
(2010) 06 UK CK 0190
In the Uttarakhand High Court

Radhey Shyam and Others and Harish Chandra	APPELLANT
Vs	
State of U.P.	RESPONDENT

Date of Decision : 08-06-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 34

Citation : (2010) 06 UK CK 0190

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

Nirmal Yadav, J.—Abovementioned appeals are being disposed of by this common judgment as both the appeals are arising out of the same judgment and order dated 26.11.1997 passed by the District & Sessions Judge, Nainital in Sessions Trial No. 23 of 1993 and Sessions Trial No. 24 of 1993. Appellants-Radhey Shyam and Chandra Mohan, Mukesh, Harish Chandra sons of Radhey Shyam alongwith Ganeshwati wife of Radhey Shyam stood trial for the offences under Sections 147, 148, 302/149 of the Indian Penal Code, 1860 (in short I.P.C.). The learned trial court, after taking into consideration the evidence and material available on record acquitted Ganeshwati of all the charges levelled against her while the other four accused have been convicted for the offences punishable u/s 302 read with Section 34 of the I.P.C. and sentenced for life imprisonment and a fine of Rs. 1,000/- each. In default of payment of fine they have been ordered to further undergo one month's imprisonment. It is worth mentioning at the outset that accused Radhey Shyam and Mukesh had died during the pendency of the appeal.

2. Brief facts of the case as per the prosecution are that family of accused Radhey Shyam and family of deceased were engaged in litigation with regard to some land for quite sometime. As per complainant Sukhvinder, his family, was in possession of the land but the accused party tried to take forcible possession on 10th December 1991. When his father Kartar Singh resisted the accused, quarrel

(Marpeet) took place between the parties and accused Radhey Shyam reported the matter to the police. Kartar Singh was arrested but released on bail. On 17th December 1991 Kartar Singh at about 1:00 p.m. was sitting in the hut for the security of his fields, Sukhvinder Singh alongwith one Balbir Singh had also reached the fields as he had brought the meals for his father. He heard the shrieks of his father on the eastern side of the hut and found his father lying on the earth. Accused Ganeshwati was shouting that "Sardar be not left alive". Accused Radhey Shyam was armed with single barrel gun, his son Harish and Mukesh were armed with Ballam shaped lathi and his third son Chandra Mohan was armed with Kanta. Radhey Shyam was giving injuries to Kartar Singh with the butt of his gun while other accused were causing injuries with their respective weapons. The occurrence was also witnessed by Balbir Singh, Chanchal Singh and Harbansh Singh. On hearing the noise of Kartar Singh they had reached the spot to rescue him and on seeing them all the accused ran away. One of the co-villager, Milkiyat Singh telephonically informed the police station Rudrapur at 1.07 p.m. about the quarrel (Marpeet) taking place in the fields of village Fazalpur Ourala. One Sub Inspector alongwith few constables were dispatched from the police station to place of occurrence. Injured Kartar Singh was removed to the hospital in the police jeep, however before reaching the hospital Kartar Singh succumbed to his injuries. Complainant Sukhvinder Singh submitted a written complaint (Ex. Ka-2) in police station Rudrapur on the basis of which Chick F.I.R. (Ex. Ka-10) was recorded at 2:30 p.m. and G.D. report (Ex. Ka-11) was also entered in this respect at 1:30 p.m.

3. Investigation was handed over to Senior Sub Inspector Rajendra Singh (PW-5), who reached the spot and prepared the inquest report (Ex. Ka-1). The dead body of Kartar Singh was sealed in a parcel and sent for postmortem. On the next day site plan (Ex. Ka-6) was prepared. The bloodstained earth and simple earth were lifted from the place of occurrence and taken into possession vide memo Ex. Ka-7.

4. On completion of the investigation, charge sheet was submitted against the accused persons. On the basis of the evidence and material facts available on record, accused namely, Radhey Shyam, Chandra Mohan, Mukesh and Harish Chandra son of Radhey Shyam were charge sheeted under Sections 148 and 302/149 of the I.P.C. while Ganeshwati wife of Radhey Shyam was charge sheeted u/s 147 of the I.P.C. to which they pleaded not guilty and claimed trial.

5. In order to prove its case prosecution produced Girija Shanker (PW-1), who was joined in the investigation and was signatory to the inquest report. Sukhvinder Singh (PW-2) son of Kartar Singh (deceased) and Harbansh Singh (PW-3) are the two eyewitnesses.

