

Himachal Pradesh High Court

Harish Chander vs State Of Himachal Pradesh on 2 November, 2023

Bench: Tarlok Singh Chauhan, Ranjan Sharma

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA Criminal Appeal No.122 of 2010 .

a/w Criminal Appeal Nos. 399 and 595 of 2010.

Reserved on : 31.10.2023.

Date of decision: 02.11.2023.

1. Criminal Appeal No. 122 of 2010.

Harish Chander

.....Appellant.

Versus

State of Himachal Pradesh

.....Respondent.

2. Criminal Appeal No. 399 of 2010.

State of Himachal Pradesh

.....Appellant.

Versus

Harish Chander

.....Respondent.

3. Criminal Appeal No.595 of 2010.

State of Himachal Pradesh

.....Appellant.

Versus

Harish Chander and another

.....Respondents.

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The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge. The Hon'ble Mr. Justice Ranjan Sharma, Judge.

Whether approved for reporting?1 No For the Appellant : Mr. Ashwani Pathak, Senior Advocate with Mr. Dev Raj, Whether the reporters of the local papers may be allowed to see the Judgment?Yes Advocate, for the appellant, in Criminal Appeal No. 122 of 2010 and for the respondent(s)) in .

of 2010.

For the Respondent(s) : Mr. Yashwardhan Chauhan, Senior Additional Advocate General with Ms. Sharmila Patial, Additional Advocate General, for the respondent-State in Criminal Appeal No.122 of 2010 and for the appellant-State in Criminal Appeal Nos. 399 and 595 of 2010.

Mr. Vivek Sharma, Advocate, for r complainant-Sunil Kumar.

Tarlok Singh Chauhan, Judge Since these three appeals arise out of a single judgment passed by the learned Court below, therefore, they were taken up together for consideration and are being disposed of by a common judgment.

2. Criminal Appeal No. 122 of 2010 has been preferred by appellant Harish Chander against the judgment whereby he has been convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.10,000/- for the offence punishable under Section 307 of the Indian Penal Code (for short "IPC") and in default of payment of fine to undergo simple imprisonment for six months and further to undergo rigorous imprisonment for one year along with fine of Rs.5,000/- under Section 25(1B) of the Arms Act and in default of payment of fine to .

undergo simple imprisonment for a period of three months.

3. Criminal Appeal No. 399 of 2010 has been filed by the State for enhancement of the sentence, whereas, Criminal Appeal No. 595 of 2010 has again been filed by the State against the acquittal of accused Harish Chander and Archana Devi for the offences under Sections 452, 325, 201 readwith Section 34 IPC.

4. The case of the prosecution, in brief, is that on 20.02.2001 at about 10.25 a.m., police were telephonically informed by Dhani Devi about an incident in which a gunshot had been fired.

The police party comprising of H.C. Nand Lal, H.C. Gambhir Singh and Constable Om Parkash proceeded towards the spot in a government vehicle driven by Constable Govind Ram. They met Dhani Devi on the way and advised her to go to the hospital. The police party proceeded towards the spot and found Sunil Kumar in an injured condition. The police arranged to send Sunil Kumar to Zonal Hospital, Mandi. A telephonic call was made to the police station informing that the injured had been sent to Zonal Hospital and that some I.O. be sent to the hospital. Upon such telephonic information, ASI Rajender went to the hospital and there he recorded the statement of Sunil Kumar under Section 154 Cr.P.C., who disclosed that relations between his family and the family of Gopal

Singh, that is the accused, were strained due to land dispute. He .

further deposed that on that day at about 9.30 a.m. or 10.00 a.m., when he was returning home with a load of grass, then he saw that Gopal Singh and his son Harish Chander were dismantling the walls of his kitchen. His mother Dhani Devi was in the kitchen and while he was moving forward to enter the kitchen, Harish Chander fired a gunshot from behind resulting in an injury on his back, as a result whereof, he fell down. Harish Chander and Gopal Singh then fled away from the spot. The statement of Sunil Kumar was sent by the I.O. to the police station whereupon an FIR, on the basis of the statement, came to be registered. The I.O. also took into possession blood stained piece of cloth and a burnt paper of the cartridge.

Harish Chander produced two guns to the police. Dhani Devi was medically examined and the doctor found grievous injuries on her person. Statements of the witnesses under Section 161 Cr.P.C.

were recorded which revealed that the accused persons had trespassed into the house with preparation to commit the offence.

