
(2014) 05 UK CK 0035

In the Uttarakhand High Court

Case No : Criminal Revision No. 245 of 2005

Jabar Singh Saroba

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 22-05-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 244, 246, 313, 357
Penal Code, 1860 (IPC) — Section 304-A, 504, 506

Citation : (2014) CriLJ 3732 : (2015) 2 Crimes 172 : (2014) 4 RCR(Criminal) 851

Hon'ble Judges : Umesh Chandra Dhyani, J

Bench : Single Bench

Advocate : Lokendra Dobhal, Advocate for the Appellant; S.S. Adhikari, Brief Holder and Pankaj Miglani, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Umesh Chandra Dhyani, J.—Accused-revisionist Jabar Singh Saroba was convicted of the offence punishable u/s 304-A of IPC and was directed to undergo simple imprisonment for two years, along with a fine of Rs. 5,000/-, in default of payment of which, he was directed to further undergo one month's simple imprisonment, vide judgment and order dated 30.03.2005, passed by learned Judicial Magistrate, Haridwar. Accused-revisionist was acquitted of the charges levelled against him under Sections 504 and 506 of IPC. Aggrieved against the same, a criminal appeal was preferred by the accused, which was dismissed, vide impugned judgment and order dated 09.12.2005. Aggrieved against the same, present criminal revision was preferred. According to the complainant, her son worked in a dhaba (hotel) of Meharpal Singh. On 24.07.2003, Meharpal Singh got a petromax gas cylinder of the capacity of four kg. filled up from the shop of accused-revisionist Jabar Singh Saroba, who, filled up gas of six kg and 200 gms, instead of four kg, in the petromax. Meharpal Singh's son Sompal brought the same in the dhaba (hotel). When the petromax was ignited, the same burst, as a consequence of which, Sompal Singh, son of

Meharpal Singh and two others sustained injuries. Complainant's son was admitted in Government Hospital, Haridwar, whereupon the injured was taken to Dehradun, and on being referred to higher centre, he was taken to Delhi. The injured breathed his last on 04.08.2003, at 10:00 a.m., at Safdarjang Hospital. The complainant went to the police station to lodge the first information report, but her report was not registered. She had, therefore, no option but to file the criminal complaint case on 29.01.2004.

2. Accused-revisionist was summoned to face the trial. He was, thereafter, charged for the offences punishable under Sections 304-A, 504 and 506 of IPC, to which he pleaded not guilty and claimed trial. P.W. 1 Smt. Premwati, P.W. 2 Rampal Singh, P.W. 3 Dharmendra, P.W. 4 Karan Singh, P.W. 5 Ghaseeta and P.W. 6 Rampal Singh were examined on behalf of the prosecution. Incriminating evidence was put to the accused u/s 313 Cr.P.C., in reply to which, he stated that he was falsely implicated in the case. D.W. 1 Kheempal Singh, D.W. 2 Devendra Singh, D.W. 3 Kirti Singh, D.W. 4 Rangat Singh, D.W. 5 Jabar Singh and D.W. 6 Mehar Singh were examined on behalf of the defence. After considering the evidence on record, learned Trial Court convicted the accused-revisionist (Jabar Singh Saroba) u/s 304-A of IPC. He was sentenced accordingly. As stated above, a criminal appeal was preferred by him, which criminal appeal was dismissed by the learned lower appellate Court, and aggrieved against the same, present Criminal Revision was preferred.

3. Smt. Premwati, in her statement u/s 244 of Cr.P.C., supported the complaint story. Her statement u/s 244 Cr.P.C. was almost verbatim reproduction of her complaint and therefore, the contents of evidence u/s 244 Cr.P.C. are not being reproduced herein for the sake of brevity. She also proved the application addressed to Senior Superintendent of Police, Haridwar. Receipt of the registered letter was also filed to indicate that she dispatched such letter to the police chief of the district. The death certificate of higher centre was also filed.

4. In her cross-examination, she stated that Jabar Singh's shop was situated at a distance of 2-2½ kilometers away from her house. Although, she did not see the incident, but she went to the place of occurrence, when the alarm was raised by the wife of the deceased. In her cross-examination u/s 246 Cr.P.C., P.W. 1 stated that her son was taken to Haridwar in an ambulance. He remained admitted at Haridwar also, but finally, was referred to Delhi, where he remained admitted for two days and nights and ultimately died on the 3rd day.

5. P.W. 2 stated, in his statement u/s 244 Cr.P.C., that on 24.07.2003, at 10:30 p.m., a cylinder was burst in the presence of Om Prakash, Ghaseeta, Karan Singh in Meharpal Singh's hotel. The cylinder, which was of the capacity of four kg., got burst because liquid petroleum gas of six kg and 200 gms was filled up in the same. In a nutshell, excess quantity of LPG was filled in the cylinder. P.W. 1's son, who was working in the hotel, got injured and subsequently, died in Delhi. In his cross-examination, he stated that he was sitting at a distance of 25 feet. Sunder Singh sustained injuries in his presence.

6. According to P.W. 3, burst cylinder was given to him by Meharpal Singh. Such cylinder was presented in the trial court and was exhibited as material Ext. 1. In his cross-examination, P.W. 3 stated that the cylinder did not burst in his presence.

7. P.W. 4 was also an eye-witness of the incident, in whose presence the gas cylinder burst on 24.07.2003, at 10:30 p.m. and as a consequence thereof, the son of P.W. 1 sustained injuries, who, finally died after a few days of the incident. The reason for bursting of the cylinder was attributed to excess filling of gas.

