 4-1-1995 at about 4 p.m. at village Hambot, respondent Bimla Devi caused grievous hurt to Janki Devi (P.W. 2), The matter was reported to the police by Panchhi Ram, complainant, who is the husband of Janki Devi (P.W. 2), on the basis of which FIR Ex. P.W. 5/A was registered against the respondent. Janki Devi (P.W. 2) was got medically examined vide MLC Ex. P.W. 6/A. The investigation was conducted and the police visited the spot and prepared the site plan Ex. P.W. 8/A. After recording the statements of the witnesses under Section 181 of the Code of Criminal Procedure, the challan against the respondent was presented in the Court. The respondent was charged under Section 325 of the Indian Penal Code to which she pleaded not guilty and claimed trial. Eight witnesses were examined in support of the case of the prosecution. In her statement under Section 313 of the Code of Criminal Procedure, the respondent pleaded her innocence. No defence evidence has been led.

3. I have heard Mr. Som Dutt Vasudeva, learned Additional Advocate General, for the appellant-State and Mr. Rakesh Jaswal, learned Counsel for the respondent and have also gone through the evidence and the entire material on record.

4. The learned Additional Advocate General has argued that the version of P.W. 2 Janki Devi is supported by the testimony of P.W. 3 Promila Devi who is her daughter-in-law and who has witnessed the occurrence of the incident. Moreover, the victim (P.W. 2) has suffered grievous injuries for which she remained in the hospital for 1 1/2 month as has been stated by P.W. 8 Dharam Singh, who is the Investigating Officer of the case. Complainant Panchhi Ram (P.W. 1), who is the husband of P.W. 2, has reported the matter to the police promptly and Janki Devi was taken to the hospital for treatment on the very same day.

5. On the other hand, Mr. Rakesh Jaswal, learned Counsel for the respondent, has contended that there are material contradictions and inconsistencies in the case of the prosecution and even if the testimony of Janki Devi (P.W. 2) is seen, it does

not find corroboration from the testimony of P.W. 3 Promila Devi, who is stated to have witnessed the occurrence, or from that of P.W. 1 Panchhi Ram, who is the complainant and husband of P.W. 2 Janki Devi.

6. The first contradiction pointed out by the learned Counsel for the respondent is that in her testimony, P.W. 2 states that on 4-1-1995 at about 4 p.m. when she was coming back after cutting grass, she met the respondent, who pushed her. As a result of pushing, P.W. 2 is stated to have fallen down from the retaining wall. She further states that the respondent also started throwing stones on her. On her screaming, P.W. 3 Promila Devi came there and saved her from the clutches of the respondent. P.W. 2 states that thereafter she went to the hospital and the report of the incident was made in the Police Station. This is belied by the report No. 16, which is on record as Ex. P.W. 5/B and is dated 6-1-1995. This means that the report was made only on 6-1-1995, which is three days after the incident and, therefore, the version of P.W. 2 that they went to the Police Station on the same day is not true. It has further been stated by Panchhi Ram (P.W. 1), in his cross-examination that it was his daughter-in-law who has dragged his wife home and his wife fell from the wall at a height of 8-10 feet. This contradicts the narration of P.W. 2,

7. The main ground of attack of the learned counsel for the respondent is that if the incident as alleged by the prosecution had taken place, why the report in this regard was not lodged immediately thereafter and why the incident was reported only on 6-1-1995, that is after three days. There is no explanation whatsoever for the delay in making the report which gives rise to the suspicion that the entire case is a concocted one and an afterthought. The medical examination of P.W. 2 Janki Devi also took place on 6-1-1995, which is three days after the incident, although, she was admitted to the hospital on 4-1-1995.

8. It has been contended that the prosecution has not been able to connect the respondents with the crime or with the injuries on the person of the complainant in a satisfactory manner. In fact, what emerges from the record is that P.W. 2 sustained injuries by falling from a retaining wall and the respondent did not have anything to do with the same. This has been stated by her husband P.W. 1. In fact,

if he is to be believed, P.W. 3 Promila Devi dragged her mother-in-law home and the respondent is nowhere connected with the incident. It has also come on record that one Basanta and Chuni Lal were present at the time of the incident. Basanta has been examined as P.W. 4 but he has completely denied the story of the prosecution and has been declared hostile. Chuni Lal has not been examined by the prosecution.

