
(2013) 06 UK CK 0006

In the Uttarakhand High Court

Case No : Criminal Jail Appeal No. 14 of 2010

Maresh Kumar

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 20-06-2013

Acts Referred:

Citation : (2013) 2 NCC 176

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

Bench : Division Bench

Advocate : G.C. Kandpal, Amicus Curiae, for the Appellant; Vinod Sharma, Dy. Advocate General and Mr. Asif Ali, Brief Holder, for the Respondent

Judgement

Prafulla C. Pant, J.—This appeal is directed against the judgment and order dated 07.04.2010, passed by Additional Sessions Judge, Rishikesh, in Sessions Trial No. 24 of 2007, whereby said court has convicted the accused/appellant Mahesh Kumar u/s 302 read with section 34 of I.P.C., and sentenced him to imprisonment for life and directed to pay fine of Rs. 10,000/-. In default of payment of which the accused is directed to undergo further two months imprisonment. Heard learned Amicus Curiae for the appellant, and learned counsel for the State, and perused the lower court record.

2. Prosecution story, in brief, is that on 02.11.2006 at about 4.00 am PW1 Asha Ram Semwal (informant) gave First Information Report (Ex-A1) at police station Raiwala stating that a guard (Chowkidar) at about 2.30 am on 02.11.2006, informed him that shutter of shop of the deceased (Kamleshwar Prasad Lakhera) is lying half open and two persons were seen running from there. It was also told by PW1 Asha Ram Semwal that he went to the spot and saw that his brother in law Kamleshwar Prasad Lakhera was lying dead who was tied with the cot and his mouth was gagged with trouser piece. It was further found that the cash and mobile has been looted from the shop. The mobile sim number of the deceased was 9897889187 which was being used in Nokia 2100 set. The set was given to the deceased by PW7 V.K. Walia. On the basis of First Information Report (Ex-A1)

Crime No. 135 of 2006, was registered against two unknown persons in respect of offences punishable u/s 460 of I.P.C.

3. The investigation was taken up by PW16 Sub Inspector Bhaskar Lal Shah who requested Special Operation Group to keep the looted mobile phone on surveillance and obtain call details. PW12 Sub Inspector Manoj Kumar Negi of Special Operation Group after keeping the looted mobile set under surveillance gave information that from the mobile set bearing IMEI No. 351344609954360 a call was made on 02.11.2006 at about noon to land line number 2484259 belonging to PW6 Vimla Devi. The Investigating Officer interrogated PW6 Vimla Devi and came to know that said call was made by accused/appellant Mahesh who talked with her tenant PW3 Rohit. Accused/appellant Mahesh Kumar was arrested alongwith co accused Harvinder @ Pappu on 20.11.2006 and recovery of the looted set of mobile was made in respect of which memorandum (Ex-A7) was prepared. The recovery was made in the presence of PW14 Shankar Singh, Village Pradhan.

4. After completion of investigation, the Investigating Officer submitted charge sheet (Ex-A12) against the two accused/appellants namely Mahesh Kumar and Harvinder@ Pappu. It appears that accused/appellant Harvinder @ Pappu was declared juvenile and his case was separated on 26.10.2009. Before his trial was separated, on 01.09.2007, after hearing the parties, charge in respect of offence punishable u/s 302 read with section 34 of I.P.C. was framed against the accused Mahesh Kumar and accused Harvinder @ Pappu to which both of them pleaded not guilty and claimed to be tried.

