

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.97 of 2010

Date of Decision: 18.7.2026

Ram Singh and Anr.

.....Appellants

Versus

State of Himachal Pradesh

.....Respondent

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? Yes.

For the appellants: M/s Arun Kaushal and Shagun Sharma,
Advocates.

For the respondent: Mr. Rajan Kahol, Additional Advocate General.

Sandeep Sharma, J. *(Oral)*

Instant criminal appeal filed under Section 374 of CrPC, lays challenge to judgment of conviction and order of sentence dated 30.04.2010/10.05.2010, passed by the learned Sessions Judge, Chamba, Division Chamba, Himachal Pradesh (in short the “trial Court”) in Sessions Trial No. 42 of 2009, whereby afore court, while holding the appellants-accused (hereafter referred to as the “accused”) guilty of their having committed offence punishable under Sections 304 IPC and 323 IPC, convicted and sentenced them to undergo five years’ imprisonment and pay fine of Rs.25,000 each and in default of payment of fine, one year imprisonment under Section 304 of IPC. Learned trial Court, while passing the aforesaid order of sentence observed that since there is only one year imprisonment for offence

under Section 323 of IPC and both the convicts have been already sentenced for five years under Section 304 of IPC, there is no requirement of a separate sentence for offence under Section 323 IPC.

2. In nutshell, the case of the prosecution as emerges from the record made available to this court is that on 08.04.2009 at around 5:50 PM, sheep of the accused, who at the relevant time, were grazing near village Chorandu falling within the jurisdiction of Police Station Chowari, District Chamba, allegedly entered the land of deceased Prithi Chand. Aforesaid Prithi Chand, who at the relevant time, was sitting along with his sons and family members at his house, rushed towards the fields and objected to the entry of their sheep and goats in his land. Allegedly, the accused started hurling abuses and they picked up a quarrel with him. While the accused were going to administer beatings to Prithi Chand, his two sons namely Ashok Kumar and Mohinder Singh rushed to the spot. Prithi Chand was caught hold by accused Balwant. When the son of Prithi Chand namely Ashok Kumar tried to rescue his father, he was allegedly given a tooth bite by the aforesaid accused Balwant on the finger of his left hand. Accused Ram Singh administered fist and kick blows to Prithi Chand, as a result thereof, he fell on the field and rolled down to a distance of 20 to 25 feet and suffered injuries on his forehead and other parts of the body which resulted into his death.

3. FIR Ext. PW-9/A came to be lodged against the accused on the basis of a statement made by PW2 Ashok Kumar under Section 154 of CrPC, wherein allegations as noticed hereinabove, came to be recorded. Police, after having conducted necessary formalities, such as, medical examination of PW2 Ashok Kumar who was allegedly given a tooth bite on his finger and post-mortem of deceased Prithi Chand, completed the investigation and presented the challan in the competent court of law.

4. Learned trial Court, being satisfied that a *prima facie* case exists against the accused named in the challan under Sections 323 and 304 IPC read with Section 34 IPC, proceeded to frame charges against the accused under the aforesaid provisions of law, to which they pleaded not guilty and claimed trial.

5. Prosecution, with a view to prove its case, examined as many as thirteen witnesses, whereas the accused in their statements recorded under Section 313 CrPC denied the case of the prosecution in *toto* and claimed themselves to be innocent, however, despite sufficient opportunity, they failed to lead any evidence in defense.

6. Learned trial Court after appreciation of evidence, held the accused guilty of their having committed offence punishable under Sections 304 and 323 IPC and accordingly convicted and sentenced them as per the description given above. In the aforesaid background, the accused have approached this court in the instant proceedings

praying therein for acquittal after setting aside the judgment of conviction and order of sentence passed by the learned trial Court.

7. Precisely, the grouse of the accused, as has been highlighted in the grounds of appeal and further canvassed by Shri Arun Kaushal, Advocate, is that the learned trial Court has fallen in grave error inasmuch as holding the accused guilty of their having committed offence under Section 304 IPC. Mr. Kaushal vehemently argued that no evidence worth credence ever came to be led on record that the deceased suffered head injury after his being pushed by the accused, rather, as per own case of the prosecution, the deceased, after being administered fist and kick blows by accused Ram Singh, fell on the ground and rolled down 20-25 feet on the sloppy field. Mr. Kaushal further submitted that to invoke Section 304 IPC, it was incumbent upon the prosecution to prove that accused had knowledge that the act of their giving fist and kick blows would cause death of the deceased, however, in the instant case, no injury on the head, which subsequently came to be opined as a reason for death of the accused, was inflicted by any of the accused, rather, the deceased, after being allegedly administered fist and kick blows, fell down on the ground and rolled down on account of sloppy field. He further submitted that the statements made by PW-2 and PW-3, who otherwise happen to be sons of the deceased and they are the only eyewitnesses, nowhere suggest that the deceased was given push by the accused named in