Harish Chander while in police custody made a disclosure statement that he could produce an empty cartridge and pursuant to such disclosure, an empty cartridge was recovered and seized by the police. On 24.02.2001, Gopal Singh was arrested. On 25.02.2001, Archana co-accused was also arrested. During the investigation, a 'danda' was produced by Gopal Singh to the police. The guns, .

cartridge etc. were sent to the Ballistic Expert. The Expert, however, found that the cartridge in question was not fired from either of the guns. Police prepared the challan and presented the same to the Court which committed the case for trial.

5. All the three accused were charged with offences under Sections 307, 452, and 325 IPC. Accused Harish Chander was additionally charged with offence under Section 25 read with Section 27 of the Arms Act. Later on, he was also charged with the offence under Section 201 IPC.

6. Prosecution examined as many as 22 witnesses.

Thereafter, the accused persons were examined under Section 313 Cr.P.C. Their defence was that due to a land dispute, relations between the parties were inimical and claimed that a false case had been foisted on them. Rather, it was accused Gopal Singh, who was mercilessly beaten up by the complainant party. Be it stated that a cross FIR was also lodged by the accused persons, who examined two witnesses in defence.

7. The learned Court below after recording evidence and evaluating the same acquitted accused Harish Chander and Archana Devi, whereas, accused Harish Chander was convicted for the offence under Section 307 IPC and Section 25 (1B) of the Arms Act.

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8. It is vehemently argued by Shri Ashwani Pathak, learned Senior Advocate assisted by Shri Dev Raj Advocate that once the Ballistic Expert had clearly opined that the cartridge had not been fired from either of the two guns that were taken into possession by the police during the course of the investigation, then his client could not have been convicted under Section 307 IPC or for that matter under any other Sections of the IPC. Whereas, Shri Yashwardhan Chauhan, learned Senior Additional Advocate General and Shri Vivek Sharma, learned counsel for the complainant, who was permitted to assist the learned Senior Additional Advocate General, would vehemently argue, assuming that the recovery of the weapon used is not established or proved, then the same cannot be a ground to acquit the accused when there is direct evidence of the eye witnesses. Recovery of the weapon used in the commission of offence is not a sine-qua-non to convict the accused, more particularly, when there is a direct evidence in the form of four eye witnesses, then in the absence of recovery of weapon of offence, the accused can still be convicted.

9. Since, the State has filed the instant appeals being Criminal Appeal No. 399 of 2010 and 595 of 2010 for enhancement of the sentence and against the acquittal of the co-accused, therefore, this Court is required to go into the entire gamut of the .

case.

10. The learned Court below has correctly framed the following points for determination:

"1. Whether the prosecution has proved that the accused persons in furtherance of common intention trespassed into the dwelling house of Kishan Singh after having made preparations for causing hurt?

2. Whether the prosecution has proved that in furtherance of the common intention of all, accused Harish Chander fired the gun at Sunil Kumar with such intention or knowledge and under such circumstances that if by that act death was caused, they would have been guilty of murder?

3. Whether prosecution has proved that the accused persons in furtherance of their common intention caused grievous hurt to Smt. Dhani Devi?

4. Whether prosecution has proved that the accused Harish Chander carried gun of his father besides his own gun and used the gun for unlawful purpose?

5. Whether prosecution has proved that accused Harish Chander knowing that an offence under Section 307 IPC had been committed, caused dis-appearance of such offence?"

"1. Whether the prosecution has proved that the accused persons in furtherance of common intention trespassed into the dwelling house of .

Kishan Singh after having made preparations for causing hurt?

11. Admittedly, there were only four witnesses of the occurrence. Out of them, PW-13 and PW-14 are the witnesses of the whole occurrence, whereas, PW-1 and PW-3 are witnesses of the part of the occurrence only. PW-3 witnessed the earlier part of the incident, whereas, PW-1 witnessed the so-called later part of the incident.

12. As per PW-1 Sunil Kumar, on 20.02.2001 at about 9.30/10.00 a.m., when he was returning from his fields with a load of grass and had reached near the cowshed, he then saw accused Gopal Singh, Harish Chander and Archana damaging the walls of his kitchen. However, he did not state that they were inside the kitchen. He further stated that his mother was near the door of the kitchen and when he tried to enter the kitchen, at that moment, Harish Chaner fired at him. Nowhere has this witness stated that Harish Chander had fired after entering the kitchen or after entering any other part of the dwelling house. The learned Court below has rightly concluded that common intention to trespass into the dwelling house has not been established in his testimony.

