

(2016) 06 SHI CK 0146

High Court of Himachal Pradesh

Case No: Cr. Revision No. 70 of 2013-E.

Shiv Lal - Petitioner @HASH State
of H.P.

APPELLANT

Vs

RESPONDENT

Date of Decision: June 30, 2016

Acts Referred:

- Evidence Act, 1872 - Section 11
- Penal Code, 1860 (IPC) - Section 323, Section 336, Section 341

Citation: (2016) ILRHP 2326

Hon'ble Judges: Sanjay Karol, J.

Bench: Single Bench

Advocate: Mr. Prem P. Chauhan, Advocate, for the Petitioner; Mr. R.S. Verma and Mr. R.M. Bisht, Addl. AGs, for the Respondent; ;

Final Decision: Disposed Off

Judgement

Mr. Sanjay Karol, J. - In this Revision Petition filed under the provisions of Section 397 read with Section 401 of the Criminal Procedure Code, 1973, convict-petitioner has assailed the judgment dated 28.12.2009/29.12.2009, passed by Judicial Magistrate, 1st Class, Theog, District Shimla, H.P., in Criminal Case No. 194/1 of 2007, titled as State of H.P. v. Mohan Lal & others, as affirmed by the learned Additional Sessions Judge, Fast Track Court, Shimla, H.P., vide judgment dated 02.03.2013, passed in Criminal Appeal No. 9-S/10 of 2010, titled as Shiv Lal v. State of H.P., whereby he stands convicted and sentenced along with other co-accused as under:-

Convicted
under Sections

Sentence imposed

341 read with Section 34 of IPC	Rigorous imprisonment for a period of one month.
325 read with Section 34 of IPC	Rigorous imprisonment for a period of one year and pay fine of Rs. 1000/- and in default thereof further to undergo simple imprisonment for a period of one month.
506 read with Section 34 of IPC	Rigorous imprisonment for a period of six months and pay fine of Rs. 500/- and in default thereof further to undergo simple imprisonment for a period of fifteen days.

2. On the basis of written complaint, so filed by complainant Ms. Shanti Devi (PW.3), FIR 59/2007, dated 31.03.2007 (Ex.PW.2/A), came to be registered under the provisions of Section 341, 323, 336 and 506 read with Section 34 of the Indian Penal Code, at Police Station, Theog, District Shimla, H.P. Investigation conducted by HC Parkash Chand (PW.1) and ASI Het Ram (PW.4), revealed that on 30.03.2007, at about 6.30 PM, convicts Mohan Lal, Dhani Ram, Kapil Dev and Shiv Lal, assaulted the complainant and her daughter Smt. Vidya Devi (PW.7). As a result thereof, complainant Ms. Shanti Devi sustained both grievous and simple injuries, which came to be affirmed by Dr. Pawan (PW.5), who issued MLC (Ex.PW.5/B). The convicts allegedly assaulted the complainant and her daughter with danda, which came to be recovered during the course of investigation. With the completion of investigation, which prima facie revealed complicity of the convicts in the alleged crime, Challan was presented in the Court for trial.

3. The convicts were charged for having committed offences punishable under the provisions of Sections 341, 325, 323, 427 and 506 read with Section 34 of IPC, to which they did not plead guilty and claimed trial.

4. In order to establish its case, in all, prosecution examined as many as seven witnesses. Statements of the accused under Section 313 of the Criminal Procedure Code were also recorded. Present petitioner Shiv Lal pleaded false implication. Also during the course of trial, he took plea of alibi. To establish the same, he led two witnesses in his defence.

5. Finding favour with the testimonies of the prosecution witnesses, trial Court convicted accused Shiv Lal along with other co-accused for having committed offences punishable under the provisions of Sections 341, 325 and 506 read with

Section 34 of IPC and sentenced as aforesaid. Hence the present appeal by the convict.

6. Significantly, State did not assail the findings qua acquittal of the accused in relation to the charges framed under Sections 323 and 427 of IPC.

7. Having heard Mr. Prem P. Chauhan, learned counsel, on behalf of the petitioner as also Mr. R.S. Verma, learned Additional Advocate General, on behalf of the State, as also minutely examined the testimonies of the witnesses and other documentary evidence, so placed on record by the prosecution, Court is of the considered view that trial Court committed great illegality in convicting the present petitioner, for the reasons discussed hereinafter. Contradictions and improbabilities which are glaring, rendering the prosecution case to be extremely doubtful, if not true, stand ignored.

8. In **Shivaji Sahabrao Bobade and another v. State of Maharashtra, (1973) 2 SCC 793**, the apex Court, has held as under:

"....Lord Russel delivering the judgment of the Board pointed out that there was "no indication in the Code of any limitation or restriction on the High Court in the exercise of its powers as an appellate Tribunal", that no distinction was drawn "between an appeal from an order of acquittal and an appeal from a conviction", and that "no limitation should be placed upon that power unless it be found expressly stated in the Code".

(Emphasis supplied)

9. The apex Court in **Lal Mandi v. State of W.B., (1995) 3 SCC 603**, has held that in an appeal against conviction, the appellate Court is duty bound to appreciate the evidence on record and if two views are possible on the appraisal of evidence, benefit of reasonable doubt has to be given to the accused.

