
(2009) 06 UK CK 0043
In the Uttarakhand High Court

Bharat Singh, Surat Singh, Virendra Singh and Bhaw Singh	APPELLANT
Vs	
State of Uttrakhand	RESPONDENT

Date of Decision : 12-06-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 313, 374
Penal Code, 1860 (IPC) — Section 304, 308, 34

Citation : (2009) 06 UK CK 0043

Hon'ble Judges : Prafulla C. Pant, J;Brahma Singh Verma, J

Bench : Division Bench

Judgement

Prafulla C. Pant, J.—This appeal, preferred u/s 374 of Code of Criminal Procedure, 1973 (herein after referred as Cr.P.C.), is directed against the judgment and order dated 20.04.1995, passed by learned Additional Sessions Judge, Dehradun, in Sessions Trial No. 129 of 1994, whereby accused/appellants Bharat Singh, Surat Singh, Virendra Singh and Bhaw Singh have been convicted u/s 304 read with Section 34 of Indian Penal Code, 1860 (herein after referred as I.P.C.), and each one of the three convicts namely Bharat Singh, Surat Singh and Virendra Singh has been sentenced to imprisonment for life. Convict Bhaw Singh has been sentenced to undergo rigorous imprisonment for a period of ten years.

2. Heard learned Counsel for the parties and perused the lower court record.

3. Prosecution story in brief is that on 04.05.1994, at about 6:30-7:00 p.m. Kashi Ram (deceased) was coming towards his house in Village Kodra within the limits of police station Sahaspur, District Dehradun. He was surrounded by accused/appellants Bharat Singh, Surat Singh, Virendra Singh and their father Bhaw Singh. Kashi Ram was given blows with lathi and stones by the accused/appellants. On hearing shrieks of the injured Kashi Ram, his brother Omkar Chand (P.W. 2) and other villagers including Dujendra Singh (P.W. 3) and Shrawan Singh (P.W. 4) came out and saw the incident. Accused/appellants left Kashi Ram in an injured condition. Omkar Chand (P.W. 2) along with other villagers took the injured to nearest Sahaspur hospital. On his way to hospital,

he (Omkar Chand) asked K.S. Rana (P.W. 1) to go to the police station and lodge the First Information Report against the accused. K.S. Rana (P.W. 1) went to P.S. Sahaspur and lodged First Information Report (Ext. A-1) on the basis of which crime No. 42 of 1994, relating to offence punishable u/s 308 I.P.C., was registered against accused/appellants Bhaw Singh, Bharat Singh, Surat Singh and Virendra Singh at about 9:10 p.m. (on the very day i.e. 04.05.1994). Meanwhile, in the Primary Health Centre, Sahaspur, Dr. Ajay Sharma (P.W. 5) at about 8:40 p.m. (on 04.05.1994) recorded five injuries and prepared injury report (Ext. A-3). He referred the injured to Doon Hospital, Dehradun, for proper medical treatment. On this, P.W. 2 Omkar Chand, brother of injured Kashi Ram, took him to Doon Hospital from where considering the precarious condition of the injured, he was further referred to Post Graduate Institute of Medical Education at Chandigarh. Injured Kashi Ram remained admitted in the hospital at Chandigarh till his death on 11.05.1994, when he finally succumbed to the injuries. The crime was investigated by Sub- Inspector R.K. Sharma (P.W. 9). After death of the deceased on 11.05.1994, police took his dead body in its possession and prepared inquest report (Ext. A-4) on 13.05.1994, at 8:30 a.m. The Investigating Officer further prepared sketch of the dead body (Ext. A-11) and police form No. 13 (Ext. A-10). The witnesses were interrogated by the Investigating Officer. He obtained the document (Ext. A-5) from Post Graduate Institute of Medical Education and Research, Chandigarh regarding homicidal death of the deceased. On completion of investigation, Investigating Officer submitted charge sheet (Ext. A- 9) against all the four accused namely Surat Singh, Bharat Singh, Virendra Singh and their father Bhaw Singh for their trial in respect of offence punishable u/s 304 I.P.C.

