
(2015) 04 UK CK 0018

In the Uttarakhand High Court

Case No : Criminal Appeal Nos. 36 and 260 of 2012

Intezar and Others

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 01-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 120-B, 201, 302, 34, 364

Citation : (2015) 2 NCC 166

Hon'ble Judges : Alok Singh, J;S.K. Gupta, J

Bench : Division Bench

Advocate : R.K. Sharma, Amicus Curiae, A.M. Saklani and Safdar, for the Appellant; A.S. Gill, Dy. Advocate General (Criminal), Advocates for the Respondent

Judgement

Alok Singh, J—Since both the appeals have arisen out of a common judgment and order, hence they are being disposed of together by this common judgment. Present appeals are preferred assailing the judgment and order dated 31.7.2012 passed by the First Additional Sessions Judge, Haridwar in S.T. No. 281 of 2008, whereby the appellants Interzar, Iddu Hasan and Gulzar were held guilty for the offences punishable u/s. 302 r/w 34 IPC, 364 r/w 34 IPC, 394 r/w 34 IPC, 411 IPC, 201 IPC and 120-B IPC; all the appellants were sentenced to undergo life imprisonment and to pay fine of Rs. 2,000/- each for the offences punishable u/s. 302 r/w 34 IPC; to undergo R.I. for ten years and to pay fine of Rs. 2,000/- each for the offence punishable u/s. 364 r/w 34 IPC; to undergo R.I. for a period of ten years and to pay fine of Rs. 2,000/- each for the offence punishable u/s. 394 r/w 34 IPC; to undergo R.I. for a period of two years and to pay fine of Rs. 1,000/- each for the offence punishable u/s. 411 IPC; to undergo R.I. for a period of three years and to pay fine of Rs. 1,000/- each for the offence punishable u/s. 201 IPC; to undergo imprisonment for life and to pay fine of Rs. 2,000/- each for the offences punishable u/s. 120-B IPC.

2. Brief facts of the case, inter alia, are that PW1 Lal Singh got registered one

FIR written by Rakesh Kumar with P.S. Purkaji, District Muzaffarnagar on 12.10.2007, Ex. Ka-1, stating therein that in the evening of 11.10.2007, he along with PW2 Pawan Kumar and his brother Nitu @ Budh Singh (deceased) was sitting in their house; his brother Nitu @ Buddh Singh (deceased) was having tractor-trolley No. UA08-1340 and used to give the same on hire; two people came in the evening of 11.10.2007 and told his brother Nitu (deceased) that they were sent by Zakir of their village to hire his tractor-trolley to transport potato and onion from Purkaji to Jwalapur Mand; deceased demanded Rs. 3,000/- to transport onion and potato from Purkaji to Jwalapur Mandi, however, ultimately, negotiations settled at Rs. 2,300/-; Nitu left the house at about 5:30 PM on the same day along with those two people to transport potato and onion from Purkaji to Jwalapur Mandi; Nitu (deceased): was having mobile phone No. 9411191094 of Sony Ericsson mark with BSNL SIM Card inserted therein; at about 6:30 in the evening, PW1 had talked with Nitu on his mobile whereupon Nitu has informed PW1 that he was near Katha-Peer Pathri; thereafter PW1 tried to make contact on the mobile phone of Nitu, however his phone was always found switched off; when phone was found switched off, PW1 became apprehensive about some mis-happening with his brother, therefore, he along with Pawan went to the house of Zakir to make enquiry; Zakir informed PW1 as well as PW2 Pawan that of course, two people came to him, however since he was not having the tractor-trolley available with him, therefore, he has asked both the people to make contact with Nitu, who also gives his tractor-trolley on hire; thereafter PW1 and PW2 along with other villagers started searching for Nitu; meanwhile Village Pradhan Rampal Singh (PW4) informed the SHO of P.S. Pathri on phone that the last location of Nitu deceased was near Pathri, therefore, he could be searched; in the morning of 12.10.2007, PW1, PW2 and other villagers went to Pathri to make enquiry about Nitu deceased and ultimately, they found the dead body of Nitu in the agricultural field of Jatan Singh and tractor-trolley was found parked on the road near the agricultural field of Jatan Singh; Muffler was found surrounded on the neck of deceased Nitu @ Budh Singh.

3. Since the occurrence was within the territorial jurisdiction of P.S. Pathri, District Haridwar, therefore, the FIR was transferred to P.S. Pathri, District Haridwar, wherein case crime No. NIL of 2007 u/s. 364, 302, 201 and 411 IPC was registered and investigation commenced.

4. Post-mortem on the dead body of Nitu @ Buddh Singh was conducted by PW8 Dr. Arun Kumar Vashisth; as per the post-mortem and statement of Dr. Vashisth, the cause of death of Nitu was asphyxia as a result of ante-mortem injuries.

5. Accused Intezar and Aarif were arrested on 27.12.2007 while Iddu Hassan was arrested on 4.1.2008 and Gulzar was arrested on 9.2.2008.

