

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 553 OF 2002

State of H.P.

...Appellant

Versus

Ram Krishan

...Respondent

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the judgment of a Division Bench of the Himachal Pradesh High Court directing acquittal of the respondent. The Division Bench had disposed of two appeals, one by the accused and the other by the State, both questioning correctness of the judgment passed by learned Additional Sessions Judge, Mandi. As noted above, while the accused questioned his conviction for offence punishable under Section 302

IPC, the State's appeal was against the acquittal in respect of offences punishable under Sections 452, 427 and 323 IPC so far as Respondent Ram Krishan is concerned and also questioning acquittal of co-accused Harminder. The High Court by the impugned judgment affirmed the order of acquittal as done by the trial court while also directing acquittal of the respondent.

2. Background facts in a nutshell are as follows:

Laxmi Dutt (PW-1), resident of village Mandap in Tehsil Karsog was running a tailoring shop at the material time in village Maghundi at a distance of about one kilometer from his residential house. Manohar Lal (hereinafter referred to as the 'deceased') was his younger brother and was running a shop of general merchandise at Maghandi in the business premises of PW-1 in the morning and evening, while during the day time he used to teach students of a nearby school. On 26.11.1998 at about 7.30 p.m. when the deceased was present in his aforesaid business premises, Ram Krishan (hereinafter referred to as the 'accused') and Harmender Singh (hereafter referred to as 'the co-accused') came there while under the influence of liquor. They wanted to take more liquor at the said business

premises of the deceased. They asked the deceased to give them some eatables. The deceased, however, asked the accused persons not to take liquor in his business premises which infuriated them and as a result they quarrelled with the deceased and slapped him. The accused persons also threw the goods at the business premises of the deceased helter-skelter. When the deceased asked them not to indulge in such mischief, they asked him to get lost. Thereupon the deceased went to the houses of Pawan Kumar (PW-5) and Dogar Ram residents of village Thaltu. The deceased informed them about the acts and conduct of the accused persons and then returned to his business premises along with PW5 and Dogar Ram, who is elder brother of accused Harmender Singh. PW-5 and Dogar Ram requested the accused persons not to commit the mischief in the business premises of the deceased. However, the accused persons asked them to get lost. The deceased then went to his house and informed Laxmi Dutt (PW-1) and Karam Dass (PW 6) and other persons present in the house about the acts and conduct of the accused persons. Laxmi Dutt (PW-1), Amba Dutt (PW2), Nanak Chand (PW3) and Preen Lal came along with the deceased and reached the business premises at about 8.15 p.m. They inquired from the accused persons as to why they had picked up a quarrel with the deceased? On such enquiry, the accused persons stepped out of the

business premises of Manohar Lal (deceased), and with a stone, hit on the left side of his head and as a consequence, the deceased dropped dead at the site where he had sustained injury with stone Ext. P-1 and rolled down the hill-side upto a distance of about 50 feet. The accused persons thereafter pelted stones on the other persons present there thereby causing simple hurt to PW6 and Dogar Ram. On hearing the noise from the spot, Man Singh (PW7) also came to the place of occurrence. He asked the accused persons not to pelt stones and took them to their houses. PW-1, PW-7 and Khuba Raid went to the house of Krishna Devi (PW-4), Pardhan of the Gram Panchayat and informed her of the murder of Manohar Lal (deceased). She accompanied them to the place of occurrence and inspected the dead body of the deceased. Thereafter, PW-1, PW-4 and PW-7 went to Police Station, Karsog and lodged FIR. Ext. PW-1/A under Sections 452, 323, 427, 302/34 of the Indian Penal Code against the accused persons and the investigation in the matter followed. SHO, Harbhajan Singh, S.I. (PW-13) visited the place of occurrence and took the dead body of Manohar Lal in possession. Photographs of the dead body and the place of occurrence were taken and the developed photographs are Exts. PW-10/A-1 to PW-10/A-8. The report Marg Exts. PW-13/B and PW-13/C were prepared and the dead body was sent for post mortem examination. Stone Ext. PW 1 was also taken in

possession vide recovery memo. Ext.PW-4/1 and was sealed. Stone Ext. P2 was also taken in possession from the business premises of the deceased vide recovery memo Ext. PW-4/B. The post mortem of the dead body of the deceased was conducted by Dr. Girish (PW-14) and the post mortem report issued by him is Ext. PW-14/A. As per opinion of PW- 14, the deceased died due to the injuries to brain caused by the head injury.

Fourteen witnesses were examined to substantiate the prosecution version. PWs. 1, 2, 3, 5 & 6 were stated to be eye witnesses. The High court noticed that the injury could have been caused because of the fall and not because of the assault made by the respondent. The basis for such conclusion was that the injuries noticed on post mortem clearly revealed that there was a scope for the injuries having been sustained during the fall. It was, therefore, held that the vital injury could not have been caused by the accused Ram Krishan.

3. In support of the appeal learned counsel for the appellant submitted that the conclusions of the High Court are purely based on conjectures.

4. Learned counsel for the respondent on the other hand supported the judgment.

5. It is to be noted that there is no dispute that the deceased died out of a head injury. PWs 1, 2, 3, 5 & 6 are eye witnesses and all of them stated that the accused Ram Krishan hit the deceased on the left side of the head with the stone and he rolled down. Thus there was no material before the High Court to come to a conclusion that the death occurred due to fall. The High Court came to a peculiar finding that it might be possible that before the stone had hit the head of the deceased, he had slipped and had rolled down. There was no material on record in this regard.

6. The High Court's conclusion is that no one examined the body of the deceased before it rolled down to ascertain whether he was alive or dead. It is relevant that all the eye witnesses had stated about the assault of the head of the deceased by the accused with the stone. Injury No. 9 was described as the fatal injury. At least five of the injuries were on the head, which can be related to the assault by the stone and more particularly injury No. 9 viz. the fracture in the left temporal region. Since the High Court's order is based on surmises and conjectures, it cannot be sustained and is set aside and the order of conviction recorded by the trial court stands restored. The

respondent shall surrender to custody forthwith to serve remainder of sentence.

7. Appeal is allowed to the aforesaid extent.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(Dr. MUKUNDAKAM SHARMA)

New Delhi,
January 12, 2009_