
(2010) 10 UK CK 0072
In the Uttarakhand High Court
Case No : Criminal Appeal No. 1512 of 2001

Chandra Singh, Tajbar Singh and Jagdish Singh	APPELLANT
Vs	
State of Uttarakhand	RESPONDENT

Date of Decision : 28-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 313, 374(2)
Evidence Act, 1872 — Section 134
Penal Code, 1860 (IPC) — Section 307, 34

Citation : (2010) 10 UK CK 0072

Hon'ble Judges : Dharam Veer, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dharam Veer, J.—This appeal, preferred by the appellants u/s 374(2) of The Code of Criminal Procedure, 1973 (hereinafter to be referred as Cr.P.C.), is directed against the judgment and order dated 10.4.2000 passed by Sessions Judge, Pauri Garhwal in Sessions Trial No. 33 of 1997, State v. Chandra Singh and Ors. whereby the learned Sessions Judge convicted the appellants-accused u/s 307 read with Section 34 of The Indian Penal Code, 1860 (hereinafter to be referred as IPC) and sentenced them to undergo rigorous imprisonment for a period of four years with a fine of Rs. 1,000/- each and in default of payment of fine, six months" imprisonment was further awarded to each of them.

2. Heard learned Counsel for the parties and perused the entire material on record.

3. In brief, the prosecution case is that Anand Singh Rawat lodged a report before Patti Patwari Talka, Tehsil Badalpur on 9.7.1995 stating therein that on 8.7.1995 the complainant was in his house. His one relative named Teerath Singh was also with him. The complainant had sent his son Sunil Singh for purchasing certain articles from the market. In the evening at about 07:45 P.M., Hoshiyar Singh, resident of his village, informed him that the appellants-accused

has caused injuries to his son by khukhri. On this information, the complainant and Teerath Singh reached at the place of occurrence and saw his son lying on road and drenched with blood. There were number of injuries on the body of his son. His son was shirtless and blood was oozing out from his body. He got admitted his son in the hospital but because of his serious condition, he was referred to Army Hospital, Lansdowne. It is further stated that the appellants-accused were bearing enmity with the complainant and his family and, with intention to kill his son, the appellants-accused caused injuries to his son and assuming him as dead, these accused persons had fled away from the spot. The complainant also found a bloodstained Khukhri at some distance from the place of occurrence. With these averments, the FIR was lodged by Anand Singh Rawat (PW2) on 9.7.1995 at 8 AM, which is Ext.Ka-1. On the basis of this report, Chik FIR of the case was prepared by Patwari Janardan Prasad, i.e. Ext.Ka-4. Necessary entries were also made in the G.D., copy of which is Ext.Ka-5. The investigation of the case was entrusted to Patwari Janardhan Prasad. (In Rural Hilly Areas of State of Uttarakhand, the Patwaris and certain Revenue Officials are being vested with police powers vide U.P. Govt. Notification No. 494/VIII-418-16 dated 7.3.1916). Khukhri given by the complainant was taken into possession and a fard thereof was prepared which is Ext.Ka-2. Injured Sunil Singh was medically examined by PW5 Dr. S.P. Naithani on 8.7.1995 at 10:30 P.M., who after the medical examination, prepared the injury report, i.e. Ext.Ka-3. During the course of investigation, the I.O./Patwari recorded the statement of witnesses, inspected the place of occurrence and prepared the site-plan, i.e. Ext.Ka-6 and on completion of investigation, he filed the charge sheet against the appellants-accused, which is Ext.Ka-7.

4. After receiving the charge sheet, learned Chief Judicial Magistrate, Pauri Garhwal, committed the case to the court of Sessions on 24.4.1997, after giving necessary copies to the appellants-accused as provided u/s 207 Code of Criminal Procedure

5. On 14.7.1997, learned Sessions Judge, Pauri Garhwal, framed the charge of offence punishable u/s 307 r/w 34 IPC against the appellants-accused. The charge was read over and explained to the appellants-accused, who pleaded not guilty and claimed to be tried.

6. In order to prove its case, the prosecution has examined PW1 Teerath Singh, eyewitness, PW2 Anand Singh, complainant, PW3 Hoshiyar Singh, PW4 Sunil Rawat, injured witness, PW5 Dr. S.P. Naithani, who medically examined the injured and PW6 Janardhan Prasad, I.O. of the case.

7. Thereafter the statements of the appellants-accused were recorded u/s 313 Code of Criminal Procedure The oral and documentary evidence were put to each of them in question form, who denied the allegations made against them. However, they have not produced any oral or documentary evidence in defence.

