

Gian Chand vs The State Of Himachal Pradesh on 18 May, 2023

Author: Rajesh Bindal

Bench: Abhay S. Oka, Rajesh Bindal

Criminal Appeal No. 282 of 2011

[NON-REPORTABLE]

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 282 of 2011

Gian Chand

...Appellant

Versus

State of Himachal Pradesh

...Respondent

JUDGMENT

Rajesh Bindal, J.

1. Judgment of the High Court of Himachal Pradesh dated 21.6.2010 passed in Criminal Appeal No. 292/1998 has been challenged by the appellant who has been convicted under Section 304 Part II, IPC and sentenced to undergo imprisonment for a period of four years and to pay a fine of 1000/- with default sentence of six months. The Judgment of acquittal of the Trial Court was reversed.

2. The case of the prosecution was that on 15.9.1992 at 9.00 a.m., the complainant Mohar Singh, PW-1, a member of Criminal Appeal No. 282 of 2011 Gram Panchayat, Karar accompanied by Khyali Ram, PW-6, Pradhan of the said Gram Panchayat lodged a daily diary report with the police post Anni, District Kullu stating that at about 7.00 p.m. on 14.9.1992, after hearing noise when they came out, they saw a verbal duel between Gian Chand, the appellant, Mohar Lal, Ranjit and Ghum Dassi on the one hand and Salig Ram, the deceased, on the other hand. The accused Mohar Lal was carrying danda and other accused were carrying thick branches of Rai. After verbal altercation continued for some time, Gian Chand, Mohar Lal and Ranjit attacked the deceased Salig Ram with danda as a result of which he died and they fled from the spot. FIR came to be registered. The

prosecution produced fifteen witnesses whereas in defence, the appellant produced Amar Singh, DW-1. The Trial Court after appreciating the evidence, acquitted the accused. However, in appeal by the State, the judgment of the Trial Court was reversed and the appellant was convicted under Section 304 Part II, IPC. It is this order which is under challenge in the present appeal.

3. Learned counsel for the appellant submitted that there are discrepancies in the evidence led by the prosecution. On the basis of the statement of the eyewitnesses, the Criminal Appeal No. 282 of 2011 appellant could not be convicted. Well-reasoned judgment of the Trial Court has been reversed though the view taken was possible. Admittedly, there was a land dispute between the parties. The evidence led by the appellant in defence in the form of statement of Amar Singh, who appeared as DW-1 was not considered at all. He was an independent witness, though relative of both, the appellant as well as the deceased. He clearly stated that the deceased died on account of fall from the danga, which was 10-12 feet high. He further submitted that it is a case where the incident took place way back in the year 1992. More than three decades have passed by. Families have also settled in their lives. The matter may be considered in that light as well.

4. On the other hand, learned counsel for the respondent State submitted that the arguments sought to be raised by the appellant are not tenable at all. Despite minor discrepancies in the evidence led by the prosecution in the form of eye witnesses PWs 1 to 5, who had withstood the cross-examination, all have categorically testified that danda blow was given by Gian Chand on the head of Salig Ram after which he died almost instantaneously. The plea raised by the Criminal Appeal No. 282 of 2011 appellant in defence was not tenable as the same was not supported by the medical evidence.

5. Heard learned counsel for the parties and perused the paper book and the relevant record.

6. The prosecution produced fifteen witnesses. In his statement, Mohar Singh, PW-1 clearly stated that on 14.9.1992 about 7 p.m., he saw a scuffle between the deceased and the accused. There was some dispute regarding the allotment of nautor as on one side land was allotted to the deceased and on the other side, it was allotted to the appellant. PW-1 went back to his house. However, hearing the loud noise again, he came back and saw Gian Chand and Mohar Lal with dandas in their hands giving blow on the head of the deceased Salig Ram who died at the spot. On the next day, he had gone to the police station to report the matter. The police had taken into possession clothes and dandas. He was an independent witness.