13. It needs to be noticed that it was on the basis of statement of PW-1 under Section 154 Cr.P.C. Ext. PW-1/A that an .

FIR came to be lodged and in that statement, there is no mention of Archana being at the spot what to talk of her entering the dwelling house.

14. PW-3 Prabhu Ram stated that he had gone to the house of the complainant party to collect his wages and one Phamphi Ram (PW-14) was also with him. He stated that while he and Phamphi Ram were there, they saw accused Gopal Singh coming there, who in turn, asked both of them i.e. witnesses Prabhu Ram and Phamphi Ram to leave the place. Gopal Singh was having a 'danda' in his hand. The witness further stated that due to fear, he left the place. While leaving the place, he saw Harish Chander at the spot, who was carrying two guns in his hands. Even this witness did not state about the entry of the accused into the house of the complainant. What would further be noticed is that even this witness did not make a mention of the presence of Archana at the spot.

15. PW-13 Dhani Devi is the mother of Sunil Kumar. She stated that her sons Sunil Kumar and Naveen were away to fetch grass at the time when Prabhu Ram and Phamphi Ram had come to their house to collect their wages. She further stated that accused Gopal Singh had come there with a 'danda' and asked Prabhu Ram and Phamphi Ram as to why they had come there and asked them to leave. Gopal Singh started advancing threats and also hurled .

abuses at her. Gopal Singh then called his son Harish Chander and daughter Archana, who came there and at that time Archana was having stick while Harish Chander had two guns and on seeing them, Prabhu Ram left. The witness further stated that out of fear, she entered her house. Gopal Singh also entered the house and had a scuffle with her. Pamphi Ram entered the house and tried to rescue Dhani Devi but he was given a push by the accused Gopal Singh. Dhani Devi neither stated about the entry of accused Archana nor Harish Chander into their house and only made a mention of Gopal Singh, who unfortunately is no more in the land of living.

16. Now the entire case of the prosecution rests on the testimony of PW-14 Phamphi Ram, who stated that he and Prabhu Ram had gone to the house of Dhani Devi to collect wages. Gopal Singh came there with a stick and started advancing threats to them as also Dhani Devi. He further stated that thereafter Gopal entered the verandah of Dhani Devi and gave beating to her. He further stated that he went inside the house to save Dhani Devi from Gopal Singh but he was pushed away, and as a result whereof, he fell down. He came out and saw that Prabhu Ram had left. The witness also stated that he saw Archana and Harish Chander coming with stick and guns. But, then again he did not state either about Harish .

Chander or for that matter Archana having entered the house.

17. On the basis of the aforesaid evidence, no fault can be found in the findings of the learned Court below when it negates the plea of trespass against Harish Chander and Archana.

2. Whether prosecution has proved that in furtherance of common intention of all, accused Harish Chander fired gun at Sunil Kumar with such intention or knowledge and under such circumstances that if by that act death was caused, they would have been guilty of murder?

18. As per the prosecution case, accused Harish Chander came at the site of occurrence with two guns and fired from one of them at Sunil Kumar causing injuries to him on his back, right hand and arm. However, as observed above, the opinion rendered by the Ballistic Expert does not support the case of the prosecution as it has been categorically found by the Ballistic Expert that the cartridge recovered in this case had not been fired by either of the guns.

19. Learned Senior Additional Advocate General and learned counsel for the complainant would argue that since there was overwhelming evidence of the eyewitnesses regarding fire of the gunshot, therefore, the mere fact that the opinion of the Ballistic Expert does not support the case of the prosecution is of no avail because if there is direct evidence in the form of eyewitnesses, then even, in the absence of recovery of weapon and non-examination of .

Ballistic Expert, the accused can be convicted.