6. Dr. Charan Jeet Singh (PW-4) conducted the postmortem on the dead body of Kartar Singh (deceased) and found the following ante mortem injuries and the postmortem reoport is Ex. Ka-3:

- (i) Incised wound 5 c.m. x 1 c.m. x bone deep on the forehead, 5 c.m. above the right eyebrow.
- (ii) Incised wound 4 c.m. x 1 c.m. x bone deep on the scalp, 13 c.m. above from the root of the nose.
- (iii) Punctured wound 3 c.m. x 1.5 c.m. x 0.5 c.m. in front of middle of the neck just below Thyroid cartilage. Trachea muscles and big muscles along the trachea and oesophagus were also cut.
- (iv) Incised wound 11 c.m. x 0.5 c.m. skin deep in front of lower part of neck extending up to end of right clavicle.
- (v) Punctured wound 0.5 c.m. x 0.5 c.m. x 1 c.m. deep on the right side of chest, third on the right inter costal space 3 c.m. mid line.
- (vi) Punctured wound 1 c.m. x 0.5 c.m. x 2 c.m deep on the left side inter costal space 11 c.m. from mid line.
- (vii) Punctured wound 1.5 c.m. x 0.5 c.m. x 1.5 c.m. deep on the front side of right arm, 4.5 c.m. below tip of acromion process.
- (viii) Punctured wound 1.5 c.m. x 1 c.m. x 2 c.m deep in the middle of backside of right arm.
- (ix) Punctured wound 1.5 c.m. x 1 c.m. muscle deep on the back side of right arm 7 c.m. above elbow joint.
- (x) Linear abrasion 10 c.m. on lower part of chest and obliquely place.
- (xi) Incised wound 3 c.m. x 1 c.m. x 2 c.m. deep on the backside of left arm 7 c.m. above elbow.
- (xii) Punctured wound 1 c.m. x 1 c.m. x 2 c.m. deep on the front of left thigh, 7 c.m. above left knee joint.
- (xiii) Punctured wound 1 c.m. x 1 c.m. x 2 c.m. deep on the front of left thigh 1 c.m. latter to injury No. 12.
- (xiv) Contusion with traumatization. On both side of sternum 4 c.m. x 3 c.m. in front of the chest.

7. No rigor mortis was found on the person of deceased. On internal examination, underneath injury No. 14 sternum was found to be fractured and Haematoma was also present. In trachea, cut was present underneath the thyroid cartilage. Left chamber of the heart was empty while right chamber was full of blood.

8. As per the opinion of doctor, the death was caused due to shock and hemorrhage on account of ante mortem injuries on the person of the deceased. The death might have been caused three hours prior to conducting the postmortem.

9. Senior Sub Inspector Rajendra Singh (PW-5) is the Investigating Officer. Head Constable Ved Prakash Sharma (PW-6) had received the information on telephone from Milkiyat Singh with regard to the incident at 1.07 p.m. and G.D. entry No. 39 was recorded in this respect at 1.07 p.m. Thereafter he also received the written report (Ex. Ka-2) submitted by Sukhvinder Singh (PW-2). He also recorded G.D. report No. 40 (Ex. Ka-11) at 1:30 p.m.

10. When examined u/s 313 Cr.P.C., the accused appellants pleaded innocence and false implication. They further stated that Kartar Singh (deceased) and others forcibly wanted to take possession of their land on 10th December 1991 and had given beatings to Ganeshwati. A report was lodged in this respect and on this account they have been falsely implicated. In defence accused appellants did not produce any oral evidence however, submitted documents Ex. Kha-1 to Kha-9.

11. The learned trial court after taking into consideration the facts and evidence available on record acquitted accused Ganeshwati and convicted the other accused persons as mentioned in paragraph-1 of the judgment.

12. We have heard Mr. B.S. Adhikari, learned Counsel for the appellants, Mr. Nandan Arya, learned A.G.A. for the State and perused the entire material available on record.

13. Mr. Nandan Arya, learned A.G.A. for the State argued that the matter was reported to the police with promptitude. Occurrence took place at 1:00 p.m. and telephonic information with regard to the incident was given by co-villager namely Milkiyat Singh at about 1:07 p.m. Even the complaint was submitted by Sukhvinder Singh (PW-2) at 1:30 p.m. Learned A.G.A. referred to the statement of Head Constable Ved Prakash who stated that in fact F.I.R. was recorded at 1:30 p.m. and G.D. report (Ex. Ka-11) was recorded at 1:30 p.m. only but he inadvertently mentioned the time of occurrence as 2:30 p.m. Learned A.G.A. therefore, argued that the occurrence took place in the broad daylight. The accused persons had strong motive as the parties were litigating for a long time over a land dispute. Even on 10th December 1991 a quarrel (Marpeet) had taken place between the parties and a case was registered against Kartar Singh (deceased) by the accused persons. The prosecution has proved its case with the help of two eyewitnesses i.e. Sukhvinder Singh (PW-2) son of deceased and Harbansh Singh (PW-3), who is an independent witness. Both the witnesses were strenuously cross-examined but except minor discrepancy with regard to the kind of crop grown in the field, their testimony remained consistent and nothing could be elicited to doubt the veracity of the prosecution case.

