
(2022) 10 UK CK 0020
In the Uttarakhand High Court
Case No : Criminal Appeal No. 336 Of 2013

Hemu Pant @ Hemu Kalu And Another APPELLANT
Vs
State Of Uttarakhand RESPONDENT

Date of Decision : 11-10-2022

Acts Referred:

Indian Penal Code, 1860 — Section 201, 302, 364
Arms Act, 1959 — Section 4, 25
Code Of Criminal Procedure, 1973 — Section 437A

Citation : (2022) 10 UK CK 0020

Hon'ble Judges : Sanjaya Kumar Mishra, J;Alok Kumar Verma, J

Bench : Division Bench

Advocate : L.D. Joshi, R.S. Sammal, J. S. Virk

Final Decision : Allowed

Judgement

Sanjaya Kumar Mishra, J

1. The appellants – Hemu Pant @ Hemu Kalu and Manish @ Kanchu Matiyani have taken exception to their conviction by the learned District and Sessions Judge, Nainital in Session Trial No. 30 of 2007, 31 of 2007 and 32 of 2007 as per judgment and order dated 19.08.2013 for the offence under Sections 364, 302 and 201 of the Indian Penal Code, 1860, (hereafter referred to as “the Penal Code” for brevity), and also for the offence under Section 4/25 of the Arms Act, 1959 (herein after referred to as “the Act” for brevity) and the sentences awarded thereunder in a joint Trial in four Sessions Case Nos. 30 of 2007, 31 of 2007, 32 of 2007 and 33 of 2007, which were disposed of by the same judgment.
2. The present appellants along with Lokpal Mehra, Lalit Mehra, Lakhan Singh and Atul Negi were tried for the aforesaid offences. However, the co-accused were acquitted by the learned Sessions Judge, Nainital.
3. Bereft of all unnecessary details, the case of the prosecution comes on 12.12.2006, a First Information Report ‘Exhibit Ka-2’ was presented by the

complainant- Krishna Kumar Singh Bhakuni (Cousin of the deceased) before the S.H.O., Police Station Haldwani in the District of Nainital, inter alia, stating that in the night of 11.12.2006, he along with Tarunjeet Singh Bhakuni went to attend Reception in Subhash Nagar at the house of one Tiwari Ji. At the place of reception, it came to know that Lalit Mehra being injured was admitted in 'Krishna Nursing Home, Haldwani'. Therefore, the complainant and others went to see him, where Lokpal Mehra, Hemu Pant, Atul Negi and Kanchu Matiyani met them outside the 'Krishna Nursing Home'. Hemu Pant abused Tarunjeet Singh Bhakuni. A scuffle resulted. One Deepak Gangola rescued him. Thereafter, the complainant and Tarunjeet Singh Bhakuni came back to the Reception.

At about 10/10:30 PM, the appellants – Hemu Pant and Kanchu Matiyani along with Lakhan Singh, Atul Negi, Lokpal Mehra and Lalit Mehra came to the place where, the reception was being held in a blue colour car. They were armed with sharp edged weapons and lathi – dande (लठी-डंडे) etc. and they started to beat Tarunjeet Singh Bhakuni and forcibly took him away in that car. The complainant further, thought that deceased would eventually come back, so after having his meal, he went to his house. In the next morning, he came to know that deceased - Tarunjeet Singh Bhakuni had not reached his house. The complainant searched him along with his family members.

On the way, he came to know that dead body was recovered from the place of Village – Prempur Loshgyani. They all reached there and saw the dead body of Tarun Bhakuni. He identified the dead body before the police and prayed for necessary legal action against the accused persons.

On the basis of F.I.R. Crime No. 159/2007 was registered for the offences stated above against all the accused persons including the present appellants and investigation was taken up.

In course of investigation, the Investigating Officer examined the complainant and other witnesses, and on the basis of recovery of arms and the discovery statement made by Manish Matiyani, Hemu Pant and Lalit Mehra, three separate cases were registered as Crime Case Nos. 6463 of 2006, 6557 of 2006 and 159 of 2007 respectively under Section 4/25 of the Arms Act.

The dead body of the deceased was sent for post mortem examination and after completion of investigation, charge-sheet has been submitted against all the accused persons. The defence took the plea of simple denial and false accusation in this case.