20. Strong reliance is placed on the recent judgment of the Hon'ble Supreme Court in State Through the Inspector of Police versus Laly alias Manikandan and another Etc. AIR 2022 SC 5034, more particularly, the observations contained in para-7 thereof, which reads as under:

"7. The submission on behalf of the accused that as the original informant - Mahendran has not been examined and that the other independent witnesses have not been examined and that the recovery of the weapon has not been proved and there is serious doubt about the timing and place of the incident, the accused are to be acquitted cannot be accepted. Merely because the original complainant is not examined cannot be a ground to discard the deposition of PW1. As observed hereinabove, PW1 is the eyewitness to the occurrence at both places. Similarly, assuming that the recovery of the weapon used is not established or proved also

cannot be a ground to acquit the accused when there is direct evidence of the eyewitness. Recovery of the weapon used in the commission of the offence is not a sine qua non to convict the accused. If there is direct evidence in the form of an eye witness, even in the absence of recovery of the weapon, the accused can be convicted. Similarly, even in the case of some contradictions concerning the timing of lodging the FIR/complaint cannot be a ground to acquit the accused when the prosecution case is based upon the deposition of an eye witness."

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21. It needs to be noticed that the learned Court below while convicting the accused Harish Chander has observed that all the witnesses of the occurrence have stated in one voice that it was accused Harish Chander, who had fired a gunshot and there can be a possibility of the accused holding some other gun and producing some other gun to the police. However, the learned Court below completely erred and was totally unmindful of the fact that he was dealing with a criminal case where offence has to be proved beyond reasonable doubt as against preponderance of probabilities. The learned Court below was totally oblivious of the fact that it was the prosecution witnesses themselves that had disputed the guns exhibited in this case to be the same that were being held and thereafter allegedly used by Harish Chander to fire the gunshot.

22. PW-1 in his deposition (after the parcel had been opened) stated as under:

"guns Exts. P6 and P7 are also the same which the accused persons were carrying at the time of incident."

Whereas, PW-3 Prabhu Ram stated as follows:

"When I was leaving the place, I noticed accused Harish Chander, present in the court, coming with two guns in his hand."

23. Now adverting to the testimony of Dhani Devi, mother of Sunil Kumar (PW-1), she in her statement has categorically stated .

as follows:

"guns Exts. P6 and P7 contained in the parcel are the same which were with accused Harish."

The other so-called eye witness PW-14 Phamphi Ram could not identify the guns and stated as follows:

"I am not in a position to identify the stick Ext. P8 and guns Ext. P6 and P7 as enough time has elapsed."

24. Once, the complainant party itself did not dispute the guns allegedly to have been used in the commission of the offence, then we really fail to understand how the learned Court below could have carved out an entirely different case from the one set up by the prosecution to convict accused Harish Chander.

25. As regards the judgment of the Hon'ble Supreme Court in Laly alias Manikandan's case (supra), obviously, there can be no quarrel with the same. However, it would be noticed that in that case there was no recovery of the weapon of offence. Whereas, in the present case, not only the recovery of weapon but its alleged use has been sought to be established by the prosecution and as per the prosecution's case these alone were very two guns that were used in the commission of the offence. But, unfortunately, the oral testimonies of these witnesses are completely demolished by the scientific evidence.

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26. We are not oblivious that where the Court finds the witnesses to be reliable and trustworthy, the evidence of eyewitnesses gets corroboration from other corroborating witnesses including seizure witnesses and doctor, Ballistic Expert, the conviction still can be based even when there is no recovery of weapon of attack because it would be too much to expect production of corpus delicti in each and every case and non-production or recovery would not in all cases be fatal to the prosecution and would depend upon the facts and circumstances of each case.

27. However, it needs to be emphasized that in cases where the injuries are caused by firearms, the opinion of the Ballistic Expert is of considerable importance especially where both firearm and crime cartridge, as in the instant case, are recovered during the investigation to connect the accused with the crime.

28. We are also not unmindful of the fact that here the entire case of the prosecution hinges upon the testimonies of near, relations of the victim, who may be interested in securing the conviction of the accused persons and, therefore, their testimonies have to be examined and analyzed with utmost care and caution and it is only if their testimonies are found to be truthful and worthy of credence, then the plea of guilt can be answered without looking for anything more.

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29. Here, it would be noticed that the testimony of PW-3, who is supposed to be a labourer, is hardly of any avail. As regards evidence of Phamphi Ram (PW-14), he is a witness of the complainant in the civil case and his testimony otherwise does not inspire much confidence regarding his presence at the spot because instead of fleeing away from the spot he would state that he had gone to the second storey of the house which is highly improbable.

30. Apart from the above, it needs to be noticed that it is the specific case of the prosecution as has come out in the testimony of PW-13 that accused Harish had fired a gunshot at Sunil from a range of about 15 feet. If that be so, we really wonder how the gunshot would not have proved to be fatal

having been fired from such a close distance and why and how only superficial injuries were found on the person of injured Sunil Kumar.

