

18 February 2009

CRIMINAL APPEAL NO. 330 OF 2009 (Arising out of SLP (Crl.) No. 7557 of 2008)

The Judgment was delivered by : Dr. Arijit Pasayat, J.

Leave granted.

Challenge in this appeal is to the judgment of a Division Bench of the Himachal Pradesh High Court setting aside the acquittal recorded by learned Additional Sessions Judge, Kangra, Dharamshala. Three accused persons, Bhola, Pruthu and Dharmu faced trial for alleged commission of offence punishable under Sections 302 read with 34 of the Indian Penal Code, 1860 (in short the 'IPC'). The High Court by the impugned judgment set aside the order of acquittal and directed each of the accused persons guilty of offence punishable under Section 304 Part I, IPC read with Section 34 IPC and sentenced each to undergo rigorous imprisonment for seven years and to pay a fine of Rs.5,000/-.

Background facts in a nutshell are as follows:

1. Fandi Ram (hereinafter referred to as the 'deceased') owed certain amount to Prehlad Chand (PW-10), merchant of village Boh on account of purchases made on credit. Appellant is son of PW-10. On 14.2.1992 at 8.00 a.m. the accused appellant visited house of Fandi Ram and demanded payment due to his father. Fandi Ram told Bhola that he had to take loan from the society and would make payment. Bhola who was carrying a bottle of liquor asked Fandi Ram to go to society shop after visiting the house of accused Prithu. Both of them went to the house of Prithu located in the village of Fandi Ram. All the three sat in the house and started consuming liquor in which his brother Dharmu also joined. At about 2 p.m. Singhu (PW-4) son of deceased was sent by his widow Kailasho Devi (PW-3) to see if Fandi Ram had gone to society shop. Singhu reminded his father, but all the three accused told that they would accompany him to society shop. Singhu then came and left for village Kathla and Sardair Lal (PW-5) another son of deceased went to water mill (Gharat).

At about 3.30 p.m Kailasho and her son Jagdish from their house noticed all the three accused giving fist blows to Fandi Ram near the school, located in front of their house, separated by a drain from the school. Kailasho shouted why her husband was being beaten and she accompanied by Jagdish rushed to the place of occurrence where her husband was being given a beating. Bhola accused in her presence gave a stone blow on the head of Fandi Ram and ran away. Remaining accused also hit him with the stone on the head. Jagdish (PW-2) intervened but the accused Dharmu and Prithu also gave beatings to him. The sleeve of the shirt of Jagdish got torn and one sleeve was left on the spot. Jagdish tied a cloth around the head of his father, which was bleeding due to injuries. They took Fandi Ram to the shop of Prehlad Chand (PW-10). On the way Sardari Lal (PW-5) who was coming from water mill met them. He inquired about the cause of injuries from his father. Fandi Ram told him of the accused beating him with stones with all the other accused due to the enmity of Panchayat elections. Then on the way to the shop of Prehlad Chand, Janam Singh, Nambardar (PW-6) met them who was also told by the deceased that he was beaten by the accused with stones due to Panchayat elections. Prehlad Chand was also told by the deceased that he was beaten by the accused, who then tried to get the matter compounded and settled for Rs.600/-. But accused did not agree to make payment. Thereafter in the shop of Prehlad Chand, Fandi Ram fell unconscious. On way a Compounder Desh Raj (PW -12) provided him first aid.

Fandi Ram at about 11.00 p.m. succumbed to the injuries. Further case revealed is that during night due to distance, injured could not be taken to hospital at Shahpur located at a distance of 25 Kilometers, nor police could be informed. In the morning of 15th February, 1992, Sardari Lal came to Shahpur to lodge report but when he reached village Darini, the bus had already left. Therefore, Darini informed police station Shahpur on telephone about the occurrence upon which information A.S.1. Feru Ram (PW-15) recorded Rapat Ex.P.19 and proceeded to the spot. In village of the deceased he recorded statement Ex.P-5 of Jagdish Singh (PW-2), sent the same for registration of a case. Prepared inquest report Ex. P. 2 and took Parina Ex. P. 10 vide memo Ex. P. 8 in possession. Investigation was undertaken. After completion of investigation charge sheet was filed.

Trial Court did not accept the evidence to be credible and directed acquittal. State questioned the acquittal.

The High Court found that the trial Court has over looked the evidence of the eye witnesses, more particularly, PWs 2 to 5. It was also noted that PW-10 the father of accused Bhola accepted that Kailasho Devi a

accompanied by her son and the deceased in injured condition came to his shop and on enquiry Fandi Ram and his wife informed him that he was beaten by accused Dharmu and Fundi Ram also nodded his head supporting the version of his wife. The High Court noted that the evidence clearly established that the accused persons took liquor with the deceased in the house of accused Bhola. There was election dispute. PW-10 who was Pradhan proclaimed that he did not vote for a winning party and this was the bone of contention between the accused persons and the deceased. The accused persons were also drunk. They started quarreling with the deceased and gave him a fist blow and assaulted him with some stones which was witnessed by Kailasho Devi and her son Jagdish Singh from their house. Therefore, the order of acquittal was set aside.

In support of the appeal, learned counsel for the appellant submitted that the evidence of the eye witnesses was not reliable and, therefore, the order of acquittal should not have been set aside.

Learned counsel for the State on the other hand submitted that the High Court had rightly held that in course of sudden quarrel the occurrence took place and, therefore, had convicted the accused persons in terms of Exception 4 to Section 300 IPC by altering the conviction to Section 304 Part I IPC.

It is to be noted that the accused persons pleaded that the evidence of the eye witnesses cannot be accepted as there were omissions, contradictions and discrepancies in the evidence of most of the prosecution witnesses. In the effort to false implication prosecution made introduction of PW-9 an eye witness. It is fairly settled position in law that even if there are some omissions, contradictions and discrepancies the entire evidence cannot be discarded. After exercising care and caution and sifting the evidence to separate the truth from untruth, exaggeration, embellishments and improvements the court can come to a conclusion as to whether the residual evidence is sufficient to convict the accused. (See Sohrab and Anr. V. The State of M.P. (AIR 1972 SC 2020 1972 Indlaw SC 103) and State of U.P. v. M.K. Anthony (AIR 1985 SC 48 1984 Indlaw SC 19).

In *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat* (AIR 1983 SC 753 1983 Indlaw SC 103), it was observed that undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the root of the matter and shake the basic version of the prosecution witnesses. A witness cannot be accepted to possess a photographic memory and to recall the details of an incident verbatim. Ordinarily, it so happens that a witness is overtaken by events. A witness could not have been anticipated the occurrence which very often has an element of surprise. The mental faculties cannot, therefore, be expected to be attuned to absorb all the details. Thus, minor discrepancies were bound to occur in the statement of witnesses.

The High Court has analysed the evidence in the aforesaid background and has rightly come to the conclusion that the guilt of the accused persons has been established.

The appeal is, therefore, dismissed.

Appeal dismissed