8. After appreciating the entire evidence on record and hearing learned Counsel

for the parties, learned Sessions Judge, Pauri Garhwal, vide his judgment and order dated 10.4.2000 convicted and sentenced the appellants-accused as mentioned above. Against the said judgment and order, the appellants-accused have preferred the present appeal.

9. Before any further discussion, it would be pertinent to mention the injury report Ext.Ka-3 of injured Sunil Singh, which is reproduced as under:

- i) Lacerated wound 8 cm x 1 cm x 1 cm situated horizontally at posterior part of scalp just right to the occipital protuberance. The wound oozing fresh blood.
- ii) Lacerated wound 1 cm x 1 cm x 0.5 cm oozing fresh blood situated at forehead on right side.
- iii) Incised wound sharp edge oozing fresh blood situated at lower part of sternum slightly to the right side of chest. The wound is about 2.5 cm x 0.5 cm x 0.8 cm deep.
- iv) Incised wound horizontally oblique 2.5 cm x 0.5 cm x 0.8 cm oozing fresh blood situated at lowest part of chest frontal region slightly to the right side. Just below injury No. 3. Just above lowest boarded of ribs on right side.
- v) Horizontal incised wound 3 cm x 0.5 cm x 0.5 cm oozing fresh blood situated on upper left half of the abdomen below costal margins.
- vi) Oblique incised wound 2 cm x 0.4 cm x 0.5 cm situated at lowest part of left side of front of chest. It is oozing fresh blood.
- vii) Superficial incised wound 6 cm x 0.5 cm x 0.2 cm situated at left lower quadrant of abdomen just above anterior super iliac spine. It is oozing fresh blood.
- viii) Bruise pink coloured 8 cm x 4 cm situated at upper part of abdomen just below xiphi sternum.
- ix) Linear superficial abrasion pink coloured situated at left side of abdomen, just below injury No. 6. It is horizontal and 8 cm long.
- x) Bruise 10 cm x 5 cm x pinkish coloured situated at mid part of the back of chest slightly to the right side. It is obliquely placed.
- xi) Bruise vertical/obliquely placed at back of lower part of chest. It is pinkish coloured and 10 cm x 5 cm in diameter.
- xii) Bruise pinkish coloured 8 cm x 4 cm horizontal situated at mid scapular region of right side back part of chest.
- xiii) Linear abrasion pinkish coloured situated at supra scapular region on left side back of chest.
- xiv) Right side cheek is swollen and tender. Swelling is diffused and about 2 cm in diameter.

xv) Complaint of pain left side ear and hearing. For any impairment in hearing he is referred to ENT specialist.

xvi) Linear abrasion 6 cm, light brown coloured situated at upper palmer aspect of left side arm.

xvii) Bruise pinkish coloured 10 cm x 6 cm situated at upper part of back aspect of left side leg.

Opinion: In my opinion the injuries are simple in nature (except injury No. 1 and 2) in which case any underneath bleeding cannot be ruled out. All the injuries are fresh in nature. Injury Nos. 3, 4, 5, 6, 7, 9, 13, 16 are caused by sharp weapon. Rest of the injuries are caused by blunt blow.

10. To prove the above medical report, the prosecution has examined PW5 Dr. S.P. Naithani, who was posted as Medical Officer at Cantt Hospital, Lansdowne on 8.7.1995 and on that day at 10:30 P.M. he medically examined the injuries on the person of injured Sunil Singh. He has proved the injury report Ext.Ka-3. He opined that all these injuries were possible to come on 8.7.1995 at about 7:45 P.M.. Injury Nos. 3, 4, 5, 6, 7, 9, 13 and 16 could be caused by sharp weapon like Khukhri and rest could be caused by blunt object and kicks and fists. Injury Nos. 1 and 2 were on head which is a vital part of the body. He further stated that if the injury Nos. 1 and 2 would be grievous in nature then it would be sufficient for death.

11. PW4 Sunil Rawat is the injured witness of the case. He has stated that he is serving in Army. On the date of incident, he was on leave. On 8.7.1995, Teerath Singh, his cousin, had come in their house and he had gone to market for purchasing certain articles. At about 7:30 P.M. when he was coming back from market and has reached in front of the house of the appellants-accused, he saw the appellants-accused standing there. Appellant-accused Chandra Singh hurled abuses to him and his father. Appellant-accused Chandra Singh was armed with Khukhri. Other accused caught hold of him and appellant-accused Chandra Singh caused injuries to him by khukhri. Appellant-accused Jagdish and Tajbar torn his clothes and stuck their teeth on his hand. Appellant-accused Chandra Singh caused injuries on his head, abdomen, hand and chest due to which he became unconscious. He was taken to Cantt Hospital, but due to serious condition, he was referred to Military Hospital, Lansdowne. When his condition became more serious, he was sent to Military Hospital, Roorkee. Thereafter he was sent to Central Command Hospital, Lucknow and when he recovered a bit, he was again sent to M.H., Lansdowne. He remained in hospital for about 31 days. He further stated that the said incident had taken place at 7:30 P.M. and it was not dark at that time. He further stated that his father is Chairman of Cooperative Bank and due to reason the appellants-accused were having enmity with them. He further stated that he received 14 stitches on his head. Appellants-accused committed marpeet with him with intention to kill him. This witness was cross-examined at length by the defence counsel but nothing has come out from his evidence which