4. In order to prove its case, the prosecution examined 15 witnesses and led into the evidence, several documents and material objects. PW2 – Krishna Kumar Singh Bhakuni is the informant in this case. He happens to be the cousin of the deceased. PW1 – Hemant Tiwari, PW3 – Deepak Gangola, PW4 – Rajendra Singh Negi and PW7 – Anup Singh Thathola (brother-in-law of the deceased) have not supported the case of the prosecution and has turned hostile to it. PW8 – Devendra Singh Bhakuni and PW9 Rohit Bhakuni are witnesses to the inquest,

PW10 – Baljeet Singh Bhakuni (elder brother of the deceased) is a witness to the recovery of Khukhri and wallet and PW11 – Anand Singh is a witness to the recovery of khookhri, PW5 – Dr. D.C. Bhatt has conducted the post mortem examination of the dead body of the deceased, PW6 – Aijaj Khan, PW12 – S.I. Jagdish Singh Dhakriyal, PW13 – S.I. K.R. Arya and PW14 – S.I. Arvind Kumar Nain are police officers, who have taken part in the investigation of the case like holding inquest and being witness of the recovery etc. PW15 – H.B. Sain, Senior Sub-Inspector has investigated into the case and has submitted the charge-sheet against the accused persons. The defence, on the other hand, examined Dr. Harbhajan as DW1.

5. Admittedly, the case of the prosecution is based entirely upon circumstantial evidence. However, the defence has not challenged the identity of dead body of the deceased and that it was put to post mortem examination by PW5 – Dr. D.C. Bhatt.

6. It is apparent that he has conducted post mortem of the dead body of the deceased and found that he had sustained several injuries on his body like 9 incised injuries and several other injuries, which reads as under:-

i. An incised wound 4 cm x 0.2 cm x bone deep lying obliquely on left side of forehead 3 cm. above left eyebrow. Margins are clean cut.

ii. An incised wound 1.5 cm. x 0.2 cm x bone deep lying obliquely 1 cm above the injury no. 1. Margins are clean cut.

iii. An incised wound 4.5 cm. x 0.2 cm x bone deep on the middle of forehead lying horizontally. Margins are clean cut.

iv. An incised wound 2.5 cm. x 0.2 cm x maxilla deep on right side face lying 1.5 cm. below right outer angle of eye. Margins are clean cut.

v. An incised wound 3 cm. x 0.2 cm x bone deep on right side forehead lying obliquely 3 cm. above the hair line on right side.

vi. An incised wound 3 cm. x 0.2 cm x bone deep on the middle of head. Margins are clean cut lying obliquely.

vii. An incised wound 6 cm. x 0.2 cm x bone deep lying obliquely on left side head 4 cm. above left ear at 1 o'clock position. Margins are clean cut.

viii. Right Pinna cut size 3 cm.

ix. An incised wound 2.5 cm. x 0.2 cm x bone deep 0.5 cm in front of left ear lobule. Margins are clean cut.

x. An incised wound 2.5 cm. x 0.2 cm x bone deep on the back of head lying obliquely 8 cm. away from left ear at 3 o'clock position. Margins are clean cut.

xi. An abraded contusion 8 cm. x 4 cm. on left side abdomen lying 9.5 cm. above umbilicus at 1 o'clock position.

xii. An abrasion 4 cm x 2 cm on the back of right hand.

xiii. Lower end of right tibia fractured.

xiv. An abrasion 7 cm x 2 cm in from of right leg.

xv. An abrasion 8 cm x 3 cm. in front of left leg.

7. He has given a very categorical finding that the injury nos. i to x could be possibly by sharp weapon like Khukhri but the death was caused particularly because of injury nos. vi and vii as stated above.

8. Both the injuries have clear cut margins. The doctor also found fracture on the right and left parietal bone and left temporal bone. Thus, it is clear that the death of the deceased was due to bodily injuries inflicted upon him by sharp edged weapon and that death was caused because of the injuries to the head, hence, the death of the deceased was definitely homicidal.

9. In order to establish its case, the prosecution has mainly relied upon the evidence of PW2, who is the informant and also cousin of the deceased. It is stated by this witness examined as PW2 that on the date of occurrence, they had been to the Reception party of one Tiwari Ji at Haldwani, where Lalit Mehra met with an accident has been admitted to 'Krishna Nursing Home'. Thereafter, the informant – PW2 and the deceased – Tarunjeet Singh Bhakuni went to the said Nursing Home. In front of the hospital on the thandi road, they saw Hemu Pant, Lokpal Mehra, Kanchu Matiyani and Atul Negi. There Hemu Pant started assaulting the deceased, but witness Deepak Gangola came and separated them. He also gave a slap to the appellant – Hemu Pant and then also reprimand them.

The witness, further states that they returned to the Reception of Tiwari. While, they were present there, the accused persons - Lokpal Mehra, Hemu Pant, Kanchu Matwani, and Atul Negi came in a blue color Santro car bearing Registration No. UP 02D-6272 and started abusing the deceased - Tarunjeet Bhakuni. They also took away the deceased in that car, at that time, they were being armed with lathi - dande (लाठी-डंडे), chaku (चाकू), Khurkhri (खूखरी) etc.

