
(2013) 03 UK CK 0051

In the Uttarakhand High Court

Case No : Criminal Appeal No. 139 of 2008

Girish Singh Khati

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 18-03-2013

Acts Referred:

Citation : (2013) 1 NCC 599 : (2014) 1 UC 529

Hon'ble Judges : Barin Ghosh, C.J;Alok Singh, J

Bench : Division Bench

Advocate : R.S. Sammal in Criminal Appeal No. 139 of 2008 and Ms. Geeta Parihar, Amicus Curiae in Criminal Appeal No. 148 of 2008, for the Appellant; V.P. Bahuguna, Brief Holder in Criminal Appeal No. 139 of 2008 and Mr. A.S. Gill, Sr. Government Advocate assisted by Mr. V.P. Bahuguna, Brief Holder in Criminal Appeal No. 148 of 2008, for the Respondent

Final Decision : Dismissed

Judgement

Alok Singh, J.—Since both the appeals are arising out of the same judgment and order dated 24.05.2008 passed by Sessions Judge, Nainital thereby convicting the appellants, herein, for the offences punishable u/s 302/34 IPC and sentencing them to undergo imprisonment for life and to pay fine of Rs. 10,000/- each, failing which to undergo additional rigorous imprisonment of one year each, therefore, both the appeals were taken up and heard together and are being disposed of by this common judgment. Brief facts of the present case are that PW1 Geeta Arya along with Chandan Kumar were taking walk at about 09.00 p.m. and when both of them reached near the house of PW3 Mahesh Chandra Joshi, both the appellants came on Yamaha motorcycle and pushed Chandan Kumar from behind and thereafter, started beating Chandan Kumar. PW1 Geeta Arya and PW3 Mahesh Chandra Joshi tried to intervene and made an attempt to get released Chandan Kumar from the clutches of appellants, however, appellants pushed PW1 and PW3, and thereafter, had tossed him on the road. Deepak Singh Bisht sat on the feet of Chandan Kumar while Girish Singh Khati took a stone from road and hit it on the head of Chandan Kumar several

times; consequently, Chandan Kumar started bleeding profusely. Thereafter, both the appellant took Chandan Kumar on their motorcycle placing him in between them and fled away from the spot. When Chandan Kumar did not return home, PW2 Mohan Lal having received the information lodged an FIR (Exhibit Ka 1) with the police station Kathgodam at 12.30 a.m. Having registered the FIR, PW7 SI Mohd. Zaheer Khan started the investigation.

2. PW7 Investigating Officer went to the spot and had taken a piece of blood stained road as well as plain road from the site of occurrence and kept in sealed cover. He also collected blood stained stone, which was said to be used in the murder of Chandan Kumar. Dead body of Chandan Kumar was recovered from beneath the canal bridge and an inquest report was prepared on the spot. Dead body was sent for post mortem examination. The motorcycle, jacket and pants of Girish Chandra Khati were also taken into custody and recovery memos thereof were prepared. The postmortem examination was conducted by Dr. B.K. Teelara on 16.01.2006 on the dead body of Chandan Kumar, who found following ante mortem injuries on the person of Chandan Kumar, one lacerated wound 4 cm. X 2 cm. bone deep on the right side skull, parietal bone broken into pieces and entered into the brain, three other lacerated wounds on the forehead and one contusion on the nose, besides abrasions.

3. Clothes of Girish Singh Khati, rear wheel of motorcycle along with the stone were sent for chemical examination. As per report of Forensic Science Laboratory, jacket, pants, rear wheel of motorcycle of accused Girish Singh Khati, stone used in the crime, all were found having human bloodstains thereon.

4. Having investigated the matter, a chargesheet was submitted against the accused appellants for the offences punishable u/s 302, 201 IPC and u/s 3(2)(1) of SC & ST Act while against one accused Prahalad Singh charge-sheet was filed (who is not appellant before this Court) u/s 120B IPC u/s 3(2)(1) of SC & ST Act.

5. From the side of prosecution, Km Geeta Arya (PW1), Mohan Lal, informant (PW2), Mahesh Chandra Joshi (PW3) as well as 7 other witnesses were examined.

6. Learned trial Judge, having considered the material available on record, found both the appellants guilty for the offences punishable u/s 302 IPC read with Section 34 IPC and sentenced them as mentioned hereinabove, however, acquitted accused Prahalad Singh from the charges levelled against him. Feeling aggrieved, both the appellants have preferred these two appeals.

