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INDIRA DEVI AND ORS.

v.

STATE OF HIMACHAL PRADESH

(Criminal Appeal No. 524 of 2016)

B

JUNE 03, 2016

[DIPAK MISRA AND SHIVA KIRTI SINGH, JJ.]

C

Penal Code, 1860 – ss. 307/149 and s. 148 – Conviction under – Prosecution case that land dispute between the victim and the husband of appellant no. 1 – On the fateful day, victim beaten by appellants and two others – Gun shot injuries inflicted by husband of appellant no. 1 and axe injuries inflicted by husband of appellant no. 3 – FIR lodged by victim for offences u/s. 147/148/307 r/w s. 149 and s. 25 of Arms Act against three appellants-ladies alongwith husband of appellant no. 1 and 3 – Conviction of five charge sheeted accused u/s. 307/149 and s. 148 by the courts below – On appeal, held: Courts below should not have believed the exaggerated and contradictory deposition of the victim qua appellants – Medical evidence did not corroborate the subsequent allegations made by the victim against appellants – Trial court ignored the contradiction and subsequent development qua the three appellants as also erred in not keeping in mind that injured witness when interested must be subjected to careful scrutiny – High Court erred in not analyzing the evidence of the victim as well as the medical evidence with care and caution – Thus, appellants acquitted of all the charges by extending them benefit of doubt.

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Allowing the appeal, the Court

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HELD: 1.1 An injured witness is generally reliable is no doubt correct but even an injured witness must be subjected to careful scrutiny if circumstances and materials available on record suggest that he may have falsely implicated some innocent persons also as an after thought on account of enmity and vendetta. The trial court ignored the contradiction and subsequent development qua the three appellants and its failure to consider whether the complainant should be believed only in part qua the male accused persons and not in respect of the appellants. This approach of the trial court is clearly erroneous in law. [Paras 6, 7]

H

[572-D-F]

1.2 As per prosecution case there is no corresponding injury on the person of victim to support the allegation of assault against the appellants. Coupled with this fact the initial version also creates a serious doubt that the specific allegations against the appellants have been developed later in the course of deposition in Court. Such allegation came only from PW-1 without support from any independent witness. In such circumstances and due to lack of convincing medical evidence, the credibility of specific allegations against the appellants required serious consideration by the trial court and also by the High Court while hearing the appeal. Unfortunately for the appellants, such consideration did not take place. [Para 8] [573-B-D]

1.3 A perusal of the impugned judgment shows that the High Court did not consider the specific case of the appellants that they were merely by-standers and specific allegations against them have been added subsequently, contrary to the statement before the police. The High Court erred in not analyzing the evidence of the victim as well as the medical evidence with care and caution in the light of specific defence of the appellants that there was no reliable material and circumstances to rope them with the assault upon the victim made by the other accused persons, with the aid of Section 149 IPC. [Para 9] [573-D-F]

1.4 The courts below should not have believed the exaggerated and contradictory deposition of the victim qua the appellants in view of the fact that the parties were having land dispute from before and even then in the FIR no specific role was assigned to the appellants while specific role was assigned to two co-accused. The medical evidence also does not corroborate the subsequent allegations made by the victim against the appellants. The broad features of the case also reveal that the two male accused were allegedly having a gun and an axe in their hand and they used these weapons only to cause injuries which did not pose any danger to the life of the victim. In such circumstances the women accused could have hardly any reason to unnecessarily get involved into assault so as to cause simple injuries by fists and kicks. The conviction and sentence imposed against the appellants are set aside and are acquitted of all the charges by extending them the benefit of doubt. [Para 10] [573-G-H; 574-A-B]

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 524 of 2016.

From the Judgment and Order dated 02.01.2016 of the High Court
of Himachal Pradesh at Shimla in CRA No. 4015 of 2013.

B Naresh Kumar Tomar, Balraj Dewan, Advs. for the Appellant.

Suryanarayana Singh, Sr. Addl. AG. Ms. Pragati Neekhra, Adv.
for the Respondent.

