

The State Of Himachal Pradesh vs Naveen Kumar on 4 October, 2018

Equivalent citations: AIR ONLINE 2018 SC 728, (2018) 14 SCALE 644, (2018) 4 CRIMES 486, (2019) 107 ALLCRIC 728, (2019) 197 ALLINDCAS 107, 2019 (3) SCC (CRI) 149, AIR 2018 SC (SUPP) 2556

Author: N. V. Ramana

Bench: Mohan M. Shantanagoudar, N. V. Ramana

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 567 of 2017

STATE OF HIMACHAL PRADESH

Appellant(s)

VERSUS

NAVEEN KUMAR

Respondent(s)

JUDGMENT

N. V. RAMANA, J.

1. Heard counsels for both the parties.

2. The present appeal is preferred by the State against the impugned order dated 08.09.2009 passed by the High Court of Himachal Pradesh, Shimla, wherein the High Court while accepting the appeal preferred by the accused-Respondent, set aside the earlier order of conviction passed by the trial

court and acquitted the accused-Respondent from all charges.

3. The brief case of the prosecution necessary for the adjudication of the matter is as follows. On 10.09.1999, around eight persons including the accused-Respondent were alleged to have formed an unlawful assembly with a common object of causing deadly assault upon PW-1 Ashwani Kumar, PW-2 Ram Pal and three other deceased persons. The accused persons allegedly armed with deadly weapons such as, swords, gandasis, hockey sticks, clutch wire, etc. blocked the roads and around 9:30p.m, the victims reached the place of occurrence, the accused persons attacked them and the intended criminal act was accomplished within 3-4 minutes. The alleged persons fled the scene of crime before the injured and the deceased could raise an alarm. Thereafter, the police were informed by 9:35 p.m., through the telephone and an entry was made in the Rojnamacha, at the Police Station, regarding the aforesaid incident.

4. Thereafter, the injured persons were taken to the hospital. But, while the deceased persons, Rajiv Kumar, Raj Kumar and Santokh Singh were undergoing treatment, they succumbed to their injuries. In the meanwhile, P.W 29-ASI recorded the statement of PW-1 Ashwani Kumar. During the course of investigation, the accused persons, including the present accused-Respondent were arrested. Allegedly, the accused- Respondent made a disclosure statement, which led to the recovery of the clutch wire. After the completion of the investigation, seven more accused persons were challaned along with the present Respondent for screening the accused persons and helping them in the obstruction of evidence.

5. The trial court after relying upon the statements of two injured eye-witnesses, PW-1 Ashwani Kumar and PW-2 Ram Kumar, concluded that, the accused-Respondent along with seven others are guilty under Sections 302, 324, 323, 341, 148 read with Section 149 of the Indian Penal Code (hereinafter referred as "IPC"). Accordingly, the sessions court awarded the following sentence; Imprisonment for life and a fine of Rs.50,000/- in default of payment of fine to undergo rigorous imprisonment for a further period of two years, for offence under Section 302, read with Section 149 of the Indian Penal Code; rigorous imprisonment for three years and fine of Rs.10,000/-, in default of payment of fine to undergo rigorous imprisonment for a further period of six months, for offence under Section 324, read with Section 149 of the Indian Penal Code; rigorous imprisonment for one year and a fine of Rs.5,000/- in default of payment of fine to undergo rigorous imprisonment for a further period of two months, for offence under Section 323, read with Section 149 of the Indian Penal Code; simple imprisonment for one month and a fine of Rs.500/-, in default of payment of fine to undergo simple imprisonment for a further period of seven days, for offence under Section 341 read with Section 149 of the Indian Penal Code; and rigorous imprisonment for three years and a fine of Rs.5,000/-, in default of payment of fine to undergo rigorous imprisonment for a further period of six months, for offence under Section 148, read with Section 149 of the Indian Penal Code.

6. Aggrieved by the above order of conviction, the accused persons preferred an appeal before High Court. The High Court, upon finding lack of evidence against the accused-Respondent and four other accused persons, allowed their appeal and acquitted them, while upholding the conviction of the other two accused persons. It may be noted that, since accused no.5, Ashok Kumar passed away during the trial, the proceedings against him stands abated.

7. The State has preferred the present appeal against aforesaid order of acquittal.

8. The counsel on behalf of the appellant-State, while supporting the order of conviction passed by the Sessions Court, submitted that, this ocular version of the natural witness is supported other medical and forensic evidences, hence, the high court erred while passing the impugned order of acquittal.

9. Whereas, the counsel on behalf of the Accused-Respondent supported the order of acquittal passed by the High Court as the prosecution failed to provide conclusive evidence, so as to implicate the accused-Respondent for the commission of the alleged offence.

10. Having heard learned counsels for both the parties and after perusing the record, we find that, the Respondent was not named as one of the accused in the FIR registered at the instance of P.W 1-Ashwani Kumar. It was only in the subsequent statement under Section 161 of the CrPC, that PW1-Ashwani Kumar improved upon his earlier statement and named two more persons including the accused-Respondent herein. But, PW 1-Ashwani Kumar, failed to provide any plausible reason as to why these two persons, including the present Respondent were not named in the earlier statement, wherein he had ample opportunity to name the accused persons without any deliberation. Therefore, the High Court correctly observed that, in the such circumstances, the accused-Respondent cannot be convicted in the absence of corroboration of independent evidences to prove his involvement in the alleged crime.

11. In the present case, the counsel for the State has argued that, pursuant to the disclosure made by the accused-Respondent, a clutch wire was recovered. But it is pertinent to note here that, firstly, the alleged confessional statement was given while the accused-Respondent was in the police custody. Secondly, the fact of recovery of the clutch wire is not enough to prove the culpability of the accused-Respondent as, a clutch wire is a commonly available material in the market and there was no specific mark on the recovered clutch wire to associate it with the offence. Further, postmortem report reveals that the injuries can be attributed to Gandasis or Khukhri. Therefore, apart from the subsequent statement made of PW 1-Ashwini Kumar, there is no other evidence to prove the culpability of the accused- Respondent.

12. Having observed the above facts and circumstances, we are of the considered opinion that, the High Court has rightfully acquitted the accused-Respondent, as the case of the present respondent cannot be equated with that of the convicted accused persons. In our opinion, there exists no perversity in the judgment of the High Court. Further, in the absence of compelling reasons, this court is not keen to entertain this appeal challenging the order of acquittal.

13. The appeal is accordingly dismissed. Pending applications, if any, shall also stand disposed of.

.....J. (N. V. Ramana)J. (Mohan M. Shantanagoudar) NEW
DELHI, OCTOBER 04, 2018