7. The first ground of acquittal taken by the Trial Court is the variance between the two versions stated by PW-1, Mohar Singh. In the DDR dated 15.9.1992, he mentioned the danda blow was inflicted by accused, Mohar Lal and a blow by Criminal Appeal No. 282 of 2011 branch was given by the appellant. However, as per his supplementary statement recorded under Section 161 CrPC dated 15.9.1992, he corrected his previous statement whereby he said that Gian Chand, the appellant was the one who had inflicted the danda blow and not Mohar Lal. While deposing before the Court, he has stated that Gian Chand had given the dana blow. The Trial Court has erroneously concluded that the variance between the two versions goes to the very root of the case. It must be noted that PW-1 corrected his statement at the first available opportunity on the same day. Furthermore, appellant

Gian Chand and accused Mohar Lal are real brothers. There could be no occasion for the complainant to have changed his version in order to absolve one of the brothers and implicate the other brother, being the author of the fatal head injury suffered by the deceased. The High Court has rightly concluded that the variance appears to be on account of an inadvertent mistake. PW-2 is Paras Ram. He also stated that deceased died on account of danda blow given by the appellant. The place of occurrence and the time is fully corroborated by him as well. No dent could be pointed out from his cross-examination. PW-3 Mohan Lal also stated that Criminal Appeal No. 282 of 2011 the dispute was regarding some land, in possession of deceased Salig Ram and accused persons wanted to take forcible possession thereof. Widow of the deceased Salig Ram, Devki Devi, had also suffered injuries and is a material prosecution witness. She appeared as PW-5. She stated that the accused sought to raise dispute regarding the land which was allotted to her husband. The accused party including the appellant were trying to interfere in their peaceful possession. She also stated that her husband was beaten with danda by the accused, Gian Chand, Mohar Lal and Ranjit, thereafter she fell unconscious. She also denied in her cross examination that her husband received injuries due to fall from danga.

8. On a combined reading of the depositions made by the eye witnesses, it is clear that these do not suffer from any major contradictions. As has been noticed by the High Court, one must bear in mind that the occurrence has taken place on 14.9.1992 whereas the witnesses were making statements in the court on 11.12.1996. Since there is a gap of more than four years, minor contradictions or variations are normal. The Trial Court has erred in basing the acquittal of the accused on these immaterial inconsistencies. When factum of dispute between Criminal Appeal No. 282 of 2011 the parties was even admitted by the accused in their statement, recorded under section 313 Cr.PC.

9. As per the statement of Dr. Tejvir Singh, who appeared as PW-7, the deceased received incised looking lacerated wound 6" x 1" x 6" on the scalp above the left ear and abrasion on the right scapula. There was no fracture of skull. Dura mater was intact. Extra and subdural haemorrhage was noticed at the site of wound. Brain matter was congested in the region of wound. His opinion was that it was a case of homicide caused by blunt weapon. He had also examined Devki Devi who received lacerated wound about 1 1/2 cm x 1/2 cm x 1/2 cm on left side of forehead about 1 1/2" above outer margin of left eye. There was dark red blood clotted on the surface. The injuries inflicted upon her were opined to be simple, caused with blunt weapon. In his cross examination he stated that the injuries suffered by the deceased could be caused by a fall on hard surface. This one line stated by the doctor in his cross examination may not be of any help to demolish the case of the prosecution which finds corroboration with the eye witnesses' account.

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10. The defence version, in the form of the testimony of DW-1 does not carry any weight for the reason that when it was put to PW-1, PW-3, PW-5 and I.O. in their cross examination, all have denied that the deceased received injuries due to fall from 'thara'. In fact, stark contradiction to the defence version has been suggested. According to Gian Chand, the appellant, the deceased had died due to fall from 'thara', According to accused Mohar Lal, also fatal injuries were suffered by the deceased due to fall from a 'danga'. Further, accused Ranjit Singh has altogether shifted the venue in

this regard by mentioning that injuries have been suffered due to fall from the 'danga of the khalian'. Furthermore, DW-1 has stated "while altercating, Salig Ram moved towards a danga of the accused person from where he fell down. Meaning thereby he has further shifted the venue of the alleged fall to the house of the accused. Therefore, four different versions are coming from the side of the defence. Firstly, the deceased had died due to fall from the 'thara' of his house, secondly, from the 'danga' of his house, thirdly, from the 'danga of the khalian' and fourthly from the 'danga of the accused'. Such inherent contradictions Criminal Appeal No. 282 of 2011 cannot result in acquitting the accused. DW-1 was not an eye witness, though claimed to be one.

11. In view of the clinching evidence produced by the prosecution, in the form of independent witnesses, in our view, no error has been committed by the High Court in reversing the judgment of acquittal passed by the Trial Court. No material evidence was either misread or ignored. There is no merit in the appeal. The same is accordingly dismissed.

_____, J.

(Abhay S. Oka) _____, J.

(Rajesh Bindal) New Delhi May 18, 2023.

// NR, SS //