

CRIMINAL APPEAL NO. 1853 OF 2008

JOGINDER SINGH .. Appellant

VERSUS

STATE OF H.P. .. Respondent

O R D E R

1. This appeal has been preferred against the judgment and order dated 14th March, 2007 of the High Court of Himachal Pradesh at Shimla in Criminal Appeal No. 241 of 2006 by which it has dismissed the appeal preferred by the appellant against the judgment and order dated 24.7.2006 passed by the Addl. Sessions, Judge, Solan convicting him under Section 307/34 of the Indian Penal Code, 1860 (hereinafter called "IPC") and awarding punishment of 7 years R.I. with fine.

2. Facts and circumstances which rise to this case are as under:

A. That the appellant along with co-accused Rajesh Kumar had been charged under Section 307/34 IPC for causing injuries with iron-rod and danda on Gopal Singh (PW.6). Before the trial Court, 17 witnesses were examined to substantiate the allegations made against

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the accused persons.

B. Sunil Kumar (PW.1) deposed that on 11.5.2005 at about 10.30 p.m., he was present in the field along with Raman Kumar (PW.2) for irrigating his fields and thereafter both these persons came to the tea stall of

Bish Ram (PW.3) where Gopal Singh (PW.6) was present.

Both the accused persons Rajesh Kumar and Jogender Singh alongwith one Nittu, the brother of accused

Rajesh Kumar dragged Gopal Singh (PW.6) from the tea stall and beat him with danda and iron rod on his head.

Resultantly, Gopal Singh (PW.6) sustained injuries on his head and other parts of the body including arms and became unconscious at the spot.

C. Other persons including Kuldip Singh came on

the spot on hearing the noise and accused persons managed to escape from the spot. On the information

furnished by Kuldip Singh telephonically, police arrived at the place of occurrence and it recorded his statement and thus, the FIR was lodged.

D. Raman Kumar (PW.2) had been present alongwith Sunil Kumar (PW.1) and he has supported the prosecution case narrating similar facts like Sunil Kumar (PW.1).

Bish Ram (PW.3), the owner of the tea stall has also supported the case of the prosecution giving the similar narrations. Gopal Singh (PW.6) injured, who has virtually become crippled after the incident as he

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lost his ability of speaking and even power of writing was examined by the Court in question and answer form in writing. He replied to the questions in writing in his own hand and also clearly stated that the accused persons gave him several beatings by weapon of offence, i.e., by the iron rod and danda with the result that he sustained multiple simple and grievous injuries on his head and other parts of the body. The intention of the accused persons was to commit his murder.

E. Dr. R.K. Behl (PW.4) who had examined the injured Gopal Singh (PW.6) at Zonal Hospital at Solan at first point of time issued MLC Exhibit PW 4/C and

proved the injury reports.

F. Sudhir Kumar ASI (PW.12), the investigating officer, deposed about the progress of the investigation, recovery of the iron rods and danda, recording of statement of the witnesses and about the incident which had occurred earlier with Nittu. Dr.

Navneet Singla (PW.13), Senior Resident, Neuro Surgery, PGI, Chandigarh had deposed that he had treated Gopal Singh injured at PGI, Chandigarh and issued medical case summary Exh. PW 13/A. He deposed that the laceration and head injury could be caused by blow of blunt weapon like iron rod and lathi etc.

G. In his statement under Section 313 Cr.PC, the appellant denied his involvement and he further stated that there had not been any enmity and that Gopal Singh

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sustained those injuries by fall on hard uneven surface as he was under intoxication due to excess consumption of alcohol. In defence, he also examined Kishan Chand (DW.1), who supported the version given by the accused in Section 313 Cr.PC. statement.

H. The trial Court after appreciating the entire evidence found the case of the prosecution proved beyond reasonable doubt, disbelieving Kishan Chand (DW.1) and a finding has been recorded that he was telling lies in the Court and was not the person who could be relied upon.

I. In view of the above, the trial Court convicted the appellant as well as accused Rajesh Kumar vide judgment and order dated 24.7.2006 and imposed sentence of 7 years each with a further imposition of fine of Rs. 20,000/- each for the offences punishable under Section 307 read with Section 34 IPC. In default of payment of fine, both the appellants were ordered to

further suffer simple imprisonment for one year each.

J. Aggrieved, they preferred the appeal before the High Court which has been dismissed vide impugned judgment and order.

Hence this appeal.

3. Before we deal with this appeal on merit, it may be pertinent to mention that the special leave petition filed by the co-accused Rajesh Kumar stood dismissed by this Court vide order dated 7.12.2007.

4. Mr. Qadri, learned Amicus Curiae has taken us through the judgments of the Courts below and the evidence. However, his contention had been that as the present appellant was having a danda only and injuries had been caused by iron rod, he could not have been convicted for the offences punishable under Section 307 read with Section 34 IPC. He could be given lesser punishment and his conviction may be permissible only under Section 324 IPC.

5. However, Mr. Naresh Kumar Sharma, learned counsel appearing for the State has opposed the contention. Mr. Sharma has drawn our attention to the depositions of Dr. Navneet Singla (PW.13) who had deposed that such injuries could be caused by giving blows by iron rod or lathi.

6. According to the medical report, the following injuries had been caused to Gopal Singh (PW.6):

a. lacerated wounds 6"X1"X1" on the top of scalp extending to forehead above left eye brow with irregular margin and edges were averted and fresh blood was present.

b. Lacerated wound linear shape 2"X1/2"X1/2" on left parietal area of scalp margins were irregular and fresh blood was present

c. lacerated wound 3"X1/2"X1/2" on top of scalp adjacent to the injury no. 1.

7. In view of the fact that such injury(s) could be caused by lathi also and there is nothing on record to show as what was the size of the danda used by the appellant, we do not find force in the submissions made by Mr. S. Wasim A. Qadri.

The appeal lacks merit and is accordingly dismissed.

.....J.
(Dr. B.S. CHAUHAN)

.....J.
(DIPAK MISRA)

NEW DELHI
MAY 17, 2012.

ITEM NO.105 Court No.5 SECTION IIB

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CRIMINAL APPEAL NO(s). 1853 OF 2008

JOGINDER SINGH Appellant (s)

VERSUS

STATE OF H.P. Respondent(s)

(With appln(s) for filing c/c of the Trial Ct. judgment)

Date: 17/05/2012 This Appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN
HON'BLE MR. JUSTICE DIPAK MISRA
(VACATION BENCH)

For Appellant(s) Mr. S. Wasim A. Qadri(A.C.)
Mr. Zaid Ali, Adv.

For Respondent(s)
Mr. Naresh K. Sharma,Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

(DEEPAK MANSUKHANI)

Court Master

(The signed order is placed on the file)

(M.S. NEGI)

Court Master