9. What has further emerged from the record is that there was some civil litigation going on between the complainant and the respondent, which is evident from the statement of P.W. 1 Panchhi Ram and P.W. 2 Janki Devi. The argument of the learned Counsel for the respondent that the present case is a result of the enmity between the complainant and the present respondent and the respondent has been falsely roped into it, seems to be plausible, in this background.

10. Lastly, it has been contended by the learned Counsel for the respondent that the trial Court has come to the right conclusion in acquitting the respondent since there is no evidence worth the name to connect the respondent with the commission of the alleged offence. Moreover, the appellant has not seriously assailed the reasons given by the trial Court for acquittal.

11. The learned Counsel for the respondent has placed reliance upon : 1974 CriLJ1 titled Kali Ram v. State of Himachal Pradesh. The relevant part as contained in paras 25 and 26 of this judgment is as under :

25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the Court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the Court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt....

26. It needs all the same to be re-emphasised that if a reasonable doubt arises regarding the guilt of the accused, the benefit of that cannot be withheld from the accused. The Courts would not be justified in withholding that benefit because the acquittal might have an impact upon the law and order situation or create adverse reaction in society or amongst those members of the society who believe the accused to be guilty but whether his guilt has been established by the evidence brought on record....

The same principle has been reiterated in : 1974 CriLJ1 , titled as Kali Ram v. State of Himachal Pradesh and : 2001 CriLJ4677 titled as Kalyan v. State of U.P.

12. After hearing both the parties and scrutinizing the material on record, I find that the incident, as narrated by the prosecution, does not find corroboration in material particulars from the material on record. P.W. 3 Promila Devi, who is daughter-in-law of P.W. 2, says that on hearing noise when she came to the spot, she saw that her mother-in-law had fallen down from the retaining wall and the respondent was giving her beatings. She has stated that P.W. 4 Basanta and Chuni Lal came on the spot and separated them. However, P.W. 4 has denied this version outrightly. P.W. 1, who is the husband of Janki Devi, has clearly stated in his cross-examination that it was his daughter-in-law who dragged his wife Janki Devi home and Janki Devi had fallen from a height of 8-10 feet. He is not a witness to the incident but says that he only met his wife, who was crying, on the road when she was going home. P.W. 4 states that at the time of the incident when he was going on the road, he saw that P.W. 2 Janki Devi had fallen down and on hearing her cries he had come to the spot. He has clearly stated that he has not seen anything more than this and when he asked Janki Devi she only stated that she had fallen down.

13. It is clear from the FIR Ex. P.W. 5/A that the Police Station is only at a distance of 12 Kms. from the village of the complainant party. Why the report regarding the incident has been made only on 6-1-1995, when the incident took place on 4-1-1995, has remained unexplained. Moreover, the FIR has been registered only on 8-3-1995 and seems to be an afterthought. Although delay in lodging the report by itself may not be a circumstance against the complainant, but an example of

slipshod investigation, but taken along with the totality of the circumstances and the material contradictions in the testimony of the witnesses, it does cast a shadow of doubt upon the entire story of the prosecution. There is evidence on record regarding inimical relations due to civil litigation between the complainant and the respondent. Whether P.W. 2 Janki Devi sustained injuries by falling from the retaining wall or whether at the behest of the respondent, is not at all clear from the record. The incident is stated to have taken place at 4 p.m. It is strange why no other person from the village or surrounding area has been examined by the prosecution since, at that time of the day, it cannot be said that no person was available. The only independent witness P.W. 4 Basanta has totally denied the story of the prosecution and has stuck to the version that P.W. 2 Janki Devi sustained injuries as a result of a fall.

14. It is the settled position of law that in an appeal against acquittal, although the High Court has full power to review the evidence and re-appreciate the same, the presumption of innocence, which is fortified by a judgment of acquittal, should not be lightly upset. As has been observed by the Hon'ble Supreme Court in Kali Ram's case 1974 Cri LJ 1 (supra) that if two views are possible on the evidence adduced in the case, the view which is favourable to the accused should be adopted.

15. Following the ratio as laid down in the aforesaid judgment, I have no hesitation in holding that after careful perusal of the material on record, I find that there is no reason whatsoever to interfere with the judgment of the trial Court whereby the respondent has been acquitted.

16. As a result, there is no merit in the appeal, which is accordingly dismissed.