
(2010) 06 UK CK 0040
In the Uttarakhand High Court

Munsha Singh and Another	APPELLANT
Vs	
State of U.P. (Now State of Uttarakhand)	RESPONDENT

Date of Decision : 16-06-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 313
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2010) 06 UK CK 0040

Hon'ble Judges : Nirmal Yadav, J;B.C.Kandpal, J

Bench : Division Bench

Judgement

Nirmal Yadav, J.—Present appeal has been filed against the judgment and order-dated 19th June 1999 passed by the Additional Sessions Judge, Nainital in Sessions Trial No. 410 of 1996, u/s 302 read with Section 34 of the Indian Penal Code, 1860 (for short I.P.C.) whereby accused/appellants, namely, Munsha Singh and Gurnam Singh have been convicted and sentenced to life imprisonment.

2. The criminal law was set in motion on the statement of Balbir Singh, father of Paramjeet Kaur (deceased) through an application (Ex. Ka-1) submitted to Station House Officer, police station Nanakmatta, district Nainital on 28th September 1994 stating that during the previous night i.e. 27th September 1994 he along with his family was sleeping in the verandah of his house on three separate cots. Suddenly on hearing the noise of firearm shot the whole family woke up. His wife Bhajan Kaur and eldest daughter Gurmeet Kaur noticed the presence of two men near the cot lying on the north side where Paramjeet Kaur (deceased) was sleeping. They could identify the assailants in the light of lantern, however both the accused persons ran away noticing that the entire family had woken up. The firearm injury was caused on the head of Paramjeet Kaur (deceased), daughter of complainant Balbir Singh. There was a lot of bleeding from the injury. Complainant Balbir Singh sent his daughter Gurmeet Kaur to call his brothers, Kashmir Singh and Janrail Singh and when they reached along with Gram Pradhan Hukam Singh, complainant took his injured daughter Paramjeet Kaur to Government Hospital in a tractor trolley. However, injured

Paramjeet Kaur succumbed to her injuries at about 11:00 p.m.

3. The Panchnama of the dead body (Ex. Ka-15) was prepared by Sub Inspector Karan Singh (PW-10) in the Civil Hospital Khatima. The dead body was handed over to Constable Vijay Kumar and Constable Maan Singh, for taking the same for postmortem to District Hospital Pilibhit. After the postmortem the complainant got the dead body of Paramjeet Kaur from District Hospital Pilibhit and performed her last rites on the same day. During the cremation the complainant came to know the names of the assailants through co-villagers particularly Chatar Singh son of Kashmir Singh, complainant's daughter Gurmeet Kaur also confirmed the names of the assailants who had seen the accused persons running out of their house while she was going to call the complainant's brothers after the incident. Thereafter complainant Balbir Singh again went to police station Nanakmatta on the same day and submitted another written complaint (Ex. Ka-2) disclosing the names of Munsha Singh and Gurnam Singh being the assailants.

4. The investigation was taken up by Station House Officer Vijay Kumar (PW-9). He made inquiry from Chatar Singh and recorded his statement. He also took into possession one Eveready torch vide recovery memo Ex. Ka-3, in the light of the said torch Chatar Singh had seen Munsha Singh along with a country made pistol and Gurnam Singh having a sword with him. The accused persons were arrested on 6th October 1994. On interrogation the accused disclosed the place where the arms were hidden. After making disclosure Munsha Singh got recovered country made pistol, which was taken into possession vide recovery memo Ex. Ka-5. The site plan of the place of recovery of weapon (Ex. Ka-13) and the site plan of the place of occurrence Ex. Ka-12 were produced. The Investigating Officer took into possession bloodstained cushion and mosquito net vide recovery memo Ex. Ka-10 and a lantern vide memo Ex. Ka-11 from the spot. The clothes of the victim, cushion and mosquito net was sent to the Forensic Science Laboratory and the report of the Forensic Laboratory are Ex. Ka-22 and Ex. Ka-23.

5. On completion of investigation, final report u/s 173 Cr.P.C. was put in the court for trial. The accused-appellants were charge sheeted for commission of crime u/s 302 read with Section 34 of the I.P.C. to which they pleaded not guilty and claimed trial.

6. In order to prove its case, the prosecution produced as many as ten witnesses. Complainant Balbir Singh (PW-1), father of Paramjeet Kaur (deceased). Gurmeet Kaur (PW-2), sister of Paramjeet Kaur (deceased). Chatar Singh (PW-3) had seen the accused persons in the torchlight. Dr. Gyan Prakash (PW-4) conducted the postmortem on the dead body of the deceased. Makhan Singh (PW-5) is the witness of recovery of country made pistol, which was used in the alleged offence. Head Constable Pooran Singh (PW-6) recorded the Chick F.I.R. Bholu Singh (PW-7) is the witness of recovery of articles lifted from the spot. Constable Vijay Kumar (PW-8) along with Constable Maan Singh was sent

along with the dead body for postmortem. Station House Officer Vijay Kumar (PW-9) initially conducted the investigation. Sub Inspector Karan Singh (PW-10) is also the Investigating Officer.

