
(2011) 04 UK CK 0033

In the Uttarakhand High Court

Case No : Criminal Appeal No. 898 of 2001 (Old No. 2313 of 2000)

Jasveer Singh @ Jassa and Babu

APPELLANT

Vs

State of U.P. (now Uttarakhand)

RESPONDENT

Date of Decision : 27-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 313

Penal Code, 1860 (IPC) — Section 201, 302, 34, 364

Uttar Pradesh Reorganisation Act, 2000 — Section 35

Citation : (2011) 04 UK CK 0033

Hon'ble Judges : Servesch Kumar Gupta, J; Prafulla C. Pant, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Prafulla C. Pant, J.—Both these appeals are directed against the judgment and order dated 31.8.2000 passed by the Sessions Judge, U.S. Nagar in S.T. No. 121/98, whereby the accused/Appellants Jasveer Singh @ Jassa, Babu, Kulvinder Singh @ Kintu and Ranjeet Singh @ Jeeta are convicted u/s 364 r/w Section 34, u/s 302 r/w Section 34 and u/s 201 of the Indian Penal Code, 1860 [for short I.P.C.] and each one of them has been sentenced to imprisonment for life and directed to pay fine of Rs. 5,000/- u/s 364/34 IPC, imprisonment for life and directed to pay fine of Rs. 5,000/- u/s 302/34 IPC and rigorous imprisonment for a period of five years u/s 201 IPC.

2. Heard learned Counsel for the parties and perused the lower Court record.

3. Prosecution story, in brief, is that on 24.5.1998 at about 9 PM, P.W. 1 Mangal Singh (complainant) was irrigating his field in village Baintwala, within the limits of P.S. Kashipur, with his brother Chet Ram (deceased). It is alleged that accused/Appellants Kulvinder Singh @ Kintu, Ranjeet Singh @ Jeeta, Jasveer Singh @ Jassa and Babu, armed with weapons, came there and took Chet Ram forcibly with them. P.W. 1 Mangal Singh protested but the accused threatened him and took Chet Ram towards river Dhaila. When the complainant pleaded to the

accused to leave Chet Ram, they told him that he will be free after taking work in the field. On 28.5.1998 at about 3:30 PM, dead body of Chet Ram was found lying near cremation ground. On noticing it, P.W. 1 Mangal Singh lodged the first information report (Ex. A-1) after getting it scribed through one Bhagwan Dass at police station Kashipur, on the basis of which crime No. 420/98 was registered relating to offences punishable under Sections 364/302/201 IPC, against the four accused, namely, Kulvindar Singh @ Kintu, Ranjeet Singh @ Jeeta, Jasveer Singh @ Jassa and Babu. Investigation was taken up by P.W. 6 S.I. Harish Chandra Singh, who went to the spot and took the dead body of Chet Ram into possession on 28.5.1998 at 4:50 PM, and prepared the inquest report (Ex. A-2). Other necessary papers, like Police Form No. 13 (Ex. A-8), sketch of dead body (Ex. A-9), letter to Chief Medical Officer requesting for postmortem examination (Ex. Ka-10) and sample seal (Ex. A-11) were also prepared by the Investigating Officer. P.W. 4 Dr. B.C. Joshi conducted the post-mortem examination on 29.05.1998 at about 9:30 PM and prepared autopsy report (Ex. A-3). After inspecting the spot and interrogating the witnesses and on completion of investigation, the Investigating Officer submitted charge sheet (Ex. A-12) against the four accused, named in the First Information Report, for the trial in respect of offences punishable under Sections 364/302/201 IPC.

4. The Additional Chief Judicial Magistrate, Kashipur, on receipt of the charge sheet, after giving the necessary copies to the accused, as required u/s 207 of Code of Criminal Procedure, committed the cases to the court of sessions for trial.

5. Learned Sessions Judge, U.S. Nagar, on 1.4.1999, after hearing the parties, framed charge of offences punishable under Sections 364 r/w Section 34, u/s 302 r/w Section 34 and u/s 201 I.P.C. against all the four accused, namely, Kulvindar Singh @ Kintu, Ranjeet Singh @ Jeeta, Jasveer Singh @ Jassa and Babu. However, they pleaded not guilty and claimed to be tried. On this, the prosecution got examined P.W. 1 Mangal Singh (complainant), P.W. 2 Sukkhan Singh (declared hostile), P.W. 3 Saeed Ahmed (witness of inquest report), P.W. 4 Dr. P.C. Joshi (who conducted postmortem examination), P.W.5 H.C. Jagdish Chand Tewari (who prepared Check Report of FIR) and P.W. 6 S.I. Harish Chandra Singh (who investigated the crime). Oral and documentary evidence was put to the accused by the trial Court u/s 313 of Code of Criminal Procedure, in reply to which they stated that the evidence adduced against them is false and they have been falsely implicated due to enmity. However, no evidence, in defence, was adduced. The trial Court after hearing the parties, found that the prosecution has successfully proved the charge of offences punishable under Sections 364/34, 302/34 and 201 IPC. After hearing on sentence, each of the convicts was sentenced by the trial Court for imprisonment of life and directed to pay fine of Rs. 5,000/- u/s 364/34 IPC, imprisonment for life and directed to pay fine of Rs. 5,000/- u/s 302/34 IPC and rigorous imprisonment for a period of five years u/s 201 IPC. Aggrieved by the said judgment and order dated 31.8.2000 passed by the Sessions Judge, U.S. Nagar in S.T. No. 121/98, these two appeals were filed by the convicts before Allahabad High Court, from where the same are

received by this Court u/s 35 of U.P. Reorganization Act, 2000 (Central Act No. 29/2000).