may create any doubt in his evidence. The evidence of this witness is reliable, believable and inspires confidence.

12. PW1 Teerath Singh is a eyewitness of the case. He has corroborated the statement of PW4 Sunil Rawat.

13. PW2 Anand Singh is the complainant of the case. He has reiterated the contents of FIR lodged by him before Patwari. He has proved the report Ext.Ka-1.

14. PW3 Hoshiyar Singh, who was cited as a eyewitness of the case has not supported the prosecution case and was declared hostile.

15. PW6 Janardhan Prasad Gaud was posted as Patwari of area Talka Badalpur in 1995. On the basis of report lodged by Anand Singh 9.7.1995 at about 8 A.M., he prepared the chik FIR Ext.Ka-4 and made entry in the G.D., Ext.Ka-5 and thereafter he started the investigation of the case. During the course of investigation, he recorded the statement of witnesses, prepared the site-plan Ext.Ka-6 and on completion of investigation, he filed the charge sheet Ext.Ka-7 against the appellants-accused.

16. Thereafter the statements of the appellants-accused were recorded u/s 313 Code of Criminal Procedure The oral and documentary evidence were put to each of them in question form, who denied the allegations made against them. However, they have not produced any oral or documentary evidence in defence.

17. Learned amicus curiae appearing on behalf of the appellants argued that the prosecution has not proved its case beyond reasonable doubt against the appellants-accused. I do not find force in the argument put forth by learned Counsel for the appellants-accused for the reason that PW4 Sunil Rawat, who is the injured witness of the case, has specifically stated in his statement that on 8.7.1995, Teerath Singh, his cousin, had come in their house and he had gone to market for purchasing certain articles. At about 7:30 P.M. when he was coming back from market and has reached in front of the house of the appellants-accused, he saw the appellants-accused standing. Appellant-accused Chandra Singh hurled abuses to him and his father. Appellant-accused Chandra Singh was armed with Khukhri. Other accused caught hold of him and appellant-accused Chandra Singh assaulted him by khukhri. Appellant-accused Jagdish and Tajbar torn his clothes and stuck their teeth on his hand. Appellant-accused Chandra Singh caused injuries on his head, abdomen, hand and chest due to which he became unconscious. He was taken to Cantt Hospital but due to serious condition, he was referred to Military Hospital, Lansdowne. When his condition became more serious, he was sent to Military Hospital, Roorkee. Thereafter he was sent to Central Command Hospital, Lucknow and, when he recovered a bit, he was sent back to M.H., Lansdowne. He remained in hospital for about 31 days. He further stated that the said incident had taken place at about 7:30 P.M. and it was not dark at that time. He further stated that his father is Chairman of Cooperative Bank and due to reason the appellants-accused would be having enmity with them. Appellants-accused committed marpeet with him with

intention to kill him. The evidence of this witness is reliable, believable and natural and inspires confidence and the same also gets full corroboration from the oral evidence of P.W.1 Teerath Singh and P.W.2 Anand Singh. Though these two witnesses are not the eyewitnesses of the case, but on the information of Hoshiyar Singh (PW3), they rushed at the place of occurrence and saw the injured Sunil Rawat who was drenched with blood and was lying on road. Both of them have fully supported the prosecution case in their statements. Apart from above, the evidence of P.W.4 Sunil Rawat further gets full corroboration from the medical evidence of P.W.5 Dr. S.P. Naithani as well as from the injury report Ext.Ka-3. As many as 17 injuries were found on the person of the injured, about which P.W.5 Dr. S.P. Naithani opined that all these injuries were possible to come on 8.7.1995 at about 7:45 P.M. Further, injury Nos. 3, 4, 5, 6, 7, 9, 13 and 16 could be caused by sharp weapon like Khukhri and rest could be caused by kicks and fists and blunt object. Injury Nos. 1 and 2 were on head, which is a vital part of the body. It was also stated by the medical officer that if the injury Nos. 1 and 2 would be grievous in nature then it would be sufficient for death of injured. All these facts and circumstances give full support and, therefore, wholly corroborate the statement of injured.