7. When examined u/s 313 Cr.P.C., the accused appellants admitted that complainant Balbir Singh is their neighbour but they had no dispute with him. They pleaded innocence and false implication. The accused appellants did not produce any evidence in defence.

8. Dr. Gyan Prakash (PW-4) conducted the postmortem on the dead body of Paramjeet Kaur and prepared postmortem report vide Ex. Ka-4 and found the following injuries:

(i) Lacerated wound with inverted margins measuring 5 c.m. x 3.5 c.m. x cavity deep on the top of head more on right side about 13 c.m. above the right ear. On account of the injury, the brain matter was protruding from the wound. Tattooing and charring were absent.

(ii) On exploration of injury No. 1, right side of parietal temporal occipital and frontal bones were found fractured. Left side of occipital parietal bones were also found fractured. Underneath the injury membrane of both the lobes of brain were lacerated. Underneath the brain matter one piece of tickly and thirty small pieces of pallets were found and taken out. They were sealed separately.

9. Rigor mortis was present in all the limbs. Eyes were closed and mouth was found open. There was no sign of decomposition of the body. All the chambers of heart were empty. All other organs were found normal.

10. As per opinion of the doctor cause of death was coma due to ante mortem injuries. Injury No. 1 was sufficient to cause death in the ordinary course of nature. The injury No. 1 could be possibly caused by firearm i.e. country made pistol. The death could have been caused on 27th September 1994 at 11:10.p.m.

11. We have heard Mr. S.K. Mandal, learned Counsel for the appellants, Mr. S.S. Adhikari, learned A.G.A. for the State and perused the entire material available on record.

12. Learned Counsel for the appellants submitted that F.I.R. has been lodged after a considerable delay. As per the prosecution case, occurrence took place in the night of 27th September 1994 at about 9/10 p.m. and the F.I.R. has been lodged on the next day i.e. 28th September 1994 at about 11:00 a.m. i.e. after almost 13-14 hours of the occurrence. In the said F.I.R. the names of the accused-appellants have not been mentioned, though from the statement of complainant Balbir (PW-1), the accused persons were seen by him, his wife and daughter in the light of lantern. Learned Counsel for the appellants thus argued that if both the accused-appellants had been seen at the spot by the complainant then what was the reason for not mentioning their names in the F.I.R. This fact clearly shows that witnesses had not seen the occurrence.

13. Learned Counsel for the appellants further argued that it is not disputed that accused appellants as well as the complainant are living in the close vicinity. As per the complainant himself the distance between his house and that of the accused is 50-60 paces and the families of both of them were living in the neighbourhood for the last 20-25 years. He thus submitted that there appears to be no reason as to why the names of the accused persons were disclosed on the next day after the incident. Learned Counsel for the appellants further pointed out that even Gurmeet Kaur (PW-2) is alleged to have seen the accused persons while she was going to call her uncles. If she had seen the accused persons she must have disclosed their names to her father on return to the house after calling her uncles. He further pointed out that even Chatar Singh (PW-3) is alleged to have seen the accused appellants in the torchlight while he was coming towards the house of his uncle. He must have also disclosed the names of assailants to his uncle Balbir Singh (PW-1) on reaching his house but even then the names of the accused persons were not mentioned in the F.I.R. Ex. Ka-1.

14. Learned Counsel for the appellants further pointed out that whole prosecution case is shrouded the mystery. None of the witnesses appears to have seen the occurrence nor they have seen the accused persons running out of the house of Balbir Singh (PW-1). Learned Counsel for the appellants argued that it is quite possible that some unknown assailants had caused the death of Paramjeet Kaur during the night while the family of Balbir Singh (PW-1) was asleep and the accused persons have been falsely implicated. Learned Counsel for the appellants further argued that even if there was any enmity with Balbir Singh (PW-1) why the accused appellants would spare him and cause the death of innocent girl Paramjeet Kaur.

15. Learned Counsel for the appellants further argued that no incised wound has been found on the person of Paramjeet Kaur (deceased). Only one lacerated wound having been caused by firearm weapon was found on her person. Thus there is nothing on record to prove that accused Gurnam Singh caused any injury with the sword with which he is alleged to have been armed with.

16. Learned Counsel for the appellants further argued that the lantern which is alleged to have been lifted and recovered from the spot has not been produced before the court and therefore, the prosecution has failed to prove that there was any source of light at the place of occurrence. He further pointed out that even the prosecution has failed to prove the recovery of weapon used in the crime.