4. The Magistrate, on receipt of the charge sheet, after giving necessary copies to the accused, as required u/s 207 of Cr.P.C., committed the case to the Court of Sessions, for trial. Learned Additional Sessions Judge, Dehradun to whom the case was transferred, after hearing the parties on 09.01.1995, framed charge of offence punishable u/s 304 read with Section 34 I.P.C. to which the accused Bharat Singh, Surat Singh, Bhaw Singh and Virendra Singh pleaded not guilty and claimed to be tried. On this prosecution got examined P.W. 1 K.S. Rana (complainant), P.W. 2 Omkar Chand (eye-witness of the incident), P.W. 3 Dujendra Singh (declared hostile in cross examination), P.W. 4 Shrawan Singh (declared hostile), P.W. 5 Dr. Ajay Sharma (who recorded injuries on the person of Kashi Ram at Primary Health Centre, Sahaspur), P.W. 6 Gyan Singh (witness of the inquest report), P.W. 7 Hem Raj (who proved the document Ext. A-5, issued by P.G.I. Chandigarh), P.W. 8 Head Constable Suresh Chand (who registered the crime at the police station and prepared check report Ext. A-7), and P.W. 9 Sub-Inspector R.K. Sharma (who investigated the crime). The oral and documentary evidence was put to the accused u/s 313 Cr.P.C. in reply to which they alleged the same to be false. They alleged that they have been falsely implicated due to enmity. In defence, on behalf of the accused/appellants, D.W. 1 Pratap Singh was examined who stated that the deceased had fallen from a tree. After hearing the

parties, the trial court found accused/appellants Bharat Singh, Surat Singh, Virendra Singh and Bhaw Singh guilty of charge of offence punishable u/s 304 read with Section 34 I.P.C. After hearing the parties on sentence, the trial court sentenced each of the three convicts namely Bharat Singh, Surat Singh and Virendra Singh to imprisonment for life. The fourth convict Bhaw Singh was sentenced to rigorous imprisonment for a period of ten years. Aggrieved by said judgment and order dated 20.04.1995, this appeal was filed by the convicts before Allahabad High Court on 01.05.1995, where it was admitted on 02.05.1995. The appeal is received by this Court u/s 35 of U.P. Reorganisation Act, 2000 (Central Act No. 29 of 2000), for its disposal.

5. Before further discussion, we think it just and proper to mention here the injuries found on person of Kashi Ram, recorded in injury report (Ext. A-3) by P.W. 5 Dr. Ajay Sharma in Primary Health Centre, Sahaspur on 04.05.1994, at 8:40 p.m. The same are being reproduced as under:

1. Lacerated wound 5cm X 1/2cm X skull deep present over left side skull, 10cms above left eye brow and 7cms above and anterior to upper part of left ear pinna. Margins irregular. Bleeding present. Advised Xray skull.

2. Lacerated wound 4cms X 1/2cms X skull deep, present over left side skull, 6cms posterior to left ear pinna. Margins irregular. Bleeding present. Advised Xray skull.

3. Lacerated wound 5cms X 1/2cm X skull deep, present over occipital protuberance, margins irregular. Bleeding present. Advised Xray skull.

4. Contusion 10cms X 3cms, present over posterior part of neck (upper region). Swelling and tenderness present. Reddish in color. Advised Xray neck.

5. Contusion 8cms X 5cms present over dorsal aspect of left hand, starting from base of ring finger of left hand. Reddish in color. Advised Xray hand.

The Medical Officer found general condition of the injured as poor. He further observed in the injury report (Ext. A-3) that "all the injuries were caused by hard and blunt object, duration fresh". He further observed in his report that patient was referred to Doon Hospital, Dehradun. The above report corroborates the prosecution story that on the date and time, accused suffered injuries on his person. Document (Ext. A-5) issued by P.G.I, Chandigarh, shows that Kashi Ram (deceased) died in said hospital on 11.05.1994. Said document issued by P.G.I., Chandigarh, also discloses that antecedent cause of death was head injury. This document has been proved by P.W. 7 Hem Raj, brother of the deceased, who was by the side of the deceased at the time of his death at Chandigarh. This witness (P.W. 7) Hem Raj has stated that when Kashiram was in the hospital at Chandigarh, in a semi-conscious condition, he used to utter "MAAR DIYA! MAAR DIYA!" and disclosed name of "Bharat" (accused/appellant No. 1).

