
(2011) 07 UK CK 0169

In the Uttarakhand High Court

Case No : Criminal Appeal No. 969 of 2001

Balwant Singh and Others

APPELLANT

Vs

State of Uttaranchal

RESPONDENT

Date of Decision : 15-07-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304, 34, 364

Citation : (2011) 2 NCC 409 : (2012) 1 UC 416 : (2011) 2 UD 43

Hon'ble Judges : Sudhanshu Dhulia, J; Prafulla C. Pant, J

Bench : Division Bench

Judgement

Sudhanshu Dhulia, J.—This criminal appeal arises out of a judgment and order dated 28.6.2001 passed by Sessions Judge, Almora in Sessions Trial No. 14 of 1995 State v. Balwant Singh and Ors., whereby the trial court has convicted the present accused Appellants under Sections 364/34 as well as u/s 302/34 IPC and sentenced each of them to undergo rigorous imprisonment for a period of ten years u/s 364/34 IPC and fine of Rs. 500/- and life imprisonment u/s 302/34 IPC. It was also directed that in default of fine, each accused will further undergo simple imprisonment for a period of six months.

2. Heard Smt. Pushpa Joshi & Sri Amit Kapri, Advocates for the Appellants and Sri Amit Bhatt, Assistant Government Advocate for the State.

3. As per the narration of events in the First Information Report dated 30.6.1994, complainant Khushal Singh along with Kheem Singh, Narendra Singh, Balwant Singh, Dan Singh, Thakur Singh, Pushkar Singh and Darban Singh while returning to their home after doing the day's work were apprehended by Balwant Singh, Madho Singh, Saruli Devi and Bhagwat Singh near the house of the Village Pradhan. Balwant and others caught hold Lal Singh and attacked him, and thereafter dragged him towards their house. The complainant and other persons in order to save their lives escaped. The First Information Report thereafter states that the accused are of dangerous nature and they apprehend that they would kill Lal Singh, who has been abducted. The report was initially

lodged on 30.6.1994 at about 12 Noon before the Naib Tehsildar, Bageshwar. On the basis of the said FIR, a case was registered against the accused under Sections 364 IPC. The next day i.e. on 1.7.1994 at about 3.00 P.M. search was made in presence of witnesses Sher Singh, Gajendra Singh in the house of accused Balwant Singh the principal accused. It was found that Lal Singh (who was abducted by the accused as per the FIR) was lying on a mat inside the house and there were wounds all over his body, and a white light woolen blanket ("Pankhi") was spread over his body. At that stage, Lal Singh was unconscious, though still breathing, and his condition appeared to be critical and he was unable to speak. As such, with the help of the villagers Lal Singh was taken to the Primary Health Centre at Kapkote (District Bageshwar). Kapkote is about 15 kilometres from the place of incident, and had to be covered by foot. All the same, while Lal Singh was on way to the hospital, he passed away. Consequently, his body was brought back to the village i.e. Village -Dumti. A panchnama (Exhibit A-7) of the body of Lal Singh was made by the Naib Tehsildar, Bageswar (PW7) and after getting the dead body sealed, he sent the dead body for the post mortem examination to Bageshwar Hospital. The post mortem examination of the body was conducted on 2nd July, 1994 at about 3.15 P.M. The doctor namely Dr. D.K. Bankoti (PW6) thus examined the ante mortem injuries on the body of the deceased. The cause of death ascertained was the injury received by the deceased on his head. As per the Post Mortem Report, which is Exhibit-A3, shows that there were "multiple ante mortem injuries all over the body". Post Mortem Report further shows that the right temporal region was broken and fractured. The cause of death ascertained in the post mortem report is "coma due to head injury". In his examination in chief, the doctor namely Dr. D.K. Bankoti, who was examined as PW6 stated that the injuries caused on the body of the deceased were possibly due to blows of legs and fists and the injury sustained by the deceased on the head was possibly by either a "stone" or by a "Lathi".

5. As the sequence unfold, the case earlier registered u/s 364/34 was now also registered u/s 302 IPC and its investigation was done by Patwari Roop Singh PW8. After completion of the investigation, he submitted the charge sheet (Exhibit-A9) against the present accused Appellants.

6. PW1 Khushal Singh has stated in his examination in chief that on 29.6.1994 at about 5 P.M. while he was going back to his village along with his brother Lal Singh and some other persons, namely, Dan Singh, Balwant Singh, Thakur Singh, Kheem Singh and Kunjar Singh and when they had reached the house of Gram Pardhan Nandan Singh, then they were apprehended by Balwant Singh, Saruli Devi and Madho Singh. These three accused caught hold his brother Lal Singh and dragged him towards their house. Seeing this, the villagers who were along with them ran away. That day, Lal Singh did not reach his house. Therefore, they prepared a report and wanted to lodge an FIR before the Patwari, but could not trace the Patwari. At this juncture, it would be necessary to mention that in the hills of Uttarakhand, ever since it was a part of British India,

police powers were given to revenue authorities i.e. Patwari and above. Consequently in the present case which came under a patwari police jurisdiction, the initial report and the investigation have been done by the revenue authorities.

