

(2009) 04 UK CK 0027

In the Uttarakhand High Court

Case No : Criminal Appeal No. 233 of 2002 WITH Criminal Appeal No. 214 of 2002

Bahadur Nath

APPELLANT

Vs

State of Uttaranchal
 Surendra Singh Vs State of
Uttaranchal

RESPONDENT

Date of Decision : 17-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 313, 374(2)

Forest Act, 1927 — Section 26

Penal Code, 1860 (IPC) — Section 307, 379, 411

Citation : (2009) NCC 405

Hon'ble Judges : Dharam Veer, J

Bench : Single Bench

Advocate : A.S. Gill, assisted by Mr. Milin Raj, Mr. M.S. Pal, sisted by Mr. Prem Kaushal and Mr. R.S. Sammal, for the Appellant; M.A. Khan, Brief Holder, Mr. M.A. Khan, Brief Holder, for the Respondent

Final Decision : Allowed

Judgement

Dharam Veer

1. Both these appeals, preferred by the appellants u/s 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C), are directed against the common judgment and order dated 29.8.2002 passed by the Additional Sessions Judge/FTC, Kashipur, Udham Singh Nagar in Sessions Trial No. 350A/2001, State v. Surendra Singh and Sessions Trial No. 350/2001, State v. Bahadur Nath & Ors., whereby the learned Additional Sessions Judge/FTC has convicted all the appellants-accused, viz., Surendra Singh, Bahadur Nath, Zafar Ali and Layik Ahmed @ Don u/s 379 and 411 of Indian Penal Code, 1860 (for short, I.P.C.) and sentenced each of them to undergo one year's R.I. u/s 411 I.P.C. All the appellants-accused were acquitted of the charges framed against them u/s 307 I.P.C. and Section 26 of the Indian Forest Act. Since both these appeals arise out of the common impugned judgment and order dated 29.8.2002

involving common and interrelated facts, hence they are being decided by this common judgment. In brief, the prosecution case is that on 23.5.2001 at around 4:20 A.M. Station Officer Rakesh Chandra Thapliyal along with S.I. Rajveer Singh, S.I. Harish Chandra Joshi, Constable Vijay Singh, Constable Nardev Vashistha, Constable Ram Singh and Constable Rajendra Pal Singh in order to trace some wanted criminals started from P.S. Bazpur in Govt. Jeep No. UP04B 8614 which was being driven by Nand Kishor Sati. Meanwhile, the said police party while on their way to Barhaini, mukhbir informed the Station Officer that huge quantity of stolen khairwood is being smuggled by a truck no. URN 9559 from Haldwani to Kanpur via Bazpur. On this information, police party tried to find out some public witnesses through S.I. Rajveer Singh but no public witness could be available being the wee hours. Thereafter police party waited for the said truck at some distance from Barhaini. Then at around 5:04 AM, the aforesaid truck came in full speed from Haldwani side. The police party signaled the truck to stop but it did not stop and went towards Bazpur in full speed. Police party chased the truck but the driver of the truck did not give the pass and tried to hit the jeep from the rear side of the truck. Then the police party tried to overtake the truck by wrong side, then again the said truck tried to ram into the jeep. Suddenly driver of the truck lost his control over the truck and the said truck fell down on the right side of road near the house of Prem Pal. Appellant-accused Layik @ Don ran away from the spot. Appellant-accused Surendra Singh received severe injuries, who was sent for medical treatment in police custody to Govt. Hospital, Bazpur. Appellants-accused Bahadur Nath and driver Zafar Ali did not receive any injury and they were arrested on the spot. There were 315 gilts of khairwood, measurement of which was done by beet watcher Jai Kumar. Neither the documents pertaining to the wood nor the papers of truck were produced before the police party.