10. It is a matter of record that independent petitions preferred by convicts Mohan Lal, Dhani Ram and Kapil Dev, stand duly disposed of vide separate judgment of the day. They have not assailed the findings on merit, but however, pleaded leniency insofar as sentence part is concerned.

11. Coming to the petition filed by convict Shiv Lal, one finds that the Courts below seriously erred in completely appreciating the testimonies of the witnesses, so examined by the parties qua the role of the present petitioner.

12. The prosecution case primarily rests upon the testimonies of complainant (PW.3) and her daughter Smt. Vidya Devi (PW.7). Conjoint reading of the testimonies of these witnesses, establishes one fact and that being, the complainant and her two sons were involved in a case of murder and one of the brothers of the present petitioner was cited as a witness by the prosecution in the said case. Hence hostility and animosity inter se the parties, is quite apparent on record. However, there cannot be any presumption in law, of false implication on the part of the

complainant, solely on the ground of previous hostility/animosity. Correspondently, it is the duty of the Court to appreciate the testimony of the interested/hostile witnesses with circumspection. And if so required, look for some corroboration, by other contemporaneous material on record, to lend assurance and credence to the testimony of the witnesses.

13. Now in the instant case, when one peruses the testimony of complainant, one finds that while she was returning from village Deothi to her own village at Baraun, all the accused persons assaulted her with a danda. Significantly, she does not ascribe any particular role to the present petitioner Shiv Lal. Testimony of her daughter is also to similar effect.

14. It is a settled principle of law that prosecution has to establish its case, beyond reasonable doubt. Equally it is open for the convict to lead evidence and probablize his defence/alibi, if any.

15. Now in the instant case, as has come through the testimony of Pratap Sharma (DW.2), present petitioner was posted as a Junior Basic Teacher (JBT) at Government Primary School, Khaniuri, which is still farther from Rampur. It has also come in his testimony that the present petitioner, on the date of the occurrence of the incident, was present in the school all throughout till 4.00 PM. It has also come in not only his testimony but also that of the Investigating Officer that distance from Khaniuri up to the spot of crime is approximately 190 kms and the travel distance by vehicle is about 4-5 hours. Now if that were so, then obviously the present petitioner could not have been present on the spot at the time of occurrence of the incident, which according to Ms. Shanti Devi (PW.3) and Smt. Vidya Devi (PW.7), took place on 30.03.2007 at 6.30 PM. It has also not come on record through the testimony of any of the prosecution witnesses, that the present petitioner with a common intent, travelled all the way from his school up to the place of incident and joined the assailants with a premeditated mind of assaulting the victims. It has also not come on record that the petitioner used to daily visit his school from his native place. As such, it cannot be said that the present petitioner, with a common intent, voluntarily obstructed the complainant and her daughter from proceeding in any direction, resulting into their wrongful restrain. It also cannot be said that the present petitioner, with a common intent, voluntarily caused hurt by giving a blow with a danda to the complainant (PW.3) or that he criminally intimidated her or her daughter.

16. While rejecting the petitioner's plea of alibi, trial Court erred in holding that no such plea came to be suggested to Ms. Shanti Devi (PW.3) or Smt Vidya Devi (PW.7). Plea of alibi can be independently proved by leading clear, cogent, consistent and reliable evidence, which in the instant case, was so done through the testimony of Pratap Sharma (DW.2), who in fact, also proved the record of the attendance (Ex.DW.2/A) of the present petitioner. It is nobody's case that the said record was either interpolated or forged by the present petitioner. There is no challenge to the

authenticity thereof.

17. The ratio of law laid down by the Apex Court in **State of Maharashtra v. Narsingrao Gangaram Pimple, (1984) 1 SCC 446**, cannot be said to have correctly applied to the given facts. In fact, lower Appellate Court erred in reading Shiv Lal as Shyam Lal, who in fact is a Water Carrier in the school and not a JBT.

18. From the material placed on record, prosecution has failed to establish that convict Shiv Lal is guilty of having committed the offence, he stands charged for. The circumstances cannot be said to have been proven by unbroken chain of unimpeachable testimony of the prosecution witnesses. The guilt of the accused does not stand proved, beyond reasonable doubt, to the hilt.

19. Findings returned by the Courts below, convicting the accused, cannot be said to be based on correct and complete appreciation of testimonies of prosecution witnesses. Such findings cannot be said to be on the basis of any clear, cogent, convincing, legal and material piece of evidence, leading to an irresistible conclusion of guilt of the accused. Incorrect and incomplete appreciation thereof, has resulted into grave miscarriage of justice, inasmuch as present petitioner stands wrongly convicted for the charged offence.

20. Hence, for all the aforesaid reasons, petition is allowed and the judgment of conviction dated 28.12.2009/29.12.2009, passed by Judicial Magistrate, 1st Class, Theog, District Shimla, H.P., in Criminal Case No. 194/1 of 2007, titled as State of H.P. v. Mohan Lal & others, as affirmed by the learned Additional Sessions Judge, Fast Track Court, Shimla, H.P., vide judgment dated 02.03.2013, passed in Criminal Appeal No. 9-S/10 of 2010, titled as Shiv Lal v. State of H.P., qua convict Shiv Lal is set aside and he is acquitted of the charged offences. Amount of fine, if deposited by the convict, be refunded to him. Petition stands disposed of, so also pending application(s), if any.