7. PW2 Balwant Singh has deposed that on 29.6.1994 at about 5 P.M. when he was returning to his house after working at the site of contractor Dan Singh, and Narendra Singh, Kheem Singh, Dan Singh, Thakur Singh, Pushkar Singh and Lal Singh were with him, they were apprehended by accused Balwant Singh, Saruli Devi and Madho Singh. Behind all these three, Bhagwat Singh was coming. Accused Balwant Singh was under intoxication of liquor. All these persons caught hold Lal Singh and thereafter he was beaten and then dragged to their house. When these persons wanted to rescue Lal Singh, Balwant Singh took out a revolver and at this these persons returned to their house. In his cross-examination, this witness has said that Lal Singh was also 10 metres ahead of him and remaining were behind him.

8. PW3 Gajendra Singh is the witness for recovery of the injured (since deceased). He has stated that the deceased Lal Singh was his brother and at the time of recovery, Police and Naib Tehsildar were with him. The house of Balwant Singh was searched at about 2:30 in the afternoon on 1st July, 1994. At the time of search, Sher Singh was also present. During search, it was found that Lal Singh was lying on the floor and by this time, he had not died and he was still alive. He has also stated that the body of Lal Singh was recovered from the house of Balwant Singh and that there were 32 to 35 persons present outside the house.

9. PW5 Sher Singh who is also the witness of the recovery of the body of Lal Singh and not the incident, has corroborated the statement as has been given by another witness namely Gajendra Singh (PW3). Except that he has also stated that the body of Lal Singh by that time had become yellow, and blood was oozing out from one of his ears and there were marks of injury on various parts of the body.

10. PW4 Dan Singh who was again a witness to the incident has given the same statement as has been given by other witnesses, including the one that when they tried to rescue Lal Singh, Balwant Singh took out a revolver and threatened them and consequently they all were scared and returned to their house.

11. Counsel for the Appellants Ms. Pushpa Joshi has vehemently argued before us that there was no material evidence to convict the present accused. She contended that the prosecution story does not seem to be plausible inasmuch as it is the case of the prosecution that when Lal Singh was recovered from the house of Balwant Singh, he was lying on the floor and was covered by "Pankhi" (i.e. a light woolen blanket or shawl), shows that he could not have been attacked by the persons from whose house the injured (as he was till then) was recovered. This could not be the normal conduct of the accused. Moreover, none of the eye- witnesses has stated that the accused-Appellants have actually

assaulted Lal Singh by "Lathi" or by any weapon. All they state is that Lal Singh was dragged towards the house of Balwant Singh and therefore, on the basis of these sketchy evidence, the accused-Appellants could not have been convicted and sentenced.

12. We, however, do not agree with these arguments of the counsel for the Appellants inasmuch as there are three eye-witnesses to the incident all of whom have deposed that Lal Singh was dragged by Balwant Singh towards his house. There are specific allegations against Balwant Singh and Madho Singh, though it is true that there are no specific allegations against Saruli Devi and Bhagwat Singh. PW2 and PW4, the two eye witnesses placed by the prosecution have only verified the presence of Bhagwat Singh in the scene of incident when Lal Singh (deceased) was dragged by Bhagwat Singh along with Balwant Singh and Madho Singh.

13. All the same, there is no specific allegation against Saruli Devi, except that her presence was shown at the place of incident at the time when the deceased Lal Singh was dragged by these persons. Apart from this, there are no allegations against her. Madho Singh has since died therefore the case against him stands abated. The accused who is left is Balwant Singh, who is the main accused, in the prosecution story. He is the one who actually dragged Lal Singh and the injured Lal Singh was subsequently recovered from the house of Balwant Singh. Balwant Singh was armed with "Lathi" and the fatal ante mortem injury which caused the death of Lal Singh was the Lathi blow on the right temporal region of the deceased as the nature of injury quite clearly reveals. There are specific allegation against Balwant Singh that he caught hold Lal Singh and in order to deter the companions of Lal Singh from rescuing him, he took out a revolver and threatened them. The presence of Balwant Singh is fully established by the eye witness accounts. Yet, he too cannot be convicted for murder as the act done by him, considering the nature of injuries is of "culpable homicide not amounting to murder". Since there are no specific allegations against accused - Appellant No. 3 Saruli Devi and Appellant No. 4 Bhagwat Singh and the two are liable to be acquitted.

14. For the reasons as discussed above, the appeal is partly allowed. Conviction and sentence recorded by trial court under Sections 364/34 and 302/34 IPC, against Appellant No. 3 Saruli Devi and Appellant No. 4 Bhagwat Singh is set aside. Both are acquitted of the charge, giving her benefit of reasonable doubt. All the same, considering the number of injuries and their nature, on the body of the deceased, this Court is also of the view that though it is a case of homicidal death but it is a case of "culpable homicide not amounting to murder" and therefore, the finding of the trial court is changed from that of murder to that of culpable homicide not amounting to murder and the accused - Appellant No. 1 namely Balwant Singh is sentenced to undergo rigorous imprisonment for 7 years u/s 304 Part II of IPC, instead of the life imprisonment awarded by the trial court. His (Balwant Singh's) conviction u/s 364 IPC is affirmed but he is

sentenced to rigorous imprisonment for a period of seven years. Both sentences shall run concurrently. With this modification in the conviction, and sentence this appeal stands disposed of. Appellant No. 1 namely Balwant Singh is on bail. His bail is cancelled. The lower court record be sent back to make accused Appellant No. 1 Balwant Singh serve the remaining part of the sentence as modified by this Court.

15. No order as to costs.