31. This assumes importance because it is the case of the defence that it was the brother of Sunil, namely Naveen (who could have been the best witness but was not examined) who was holding a gun and it was this gun which was fired accidentally and it was for this precise reason that Dhani Devi while imparting information entered at Sr. No.15 of the 'Roznamcha' Ext. PW-11/B had only intimated regarding the fire incident having taken place without naming Harish Chander. If at all, Harish had fired, we really wonder .

why Dhani Devi would not have explicitly and categorically named him rather than making a simple reference to a gunshot being fired.

32. This further assumes importance because while hearing arguments, we ourselves had called for the production of the case property and after seeing the same, we had recorded in order dated 17.10.2023 as follows:

"HHC Dalip Singh, P.S. Sadar, Mandi, has produced Ext. P-

11, bearing three seal impressions of seal 'N', which are found to be intact. The parcel has been opened in the open Court.

The Ext. P-11, which according to the prosecution, are remnants of the burnt cartridge, but having perused the same, they are parts of the cartridge which are not found to be burnt. The Ext. P-11 is ordered to be re-sealed with one Court seal.

The case property produced in the Court is ordered to be returned.

As prayed for, list on 31.10.2023."

33. Thus, the prosecution has miserably failed to prove that in furtherance of common intention of all, accused Harish Chander fired a gunshot at Sunil Kumar with such intention or knowledge and under such circumstances that if by that act death was caused, they would have been guilty of murder.

3. Whether prosecution has proved that the accused persons in furtherance of their common intention caused grievous hurt to Smt. Dhani Devi?

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34. In order to establish its case of proving the injuries on the person of Dhani Devi, it is her testimony which alone is most material. In her deposition, she stated that Gopal Singh had first come to the spot and was having a 'danda' in his hand. She did not state that she was given beatings with that 'danda', Rather, in the cross-examination, she categorically stated that no beatings were

given to her by Gopal Singh because Phamphi Ram had intervened.

She nowhere has deposed in her testimony that Harish Chander had given any beatings to her.

35. According to this witness, it was Archana, who had given blows with stick on her hands and other parts of the body. But, then she is contradicted by Phamphi Ram, who in his deposition stated that the beatings were given with 'danda' by Gopal Singh.

Phamphi Ram further stated that there was a scuffle between Dhani Devi and Gopal Singh which continued for about 30-45 minutes. In such circumstances, the learned Court below was right in observing that now Gopal Singh is dead, the possibility of Dhani Devi to rope in and fasten the liability on Archana could not be ruled out.

36. Even otherwise, the injuries on the person of Dhani Devi were found to have been caused by a blunt weapon. In cross-

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examination, PW-8 doctor Renu Behl stated that the injuries were possible in a chase and by fall. Therefore, it is not necessary to assume that the injuries found on her person were infact caused by a 'danda' only. This assumes importance because even the accused party too had sustained injuries which have gone unexplained. This is evidently clear from the medical examination of Archana which was conducted on the same day as that of Dhani Devi. This medical examination like in the case of Dhani Devi was also got done by the police. Gopal Singh was also medically examined. Their MLCs are Exts. DC and DE, respectively. The case of the defence is that the complainant party had given beatings to Gopal Singh and Archana and an FIR regarding this incident Ext.

DD had been lodged. The I.O. in his cross-examination had admitted that Archana and Gopal Singh remained admitted in hospital for two days. Therefore, in such circumstances, the learned Court below has rightly observed that the injuries on the person of the accused should have been explained and, if not explained, the accused persons can definitely plead that the injuries on the person of the complainant were caused in self-defence.

4. Whether prosecution has proved that the accused Harish Chander carried gun of his father besides his own gun and used the gun for unlawful .

purpose?

37. It has come in the evidence that Harish was carrying two guns at the time of occurrence and it is for this precise reason that two guns were taken into possession during the investigation. It is further not in dispute that the licence of one of the guns was in the name of Harish Chander, whereas, the other was in the name of his father Gopal Singh. So, accused Harish Chander could not have carried more than one gun and was found carrying two guns with himself and the one was without licence, in such circumstances, the learned Court below has rightly convicted the accused

Harish Chander under Section 25(1B) of the Arms Act for which there is already prosecution sanction Ext. PW-7/A.