18. Learned Counsel for the appellants-accused further argued that except the injured person himself there is no other eyewitness of the case but the trial court has convicted and sentenced the appellants-accused on the basis of sole testimony of P.W.4 Sunil Rawat and it is not safe to convict the appellants-accused on the basis of sole testimony. This argument advanced by learned Counsel for the appellants has also got no force. It is settled principle of law that the conviction can be based on the sole testimony provided it must inspire implicit confidence. In the instant case, the sole eyewitness Sunil Rawat inspires implicit confidence and there is no reason to disbelieve his testimony. It is the quality of evidence of the single witness whose testimony has to be tested on the touchstone of credibility and reliability. It is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. I am fortified in my view with the verdict of Hon'ble Supreme Court in case of Chittar Lal Vs. State of Rajasthan, in which it has been held that conviction can be based on sole evidence of a witness if it inspires confidence. Para 7 of the judgment is essential to mention here which is quoted as below:

Evidence of the person -whose name did not figure in the FIR as -witness does not perforce become suspect. There can be no hard-and-fast rule that the names of all witnesses, more particularly eyewitnesses should be indicated in the FIR. As was observed by this Court in Shri Bhagwan v. State of Rajasthan mere non-mention of the name of an eyewitness does not render the prosecution version fragile. The information was not lodged by an eyewitness. Mental condition of a person whose father has lost his life inevitably gets disturbed. Explanation offered by witnesses for non-mention of PW 3's name is plausible. Additionally, it is to be noted that in the present case the statement of PW 3 was recorded on the same day of incident, immediately after the investigation process was set

into motion. Therefore, the plea that PW3's testimony is doubtful lacks substance. The other plea was that conviction should not have been made on the basis of a single witness, PW3's testimony. This plea is equally without essence. The legislative recognition of the fact that no particular number of witnesses can be insisted upon is amply reflected in Section 134 of the Indian Evidence Act, 1872 (in short "the Evidence Act"). Administration of justice can be affected and hampered if number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of one witness, leaving aside those cases which are not of unknown occurrence where determination of guilt depends entirely on circumstantial evidence. If plurality of witnesses would have been the legislative intent, cases where the testimony of a single witness only could be available, in number of crimes the offender would have gone unpunished. It is the quality of evidence of the single witness whose testimony has to be tested on the touchstone of credibility and reliability. If the testimony is found to be reliable, there is no legal impediment to convict the accused on such proof. It is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. This position has been settled by a series of decisions. The first decision which has become locus classicus is Mohd. Sugul Esa Mamasan Rer Alalah. R. The Privy Council focused on the difference between English law where a number of statutes make conviction impermissible for certain categories of offences on the testimony of a single witness and Section 134 of the Evidence Act. The view has been echoed in Vadivelu Thevar v. State of Madras, Guli Chand v. State of Rajasthan, Vahula Bhushan v. State of T.N., Jagdish Prasad v. State of M.P. and Kartik Malhar v. State of Bihar.

19. My view further stands fortified with another judgment of Hon'ble Apex Court in the case of Mahendra Singh v. State of M.P. reported in (2007) 3 SCC 583 in which in para 11, it has been held as under:

11. It is now a well-settled principle of law that conviction can be based on the basis of the testimony of a sole eyewitness.

20. After considering the aforesaid judgments rendered by Hon'ble Apex Court and in view of the evidence discussed above, the argument advanced by learned Counsel for the appellants is not sustainable in the eye of law and as per the foregoing discussion, it has been proved beyond reasonable doubt that the evidence of P.W.4 Sunil Rawat is reliable, believable and inspires implicit confidence. The prosecution has successfully proved its case against the appellants-accused beyond reasonable doubt. The trial court has rightly convicted and sentenced the appellants-accused on the basis of sole testimony of P.W.4 Smt. Sunil Rawat and I concur the view taken by the trial court in convicting and sentencing the appellants-accused as discussed above.

21. For the foregoing reason, the appeal lacks merit and is hereby dismissed. The judgment and order dated 10.4.2000 passed by Sessions Judge, Pauri Garhwal in Sessions Trial No. 33 of 1997, State v. Chandra Singh and Ors. convicting and sentencing the appellants-accused, needs no interference by this

Court and is hereby made affirmed. Appellants-accused are on bail. Their bail is cancelled. Let them be taken into custody to serve out the sentence as awarded against them.

22. A copy of this judgment along with the record be sent to the trial court concerned for compliance of the order forthwith.