
(2013) 06 UK CK 0038

In the Uttarakhand High Court

Case No : Criminal Appeal No. 97 of 2005

Kalam Singh Alias Bheeru and Others

APPELLANT

Vs

State of Uttaranchal

RESPONDENT

Date of Decision : 14-06-2013

Acts Referred:

Citation : (2013) 2 NCC 596

Hon'ble Judges : V.K. Bist, J; Prafulla C. Pant, J

Bench : Division Bench

Advocate : Gaura Devi Dev and Amicus Curiae, for the Appellant; Vinod Sharma, Dy. Advocate General, for the Respondent

Judgement

Prafulla C. Pant, J.—This appeal, preferred u/s 374 of Code of Criminal Procedure 1973, is directed against judgment and order dated 26.05.2005, passed by Special Sessions Judge, Tehri Garhwal, New Tehri, in Special Sessions Trial No. 4 of 2000, whereby said court has convicted accused/appellants Kalam Singh @ Bheeru, Ranjeet @ Guddu and Raghu, u/s 302 read with Section 34 of I.P.C., u/s 323 read with Section 34 of I.P.C. and u/s 3(2)(v) of Scheduled Castes and Scheduled Castes (Prevention of Atrocities) Act, 1989. The trial court has sentenced each one of the convicts to imprisonment for life and directed to pay fine of Rs. 2000/- u/s 302 read with Section 34 of I.P.C. and imprisonment for a period of six months u/s 323 read with Section 34 of I.P.C. and each one of them has been further sentenced to imprisonment for life and directed to pay fine of Rs. 2000/- u/s 3(2)(v) of Scheduled Castes and Scheduled Castes (Prevention of Atrocities) Act, 1989. Heard Ms. Gaura Devi Dev, Advocate/Amicus Curie, for the appellants and Mr. Vinod Sharma, Deputy Advocate General, for the respondent/State, and perused the lower court record.

2. Brief facts of the case are that on 22.10.1999, at about 6.00, am, accused/appellant No. 2 Ranjeet Singh @ Guddu went to the house of Guna Lal (deceased) in Village Unnana, Patti Chandrabadni, and took him to his house (in the same village). When by 7.00 a.m. Guna Lal did not come back to his house,

his wife PW2 Mana Devi went to the house of her mother in law PW1 Kidi Devi and told that her husband has not come back from the house of Ranjeet Singh. On this PW1 Kidi Devi (mother of the deceased) went to the house of Ranjeet Singh, where she saw that accused/appellant Ranjeet Singh @ Guddu armed with knife, accused/appellant Kalam Singh @, Bheeru armed with LATHI (stick) and accused/appellant Raghu armed with stone were assaulting Guna Lal. She immediately intervened and attempted to rescue her son, but she too was assaulted by the three accused. Whereafter, she fell down. Meanwhile, her daughter 3 in law PW2 Mana Devi and PW3 Manoj Kumar (son of the deceased Guna Lal and Mana Devi) reached to the house of Ranjeet Singh. The First Information Report (Ex. A3) of the incident was got lodged by PW1 Kidi Devi on the very day of the incident by submitting the same to Sub Divisional Magistrate of Kirti Nagar. On the basis of said report Crime No. 532 of 1999 was registered at Police Station Devprayag, at about 4.15 P.M. on 22.10.1999, in respect of offences punishable u/s 302 and 323 of I.P.C., against the three accused namely Kalam Singh@ Bheeru, Ranjeet Singh @ Guddu and Raghu. It was also mentioned in the First Information Report that Guna Lal (deceased) and Kidi Devi (PW1) were members of Scheduled Castes (The accused were Thakurs of the same village). After the report was lodged, Police went to Village Unnana and took the dead body of deceased Guna Lal in their possession on 23.10.1999, and prepared the inquest report (Ex. A6) and sealed the body. The Police also got prepared the sketch of the dead body (Ex. A7), Police Form No. 13 (Ex. A8), Sample seal (Ex. A9) and letter to Chief Medical Officer (Ex. A10) requesting for post mortem examination. PW5 Dr. S.K. Gupta conducted post mortem examination on 23.10.1999. at about 11.00 a.m. and prepared the autopsy report (Ex. A1), in which, he recorded as many as ten ante mortem injuries. Strangely, he opined that the cause of death could not be ascertained. It appears that on the request of the Superintendent of Police of District Tehri Garhwal, Chief Medical Officer, Tehri Garhwal constituted the committee of three Medical Officers to give its opinion on the basis of the 4 autopsy report, as to whether, the deceased had died a homicidal death and as to whether, it can be said that the injuries suffered by the deceased was sufficient to cause his death. In reply to which, the team of three Doctors vide their report dated 13.12.1999 (Ex. A2) opined that the deceased had died a homicidal death, but they could not say that the deceased had died of the injuries suffered by him. Since the incident fell in the Revenue Area Police initially it was investigated by Revenue Officer but later transferred to PW7 Deputy Superintendent of Police, K.C. Balodi. The Investigating Officer, after interrogating the witnesses, inspecting the spot and on completion of investigation submitted charge sheet (Ex. A16) against the accused/respondents Kalam Singh @ Bheeru, Ranjeet Singh @ Guddu and Raghu for their trial in respect of offences punishable u/s 302, 323 of I.P.C. and one punishable u/s 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. Learned Special Sessions Judge/Sessions Judge, Tehri Garhwal, on

08.03.2002, after hearing the parties, framed charge of offences punishable u/s 302/34 I.P.C. read with 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and u/s 323/34 I.P.C. read with 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, to which, all the three accused pleaded not guilty and claimed to be tried.