7. We have heard Mr. R.S. Sammal, Advocate appearing on behalf of appellant Girish Singh Khati, Ms. Geeta Parihar, Advocate, appearing on behalf of appellant Deepak Singh Bisht and Mr. A.S. Gill, Sr. Government Advocate assisted by Mr. V.P. Bahuguna, Brief Holder for the State of Uttarakhand/respondent and have carefully perused the record.

8. Statements of PW1 Geeta Arya were also earlier recorded u/s 164(5) Cr.P.C., on 20.01.2006 by the Magistrate wherein PW1 has supported the prosecution

story by stating that on the fateful night, at about 9.30 p.m. she was walking along with Chandan Kumar, the moment they reached in front of house of PW3 both the accused persons came on the motorcycle and hit Chandan Kumar from behind by motorcycle and thereafter, both of them started beating Chandan Kumar and thereafter, accused Deepak Singh Bisht had tossed Chandan Kumar on the road and sat on his leg while Girish Singh Khati took a stone in his hands started assaulting on the face and head of Chandan Kumar by stone. Having received the injuries on his head Chandan Kumar started bleeding profusely and soon thereafter, both the appellants took him away on the motorcycle.

9. Geeta Arya (PW1) had appeared in the witness box on 29.11.2006 and she has once again supported the prosecution story in her examination-in-chief. On the request of learned counsel for the defence/appellants, the case was adjourned for cross-examination and thereafter, she was cross-examined on 19.02.2007. During the cross examination, she has taken u-turn and has stated that she had not seen the appellant assaulting Chandan Kumar. It seems, meanwhile, either she was won over or was threatened.

10. PW3 Mahesh Chandra Joshi, appeared in the witness box on 28.05.2007 and has stated in his examination-in-chief that on 14.01.2006 at about 09.30 p.m., he had seen, in the electric light and moonlight that some boys were assaulting Chandan Kumar, however, he did not see the appellants assaulting Chandan Kumar, therefore, he was declared hostile.

11. Hon"ble Apex Court in Bhagwan Singh Vs. The State of Haryana, and Syad Akbar Vs. State of Karnataka, which were later on relied by three-Judge Bench of Hon"ble Apex Court in the case of Khujji alias Surendra Tiwari Vs. State of Madhya Pradesh, has held that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version found to be dependable on a careful scrutiny thereof. Hon"ble Apex Court in the case of Radha Mohan Singh @ Lal Saheb and Others Vs. State of U.P., as well as in the case of Paramjeet Singh @ Pamma Vs. State of Uttarakhand, has approved the proposition of law. In view of law laid down by the Hon"ble Apex Court, now, we have to examine as to whether from the statement of PW1 and PW2, case of prosecution can be said to have been proved.

12. From the examinations-in-chief of PW1 and PW3, we find that both the witnesses were stating that there was sufficient electric light and full moonlight on 14.01.2006 and Chandan Kumar was being assaulted. From the examination-in-chief of PW1 coupled with her statement u/s 164(5) Cr.P.C., we find Chandan Kumar was assaulted in front of house of PW3 on 14.01.2006 at about 09.30 p.m.

13. From the Forensic Science Laboratory report (Exhibit Ka 26), we find that rear wheel of motorcycle, jacket and pants of Girish Chandra Khati were having human bloodstains. Girish Chandra Khati had not disputed that clothes, so seized

as well as rear wheel of his motorcycle, which were taken for chemical examination to the forensic science laboratory did not belong to him. Appellant Girish Chandra Khati failed to give any reasonable explanation to the effect as to how his clothes and rear wheel of his motorcycle could have got human blood stains thereon. Therefore, the only conclusion would be that Chandan Kumar after being assaulted in front of the house of PW3 was taken therefrom on the motorcycle by Girish Singh Khati appellant. Consequently, we are unable to interfere with the reasoning and finding recorded by the trial court while convicting and sentencing Girish Singh Khati.

14. However, there is nothing on record to show when the clothes of appellant Deepak Singh Bisht were seized, therefore, Forensic Lab report to the effect that clothes of Deepak Singh Bisht were also having human bloodstains shall be of no help to the prosecution. Therefore, we find that prosecution failed to prove involvement of Deepak Singh Bisht in the crime beyond reasonable doubt. The conviction of Deepak Singh Bisht seems to be unjustified in the light of observations made hereinabove.

15. We, accordingly, dismiss the criminal appeal No. 139 of 2008 preferred by Girish Chandra Khati, however, allow the criminal appeal No. 148 of 2008 preferred by Deepak Singh Bisht. Deepak Singh Bisht is in jail. Let he be released from jail forthwith unless required in any other case. Let a copy of this judgment be sent to the court below for compliance along with lower court record.