6. P.W. 1 K.S. Rana (complainant) is not an eye- witness. He has simply proved First Information Report (Ext. A-1), lodged by him against the accused/

appellants with Police Station Sahaspur on 04.05.1994, at 9:00-10:00 p.m., on instructions from Omkar Chand (P.W. 2). This witness (P.W. 1) K.S. Rana has stated that on 04.05.1994, at about 7:00 p.m., he was in his shop when Omkar Chand was taking his injured brother (Kashi Ram) to Sahaspur. He (P.W. 2) Omkar Chand directed him to lodge First Information Report against accused/appellants Bhaw Singh and his three sons namely Bharat Singh, Surat Singh and Virendera Singh that they had caused injuries on the person of Kashi Ram with lathi and stones.

7. P.W. 2 Omkar Chand, brother of the deceased states that his younger brother Pratap Singh (D.W. 1) got married to daughter of Bhaw Singh (accused/appellant) against the wishes of Kashi Ram (elder brother of Pratap Singh). Bharat Singh, Virendra Singh and Surat Singh are brothers-in-law of Pratap Singh. After Kashi Ram expressed his annoyance against Pratap Singh and his in-laws, they started harbouring enmity with him. P.W. 2 Omkar Chand further states that on the day of the incident, he was in his house when at about 6:30 p.m. he heard shrieks of his brother, who was coming towards the house. The witness further states that he saw accused/appellants Bhaw Singh, Surat Singh and Virendra Singh cornering Kashi Ram (deceased) and giving him blows with lathi, danda, stones and "sariya" (iron rod). The witness further states that other witnesses Shrawan Singh (P.W. 4) and Dujendra Singh (P.W. 3) also reached at the spot and saw the incident. According to this witness, he took his injured brother to hospital at Sahaspur and on his way, he directed K.S. Rana (P.W. 1) to lodge First Information Report of the incident. The witness further states that medical officer at Sahaspur referred the injured to District Hospital, Dehradun (Doon Hospital). After examining for 2-3 hours, the medical officers at Doon Hospital, further referred the patient (injured Kashi Ram) to P.G.I. Chandigarh. The witness further states that in P.G.I., Chandigarh, injured succumbed to the injuries on 11.05.1994.

8. P.W. 3 Dujendra Singh, another eye-witness has corroborated the prosecution story in his examination in chief but in the cross examination, he retreated from his statement, given in examination in chief. The record shows that his cross examination was deferred at the request of accused/appellants and he was cross examined by the counsel for the accused/appellants on a subsequent date. This indicates that the witness (P.W. 3-Dujendra Singh) has been won over by the accused/appellants. The prosecution got the witness declared hostile.

9. P.W. 4 Shrawan Singh was also declared hostile as he did not support the prosecution story in the manner it is alleged by P.W. 2 Omkar Chand. This witness (P.W. 4) has stated that on 04.05.1994, at about 6:30 p.m. when he was going towards his house, he heard shrieks "MAAR DIYA ! MAAR DIYA!". On this, he went towards the place of incident, which was at a distance of some 50 yards, and saw that Kashi Ram was lying on the ground unconscious, and all the four accused/appellants were standing there. As such, this witness has corroborated only the fact that the incident had taken place. But as to who assaulted, he did

not name any one. The witness was got declared hostile by the prosecution.

10. We have carefully gone through the entire evidence on record. The motive of commission of crime is disclosed by P.W. 2 Omkar Chand that his younger brother Pratap Singh married to daughter of accused/appellant Bhaw Singh against the wishes of Kashi Ram (deceased), who got annoyed against Pratap Singh and his in-laws. Accused/appellants Bharat Singh, Virendra Singh and Surat Singh, are brothers-in-law of Pratap Singh and accused/appellant Bhaw Singh is father-in-law. The witness (P.W. 2 Omkar Chand) has also stated that thereafter they (accused/appellants) harboured enmity against Kashi Ram. After disclosing above motive then P.W. 2 Omkar Chand narrated the prosecution case that on hearing shrieks of Kashi Ram, he saw that accused appellants assaulting him (Kashi Ram) with lathies and stones