4. On this prosecution got examined (PW1) Kidi Devi (injured eyewitness and informant), PW2 Mana Devi (widow of the deceased), PW3 Manoj Kumar (son of the deceased and eyewitness), PW4 Seeru (declared hostile), PW5 Dr. S.K. Gupta (who conducted post mortem examination on the dead body of the deceased) PW6 Assistant Sub Inspector N.S. Rawat and PW7 K.C. Balodi (the then Deputy Superintendent of Police, who investigated the crime). Oral and documentary evidence was put to the accused u/s 313 of Cr.P.C., in reply to which, the accused/respondents pleaded that the evidence adduced against them was false and they have been falsely implicated. However, no evidence in defence was adduced.

5. The trial court after hearing the parties found that the prosecution has successfully proved the charge of offences punishable u/s 302 read with Section 34 of I.P.C., u/s 323 read with Section 34 of I.P.C. and u/s 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and convicted them accordingly. After hearing on sentence, the trial court sentenced each one of the convicts to imprisonment for life and directed to pay fine of Rs. 2000/- u/s 302 read with Section 34 of I.P.C., and imprisonment for six months u/s 323 read with Section 34 of I.P.C. The trial court further sentenced each one of the accused/convicts Kalam Singh @ Bheeru, Ranjeet Singh @ Guddu and Raghu u/s 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, to imprisonment for life and also directed to pay fine of Rs. 2000/-. Aggrieved by said judgment and order dated 26.05.2005, passed by Special Sessions Judge, Tehri Garhwal, in Special Sessions Trial No. 04 of 2000, this appeal is preferred by the convicts.

6. Before further discussion we think it just and proper to mention the ante mortem injuries recorded by PW5 Dr. S.K. Gupta in the autopsy report (Ex.A1) after conducting the post mortem examination on the dead body of Guna Lal on 23.10.1999. The ante mortem injuries observed by said Medical Officer in autopsy report (Ex. A1) are reproduced below:--

- i) Lacerated wound 4 cm X 2 cm scalp deep on left side of forehead 4 cm above left side eyebrow.
- ii) Incised wound 2 cm X 0.5 cm muscle deep on left side of face, 4 cm below angle of mouth.
- iii) Incised wound 2 cm X 0.5 cm scalp deep 2 cm below left eye.
- iv) Lacerated wound 2.5 cm X 2 cm below right nostril.
- v) Lacerated wound 3.5 cm X 1 cm behind left ear scalp deep.

vi) Incised wound 3 in number 2 cm X.5 cm, 3 cm X 1 cm, 2.5 cm X.5 cm on back of head, scalp deep.

vii) Incised wound 5 in number- 1.5 cm X 0.5 cm, 2.5 cm X 0.5 cm, 2 cm X.5 cm, 2 cm X 1 cm, 2.5 cm X 1 cm on back of left arm muscle deep 3.5 cm above left elbow.

viii) Lacerated wound 3 cm X 1 cm on shin of left leg 10 cm above ankle bone deep.

ix) Lacerated wound 2 cm X 1 cm on back of right elbow.

x) Incised wound 4 in number- 3.5 cm X 1 cm, 2 cm X 1 cm, 2.5 cm X.5 cm, 3 cm X.5 cm, muscle deep on back of right forearm.

7. PW5 Dr. S.K. Gupta in his oral testimony admitted before the trial court that injury No. 1, 5 and 6 mentioned above were on the vital part of the body of the deceased. The viscera report dated 06.06.2000/21.06.2000, which was paper No. 8A on the lower court record shows that in none of five parts of viscera, any poisonous chemical was found. As to the homicidal death of the deceased, it is clear from Report (Ex. A2) of the team of three Doctors on the record that the deceased had died homicidal death.

8. In the above circumstances, from the above evidence on record, it is established that Guna Lal died homicidal death on 22.10.1999. From the statement of PW5 Dr. S.K. Gupta it is also clear that the ante mortem incised wounds recorded in the autopsy report could have been caused by knife and scissors and rest of the injuries could have been caused by DANDA (stick).

9. Having gone through carefully the medical evidence on record discussed above, we find that the opinion given in Ex. A2 (report dated 13.12.1999) by the team of Doctors a false opinion has been given that the injuries are not on the vital part of the body of the deceased. Post mortem examination report (Ex. A1) dated 23.10.1999, clearly shows that the injuries No. 1, 5 and 6 quoted above were on the vital part of the body and only injuries No. 7, 8, 9 and 10 were on the non-vital part. PW5 Dr. S.K. Gupta when examined by the trial court himself admitted that injuries No. 1, 5 and 6 were on the vital part of the body. If head is not the vital part of body than which part of body could be said to be the vital part. There are three lacerated wounds scalp deep suffered by the deceased on his head. as such, the team of Doctors appears to have given their report (Ex. A21 only to shield the opinion of PW5 Dr. S.K. Gupta that no opinion as to the cause of death can be ascertained.