2. With aforesaid averments, the FIR was lodged by the Station Officer Rakesh Chandra Thapliyal (PW-2) in P.S. Bazapur on the same day at 11 AM, who also prepared the memo of recovery Ex. Ka-2 on the spot. Chik FIR Ex. Ka-3 was prepared by Head Moharrir Rishipal Singh (PW-4). Necessary entries were made in the GD, carbon copy of which is Ex. Ka-4. Investigation of this case was entrusted to S.I. Chandan Singh (PW-3), who during the course of investigation inspected the place of occurrence and prepared the site plan Ex. Ka-7 with the assistance of S.I. Rajveer Singh. Technical inspection of the truck was done by Shyam Singh and the technical inspection report is Ex. Ka-8. During the course of investigation, I.O. recorded the statement of the witnesses and after completing the investigation, he filed the chargesheet Ex. Ka-9 against the appellants-accused Surendra Singh, Bahadur Nath and driver Zafar Ali, whereas separate chargesheet Ex. Ka-10 was filed against the appellant-accused Layik Ahmad @ Don.

3. Learned Judicial Magistrate/Civil Judge (Jr. Div.), Kashipur after giving the necessary copies of the documents to the appellants-accused as prescribed u/s 207 Cr.P.C, committed the case to the Court of Sessions on 29.9.2001.

Thereafter the case was transferred to Additional Sessions Judge/FTC, Kashipur on 5.10.2001 for its disposal according to law.

4. Learned Additional Sessions Judge/FTC framed the charges against the appellants-accused u/s 379, 307 and 411 of I.P.C. as well as u/s 26 of Indian Forest Act. The charges were read over and explained to each of the appellants-accused, who pleaded not guilty and claimed to be tried.

5. To prove its case, the prosecution has examined PW -1 S.I. Rajveer Singh; PW -2 S.I. Rakesh Chandra Thapliyal, Station Officer of P.S. Bazpur; PW -3 S.I. Chandan Singh, the I.O. of the case; PW -4 Head Const. Rishipal Singh and PW -5 Jai Kumar, Beet Watcher.

6. Thereafter, statement of each of the appellants-accused were recorded u/s 313 of Cr.P.C. The oral and documentary evidence were put to them in question form, who denied the allegations made against them. However, in defence, they did not produce any documentary or oral evidence on record.

7. After hearing learned counsel for the parties and appreciating the evidence on record, the learned Additional Sessions Judge/FTC, Kashipur vide his judgment and order dated 29.8.2002 convicted the appellants-accused and sentenced them as discussed above. Against the aforesaid judgment and order dated 29.8.2002, the appellants-accused have preferred the present appeal.

8. I have heard learned Counsel for the parties and have carefully perused the entire material available on the record.

9. To prove its case, the prosecution has examined the PW -1 S.I. Rajveer Singh, who in his deposition has reiterated the averments made in the FIR and has further stated that there were 315 gilts of wood inside the said truck and the same are Ex. 1 to 315. The memo of information given by the mukhbir was also prepared on the spot, which is Ex. Ka-1. Fard was written by Station Officer Rakesh Chandra Thapliyal on the spot after the measurement of the wood and all the police personnel had signed on it. That fard is Ex. Ka-2. In his cross-examination, this witness has admitted that there is neither any report nor any notification filed by the forest department in respect of the stolen wood.

10. PW -2, S.I. Rakesh Chandra Thapliyal has also corroborated the statement of PW -1 S.I. Rajveer Singh. In his cross-examination, this witness has stated that it was not enquired that as to which forest the seized wood belongs to. He has not written any letter to forest department asking them as to whether the said wood belongs to reserve forest.

11. PW -3, S.I. Chandan Singh, the I.O. of the case has stated that he was entrusted with the investigation of this case. During the course of investigation, he recorded the statement of the witnesses and prepared the site plan Ex. Ka-7 after inspecting the place of occurrence and on pointing out of S.I. Rajveer Singh, PW -1. Technical inspection of the truck was also done, the report of which is Ex. Ka-8. After completing the investigation, he filed the chargesheet Ex. Ka-9

against the appellants-accused Surendra Singh, Bahadur Nath and driver Zafar Ali, whereas separate chargesheet Ex. Ka-10 was filed against the appellant-accused Layik Ahmad @ Don. In his cross-examination, this witness has stated that he did not enquire about the seized goods from the forest department. He has further stated that he recorded the statement of PW -5 Jai Kumar on the spot, who has not stated anything regarding the forest from where the seized wood was stolen.