5. Whether prosecution has proved that accused Harish Chander knowing that an offence under Section 307 IPC had been committed, caused disappearance of such offence?"

38. The case of the prosecution is that after firing a gunshot, accused Harish Chander had hid the empty cartridge in bushes and thereby he tried to destroy the evidence of the offence committed by him. But, recovery of the empty cartridge from bushes vide recovery memo Ext. PW-14/A of which Phamphi Ram and Daya Ram were witnesses has been found to be doubtful by the learned Court below. The reason being that Tek Chand (PW-4), who .

is a witness of the disclosure statement Ext. PW-4/A, in his cross-

examination, stated that he did not know when his signatures were obtained and when the signatures of Harish Chander were taken on the memo Ext. PW-4/A thereby making the disclosure statement itself doubtful and consequential recovery also doubtful.

39. The learned Court below has rightly observed that accused Harish Chander cannot be convicted for destroying evidence of offence committed by himself as Section 201 IPC applies to a person, who tries to screen the principal or actual offender and not a person causing disappearance of his own crime.

40. A Division Bench of this Court in Tej Singh versus State of Himachal Pradesh 2000 (3) SLC 82 observed as under:

"26. The learned Sessions Judge also convicted the accused under Section 201 IPC on the ground that the accused remained present on the spot after the occurrence and when the other persons gathered at the spot, left the place due to fear, the dead bodies of Baba Gian Chand and Baba Bhaghot were left unattended by the persons near the grave but when the Police, reached the spot and noticed that the dead bodies of both Babas were not found there and that grave had been covered with soil, the Police sought the permission of Sub Divisional Magistrate, Chamba (PW-

14) to dig out the grave and after doing so, the bodies of both Babas were found buried inside the grave and individually this was found strong circumstance against the .

accused to infer that two dead bodies of Babas were buried by the accused and on the basis of this circumstance, the accused was held guilty under Section 201 IPC.

27. We are not inclined to accept the said reasoning of the learned Sessions Judge holding the accused guilty of the offence under Section 201 IPC. This can be one of the additional circumstance in the link of the circumstances relied upon by the

prosecution and accepted by the learned Sessions Judge in his order of conviction passed against the accused under Section 302 IPC, but the accused cannot be held guilty for the commission of the offence under Section 201 IPC. Section 201 reads as under:

"201. Causing disappearance of evidence of offence, or giving false information to screen offender.?"

Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false."

28. From the bare reading of the provisions of Section 201 IPC, it makes clear that the provisions will apply in the case of the accused who wanted to cause disappearance of the evidence of offence committed by some other person or caused any offence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false and thus this Section will not apply to the person who is an accused himself of the crime.

Therefore, the learned Sessions Judge has erroneously held the accused guilty under Section 201 IPC and his .

conviction and sentence under Section 201 IPC shall stand accordingly set aside. The fine imposed upon the accused under Section 201 IPC if deposited by him shall be refunded to him."

41. On a reappraisal and reassessment of the entire evidence on record and for the reasons stated above, we find that the learned Court below has erred in convicting the accused Harish Chander under Section 307 IPC and to that extent, the findings are set aside. Rest of the findings regarding the acquittal of accused Archana and Harish Chander for the other offences are fully justified and, therefore, warrant no interference.

42. Consequently, both the appeals filed by the State being Criminal Appeal No. 399 of 2010 titled State of Himachal Pradesh vs. Harish Chander and Criminal Appeal No.595 of 2010 titled State of Himachal Pradesh vs. Harish Chander and another are dismissed and Criminal Appeal No. 122 of 2010 titled Harish Chander vs. State of Himachal Pradesh is partly allowed by setting aside conviction and sentence for the commission of offence under Section 307 IPC.

43. As regards the offence under Section 25(1B) of the Arms Act, we find from the records that the incident is alleged to have taken place more than 22 years back on 20.02.2001.

Therefore, we deem it appropriate to modify the sentence imposed .

by the learned Court below to the period already undergone and by increasing the fine amount from Rs. 5,000/- to Rs.15,000/- and in default of payment of fine, the accused Harish Chander to undergo simple imprisonment for a period of one month. Ordered accordingly.

44. Pending application(s), if any, also stands disposed of.

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(Tarlok Singh Chauhan)
Judge

(Ranjan Sharma)
Judge

2nd November, 2023.

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