17. On the other hand Mr. S.S. Adhikari, learned A.G.A. argued that the prosecution case has been fully established from the testimony of complainant Balbir Singh (PW-1), his daughter Gurmeet Kaur (PW-2), who were present inside the house at the time of the occurrence. Chatar Singh (PW-3) has also supported the prosecution case, who had seen the accused coming out of the house of his uncle Balbir Singh. The prosecution case is further supported by the recovery of country made pistol at the instance of accused Munsha Singh in the presence of Makhan Singh, independent witness and the Investigating Officer. He

further pointed out that the report of the Forensic Science Laboratory has also supported the prosecution case as empty cartridge, which was lifted from the spot has been found to be fired from the recovered weapon. The pellets recovered from the body of Paramjeet Kaur (deceased) were found similar to those pellets recovered by the police from the spot. Learned A.G.A. further pointed out that the prosecution case is fully supported by the medical evidence as the doctor has found one lacerated wound caused by the firearm i.e. country made pistol.

18. Learned A.G.A. further pointed out that as per complainant Balbir Singh (PW-1) a dispute between him and the accused persons existed for the last one year prior to the occurrence. Even a suggestion has been given to eye witnesses that the accused persons have been falsely implicated on account of enmity.

19. On careful consideration of the rival submissions made by learned Counsel for the parties and the documents available on record, this Court is of the view that complainant Balbir Singh (PW-1) and his daughter Gurmeet Kaur (PW-2) have fully supported the prosecution case. Their testimony further finds support from the statement of Chatar Singh (PW-3). It is true that Balbir Singh (PW-1) and Gurmeet Kaur (PW-2) are related to Paramjeet Kaur (deceased), however, their presence at the time of occurrence is genuine and natural. The occurrence has taken place inside the house of Balbir Singh (PW-1) during the night at about 9:00-10:00 p.m., therefore, no other independent witness or any outsider is expected to be present at the time and place of occurrence.

20. Gurmeet Kaur (PW-2) categorically stated that she noticed both the accused appellants escaping from her house while she was going to call her uncles on the asking of her father. She further stated that her cousin Chatar Singh (PW-3) also came at that time and he had also seen both the accused running out of their house. Chatar Singh (PW-3) disclosed the names of accused persons to his uncle Balbir Singh (PW-1) when the last rites of Paramjeet Kaur (deceased) were being performed. After performing the cremation, when Balbir Singh (PW-1) came back to his house in the evening hours Gurmeet Kaur (PW-2) and Chatar Singh (PW-3) disclosed the names of the accused persons. Thereafter Balbir Singh (PW-1) went to the police station again and submitted second report on the same day in the evening hours disclosing the names of accused persons as Munsha Singh and Gurnam Singh. It has come in the testimony of the witnesses in so many words that Balbir Singh (PW-1) could not get an opportunity to talk to his daughter Gurmeet Kaur (PW-2) and nephew Chatar Singh (PW-3) until he returned home after performing the cremation. After returning home he got opportunity to talk Gurmeet Kaur (PW-2) and Chatar Singh (PW-3). To our mind the names of the accused persons have been made available to the police at the earliest opportunity without any fabrication by complainant Balbir Singh (PW-1).

21. As regards the delay in lodging the F.I.R., admittedly Paramjeet Kaur (deceased) had received fatal injuries on her vital part of the body i.e. head. Balbir Singh (PW-1) was more concerned about her treatment rather than to

rush for reporting the matter to the police. Paramjeet Kaur (deceased) was removed to the hospital at Khatima, however, she died in the hospital. Next morning dead body of Paramjeet Kaur was sent for autopsy to Pilibhit and thereafter complainant Balbir Singh (PW-1) went to police station Nankmatta for lodging the F.I.R. Moreover even if there is any delay, it does not appear to be utilized by the complainant for concocting any false story about the incident. Had it been so the names of the assailants would have been mentioned in the report Ex. Ka-1, therefore, it does not indicate any kind of fabrication in the statement of Balbir Singh (PW-1). We are well aware about the Indian Society and specially the rustic villagers, they are not well conversant with the legal intricacies and the consequences of not reporting the matter immediately or some omissions made in the first report. Another factor which made Balbir Singh (PW-1) and the other family members was perplexed the firing incident having taken place inside the four walls of the house. The family being grief stricken, it may not have been possible that Gurmeet Kaur (PW-2) and Chatar Singh (PW-3) disclosed all the facts immediately to the head of the family so that those facts could have been incorporated in the first report Ex. Ka-1.