the FIR. He submitted that though PW-3 Mohinder Singh stated that the accused pushed the deceased, but such version of him is totally contradictory to the version put forth by his brother PW2 Ashok Kumar, who categorically stated that his deceased father, fell on the ground and rolled down 20 to 25 feet on the sloppy field. He submitted that even if the version put forth by PW-3 Shri Mohinder Singh is presumed to be correct, he nowhere stated that which of the accused pushed his deceased father. He submitted that since no evidence worth credence ever came to be led on record to prove common intention as required under Section 34 IPC, it cannot be said that alleged act of pushing of the deceased by the accused would involve both the accused, rather in such like situations, it was incumbent upon the prosecution to prove that which of the accused actually pushed the deceased. He further submitted that as per the prosecution case, within five minutes of the alleged occurrence, sons of the deceased, who were only at a distance of 20 to 25 meters, reached the spot and intervened. He submitted that as per the statement of PW2 Ashok Kumar, accused Balwant Singh, who had allegedly caught hold of his father, turned towards him and attempted to bite his index finger. He alleged that while aforesaid accused was giving him injury of a tooth bite, accused Ram Singh was giving kick and fist blows to his father, as a result of which, he fell on the ground. He submitted that even aforesaid version put forth by the prosecution

is believed that deceased Prithi Chand was given beatings by the accused, they could have been at best punished under Section 323 IPC, but definitely not under Section 304 IPC. He submitted that though the version put forth by independent witnesses cannot be brushed aside, but certainly their version is required to be taken note of with abundant caution because possibility of implicating the accused falsely by making false statements by interested witnesses cannot be ruled out. He further submitted that the statement of PW2 Ashok Kumar, if read in its entirety, suggests that though he as well as his brother had also seen entering the sheep of the accused in their field, but yet they did not go to the field and as such, their father went to the spot and within five minutes of his having reached on the spot, they also reached on the spot and intervened. He submitted that the statement made by PW-1 Dr. Sham Lal Sharma, is very relevant, wherein he has categorically admitted that there is very rare chance of neurogenic shock in case of a sudden fall. He submitted that as per the statement of the witness, if a person falls from a height of 20-25 feet on a hard surface, he is likely to suffer internal injury as also fracture, but in the case of the head, no internal injury, especially fracture, ever came to be suffered by the deceased, rather, he came to be opined to have expired on account of neurogenic shock after his fall. Lastly, Mr. Kaushal, submitted that there are material contradictions and inconsistencies in the statements of the aforesaid

material prosecution witnesses and as such, the version put forth by them otherwise could not have been taken into consideration while ascertaining the guilt of the accused.

8. To the contrary, Shri Rajan Kahol, learned Additional Advocate General, while supporting the impugned judgment of conviction recorded by the learned trial Court, vehemently argued that bare perusal of evidence adduced on record *vis-à-vis* reasoning assigned in the impugned judgment nowhere suggests that learned trial Court has failed to appreciate the evidence in the right perspective, rather, court appears to have dealt with each and every aspect of the matter meticulously and there is no scope of interference. Mr. Kahol submitted that it has specifically come in the statement of PW-3 Mohinder Singh that the accused pushed his deceased father, as a result thereof, he fell and rolled down 20-25 feet from the sloppy field. He further submitted that no suggestion worth the name ever came to be put to the material prosecution witnesses with regard to the field being sloppy and falling of their father of his own. He submitted that no suggestion ever came to be put that the deceased did not die after being pushed, rather on account of his being slipped from the sloppy field. He submitted that the accused rightly came to be punished under Section 304 IPC because they had knowledge that in the event of the deceased being pushed from the height of 20-25 feet, he would die.

9. Having heard learned counsel representing the parties and perused material available on record, this court finds that though prosecution, with a view to prove its case, examined as many as thirteen witnesses, but statements of only three witnesses Dr. Sham Lal Sharma (PW1), Shri Ashok Kumar (PW2) and Shri Mohinder Singh (PW3), are material to ascertain whether judgment of conviction recorded by the learned trial Court is in accordance with law or not. Hence, this court sees no reason to deal with statements made by other witnesses save and except the aforesaid witnesses.