11. On behalf of the appellants, it is argued that it cannot be ruled out that due to this enmity, which is a double edged weapon, accused/appellants are falsely implicated in the crime. Having gone through the evidence on record, we are of the view that P.W. 2 Omkar Chand, who is brother of the deceased would not let the real culprit go scot free. As to the presence of accused/appellants at the spot, this fact has been corroborated even by P.W. 4 Shrawan Singh. It has also come on the record that house of the accused/appellants was also near to the place of incident. But due to presence of four there, it cannot be said beyond reasonable doubt that all the accused/appellants assaulted and committed culpable homicide (not amounting to murder). Then the question arises as to against whom out the accused/appellants the charge stands proved beyond reasonable doubt. Keeping in view the statement of P.W. 7 Hem Raj, brother of the deceased, who was by the side of the deceased in the hospital at Chandigarh, that when the deceased was in a semi-conscious condition, he was uttering "MAAR DIYA! MAAR DIYA!" and was naming Bharat Singh. This part of testimony of P.W. 7 read with the statement of other eye-witnesses, proves charge of offence punishable u/s 304 I.P.C. beyond reasonable doubt at least against accused/appellant Bharat Singh. As to the other accused/appellants namely Bhaw Singh, Virendra Singh and Surat Singh, it cannot be ruled out that their names might have been added due to enmity or they might have reached at the spot soon after the incident, as their house was nearer to the place of incident than that of the witnesses in the village.

12. On behalf of the appellants, it is argued that First Information Report (Ext. A-1) is ante time report. We have gone through the report, lodged by P.W. 1 K.S. Rana and also perused the statement of P.W. 2 Omkar Chand. Statement of K.S. Rana that he lodged First Information Report on the instructions of Omkar Chand is natural and trust worthy. There is nothing on the record, which suggests that the First Information Report was not lodged on 04.05.1994. Had it been ante time, the weapon Khukri with lathi and stones would not have been mentioned in the report, as there was no injury of khukri, mentioned in the injury report (Ext. A-3), prepared by P.W. 5 Dr. Ajay Sharma on the very day at about 8:40 p.m.

13. Our attention is also drawn to the statement of D.W. 1 Pratap Singh, examined on behalf of the defence, who has stated that deceased Kashi Ram had fallen from a tree and suffered injuries. Had that been a case, the accused/appellants would have put this suggestion to the witnesses, examined on behalf of the prosecution in cross examination. On behalf of the accused/appellants no suggestion has been made that the injury could have been caused due to fall even to P.W. 5 Dr. Ajay Sharma. As such, such testimony of D.W. 1 Pratap Singh does not give the true version of the story. Apart from this place of incident is pathway not jungle.

14. For the reasons as discussed above, we are of the view that this appeal deserves to be allowed partly. The conviction of accused/appellant Bharat Singh requires no interference as we concur with the trial court that prosecution has successfully proved charge of offence punishable u/s 304 Part- I I.P.C., as against him. However, as to the conviction recorded as against his father Bhaw Singh and brothers Virendra Singh and Surat Singh, we are of the view that it cannot be said that charge is proved beyond all reasonable doubt against them. That being so, they are entitled to the benefit of reasonable doubt. Accordingly, their appeal deserves to be allowed, and conviction and sentence recorded as against them is liable to be set aside. As to the sentence awarded to the accused/appellant Bharat Singh by the trial court, we are of the view that he has been awarded maximum penalty u/s 304 Part-I I.P.C. by the trial court. Having considered the facts and circumstances of the case, and cause of death, we are of the view that rigorous imprisonment for a period of ten years would meet the ends of justice. Accordingly, we dispose of this appeal with the following directions:

1. Appeal of accused/appellants Bhaw Singh, Virendra Singh and Surat Singh is allowed, giving them benefit of reasonable doubt. Conviction and sentence recorded by the trial court as against them is set aside. They are acquitted of the charge of offence punishable u/s 304 read with Section 34 I.P.C. They are on bail. They need not to surrender.

2. Appeal of accused/appellant Bharat Singh so far it relates to his conviction u/s 304 Part I I.P.C., is dismissed. However, on the point of sentence, he is sentenced to rigorous imprisonment for a period of ten years, instead of imprisonment for life, awarded by the trial court. He is on bail. His bail is cancelled. Registry is directed to send the lower court record back so that accused/appellant Bharat Singh may be made to serve out the remaining part of sentence, awarded to him by this Court. Sentence already undergone by him during the trial shall be adjusted out of the sentence awarded by this Court.