8. P.W. 5 Ghaseeta was also an eye-witness, who stated that Sompal got the cylinder from the shop of the revisionist and paid him the money. When the gas cylinder was ignited, the same burst in his presence. P.W. 1's son sustained injuries, who died subsequently at Delhi. P.W. 5 also attributed the reason of bursting of the cylinder to it's excessive filling.

9. P.W. 6 Rampal Singh also supported the prosecution story.

10. Learned counsel for the revisionist placed reliance upon State of Haryana Vs. Ram Singh, to submit that the revisionist is entitled to benefit of doubt. It may be said here, in all humility, that the prosecution witnesses were able to prove the case against the revisionist beyond a shadow of reasonable doubt. Giving benefit of doubt to the revisionist would arise only when some doubt is left to be created in the prosecution story. In the instant case, it was not so. A reasonable prudent person will believe what was proved by the prosecution witnesses herein.

11. In Balu Sonba Shinde Vs. State of Maharashtra, , the guidelines were provided by Hon"ble Apex Court regarding the acceptability of circumstantial evidence. The instant case is not based upon the circumstantial evidence, but on the basis of direct evidence, inasmuch as, the petromax got burst and, in the mishap, the son of P.W. 1 got injured and subsequently died. The incident occurred because of the negligence of the revisionist, inasmuch as, the gas cylinder was filled up with excess quantity of LPG. The mishap occurred due to excess filling of gas in the LPG cylinder.

12. So far as the delay in filing the complaint is concerned, the same has been properly explained by the complainant. The complainant-mother (P.W. 1) ran from pillar to post and even served the revisionist with notice before taking recourse to filing a criminal complaint case. Hence, the delay, which was properly explained by the complainant, is not fatal to the prosecution story.

13. Thus, it was proved on behalf of the aforesaid witnesses that the death of the victim was caused because of the negligent act of the revisionist. Had the gas cylinder not filled up beyond it's permissible capacity, the incident would not have taken place. The incident happened because the accused-revisionist filled up the gas worth six kg and 200 gms., beyond the recommended quantity of four kg.

14. Let us now see as to whether the defence witnesses were able to make

inroads in the prosecution story or not?

15. D.W. 1 stated that the accused-revisionist was falsely implicated in this case because accused demanded the money due to him against P.W. 1, to which, P.W. 1 declined, saying that she would be giving the money after some time. P.W. 1's son was admitted in hospital at Delhi, as he was suffering from some ailment of kidney. Son of P.W. 1 died thereafter. D.W. 1 stated that no such incident took place in his presence. The evidence tendered by D.W. 1 was in the form of negative evidence and therefore, not acceptable.

16. D.W. 2 stated that he did not know about the incident, in which the son of P.W. 1 sustained injuries. The evidence tendered by D.W. 2 also did not help the revisionist.

17. D.W. 3 denied that the gas cylinder was filled up in the shop of accused-revisionist. According to D.W. 4, the revisionist was not in the business of filling up of gas cylinders.

18. Revisionist himself entered in the witness-box as D.W. 5. In his examination-in-chief, he denied the incident altogether and stated that he demanded the money due to him against P.W. 1, to which she declined. An altercation took place between them (and therefore he was falsely implicated in the case).

19. Learned trial court correctly appreciated the prosecution evidence and came to the conclusion that offence punishable u/s 304-A IPC was proved against the revisionist. Learned trial court also disbelieved defence witnesses, who gave evidence suggesting that no such incident took place. Rightly, the trial court did not believe their version. Learned lower appellate court also evaluated the testimony of the prosecution witnesses, as also the defense witnesses, who came to the conclusion that the incident took place because of the negligent act of the revisionist. This Court has also independently assessed the evidence thus brought on record to hold that there is no infirmity in the finding arrived at by the trial court and affirmed by the lower appellate court. There is no reason to disturb the concurrent findings of the two courts below. This Court is unable to take a view different from what was taken by the trial court, as well as the lower appellate court, and therefore, no interference is called for in the impugned judgment & order. Criminal Revision thus fails and is, accordingly, dismissed.

20. Learned counsel for the revisionist submitted that the benefit of Probation of Offenders Act, 1958 should be granted to the revisionist on the basis of ruling of Hon"ble Apex Court in Paul George Vs. State of N.C.T. of Delhi, was a Head Constable driver, driving the official vehicle on duty, when he met with an accident. The revisionist herein has no such credentials and therefore, this Court is unable to agree with the submission of learned counsel for the revisionist that the revisionist should be granted the benefit Probation of Offenders Act, 1958.

21. Agreeing, however, to the prayer of learned counsel for the revisionist that the sentence, which was awarded to the revisionist, should be reduced, inasmuch

as, the maximum sentence was imposed upon the revisionist, it is provided that the revisionist shall undergo rigorous imprisonment for one year, along with a fine of Rs. 5,000/-, in place of rigorous imprisonment for two years along with a fine of Rs. 5,000/-. In other words, whereas the period of imprisonment is reduced from two years to one year, it is directed that the amount of fine thus imposed shall remain intact. If the fine is realised, the same shall be given to mother of deceased, as compensation u/s 357 Cr.P.C. With the directions as above, the Criminal Revision is finally disposed of. Let the Lower Court Record be transmitted back to the Court below for ensuring compliance.