10. Admittedly, in the case at hand, none of the independent witnesses had an occasion to see the alleged incident. It is also not in dispute that the house of the deceased and PW2 & PW3 was located at a distance of 20 to 25 feet from the spot of occurrence. Allegedly, sheep of the accused entered the field of the deceased, who, with a view to object entry of the sheep in his field, rushed towards the spot. After his having reached, altercation took place *inter se* the deceased Prithi Chand and the accused and allegedly the deceased was given beatings by the accused, but in the meantime, both sons of the deceased i.e. PW-2 and PW-3, who were only at a distance of 50 feet and were watching the incident from their house, reached the spot and intervened. As per the statement of PW-2 Ashok Kumar, he, after having reached the spot, intervened, but accused Balwant Singh, who at the relevant time had caught hold of the collar of his father, turned

towards him and gave a tooth bite on the index finger of his left hand. Allegedly, in the meantime, other co-accused Ram Singh gave beatings to deceased Prithi Chand by administering fist blows and kicks. As per the version put forth by the aforesaid witness i.e. PW-2, his father fell in the field, which was sloppy and rolled down 20-25 feet and suffered injury. Most importantly, this witness stated that he, after having seen the entry of the sheep of the accused, did not immediately go to the spot, rather his deceased father went there and thereafter, he along with his brother also reached the spot. In cross-examination, specific suggestion came to be put to this witness as to *whether the deceased died due to a fall?*, but such suggestion was denied. One more suggestion with regard to the field being sloppy also came to be put, which was also denied.

11. If the statement given by PW-3 Mohinder Singh is perused in its entirety, it is almost same to the statement of PW-2 Shri Ashok Kumar, save and except one crucial aspect of the matter, i.e. with regard to the alleged push given by the accused to deceased Prithi Chand. This witness, while stating that his brother was given a tooth bite by accused Balwant Singh, stated that both the accused gave a push to his father, as a result thereof, he fell 20-25 feet down from the field which was sloppy. Such version of him is totally in contradiction of the version put forth by PW2 Ashok Kumar, who categorically stated that his father, after being administered kick and fist blows by Ram

Singh, fell on the field. This witness nowhere stated that the accused pushed deceased Prithi Chand, rather, he categorically stated that after his having fallen on the ground, his deceased father Prithi Chand rolled down on account of the field being sloppy.

12. Though conjoint reading of statements made by the aforesaid witnesses clearly suggests that on the date of the alleged incident, an altercation took place *inter se* deceased Prithi Chand and the accused on account of the unauthorized entry of sheep of the accused in the fields of Prithi Chand and thereafter, the accused gave beatings to Prithi Chand, but certainly cogent and convincing evidence with regard to push, if any, given by the accused to the deceased, whereafter he fell on the field and rolled down, is missing. Though one of the witnesses, PW3 Mohinder Singh, deposed that both the accused pushed their father, but PW2 Ashok Kumar, who was actually first to reach the spot of incident after his father, categorically stated that after being administered kick and fist blows by the accused, his father fell on the field being sloppy.

13. Story of the prosecution with regard to the alleged push given by the accused to the deceased doesn't appear to be correct on account of contradictory statements made by the aforesaid two material prosecution witnesses, who otherwise were only the eyewitnesses to the incident. Apart from the aforesaid witnesses, none was there on the spot to see the incident.

14. Admittedly, in the case at hand, PW-2 and PW-3, can be termed to be interested witnesses on account of their relationship with the deceased and it is equally true that version put forth by interested witnesses cannot be brushed aside, rather it carries the same evidentiary value as is of an independent witness. However, it is also well settled that the version put forth by interested witnesses should be taken into consideration with abundant caution and due care by the court while ascertaining the guilt of the accused, because the possibility of false implication cannot be ruled out. Interested witnesses may not leave any stone unturned to prove the guilt of the accused and in that regard, possibility of exaggeration of the incident also cannot be ruled out.

15. In the instant case, since the version put forth by both the material witnesses with regard to the alleged push given by the accused to the deceased is contradictory and apart from these witnesses, there is no specific evidence adduced on record with regard to push, if any, given by the accused, on account of which, the deceased suffered head injury, this court is persuaded to agree with the counsel representing the accused that no punishment, much less under Section 304 of IPC, could have been imposed.

16. At this stage, it would be apt to take note of Section 304 IPC, which reads as under:

“304. Punishment for culpable homicide not amounting to murder.

Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

17. Aforesaid provision of law clearly talks about punishment for culpable homicide not amounting to murder. Though as per the aforesaid provision of law, whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life or imprisonment for either description for a term which may extend to ten years or with fine or both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death. To invoke the aforesaid provision of law, it is incumbent upon the prosecution to prove that the act, which ultimately resulted in death was done with the knowledge that it is likely to cause death.

