

CASE NO.:
Appeal (crl.) 219 of 1999

PETITIONER:
Bir Singh

RESPONDENT:
State of Himachal Pradesh

DATE OF JUDGMENT: 25/04/2006

BENCH:
S.B. Sinha & P.P. Naolekar

JUDGMENT:
J U D G M E N T

S.B. SINHA, J :

The appellant herein has been convicted by the courts below for alleged commission of an offence punishable under Section 307 of the Indian Penal Code on the charge of attempt to commit murder of one Shri Harjit Ram, an Assistant Sub-Inspector of Police attached to a police out-post situate at Jahlama. The appellant herein is a resident of village Rape. Jahlama police out-post is situated at a distance of about 3 kms. from the said village in one of the remote districts in the State of Himachal Pradesh. He came to the said police out-post at about 8.30 p.m. and asked the police personnel to accompany him to the village Rape as, allegedly, a faction fight had been going on thereat. In the said out-post, apart from A.S.I. Harjit Ram, other two constables, namely, PW4\026Devi Singh and PW5\026Tashi Dorje were also present besides two other constables, namely, Bhim Singh and Dile Ram. On his request to visit the said village, the appellant allegedly declined to accede to his request stating that as it was late in the night and the road as well as the path leading to the village were sloppy and also not in good condition because of the nullahs having been spate due to heavy flow of water, it would not be safe to undertake any journey at that hour of the night. He was assured that police party would be sent to the said village early in the morning on the next day. The appellant was also advised not to go back at such time and stay at the police post. He is said to have complied with the said request. The building, wherein the police post is situated, is a double storeyed one. On the ground floor, the office of the police was housed, whereas on the first floor, there was the kitchen. The informant asked the appellant to accompany him to take his meals. While going from the office room to the kitchen, the injured started climbing the ladder at that time. He was allegedly given a blow by the appellant with his 'khukhri' on the right side of his face below the eye starting from rear of the nose extending right up to the lobe of the ear. When he looked back, another blow was hurled on him resulting in causing a cut injury on his right elbow horizontally. With a view to snatch the said khukhri from the hand of the appellant, the informant sustained injuries in his hands. Hearing the noise, PW4 and PW5, together with other two constables, arrived at the spot running and overpowered the appellant. The injured snatched the khukhri from his hand. He was, thereafter, shifted to the room of the upper floor of the building. The appellant was said to have been detained in the office room. There was a small hospital at a place known as Shansha, which was situated at a distance of 3 to 4 kms. from Jahlama. A doctor from the said hospital was summoned through a constable who reached the police post at about 12.00 O'clock in the night. The wounds of the injured were stitched. The Pradhan of the village was said to have been summoned. The said incident was recorded in the Daily Diary and PW4 \026 Devi Singh took the

same to the District Headquarter situated at Keylong, which is said to be situated at about 26 kms. away from Jahlama. The Investigating Officer, PW9\026Shobha Ram, visited Jahlama on the night of 8/9th May, 1988 and started investigation. On the next morning, the injured was sent to the Hospital at Shansha. He was thereafter referred to the District Hospital at Keylong.

Upon completion of the investigation, a charge-sheet was filed under Section 307 of the Indian Penal Code.

The injuries sustained by PW1 are as under:

1. An incised wound oblique in direction from inner corner of right eye extending to below right ear. Size 15 cm. long 1 cm. deep = cm. wide.
2. An incised wound over right side of head from the side of forehead to upward and backward. 10 cm. long = cm. wide and = cm. deep.
3. An incised wound behind right ear obliquely placed. 4= cm. long = cm. deep and = cm. wide.
4. An incised wound over right ear. 1 cm. long and = cm. deep.
5. Incised wound between first and second finger. 7 cm. long = cm. long 1 cm. deep 1= inch long.
6. 1 cm. long incised wound, = cm. deep at the base of left thumb. 1= cm. long, = cm. deep incised wound.
7. On the back of right shoulder there was incised wound of 2 cm. long, = cm. deep vertically placed.

The injured was examined on 9.5.1988 by PW2 \026 Dr. Namgayal.

The prosecution, in support of its case, besides examining PW1, the injured, examined the eye-witnesses to the occurrence, viz., PW4 and PW5.