5. The prosecution got examined PW1 Asha Ram Semwal (informant), PW2 Geeta Ram Bhatt, PW3 Rohit, PW4 Hemant Khatri, PW5 Praveen Rawat, PW6 Vimla Devi, PW7 V.K. Walia, PW8 Ramesh Chhetri, PW9 Surendra Singh Negi, and PW10 Gang Veer Singh, PW11 Dr. G.S. Rawat (who conducted post mortem examination), PW12 Sub Inspector Manoj Kumar of Special Operation Group, PW13 Pramod Dimri, PW14 Shankar Singh, PW15 Head Constable Mahendra Singh, PW16 Sub Inspector Bhaskar Lal Shah (who investigated the crime) and PW17 Sub Inspector Narendra Singh. The oral and documentary evidence was put to the accused u/s 313 Cr.P.C., in reply to which the accused/appellant submitted that he has been falsely implicated by the police and the evidence adduced against him was false. No evidence in defence was adduced. (A court witness No. 1 Manish Kumar appears to have been examined in respect of determination of age of accused Harvinder @ Pappu).

6. The trial court after hearing the parties, found that accused/appellant Mahesh Kumar with common intention with accused Harvinder @ Pappu, committed murder of Kamleshwar Prasad Lakhera and convicted him u/s 302 read with section 34 of I.P.C. After hearing on sentence convict was sentenced to imprisonment for life and directed to pay fine of Rs. 10,000/-. Aggrieved by said judgment and order dated 07.04.2010, passed by Additional Sessions Judge, Rishikesh, in Sessions Trial No. 24 of 2007, this appeal is got sent by the convict

Mahesh Kumar through Superintendent, District Jail, Dehradun.

7. At the outset, we would like to mention here that there is no eyewitness on account of commission of murder of Kamleshwar Prasad Lakhera by accused/appellant Mahesh Kumar. It is a case of circumstantial evidence.

8. The post mortem report (Ex-A5) prepared by Dr. G.S. Rawat (PW11) shows that deceased has suffered following ante mortem injuries.

(i) lacerated wound 2cm x 0.2 cm x skin deep on the right side of face 0.8 cm below right lower eye lid margins surrounded by contused swelling, 2.5 cm x 1.5 cm size, around it.

(ii) Contused swelling, 1.5 cm x 1.0 cm size, on front of nose lower part.

(iii) Contused swelling, 2.0 cm x 1.0 cm size, on the inner aspect of middle of upper lip.

(iv) Abraded contused swelling 2.5 cm x 1.5 cm size on the outer aspect middle of upper lip.

(v) Abraded contused swelling, 1.5 cm x 1.0 cm size, on the inner aspect of lower lip in the middle.

(vi) Multiple abraded contusion in an area of 10 cm x 6.0 cm in size, on the left side face and left side front and outer side of neck, 3.0 cm below and away from left angle of mouth.

The Medical Officer (PW11) Dr. G.S. Rawat has opined that deceased had died as a result of smothering. The above medical evidence clearly establishes that deceased had died homicidal death. Now, this Court has to examine whether accused/appellant Mahesh Kumar with common intention with Harvinder @ Pappu, committed murder of Kamleshwar Prasad Lakhera as suggested by prosecution or not?

9. PW1 Asha Ram Semwal is informant of the case who has stated that on 02.11.2006 at 2.30 am (wee hours) a Gorkha Regiment Training Unit Guard (GRTU Guard) informed him that shutter of the shop of the deceased is lying half open and two persons were seen fleeing from his shop. On this information Asha Ram Semwal (PW1) rushed to the spot and saw his brother in law Kamleshwar Prasad Lakhera lying dead and tied with the cot. He further told that mouth of the deceased was gagged with a trouser piece. He further found that the miscreants had taken away a mobile Nokia set Model 2100 with sim number 9897889187 and cash from the shop. This witness has proved the First Information Report (Ex-A1) immediately lodged by him with police station Raiwala, Dehradun. The witness further proved the inquest report (Ex-A2) prepared by the police after the dead body was sealed.

10. PW3 Rohit has stated that on 02.11.2006 at about noon he received a phone call from accused Mahesh, Kumar at phone number 2484259 of his aunt's

house. He further told that the accused had taken his uncle's mobile also some months before.