10. This witness was believed partly by the learned Sessions Judge in the sense that the learned Session Judge came to conclusion that he is implicating the appellants – Hemu Pant and Kanchu Matwani but for the reasons that are not reflected in the judgment, he has not relied upon the evidence of the witness to implicate the accused – Lokpal Mehra and Atul Negi. Though, he has specifically stated their names. Thus, it is clear that the evidence of PW2 cannot be accepted to be a wholly reliable witness.

11. Moreover, the last seen of the deceased was about 10:00 PM in the night of 11.12.2006, where the dead body of the deceased was found on the next day morning. So there is a considerable time gap between the last seen of the appellants with the deceased and recovered of the dead body. Though, not in all cases, a gap of 7 to 8 hours will be material but in this case, it appears to be

material as the witness himself has stated that he did not think it inappropriate or that he felt apprehensive because of the fact that they took away the deceased in their car as there was good relationship between them and they were acquainted with each other. Moreover, it is further seen that the witness stated that the appellants and deceased were good friends.

12. The prosecution, in this case, has neither made any attempt to prove motive on the part of the appellants nor has any finding been given regarding existence of motive. In a recently decided case of "Nandu Singh vs. State of Madhya Pradesh MANU/SC/0477/2022", the Hon'ble Supreme Court has held that in a case that based entirely upon circumstantial evidence complete absence of motive, weighs in favour of the accused. In this case, no motive has been suggested, much less, proved.

13. In Anwar Ali v. State of Himachal Pradesh MANU/SC/0723/2020 : (2020) 10 SCC 166, the Hon'ble Supreme Court made the legal position clear in following words:-

"Now so far as the submission on behalf of the accused that in the present case, the prosecution has failed to establish and prove the motive and therefore the accused deserved acquittal is concerned, it is true that the absence of proving the motive cannot be a ground to reject the prosecution case. It is also true and as held by the Hon'ble Supreme Court in Suresh Chandra Bahri v. State of Bihar MANU/SC/0500/1994 : 1995 Supp (1) SCC 80, that if motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. However, at the same time, as observed by this Court in Babu Babu v. State of Kerala MANU/SC/0580/2010 : (2010) 9 SCC 189, absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused."

14. The only materials available against the two appellants are recovery of two weapons of offence and a wallet. It is borne out from the evidence of PW10 that he accompanied the police team to the place, where the Khukhri and wallet concealed by Kanchu and on he is pointing out the Khukhri and the wallet of the deceased were recovered. Though, he has proved the wallet in the Court, where from the photograph of the deceased as well as some visiting cards were found. This witness has not stated in categorically terms that the wallet belongs to the deceased and that he was ordinarily carrying the wallet with him, so, this Court is of the opinion that a recovery of the wallet and absence of any statement that such wallet belongs to the deceased or that the deceased was always carrying the wallet in the ordinary course, would not connect it with the crime.

15. Two other materials like knife and Khukhri have been recovered at the instance of appellants - Hemu Pant and Kanchu Matiyani but these weapons of offence were never sent for chemical examination to find out, if the blood of the deceased could be detected on the same, so, the recovery of two weapons at the instance of both the appellants would by itself would not prove its connection

with the crime.

16. Thus, this Court is of the opinion that in this case, all the circumstances were not established conclusively. It is the opinion of this Court that the circumstances, which have been established in this case, do not form a complete chain of events or circumstances on erringly pointing out towards the guilt of the appellants.

17. In other words, this Court is of the opinion that there is a reasonable doubt regarding the complicity of these two appellants in the commission of the crime allegedly committed by them. Hence, this Court is of the opinion that the appellants should be given benefit of doubt, especially when the learned Session Judge has not accepted the case of the prosecution, as far as, Lalit Mehra and Atul Negi are concerned, the conviction of these appellants should be set-aside.

18. In that view of the matter, the appeal is allowed and the judgment and order dated 19.08.02013 passed by the learned Sessions Judge, Nainital in the aforesaid case is hereby set-aside.

19. The appellant no. 2 – Manish @ Kanchu Matiyani is on bail, he shall surrender before the learned Sessions Judge in connection with this case. He be set at liberty, if not wanted in any other case, after execution of bond u/S 437A of the Code. The appellant no. 1 – Hemu Pant @ Hemu Kalu is in jail. He be set at liberty forthwith if not wanted in any other case, after compliance of Section 437A of the Code.

20. Trial Court Records be sent back.