Upon recording a judgment of conviction, the learned Sessions Judge sentenced the appellant to undergo 7 years' Rigorous Imprisonment and a fine of Rs.2,000/-. On an appeal made therefrom, the High Court maintained the said conviction, but, reduced the sentence from 7 years to 5 years, but imposed a fine of Rs.5,000/- upon him.

Mr. Vijay K. Mehta, learned counsel appearing on behalf of the appellant, in support of the appeal, would submit that both the learned Sessions Judge as well as the High Court committed manifest errors in arriving at a finding that the evidences of PW1, PW4 and PW5 were sufficient to arrive at a finding of guilt as against the appellant herein. According to the learned counsel, the prosecution failed to analyze the evidence in a holistic manner. It was urged that the learned courts below failed to consider the fact that independent witness, viz., Hira Lal, who was the Village Pradhan, did not support the prosecution case and was declared hostile. The prosecution furthermore did not, it was submitted, explain as to why the injured was examined by the Investigating Officer, PW9\026Shobha Ram, for the first time on 9.5.1988. It was also submitted that in view of the materials brought on records by the prosecution itself, it would appear that other independent witnesses were available in the village, but, despite the same, neither any other person in the village was examined by the Investigating Officer nor any of them were cited as prosecution witness. The genesis of the occurrence, namely, that there had been a free fight at the village of the appellant, i.e., Rape, having not been proved, the prosecution case must be held to have failed to prove the guilt of the appellant.

The learned counsel for the State, on the other hand, supported the impugned judgment.

Before advertng to the contentions raised in this appeal, we may notice certain peculiar features of the case. The fact that the appellant was resident of village Rape is not in dispute. It is furthermore not in dispute

that PW-1, ASI Harjit Ram, sustained grievous injuries. The appellant is said to have been arrested at the police post situated at Jahlama. If this Court is to believe the prosecution case, the occurrence took place after 8.30 p.m. at the police post itself. The appellant has not examined any defence witness. In fact, he has not entered into any particular defence. Why he came to the police post was not explained by him.

PW1 stated in great details as to how he had suffered injuries. The injuries suffered by him stand corroborated by medical evidence. He categorically stated that he could not even recognize the accused at the time of incident, but, according to him, he came to know later on that two groups which were reported by the accused to have been fighting, had approached him earlier in his capacity as in-charge of police force with a complaint of apprehension of breach of peace and on that basis, a proceeding under Sections 107/151 of the Criminal Procedure Code was initiated by him.

The night was dark. There was no electricity in the office. The injured and the other constables had lit candles.

It has not been disputed that the Investigating Officer was informed immediately about the occurrence on the basis whereof a First Information Report was lodged. It has furthermore not been in dispute that the Investigating Officer had to walk all the way in difficult terrain from the district headquarters to the place of occurrence and thus, he could reach there only in the night of 9th May, 1988. He categorically stated that he could not take any statement from the injured before 21.5.1988 as he was not in a position to give the sane, although he was talking.

The statement of PW1 had been corroborated in material particulars by PW4 \026 Devi Singh and PW5 Tashi Dorje. We have not been shown any material which would throw any shadow of doubt to disbelieve the statements of the said witnesses.

It may be true that PW11, the Village Pradhan, Hira Lal was called, but, that would not mean that PW4 and PW5 were bound to call other villagers also. The Village Pradhan might have been called to apprise him of the incident. PW11, the Village Pradhan, has been declared hostile, as, according to him, PW1 was lying in an injured state near the building of police station, in somewhat unconscious state. He, as would appear from his deposition, deviated from his earlier statement. Both the learned Single Judge as also the High Court opined that only because PW11, Village Pradhan, was declared hostile, the same by itself would not lead to the conclusion that the statements by the other witnesses were not to be relied upon.

The appellant interestingly gave a suggestion to the prosecution witnesses that some unknown persons had assaulted PW1 when he went across the road and meanwhile he was passing along that road, he was arrested on suspicion, which clearly establishes his presence at Jahlama.

The incident in question was recorded by PW4\026Devi Singh in the Daily Diary in great details. It had to be sent to the District Headquarters at Keylong. The Investigating Officer could come to the place of occurrence only after finishing his work, walking all the way from Keylong to Jahlama, which is also a pointer to the fact that the information to the police was given at the earliest possible opportunity.

For the reasons afore-mentioned, we do not find any merit in this appeal. The appeal is dismissed. The appellant is on bail. He is directed to surrender immediately. The trial court is directed to take steps in this behalf.