22. The explanation put forward by Balbir Singh (PW-1) with regard to omission of mentioning the names of assailants in the first report appears to be quite natural and plausible. Since he was taken aback by the sudden happenings, he could not exactly identify the assailants, therefore, he did not mention their names in the first report but when his daughter Gurmeet Kaur (PW-2) and nephew Chatar Singh (PW-3) disclosed that they had seen the accused persons, namely, Munsha Singh and Gurnam Singh running out of his house along with their respective weapons, he immediately reported the same to the police on the same very day. Gurmeet Kaur (PW-2) had an occasion to see the accused persons as she was going out of house to call her uncles. Similarly the presence of Chatar Singh (PW-3) was also natural as he was coming towards the house of his uncle Balbir Singh (PW-1) on hearing the noise of firearm shot.

23. Perusal of the statements of Gurmeet Kaur (PW-2) and Chatar Singh (PW-3) shows that they had not described the entire story sequence wise, as they are rustic and illiterate villagers and of tender age. Therefore, we cannot consider the evidence and testimony of such rustic witness by the same standard as that of the witnesses who belong to the urban areas. The minor discrepancy pointed out by the learned Counsel for the appellants in the statements of complainant Balbir Singh (PW-1), Gurmeet Kaur (PW-2) and Chatar Singh (PW-3) are not of much significance. Moreover it is well established that the Court has to scrutinize the evidence and separate grain from the chaff and to look for corroboration to the reliable part of the ocular version of witness. It has come in the testimony of eyewitnesses that when the firearm injury was caused, all the members of the family had woken up and the accused persons concealed themselves nearby for a while but when they assessed that they could easily escape, they ran out of the house and that was the time they were noticed by Gurmeet Kaur (PW-2) and Chatar Singh (PW-3). Complainant Balbir Singh (PW-1) thereafter must have

been busy making the arrangements to remove his daughter Paramjeet Kaur (deceased) to the hospital rather than to make inquiry about the assailants.

24. The recovery of empty cartridge from the spot and the country made pistol got recovered at the behest of accused Munsha Singh in the presence of police officials and Makhan Singh being independent witness also corroborate the prosecution case. As per the opinion of the Forensic Science Laboratory, empty cartridge which had been recovered from the spot was fired from the recovered country made pistol. Even the pellets, which were recovered from the spot tallied with the pellets taken out from the body of Paramjeet Kaur (deceased) by the doctor.

25. With regard to the motive of the alleged crime, complainant Balbir Singh (PW-1) categorically stated that a dispute was going on between him and the accused persons for the last one year. Even a suggestion has been put to Balbir Singh (PW-1) by the defence counsel that accused persons have been falsely implicated on account of enmity. It has been argued that if the enmity was with complainant Balbir Singh (PW-1) why accused persons would commit the murder of his daughter? In response to this it can well be said that it is quite possible that accused persons had entered the house of Balbir Singh (PW-1) with an intention to cause his death but mistakenly they fired upon Paramjeet Kaur (deceased). The whole family of Balbir Singh was sleeping on three cots in the verandah, the accused persons may not have been able to identify as to on which cot Balbir Singh was sleeping. Even if the motive has not been specifically proved, it is not of much significance. Since the prosecution case has been fully established by the direct ocular testimony of complainant Balbir Singh (PW-1) and Gurmeet Kaur (PW-2).

26. It is true that no incised wound has been found on the dead body of Paramjeet Kaur and accused Gurnam Singh is alleged to be armed with sword and thus no role has been attributed to him. However, all the three witnesses namely, Balbir Singh (PW-1), Gurmeet Kaur (PW-2) and Chatar Singh (PW-3) have categorically stated that accused Gurnam Singh was accompanying accused Munsha Singh at the time of occurrence. We cannot lose sight of the fact that accused Munsha Singh, alone would not dare to enter the house of Balbir Singh (PW-1) and therefore, accused Gurnam Singh must have accompanied him. Though he did not cause any injury to the deceased but his culpability along with Munsha Singh is clearly made out as he was seen in the house of Balbir Singh (PW-1) along with Munsha Singh and left along with him after the incident. Both of them came with a pre-concert and Munsha Singh caused fire injury to Paramjeet Kaur, which resulted into her death. Though they had come to cause the death of complainant Balbir Singh (PW-1) but under the mistaken identity they caused the death of Paramjeet Kaur (deceased). However, they cannot be absolved of the act committed by them, which has been fully established by the reliable, cogent and consistent direct ocular testimonies of Balbir Singh (PW-1), Gurmeet Kaur (PW-2) and Chatar Singh (PW-3).

27. In view of the above detailed discussions, we are of the opinion that prosecution has been able to successfully prove its case beyond reasonable doubt and we do not find any ground to interfere with the findings of the trial court. The appeal is dismissed and conviction and sentence awarded by the trial court is hereby maintained. The accused appellants are on bail, their bail bonds are cancelled and sureties are discharged and they shall be taken into custody forthwith to serve out the sentence awarded by the trial court.

28. Office is directed to send back lower court record for compliance of the order.