14. Learned A.G.A. further pointed out that medical version fully supports the ocular evidence. In the postmortem report (Ex. Ka-3), Incised wounds, punctured wounds and contusion were found which clearly shows that injuries could be caused with Ballam shaped lathi, Kanta, Radhey Shyam (since deceased) is alleged to have caused injuries with the butt of his single barrel

gun, therefore, injury No. 14 could have been caused by Radhey Shyam.

15. On the other hand learned Counsel for the appellants argued that presence of both the eyewitnesses at the place of occurrence is quite doubtful. He referred to the statement of Sukhvinder Singh (PW-2) who stated that he had reached the hut of his fields as he had taken meals for his father Kartar Singh (deceased) and Harbansh Singh also reached the spot, whereas Harbansh Singh stated that he had reached the spot after hearing the noise. He also referred to the cross-examination of Harbansh Singh (PW-3) wherein he stated that Sukhvinder Singh (PW-2) reached the spot alongwith police in police jeep after 2-3 minutes alongwith police. Learned Counsel for the appellants argued that as per Harbansh Singh (PW-3), he was present at the spot and Sukhvinder Singh (PW-2) came later, whereas as per Sukhvinder Singh (PW-2), he was present earlier and then Harbansh Singh (PW-3) came.

16. Learned Counsel for the appellants submitted that there is a material contradiction in the statement of both the eyewitnesses. According to Sukhvinder Singh (PW-2) incident occurred in the field of Barseem, whereas Harbansh Singh (PW-3) stated that occurrence took place in the field of Lahi. Next argument raised by learned Counsel for the appellants is that perusal of documents Ex. Kha-1 to Ex. Kha-9 shows that the appellants owned the disputed land and they were in possession also. Learned Counsel for the appellants referred to the statement of Sukhvinder Singh wherein he admitted that proceedings u/s 145 of the Cr.P.C. initiated and a suit declaring Radhey Shyam as owner under the Tenancy Act were decided in favour of Radhey Shyam and possession of the plot was order to be given to him vide order dated 14th June 1993 passed by the S.D.M. He further pointed out that even on 10th December 1991 a case was registered against the deceased and his companion including Sukhvinder Singh, therefore, it was the complainant and his family who were aggrieved and had a reason to falsely implicate the appellants.

17. Learned Counsel for the appellants also argued that several criminal cases were registered against Kartar Singh (deceased) and he was also convicted in a murder case. Therefore, it might be possible that Kartar Singh (deceased) was murdered by some other person and the appellants have been falsely implicated.

18. We have carefully considered the submissions made by learned Counsel for the parties and from the evidence available on record, we do not find any ground to interfere with the conclusions arrived at by the learned trial court. Admittedly occurrence took place in the broad daylight and the matter was reported with utmost promptitude. Presence of Sukhvinder Singh (PW-2) at the place of occurrence is quite natural as he had gone to his fields with the meals of his father Kartar Singh (deceased) who was present in the hut located in the fields for security purposes. The occurrence took place at 1:00 p.m. and a telephonic message was received by the police at 1:07 p.m. to the effect that a quarrel was going on in the sugarcane fields in village Fazalpur. Immediately the police officials started from the police station for the place of occurrence. As per the

evidence available on record, the police reached within a few minutes after receiving the information. After receiving the injuries, injured Kartar Singh was removed to the hospital in the police jeep, however, he died on the way. Sukhvinder Singh (PW-2) thereafter submitted a written complaint in the police station within half an hour of the occurrence. He has also stated in clear terms that dispute as well as litigation was going on between both the parties for quite sometime. Proceedings u/s 145 of the Cr.P.C. were also initiated with regard to this land. Some quarrel also took place a week prior to the present occurrence i.e. on 10th December 1991 and accused persons had reported the matter to the police against Kartar Singh (deceased) and his family members. Thus the enmity between the parties has been established from the statement of Sukhvinder Singh (PW-2). He has narrated the manner of occurrence and has mentioned the name of all the accused and the weapons they were armed with. His statement is further corroborated by the medical evidence as Kartar Singh (deceased) received punctured wounds as well as incised wound and a contusion on his chest. Appellants Harish Chandra and Mukesh (since deceased) were armed with Ballam shaped lathi while appellant Chandra Mohan was armed with Kanta. The injuries found on the dead body of Kartar Singh (deceased) could be caused by the aforesaid weapons. Statement of Sukhvinder Singh (PW-2) is duly corroborated by the statement of Harbansh Singh (PW-3), who is an independent witness. He was thoroughly cross-examined but he has fully supported the prosecution case. According to him, the occurrence took place in the fields of Kartar Singh (deceased). His presence at the place of occurrence is also quite natural as his fields are located at a distance of two furlong only. According to him, he was going on the road, which is adjoining the fields of Kartar Singh (deceased) and on hearing the noise; he went towards the place of occurrence.

