

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 197 of 2007

Reserved on : November 22 , 2019

Date of Decision : January 3 , 2020

State of Himachal Pradesh ...Appellant

Versus

Nirmala Devi & another ....Respondents.

Coram: The Hon'ble Mr. Justice Anoop Chitkara, Judge.

Whether approved for reporting? No.

For the appellant : Mr. Ashwani K. Sharma and Mr. Nand Lal Thakur, Additional Advocates General for the appellant-State.

For the respondent : Mr. Prashant Sharma, Advocate, for the respondents/accused. Anoop Chitkara, Judge.

Challenging the acquittal of the respondents-accused, for causing simple hurt and wrongful restraint, the appellant-State has come up before this Court seeking conviction of accused, by filing the Criminal Appeal under Section 378 of the Code of Criminal Procedure, 1973. 2. The facts apposite to adjudicate the present appeal, and to arrive at just conclusion, trace to FIR number 154 of 2002, dated 1Whether reporters of Local Papers may be allowed to see the judgment? ::: September 9, 2002, for the commission of offences punishable under Sections 451, 323 read with section 34 of the Indian Penal Code, registered in the file of Police Station Nadaun, District Hamirpur, Himachal Pradesh. The complainant Smt. Soma Devi alleged that she is a farmer. On September 8, 2002 at 6:30 p.m., she was lopping the leaves, from her compound. In the meantime, Nirmala Devi (Accused No.1), accompanied with Seema Devi (Accused No. 2), came there. Accused Seema Devi was carrying a bamboo stick. Seema Devi obstructed her from lopping the leaves, and claimed that the land belonged to her. 3. Realizing that the accused were going to beat her, she went to the corridor of her house. Standing from her corridor, she requested the accused not to enter into any quarrel with her and if the compound falls in their land, then they should go for demarcation and in demarcation if the land is found belonging to them then she would vacate her possession. However in the meantime both the accused namely Nirmala and Seema entered into the compound and started beating her with the stick. She raised cries and on hearing her shrieks, her mother-in-law Kalan Devi intervened and tried to rescue her. On this both of them gave beatings to her mother-in-law Kalan Devi also. She alleged that in the scuffle her shirt got torn off and she received injuries on her left arm, back, and 2 ::: right leg apart from chest. She further stated that her mother-in-law received injuries on her head, right arm and near right eye. She explained that she could not come to report the matter on the same day as it had gone dark, and as she could not get any

vehicle. 4. Based on this information, the police registered FIR, as mentioned above. During investigation the police prepared spot map exhibit PW-5/A. The police got conducted the medical examination of Soma Devi and Kalan Devi from BMO, Civil Hospital Nadaun, Hamirpur. Vide MLCs (Exhibits PW 6/A and 6/B), the Doctor opined the injuries to be simple in nature. The accused produced sticks which were taken into possession vide recovery memo (Ext. PW1/A). After the completion of investigation, police filed report under Section 173 (2) CrPC in the Court of Chief Judicial Magistrate, Hamirpur, in which the present respondents were arraigned as accused. 5. Vide order dated September 13, 2004, the Trial Court framed charges against both the accused under Sections 451 and 323 both read with 34 of IPC to which they pleaded not guilty and claimed trial. 6. After recording of the prosecution evidence, the trial Court put the incriminating circumstances to the accused in compliance with the provisions of Section 313 of CrPC. The accused denied all the 3 :: circumstances and claimed innocence. However accused did not lead any evidence in defence. 7. The learned JMJC, Nadaun, District Hamirpur, H.P., vide judgment dated 29.1.2007, passed in Cr. Case No. 158-II/2002 (RBT No. 143-II-2003) acquitted both the accused of all charges. It is against that judgment of acquittal the State has come up before this Court by way of the present appeal. 8. I have heard Mr. Ashwani K. Sharma and Mr. Nand Lal Thakur, learned Additional Advocates General for the appellant-State and Mr. Prashant Sharma, learned Counsel, for the respondents accused and have waded through the entire record. Analysis and Reasoning 9. Complainant, Soma Devi testified in the Court as PW-1. After reiterating the allegations she had made in the FIR, she improved her version by saying in Court that prior to this incident, twice the accused have entered into scuffle and fightings with her, and that this was the third time they gave her beatings. In cross-examination Soma Devi (PW-1), admitted that civil litigation between the parties is going on. She further admitted that at the time of the quarrel, Balwant Singh, her daughter, two sons, her mother-in-law and members of the family of accused were also present. 4 :: 10. Kalan Devi testified as PW-2. She stated that accused persons had administered beatings to her. She admitted that litigation regarding land is pending between them. She clarified that the litigation pertaining to land is pending for last three years and they are not in talking terms with the accused. She clarified that they do not even go to each other's house on marriages and on other occasions. She disputed that she had sustained injuries due to fall in the compound. 11. Balwant Singh testified as PW-3. He stated that the quarrel did not take place in his presence. On this the prosecution requested the Court to declare this witness as a hostile witness. When leading questions were put by the Public Prosecutor then he supported the case regarding recovery of bamboo stick. In cross-examination this witness admitted that on September 8, 2002, both the accused, Nirmala Devi and Seema Devi were present in his house at around 6 to 6:30 in the evening. He further clarified that Nirmala was in his house but Seema was in her own house. This witness contradicts the version of complainant and states about the absence of both the accused at the spot of occurrence. 12. The entire case depends upon the credibility of Balwant Singh (PW-3). He was the sole independent witness and had retired from Indian Army. He specifically stated that on September 8, 2002, both the accused were not present at the spot in the evening. He stated that accused Nirmala Devi was in his house and Seema Devi was in her own house. Balwant Singh (PW-3) was neighbour of both of them and there is no reason to disbelieve his evidence. 13. I have also gone through the judgment of the trial Court, which to my opinion, is a well reasoned judgment and is based on complete, correct and proper appreciation of evidence so placed on record and I find no infirmity in it. 14. In view of the above discussions, I find that there is no merit in the present appeal and hence the same is dismissed. The

judgment rendered by the learned trial Court in Cr. Case No. 158-II/2002 (RBT No. 143-II-2003), dated 29.1.2007, is affirmed. Bail bonds furnished by the accused are discharged. Registry to return the records.

(Anoop Chitkara)

Judge