

CASE NO.:
Appeal (crl.) 605 of 1997

PETITIONER:
State of H.P.

RESPONDENT:
Sukhvinder Singh

DATE OF JUDGMENT: 04/02/2004

BENCH:
N.Santosh Hegde & B.P.Singh

JUDGMENT:
J U D G M E N T

SANTOSH HEGDE, J.

Respondent herein was found guilty of offences punishable under sections 302, 449 and 324 IPC by the Sessions Judge, Solan, Himachal Pradesh and was sentenced to undergo life imprisonment with a fine of Rs.10,000 for the offence under section 302, 10 years' RI with a fine of Rs.5,000 for an offence under section 449 and one year RI with a fine of Rs.4,000 under section 324. In an appeal filed by the respondent, the High Court of Himachal Pradesh, Simla, allowed the same, setting aside the conviction and sentence. It is against the said judgment of the High Court, the State of Himachal Pradesh is in appeal before us. Brief facts necessary for the disposal of this appeal are :

The respondent was originally engaged to be married to one Amarjit Kaur PW-6. For some reason or the other, said engagement was broken and she was married to Ranjit Singh PW-2 who is the younger brother of Respondent No.2. This was about 7 years prior to the date of the incident which was on the night of 27.9.1994. Prosecution alleges that being angered by the fact that his engagement was cancelled the respondent was constantly threatening PW-6 who was residing with her husband in the same building but in another part separately from the respondent. On 27.9.1994 at about 9.30 p.m., PW-6 allegedly went to her parents' house which was situated close-by in another block and informed her father Mohan Singh PW-1 about her fear that she may be attacked by the respondent, hence PW-1, his wife (since deceased) and two sons of PW-1 PWs.3 and 5 accompanied PW-6 to her house with an intention of spending the night with their daughter. It is the case of the prosecution that PW-2 also came back from his business later in the night and joined them. Prosecution further alleges sometime later the respondent entered the house of PW-2, armed with a dagger, and picked up a fight with PW-1 during which fight he stabbed PW-1 on his thigh who then became unconscious. Thereafter, he allegedly stabbed the wife of PW-1 on the chest and escaped from the place when PW-1's sons PWs.3 and 5 tried to intervene in the fight. Prosecution alleges that Mohinder Kaur died on the spot and PW-1 was taken to the hospital by their children where the doctor informed the jurisdictional Police about the incident in question, and PW-10 the I.O. went to the hospital, recorded the statement and a case was registered for offences, as stated above.

In support of its case the prosecution has relied upon the evidence of PWs.1, 3, 5 & 6 as eye-witnesses. Out of them PW-

2 did not support the prosecution case as he turned hostile. The trial court accepted the evidence led by the prosecution and convicted the respondent, as stated above, and in appeal the High Court noticed certain serious discrepancies and contradictions in the evidence of the prosecution, hence, it thought it not safe to rely on the prosecution case to base a conviction. Accordingly, set aside the conviction and sentence imposed on the respondent.

Mr. J.S. Attri, learned counsel appearing for the appellant-State, contended that the contradictions noticed by the High Court in the prosecution evidence are minor in nature and the same have been considered by the trial court which felt that these short comings in the prosecution case would not, in any manner, weaken the prosecution case. He further contended in that background the High Court erred in allowing the appeal solely on the basis of the said discrepancies or contradictions. The learned counsel has taken us through the evidence in the case as also the judgments of the two courts below. In our opinion, there is lot of doubt surrounding the prosecution case from the very beginning itself as noticed by the High Court. PW-10, the I.O. in his evidence clearly states that he received a telephonic message from the doctor in the hospital, hence, he went to the hospital where he recorded the statement of PW-1 which is now treated as an FIR in this case; whereas PWs.3 and 5, the sons of the deceased, unequivocally state that they went to the Police Station and lodged a complaint there. Nextly, it is seen that there is also contradiction in the evidence of PW-1 and 5 in regard to their going to the house of PW-6. While PW-1 states that he along with his wife and sons went along with PW-6 to her house on the date of the incident, PW-5 clearly states that he was staying for the past one week before the incident in the house of PW-6. We also notice from the evidence of PW-10 that when he visited the place of incident, he noticed a blood-stained dagger lying on the floor of the house which he did not bother to recover. According to this I.O., the dagger in question was recovered at about 8 a.m. the next day in the presence of Panch witnesses but from the evidence of PW-5, it is seen that the I.O. had recovered the dagger from the place of incident on the very day of the incident itself. There is also considerable doubt as to the genuineness of evidence given by PW-6 who attested the seizure of the dagger. He states that he stays far away from the place of the incident and when he heard about the incident in question, next morning he visited the house of PW-2 and when he reached there, a number of people had already gathered there and Police with the I.O. was also there. If that be the case, we do not find any reason whatsoever why the I.O. had to wait for PW-6 to come before making seizure of the dagger which he had noticed the previous night itself.

The respondent has come forward with the case that since the marriage of PW-6 with PW-2 had been solemnised nearly 7 years earlier, there was no question of his entertaining any malice in regard to the same as against PW-6; more so because of the fact that she was married to his own brother. The suggestion made in the cross examination and his statement recorded under Section 313 of Cr.P.C. shows that he was also present when PW-5 went to the Police Station which is supported by the evidence of PW-5. But surprisingly PW-10 had in his evidence stated that the respondent never came to the Police Station. All these contradictions give us an impression that the prosecution has not come out with the truth.

The High Court having considered the above

contradictions and omissions came to the conclusion that they are very serious ones casting doubt on the prosecution case. We find no reason to disagree with this finding of the High Court. For the reasons stated above, this appeal fails and the same is hereby dismissed.

JUDIS