19. A perusal of site plan (Ex. Ka-6) shows that a Kachcha road is passing next to the field of Kartar Singh (deceased). Learned Counsel for the appellants pointed out that there was a contradiction in the statement of Sukhvinder Singh (PW-2) and Harbansh Singh (PW-3) with regard to kind of crop growing in the fields where the occurrence took place. According to Sukhvinder Singh (PW-2), it was the field of Barseem whereas Harbansh Singh (PW-3) stated that it was the fields of Lahi. We cannot lose sight of the fact that occurrence took place in the year 1991 and statements of the witnesses were recorded in the year 1996 i.e. after a lapse of five years. Moreover a perusal of site plan (Ex. Ka-6) shows that the place of occurrence is in the fields of Barseem and the adjoining field was of Lahi. In such circumstances there could have been a confusion in the mind of Harbansh Singh (PW-3) as the Lahi field was situated next to the Barseem where the occurrence took place. This discrepancy does not in any way demolish his testimony in any manner. There is nothing on record to prove that Harbansh Singh (PW-3) is related to Kartar Singh (deceased) or he was inimically deposed towards the accused appellants.

20. Learned Counsel for the appellants further pointed out that Harbansh Singh (PW-3) in his cross-examination stated that Sukhvinder Singh (PW-2) had come

in the police jeep. Thus as per his statement, Sukhvinder Singh (PW-2) was not present at the place of occurrence. We are not agreeable with the argument as the police had reached the spot on the information given by a third person and by that time Sukhvinder Singh (PW-2) had not gone to the police station. It might be possible that he met the police just near the place of occurrence and Harbansh Singh (PW-3) noticed him with the police. No suggestion has been given even to the Investigating Officer that Sukhvinder Singh (PW-2) had accompanied him from the police station nor any such suggestion has been given to Sukhvinder Singh (PW-2) in this regard.

21. Learned Counsel for the appellants suggested that Kartar Singh (deceased) might have been murdered by some other person as he was involved in several criminal cases and was convicted in a murder case. This argument is not at all substantiated by any iota of evidence rather a suggestion has been given to Sukhvinder Singh (PW-2) by the defence Counsel that Radhey Shyam had lodged about 500 reports against Kartar Singh (deceased) and 70 criminal cases were pending against him. This suggestion clearly shows that all these cases were lodged against Kartar Singh (deceased) at the behest of Radhey Shyam.

22. Moreover Sukhvinder Singh (PW-2) being the son of Kartar Singh (deceased) would not like to spare the actual assailants in place of appellants. In case murder of Kartar Singh (deceased) was committed by some other person, his son would have certainly mentioned the name of the real culprits. Moreover it is no body's case that the occurrence took place somewhere during the night and none had seen the occurrence and therefore, the complainant have falsely implicated the accused persons. In the present case the occurrence took place in the broad daylight in the fields of the complainant himself. The argument of learned Counsel for the appellants that the land, where the occurrence took place, was in possession of the appellants. Order dated 15th May 1993 (Ex. Kha-1) passed by the Assistant Collector with regard to Radhey Shyam being declared as owner on account of tenancy rights has been passed later on than the present occurrence. The occurrence took place in the year 1991 and as per the facts mentioned in the order, land was handed over by Jai Kishan, who is alleged to have transferred the land in question in favour of Radhey Shyam but later on his brother Komil had got the sale deed effected in favour of Sukhvinder Singh (PW-2) on 19th March 1976 and 20th March 1976 and the possession was also handed over to him and the mutation was also entered in his name. Radhey Shyam had filed a suit under U.P. Tenancy Act. Moreover proceedings u/s 145 Cr.P.C. were initiated prior to the occurrence, which shows that there was a dispute between the parties with regard to the land in question.

23. In view of the above discussions, the prosecution has been successfully able to prove its case beyond reasonable doubt and we do not find any ground to interfere with the findings of the trial court. The appeals are 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.

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