18. Admittedly, in the case at hand, scuffle took place *inter se* the accused and deceased Prithi Chand and his sons, Ashok Kumar and Mohinder Singh, who reached the spot at a subsequent time, but

as per the version put forth by eyewitnesses of the spot i.e. PW2 and PW3, deceased Prithi Chand was administered beatings with kick and fist blows. As per PW2 Ashok Kumar, deceased Prithi Chand, after having suffered fist and kick blows, fell on the ground and rolled 20-25 feet down and suffered injury on account of field being sloppy. This witness nowhere stated that accused pushed his father. Though PW3 Mohinder Singh stated that both the accused pushed his father, but such version of him becomes doubtful on account of categorical statement made by PW2 Ashok Kumar that his father after having suffered kick and fist blows fell down on the ground and rolled down of its own on account of field being sloppy.

19. Most importantly, in the case at hand, the deceased died due to internal head injury leading to neurogenic shock and sudden death. While proving post mortem report Ext.PW1/B, PW-1 Shri Shyam Lal, stated that injuries observed by him on the dead body can be caused if the deceased had fallen from a height on a sloppy area. While stating that there were multiple abrasions on the left side of the forehead, dorsum of the right and left leg, anterior aspect left, he categorically stated that no fracture was seen. If the entire post-mortem report is seen, it doesn't talk about any injury on the other part of the body save and except head injury as indicated in the report, Exhibit PW-1/B. In his cross-examination, he categorically stated that it is possible that excessive happiness and sadness can cause

neurogenic shock. He also admitted that there is a very rare chance of neurogenic shock in the case of a sudden fall. Most importantly, this witness admitted that if a push is given from the front side and the victim falls on the back side position, he is likely to suffer injury on the back portion of the head, however, in the instant case, no injury was found on the back side of the head. This witness admitted that if a person falls from a height of 20-25 feet on a hard surface, he is likely to suffer internal injury as also fracture. However, in the instant case, no fracture was seen.

20. Leaving everything aside, having taken note of nature of injury and their place, coupled with the fact that there is a major contradiction with regard to the alleged push given by the accused to the deceased in the statements made by PW-2 and PW-3, this court is unable to agree with the finding returned by the learned trial Court that the deceased died on account of his being pushed by the accused on the date of the alleged incident. There is nothing on record to conclude knowledge, if any, of the accused that by such act of them, they can cause death of the deceased. At best, the evidence adduced on record, if perused minutely, reveals that the deceased was given fist and kick blows by accused Ram Singh, but that cannot be said to be sufficient to cause death, especially on account of the statement of PW-1, who, while proving the post-mortem report, has categorically stated that in his opinion, sudden death of the deceased was due to

internal head injury leading to neurogenic shock and sudden death. There is no evidence that injury, if any, was caused by the accused on the head of the deceased, rather, such injury came to be inflicted on his body after his having fallen on the sloppy field from the height of 20-25 feet.

21. Since injuries were found only on the forehead and no other injuries, which can be caused on account of infliction of kick and fist blows were seen on the dead body by PW-1 coupled with the fact that there are material contradictions in the statements of PW-2 and PW-3, this court is also not persuaded to agree with the learned Additional Advocate General that conviction of the accused under Section 323 IPC is sustainable, rather, the same is also not sustainable.

22. On account of major contradictions and inconsistencies in the statements of material prosecution witnesses, the entire story of the prosecution has become doubtful and such ought to have been discarded in its totality by the learned trial Court. Reliance is placed on Judgment passed by the Hon'ble Apex Court in **C. Magesh and Ors. v. State of Karnataka** (2010) 5 SCC 645, wherein it has been held as under:-

“45. It may be mentioned herein that in criminal jurisprudence, evidence has to be evaluated on the touchstone of consistency. Needless to emphasise, consistency is the keyword for upholding the conviction of an accused. In this regard it is to be

noted that this Court in the case titled Suraj Singh v. State of U.P., 2008 (11) SCR 286 has held:- (SCC p. 704, para 14)

"14. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witness is held to be creditworthy. The probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation."

46. In a criminal trial, evidence of the eye witness requires a careful assessment and must be evaluated for its creditability. Since the fundamental aspect of criminal jurisprudence rests upon the stated principle that "no man is guilty until proven so", hence utmost caution is required to be exercised in dealing with situations where there are multiple testimonies and equally large number of witnesses testifying before the court. There must be a string that should join the evidence of all the witnesses and thereby satisfying the test of consistency in evidence amongst all the witnesses."

23. Consequently, in view of the detailed discussion made herein above as well as law laid down by the Hon'ble Apex Court, this Court finds merit in the present appeal and as such, same is allowed. Accordingly, judgment of conviction and order of sentence dated 30.4.2010/10.5.2010 passed by the learned trial court in Sessions Trial No. 42 of 2009 is quashed and set-aside and accused are acquitted of the charge framed against them. In the aforesaid terms, present appeal is disposed of along with pending applications, if any.

July 18, 2026

manjit

**(Sandeep Sharma),
Judge**