6. Before further discussion, we think it just and proper to mention the ante-mortem injuries suffered by the deceased, which were found by P.W. 4 Dr. B.C. Joshi at the time of post-mortem examination on 29.5.1998 at 9:30 AM. The ante-mortem injuries mentioned in the Autopsy Report (Ex. A-3) prepared by said medical officer are being reproduced below:

1. Deep cavity wound 5 x 3 cm. 3"3 cm above and lat. to nipple of right side present on ant. Chest having irregular margins.
2. Deep cavity wound 5 x 3.0 cm. 3.0 cm below and lateral to right nipple with same characteristics as injury No. 1.
3. Another wound with same characteristics present on ant. Axillary line 5 x 3 cm on right side.

Note: Gapping present in all the above wounds.

P.W. 4 Dr. B.C. Joshi, after the post-mortem examination, opined that deceased had died of shock and hemorrhage as a result of ante-mortem injuries. He further observed that the dead body was in a decomposed condition with foul smell and maggots present. He further stated that the deceased might have died on 24.5.1998. From the medical evidence on record, it is established that Chet Ram had died homicidal death. Now, we have to see whether the accused/Appellants Kulvindar Singh @ Kintu, Ranjeet Singh @ Jeeta, Jasveer Singh @ Jassa and Babu, with common intention, abducted Chet Ram, and committed his murder and thereafter to cause disappearance, threw his body near the place it was found.

7. P.W. 1 Mangal Singh, complainant, is the brother of the deceased, who has stated that on 24.5.1998 at about 9 AM, he along with his brother Chet Ram was irrigating his sugarcane field when the accused Kulvindar Singh @ Kintu, Ranjeet Singh @ Jeeta, Jasveer Singh @ Jassa and Babu, armed with weapons, came there and took Chet Ram with them. The witness has further stated that he protested to them but they threatened him of dire consequences. It is also stated by this witness that the accused told him that if he dared to inform the police, he would be killed. P.W. 1 Mangal Singh further stated that on 29.5.1998 at about 3:30 PM, he got a foul smell near cremation ground and when he looked that side, he found it was a dead body of his brother Chet Ram. The witness further states that he got lodged the first information report (Ex. A-1) scribed by Mr. Bhagwan Dass and gave in the police station.

8. The above statement of P.W. 1 Mangal Singh, as to the abduction of deceased Chet Ram, does not give a convincing account of the incident. It is admitted by him that he (P.W. 1) is a village Pradhan. It is hard to believe that he waited for four days to lodge the first information report after abduction of his brother Chet Ram. In the cross-examination, he states that Shri Bhagwan Dass, through

whom he got scribed the first information report, was an Advocate, who practices in Kashipur. It is strange that at 3:30 PM, he detected the dead body and within 1/hour, not only he went to Bhagwan Dass to get the report scribed but also lodged the same at the police station. Assuming for a moment that the same was possible, the story narrated in the first information report itself is not a natural one. If the accused had come, armed with weapons and abducted Chet Ram, then they would not have said to complainant Mangal Singh that they will leave Chet Ram Singh after getting the work done in the field. From the evidence on record, it does not appear that deceased was a labourer. Rather P.W.1 Mangal Singh has admitted that he owns cultivatory land of more than 15-16 acres.

9. P.W. 2 Sukkhan Singh has not supported the prosecution story and stated that Chet Ram was not taken by the accused. This witness was got declared hostile.

10. P.W. 3 Saeed Ahmad, who is witness of the inquest report, in the cross-examination states that he did not see the dead body.

11. Apart from above, there is one more reason which indicates that the accused might have been implicated on suspicion only. P.W. 1 Mangal Singh admits in the examination-in-chief itself that he had political rivalry with the accused Kulvinder Singh. Also, we cannot ignore the fact that according to P.W.1 Mangal Singh, Chet Ram (deceased) was himself an accused in murder case of one Roopa, and the commission of murder by others cannot be ruled out.

12. For the reasons as discussed above, we are of the view that from the evidence on record, it cannot be said that the prosecution has successfully proved charge of offence punishable u/s 364/34, 302/34 and 201 IPC against any of the accused/Appellants, namely, Kulvinder Singh @ Kintu, Ranjeet Singh @ Jeeta, Jasveer Singh @ Jassa and Babu. Therefore, we are of the view that these appeals deserve to be allowed. Accordingly, both the appeals are allowed. Impugned judgment and order dated 31.8.2000 passed by the Sessions Judge, U.S. Nagar in S.T. No. 121/98, is set aside. Accused/Appellants Kulvinder Singh @ Kintu, Ranjeet Singh @ Jeeta, Jasveer Singh @ Jassa and Babu are acquitted of the charge of offences punishable under Sections 364/34, 302/34 and 201 IPC. They are on bail. They need not surrender. Lower Court record be sent back.