10. Now we have to examine from the oral evidence of the eyewitnesses if the accused Kalam Singh @ Bheeru, Ranjeet Singh @ Guddu and Raghu with a common intention committed murder of Guna Lal, and voluntarily caused hurt with common intention to PW1 Kidi Devi, as alleged by the prosecution.

11. PW1 Kidi Devi, the injured eyewitness is the star witness of the case. She

has stated that on the day of incident accused Kalam Singh @ Bheeru was armed with LATHI (stick) Ranjeet Singh @. Guddu was armed with knife and Raghu was armed with stone assaulted his son Guna Lal in her presence. She further told that she intervened and attempted to rescue her son, but she was also assaulted by the three accused and she suffered injuries on her head. She further told that there were eleven stitches on her head. For the reasons best known to the prosecution her injury report was not got proved. On going through the lower court record, we find that the injury report of PW1 Kidi Devi is paper No. 54A/4 which shows that she had suffered lacerated wounds with incised looking margins over her forehead extending 4.5 c.m. and the wound was bone deep. This report appears to have been prepared by the Medical Officer. Incharge, Government Hospital of Devprayag. District Tehri Garhwal. PW1 Kidi Devi in her examination in chief has stated that she has got lodged the First Information Report on the day of incident and in her cross examination she stated that on the day of incident itself she reached Devpravag and remained admitted in the Hospital. (Assuming that unproved medical evidence cannot be read in evidence, but her oral testimony cannot be ignored).

12. On behalf of the defence, it is argued by learned Amicus Curie that there are several contradictions in the statements of PW1 Kidi Devi and as such her testimony should not be believed. Having scrutinised the evidence of PW 1 Kidi Devi, we find that she is a illiterate villager and a minor contradictions appears to be there, on account of her being illiterate lady unable to understand the questions of the counsel of the defence.

13. PW2 Mana Devi (widow of the deceased) has corroborated the prosecution story to the extent that on the day of incident in the early hours accused Ranjeet Singh @ Guddu came and called her husband Guna Lal, and took him to his house. She further told that by 7 a.m. when her husband did not come back she sent her son PW3 Manoj Kumar to PW1 Kidi Devi on which she (Kidi Devi) went towards the house of Ranjeet Singh. She further told that after some time her son PW3 Manoj Kumar came running to her and told her that Kalam Singh @ Bheeru, Ranjeet Singh @ Guddu and Raghu have killed his father.

14. PW3 Manoj Kumar, a boy aged 14 years has also corroborated the prosecution story but this witness mistakenly mentioned the date of incident as 22.11.2002 (instead of 22.10.2002). His examination was recorded by the trial court on 17th of October, 2002, and the incident was of 22.10.2002, as such on the date of incident the age of this boy (Manoj Kumar) was only 11 years. As such, the contradiction found in his statement is not sufficient to disbelieve the ring of truth told by this witness.

15. For the reasons as discussed above, we find that the trial court has correctly appreciated the evidence on record, and came to the conclusion that charge against the accused Kalam Singh @ Bheeru, Ranjeet Singh @ Guddu and Raghu that they committed murder of Guna Lal with common intention and assaulted and voluntarily caused hurt to Kidi Devi with common intention is proved beyond

reasonable doubt. Needless to say that to constitute an offence read with Section 34 of I.P.C. prior meeting of mind can also be at the place of incident itself, at the time of commission of crime. The sentence awarded by the trial court u/s 302 read with Section 34 of I.P.C., and one passed u/s 323 read with Section 34 of I.P.C. is also reasonable and just. It has also come on record, in the testimony of the eyewitnesses that the deceased and Kidi Devi were members of Scheduled Caste and the accused were members of not belonging to the Scheduled Caste, who were by castes Thakurs of the same Village, as such, the offence of murder of Guna Lal committed by the accused was punishable read with provision contained in Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, but separate sentence was not required to be passed on that count, as no separate charge was framed to that effect. Therefore, the conviction and sentence awarded against the accused/appellants Kalam Singh @ Bheeru, Ranjeet Singh @ Guddu and Raghu shall be treated to have been passed by the trial court in respect of offences punishable u/s 302 read with Section 34 I.P.C. read with Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and u/s 323 read with Section 34 of I.P.C. read with 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, for which they were charged. With the above observation, the appeal stands dismissed. The accused/appellants are on bail. Their bail is cancelled. Lower court record be sent back to make the accused/appellants Kalam Singh @ Bheeru, Ranjeet Singh @ Guddu and Raghu serve out the sentence of imprisonment for life and shall pay fine of Rs. 2000/- u/s 302 read with Section 34 read with Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for which they were charged), and imprisonment for a period of six months u/s 323/34 of I.P.C. They need not to undergo separate sentence u/s 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for which they were not charged).