11. PW4 Hemant has stated that in the intervening night on 01.11.2006 and 02.11.2006 at about mid night he saw accused Mahesh who was going with some other boy near B G Camp Road. The witness further told that both the accused were wearing two plastic hawai Chappals. This witness identified the sealed Chappals opened in the court which were recovered by the Investigating Officer from the place, near the incident.

12. PW5 Praveen Rawat has also supported the statement of PW4 Hemant Khatri. He further told that he met accused Mahesh Kumar who was going with his friend at about mid night on the fateful day. The witness also identified the Chappals in the court recovered during investigation as one which were seen by him with accused Mahesh Kumar. This witness further told to the court that there was electric light in the street when he met the accused and his friend were going on foot.

13. PW6 Vimla Devi has proved the another link of chain of circumstances connecting the accused with the crime. She has corroborated the statement of PW3 Rohit. This witness states that on 02.11.2006 at about noon she received a phone call on her land line phone from accused Mahesh Kumar who wanted to talk to her tenant Rohit.

14. PW7 V.K. Walia has proved the fact that the mobile set which was being used by the deceased was presented by him to the deceased.

15. PW8 Ramesh Chhetri has proved the fact that Kamleshwar Prasad Lakhera (deceased) had got life time recharge of his mobile phone Airtel number 9897889187 from his shop.

16. PW9 Surendra Singh Negi has stated that on 01.11.2006, at about 10.00 am accused Mahesh Kumar who came to his shop with his friend aged around 18- 19 years. This witness has simply proved the fact that the appellant was seen in the company of the co-accused on 01.11.2006.

17. PW10 Gang Veer Singh has given an important piece of evidence stating that accused Mahesh stayed in his house with co-accused Harvinder @ Pappu and after the day of incident they absconded.

18. PW12 Sub Inspector Manoj Kumar Negi Special Operation Group is the most important witness of this case who has stated that on request of Investigating Officer he put mobile phone number 9897889187 on surveillance. He further told that with regard to IMEI No. 341344609954360 which was earlier used by the deceased, call details were obtained. This witness is also witness of the fact that accused Mahesh Kumar and his associate Harvinder @ Pappu were arrested near ISBT, Dehradun, and recovery of the looted Nokia mobile set was made from Harvinder @. Pappu, at the time of arrest of the two accused.

19. PW14 Shankar Singh has corroborated the statement of PW12 Sub Inspector Manoj Kumar stating that his presence the recovery of Nokia mobile set was made at the time of arresting the two accused where after memorandum (Ex-A7) was prepared by the police on 20.11.2006.

20. PW15 Head Constable Mahendra Singh is formal witness who has proved the check report of First Information Report and the entry made in the General Diary.

21. PW16 Investigating Officer has corroborated the prosecution story stating that the call details of the mobile number were obtained through Special Operation Group. He has also stated that during investigation it was found that on 02.11.2006 accused Mahesh made call using the looted mobile set at land line phone number 0135-2484259 of Vimla Devi Maithani. He has also proved the recovery of Chappals of the accused made of the field of Bhagwan Singh near the shop of the deceased.

22. Having re-appreciated the entire evidence on record, we are in agreement with the trial court that the prosecution has successfully proved charge of offence punishable u/s 302 read with section 34 of I.P.C., as against the accused Mahesh Kumar that he with common intention with his associate committed murder of Kamleshwar Prasad Lakhera while committing theft/robbery in his house. As such, we do not find force in this appeal. We are unable to accept the contention of learned Amicus Curiae that the chain of circumstances brought on record by the prosecution is not complete as against the appellant. For the reasons as discussed above, the appeal is dismissed. Conviction and sentence recorded by the trial court against the accused Mahesh Kumar vide judgment and order dated 07.04.2010, passed by Additional Sessions Judge, Rishikesh, in Sessions Trial No. 24 of 2007, u/s 302 read with section 34 of I.P.C., is hereby affirmed. Let a copy of this judgment be sent to the Superintendent of the jail concerned for information of the appellant. Lower court record be sent back.