6. Accused Aarif was found juvenile, therefore, his case was referred to the Juvenile Justice Board.

7. To prove the prosecution story, PW1 Lal Singh, PW2 Pawan Kumar, PW3 Shyam Sunder, PW4 Rampal Singh, PW5 S.I. Vikas Bhardwaj, PW6 Dhan Pal Singh, PW7 Vashisth Kumar, PW8 Dr. Arun Kumar Vashisth, PW9 HCP Bhisham Lal, PW10 Ganesh Kumar Batiyal, PW11 Aishwarya Pal and PW12 S.I. R.D. Nigam were examined.

8. Thereafter the statements of accused/appellants herein were recorded u/s. 313 Cr.P.C. From the side of defence, Saeed DW1 and Smt. Latifan DW2 were examined.

9. PW1 Lal Singh and PW2 Pawan Kumar, while appearing in the witness box, have stated on oath that in the evening of 11.10.2007, they were present in the house of PW1 Lal Singh and at that time, deceased Nitu was also sitting with them; Intezar and Aarif came to their house and enquired from Nitu deceased as to whether he would transport onion and potato from Purkaji to Jwalapur Mandi in his tractor-trolley; Nitu deceased demanded Rs. 3,000/- for transportation of onion and potato from Purkaji to Jwalapur Mandi, however ultimately, matter was settled for Rs. 2,300/-; Nitu deceased along with Intezar and Aarif left the house on his tractor-trolley to load onion and potato from Purkaji to transport the same to the Jwalapur Mandi, Haridwar. PW1 further stated that in the same evening, at about 6:30, he had talked on mobile phone of Nitu and Nitu informed him that he was nearby Pathri near Laksar.

10. PW3 Shyam Sunder while appearing in the witness box has stated that on 11.10.2007, he has sent Nitu driving the tractor-trolley and he had seen four persons sitting on the tractor along with Nitu and nothing was loaded in the tractor-trolley, in other words, trolley was un-loaded.

11. In the statements of PW1 and PW2, it has come that next day, tractor-trolley was found parked near the agricultural field of Jatan Singh and trolley was unloaded.

12. While hearing the criminal trial, the Court should not lost sight of the normal human behaviour. If Nitu deceased was asked to load onion and potato for transportation from Purkaji to Jwalapur Mandi in Haridwar and if nothing was loaded in the tractor-trolley, then as to why he agreed to go along with the accused persons towards Pathri near Laksar, which is not on the route of Purkaji to Jwalapur Mandi, has not been explained by the prosecution. In the normal course, when nothing was loaded in the trolley in Purkaji, wherefrom he was supposed to load onion and potato, perhaps, he would have refused to go with empty trolley towards Pathri.

13. In the present case, Zakir, who has allegedly sent the accused Intezar and Aarif to the deceased Nitu to hire his tractor-trolley for the transportation of potato and onion from Purkaji to Jwalapur Mandi, Haridwar, has not been produced in the witness box. He could have been the best witness to show that accused Intezar and Aarif came to him and he forwarded them to Nitu since his trolley was not available with him. However, for the reasons best known to the

prosecution, Zakir has not been examined.

14. It is argued by Mr. A.S. Gill, learned Deputy Advocate General, that the tractor-trolley was hired for the purpose of looting the same. Had it been the intention of accused persons to loot the tractor-trolley by killing Nitu, the tractor-trolley could not have been parked near the agricultural field of Jatan Singh, wherefrom dead body of Nitu was recovered.

15. Learned Trial Court has placed much reliance on the alleged recovery of purse and mobile phone from the possession of accused persons. We find force in the arguments of learned counsel for the appellants that recovery of the same is highly doubtful in the absence of any independent witness.

16. There is no eyewitness of the incident who has seen the accused committing the murder of Nitu @ Buddh Singh. The only evidence is that he left his house on his tractor-trolley along with the accused Intezar and Aarif on the pretext of transporting onion and potato from Purkaji to Jwalapur Mandi, Haridwar. As discussed hereinbefore, if potato and onion were not loaded from Purkaji, perhaps he would have refused to go with them, that too on the different route towards the Pathri near Laksar, which is not on the route of Jwalapur Haridwar.

17. In view of the above discussion, we are of the firm opinion that the prosecution has failed to prove its story beyond reasonable doubt. Therefore, the conviction of all the appellants seems to be totally unjustified. Consequently, both the appeals are allowed. Impugned judgment and order convicting and sentencing the appellants is hereby set aside. All the appellants are acquitted from the charges levelled against them.

18. Appellants Iddu Hasan and Gulzar are on bail. They need not to surrender. Their personal bonds are cancelled and sureties stand discharged.

19. Appellant Intezar is in jail. Let he be released forthwith if not wanted in connection with any other case. Let a copy of this judgment and order be forwarded to the Trial Court along with L.C.R. for compliance.