The Judgment of the Court was delivered by

C **SHIVA KIRTI SINGH, J.** 1. All the three appellants who are
ladies were arrayed as accused alongwith Brij Lal, husband of appellant
no. 1 and Dev Raj, husband of appellant no. 3, in FIR no. 198 of 2011
lodged by victim Shriram with Police Station Ghumarwin, District Bilaspur
(Himachal Pradesh) for offences under Section 147/148/307 read with
Section 149 of the IPC and Section 25 of the Arms Act. The learned
D Additional Sessions Judge Ghumarwin, Bilaspur accepted the prosecution
case against all the five chargesheeted accused in Sessions Trial No.
10/7 of 2012 and imposed the sentence of rigorous imprisonment (RI)
for five years and a fine of Rs.5,000/- each for the offence under Section
307 read with Section 149 of the IPC. RI for six months and a fine of
E Rs.1,000/- each was also imposed on all the convicts for offence under
Section 148 of the IPC. Accused Brij Lal was further sentenced to
undergo simple imprisonment for two years along with a fine of Rs.3,000/
- for offence under Section 25 of the Arms Act. In default of payment of
finances, further substantive sentences of varying periods were also ordered
by the trial court. In appeal the High Court of Himachal Pradesh at
F Shimla by the impugned judgment and order dated 2.1.2016 passed in
Criminal Appeal No. 4015 of 2013, affirmed the conviction and sentences
as noted above and dismissed the appeal as one without any merit.

G 2. On behalf of the three appellants a common argument has
been advanced that both the Courts below failed to notice and appreciate
vital contradictions in respect of overt act alleged against the lady accused
persons, the appellants, as mentioned in the initial version of the
occurrence contained in the first information report and in the subsequent
deposition of the informant Shriram rendered during the trial. The
argument has been further elaborated by urging that had the Courts
below noticed the vital contradictions, they would have treated the
H subsequent specific allegations against the appellants as mere

exaggerations and improvements fit to be discarded in view of specific role assigned in the FIR only against the two male appellants Brij Lal and Dev Raj, own brothers of the informant. As a further corollary it has been urged that the appellants were, in all probability present merely as on-lookers and hence they did not merit conviction by holding them guilty of sharing a common object with the assailants of the victim. In other words, as per learned counsel for the appellants the Courts below have erred in fact and in law in applying Section 149 of the IPC against the appellants for convicting them for the offences allegedly committed by the two male accused persons.

3. In order to appreciate the aforesaid submissions and arguments advanced on behalf of the appellants it is not necessary to go into details of all the materials and evidence available on record. It is sufficient to notice the allegations made by the victim informant in the FIR and in his evidence recorded in the course of trial along with the injuries as proved by the medical evidence adduced by the Doctor, PW-17.

4. In the FIR recorded on the date of occurrence itself i.e. 26.12.2011 but after receiving medical treatment the informant victim disclosed that there was land dispute between him and his brother Brij Lal. It is alleged in the FIR that on the previous day two trees of Khair had fallen down and on the date of occurrence at about 8 o'clock in the morning when the informant wanted the trees to be cut into pieces, allegedly the five accused persons, Brij Lal, Dev Raj and the three appellants came at the spot and started beating him. Brij Lal was having gun which he fired at his left jaw. Dev Raj assaulted with axe at the right arm. The victim came back to home and was taken to hospital where he gave the statement to police which is contained in the FIR.

5. As PW-1, the victim Shriram deposed on 16.8.2012 in Court giving details of civil dispute/land dispute between him and his brothers. He claimed to have forbidden the accused persons from lifting the pieces of fallen trees and when his orders were ignored, he protested and resultantly suffered a gun shot injury on the left side of his face at the hands of accused Brij Lal. He was then caught by Dev Raj who gave him a kick with his right knee and as a result he fell down. Thereafter Dev Raj caused an injury on his right hand with an axe. Thereafter an obvious improvement has appeared in the deposition of the victim that appellant no. 2 Fullan Devi attacked him with a 'darat' (sharp cutting weapon) which hit on his left hand, the other two appellants also gave

A him beatings with kicks and fist blows. He has specified that blood
oozed out only from left jaw and right hand. Dev Raj allegedly run away
with the gun. In the next breath he added that Dev Raj ran away from
the spot along with the appellants. Only Brij Lal remained at the spot
and he further assaulted the victim as a result whereof he fell down.
B Since son of the victim was away from the village, his two daughters-in-
law came to the spot and took him to his house. His son came later and
took him on a vehicle to Bilaspur where he was subjected to x-ray and
some treatment and then referred to a hospital at Shimla. But before
that his statement was recorded by the police at Bilaspur.