12. PW -4, Head Const. Rishipal Singh has stated that he prepared the chick FIR Ex. Ka-3 on 23.5.2001 at 11 AM on the basis of the fard Ex. Ka-2 prepared by Station Officer Rakesh Chandra Thapliyal (PW-2). Necessary entries were made in the GD and the carbon copy of the GD is Ex. Ka-4.

13. PW -5 Jai Kumar, Beet Watcher has stated that he had seen the truck which had fallen down alongside the road near the house of Prem Pal. Police party was there. Station officer asked me to gauge the wood. Three persons were trapped under the truck. He, Prem Pal and police personnel together rescued them. Thereafter measurement of wood was done by him. Fard Ex. Ka-2 was prepared, which is signed by him as well as Prem Pal. The seized wood was thereafter sent to Barhaini by truck. In his cross-examination, he has stated that by the time the seized wood was measured and kept, it was 1 PM in the day. He has also stated that the said incident did not take place before him. He had gone to police station afterwards.

14. After that, the statement of the appellants-accused were recorded u/s 313 of Cr.P.C. The oral and documentary evidence were put to them in question form, who denied the allegations made against them. However, in defence, they did not produce any documentary or oral evidence on record.

15. Chief Judicial Magistrate, Udham Singh Nagar vide his letter dated 18.8.2008 has reported that the appellant/accused Zafar Ali, driver died on 1.8.2003. Hence, the appeal of Zafar Ali stands abated.

16. Learned Counsel for the appellants argued that on the basis of the evidence discussed above, the prosecution has not proved its case against the appellants/accused beyond reasonable doubt and the whole prosecution story is concocted one.

17. I find substance in the argument put forth on behalf of the learned Counsel for the appellants/accused for the reasons recorded below:

(i) That prosecution witnesses, viz., PW -1, PW -2 & PW -3 have admitted that forest department had not lodged any report regarding theft of seized wood.

(ii) That no enquiry was done either by the I.O. or the Station Officer in respect of the seized wood from the forest department. The prosecution even did not file any notification issued by the forest department that the said wood was stolen from the reserved forest.

(iii) One of the accused Layik Ahmad @ Don was not arrested on the spot. The case of the prosecution is that he ran away from the spot. When the police party consisting of a number of armed police personnel was present there, then how he successfully escaped from the spot. It is not the case of prosecution that the jeep with which police party was chasing the truck broke down in the way. Simply by saying on the basis of the statement of the accused in police custody which is not admissible under law that the person who escaped from the spot was Layik Ahmad @ Don cannot serve the purpose.

(iv) That in the cross-examination of PW -5 Jai Kumar, he has stated that he measured the seized wood till 1 PM on 23.5.2001, but the chick FIR is shown to have been prepared at 11 AM on that day i.e. two hours before. As is natural, after the measurement of the wood, firstly the fard has to be prepared and only thereafter chick FIR, which has been stated to be prepared on the basis of the fard, could have been prepared. This fact casts a grave doubt on the prosecution story.

(v) That no enquiry about the owner of truck was done.

(vi) That incident is alleged to have been taken place near the abadi area of Barhaini, but no public witness was secured by the police party.

18. Thus, for the reasons recorded above, the prosecution has failed to prove the case against the appellants-accused beyond reasonable doubt and the appellants-accused are entitled to get the benefit of doubt. Therefore, the impugned judgment and order dated 29.8.2002 of the trial court is incorrect and unjustified and is liable to be set aside.

19. Accordingly, both these appeals are allowed. The common judgment and order dated 29.8.2002 passed by the Additional Sessions Judge/FTC, Kashipur, Udham Singh Nagar in Sessions Trial No. 350A/2001, State v. Surendra Singh and Sessions Trial No. 350/2001, State v. Bahadur Nath & Ors., thereby convicting each of the appellants u/s 379 and 411 of I.P.C. is hereby set aside and sentence of one year R.I. u/s 379 I.P.C. and two years" R.I. u/s 411 I.P.C. awarded to each of the appellants is hereby quashed. The appellants are on bail. They need not surrender. Their bail bonds are cancelled. Sureties are discharged. Let the lower court record be sent back.