C 6. The trial court judgment discloses that the defence confronted
the victim PW-1 with his earlier statement wherein he had not alleged
that Fullan Devi assaulted him with a 'darat'. But the trial court in para
24 of the judgment misdirected itself by confining the consideration only
to the issue as to whether the complainant who was an injured should be
relied upon or not. In view of his being an injured witness as proved by
D the Doctor, the trial court chose to place full reliance on his deposition.
The error committed by the trial court was in ignoring the contradiction
and subsequent development quo the three appellants herein and its failure
to consider whether the complainant should be believed only in part qua
the male accused persons and not in respect of the appellants. This
approach of the trial court is clearly erroneous in law.

E 7. The proposition of law that an injured witness is generally
reliable is no doubt correct but even an injured witness must be subjected
to careful scrutiny if circumstances and materials available on record
suggest that he may have falsely implicated some innocent persons also
as an after thought on account of enmity and vendetta. The trial court
F erred in not keeping this in mind.

G 8. The medical evidence of PW-17, Dr. Superiya Atwal proves
the injury on left side of the face of PW-1 to be a gun shot injury. The
second injury was an abrasion on the medial aspect of left hand, 5x1 cm
in size. The third injury was a bleeding one on the back of right hand
5x5x1/4 cm in size extending from thumb region to middle finger. The
fourth injury was again an abrasion on front of right thigh of 2x1 cm in
size. According to Doctor, the injury no. 2 could have been caused with
blunt side of 'darat', whereas injury no.3 could have been caused by an
axe. Injuries no. 2 and 4 were opined as simple in nature. In cross-
H examination the Doctor admitted that injury no. 2 was possible even by

a fall on hard surface. A careful analysis of the injuries as proved by the medical evidence creates a distinct impression that injury no. 2 is not by a sharp cutting weapon like 'darat' and besides being simple it may have been on account of fall. The victim, PW 1 has admitted that after receiving gun shot injury he was assaulted by Dev Raj and made to fall. He has also alleged further assault by Brij Lal after the other accused had gone away. Thus as per prosecution case there is no corresponding injury on the person of victim to support the allegation of assault against the lady accused persons, the appellants. Coupled with this fact the initial version also creates a serious doubt that specific allegations against the appellants have been developed later in the course of deposition in Court. Such allegation has come only from PW-1 without support from any independent witness. In such circumstances and due to lack of convincing medical evidence, the credibility of specific allegations against the appellants required serious consideration by the trial court and also by the High Court while hearing the appeal. Unfortunately for the appellants, such consideration did not take place.

9. A perusal of the impugned judgment shows that the High Court did not consider the specific case of the appellants as noted above that they were merely by-standers and specific allegations against them have been added subsequently, contrary to the statement before the police. We find that the High Court erred in not analyzing the evidence of the victim PW-1 as well as the medical evidence with care and caution in the light of specific defence of the appellants that there was no reliable material and circumstances to rope them with the assault upon the victim made by the other accused persons, with the aid of Section 149 of the IPC. On this account the impugned judgment and order therefore stands vitiated not only on facts but also in law.

10. We have given anxious consideration to the allegations against the appellants in the FIR as well as in the evidence that has come during trial. In view of discussions made earlier, we are of the view that the Courts below should not have believed the exaggerated and contradictory deposition of the victim qua the appellants in view of the fact that the parties were having land dispute from before and even then in the FIR no specific role was assigned to the appellants while specific role was assigned to two co-accused. The medical evidence also does not corroborate the subsequent allegations made by the victim against the appellants. The broad features of the case also reveal that the two male accused were allegedly having a gun and an axe in their hand and they

- A used these weapons only to cause injuries which did not pose any danger to the life of the victim. In such circumstances the women accused could have hardly any reason to unnecessarily get involved into assault so as to cause simple injuries by fists and kicks. For all the aforesaid reasons we find merit in the submission advanced on behalf of the appellants and do not agree with the learned counsel for the State who
- B has sought to support the impugned judgment and order. The conviction and sentence imposed against the appellants are set aside and they are acquitted of all the charges by extending them the benefit of doubt. The appellant no.1 has been exempted from surrendering in this case. She now need not surrender. The other appellants shall be released from custody forthwith if not required in any other case. The appeal stands
- C allowed.

Nidhi Jain

Appeal allowed.