
(2010) 10 UK CK 0138

In the Uttarakhand High Court

Case No : Criminal Appeal No. 1515 of 2001 (Old No. 636 of 1999)

Ram Kumar and Others

APPELLANT

Vs

State of U.P (now State of Uttarakhand)

RESPONDENT

Date of Decision : 19-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 313, 374(2)
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302
Uttar Pradesh Reorganisation Act, 2000 — Section 35

Citation : (2010) 10 UK CK 0138

Hon'ble Judges : Prafulla C. Pant, J;Nirmal Yadav, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—This appeal, preferred u/s 374(2) of Code of Criminal Procedure, 1973, (for short Cr.P.C), is directed against the judgment and order dated 16.03.1999, passed by Additional Sessions Judge Roorkee, in Sessions Trial No. 183 of 1997, whereby said court has convicted the appellants namely Ramkumar, Jaibeer @ Pappu, Jitendra @ Jasvir u/s 147, 302 read with Section 149 of Indian Penal Code ,1860, (for short I.P.C). Appellants Rampal , Rajdev and Satvir have been convicted u/s 148 and 302 read with Section 149 I.P.C. Each of the convicts has been sentenced to imprisonment for life and directed to pay fine of ` 20,000/- u/s 302 read with Section 149 I.P.C. Accused/appellants Ramkumar, Jaibeer @ Pappu, Jitendra @ Jasvir have been sentenced to undergo rigorous imprisonment for a period of two years u/s 147 I.P.C., and accused/appellants Rampal, Rajdev and Satvir have been sentenced to undergo rigorous imprisonment of two years u/s 148 I.P.C.

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

3. Prosecution story, in brief, is that on 09.02.1997, at about 9.10 p.m, Hari Singh Chowkidar of village Akodha Khurd, gave oral information at police station Laksar, about murder of Hempal at 5 pm by his brothers Rampal, Ramkumar,

Pappu, Jasvir, Satvir and Rajdev, due to enmity over land dispute. On the basis of said oral report, F.I.R (Ex - A17) was prepared and crime No. 19 of 1997, was registered relating to offences punishable u/s 147, 148, 149 and 302 I.P.C., against the aforesaid accused. The investigation was taken up by PW3 Sub Inspector Chandra Shekhar Yadav, who along with PW5 Sub Inspector Ram Prakash Yadav went to the spot and got prepared inquest report (Ex A-21) at about 11.30 p.m . The Investigating Officer further got prepared police form No. 13 (Ex- A22), letter to Chief Medical Officer (Ex- A19), sketch of the dead body (Ex -A 20), and sample seal (Ex- A9). The Investigating Officer got sent the dead body in a sealed condition for post mortem examination . PW2 Dr. K.K. Karoli conducted post mortem examination on the dead body of Hempal on 10.02.1997 at about 12.20 p.m. He recorded as many as 13 ante mortem injuries, and opined in the autopsy report that cause of death was shock and hemorrhage ,as a result of ante mortem injuries suffered by the deceased. The Investigating Officer appears to have interrogated the witnesses and recovered the three rods used in the crime, and prepared recovery memo (Ex -A14). On completion of the investigation, the Investigating Officer submitted charge sheet (Ex A16) against all the six accused namely Rampal , Ram Kumar, Jaibeer @ Pappu , Jitendra @ Jasvir , Satvir and Rajdev for their trial in respect of offences punishable u/s 147, 148, 149 and 302 I.P.C.

4. Additional Civil Judge Senior Division/ Additional Chief Judicial Magistrate, Roorkee, on receipt of the charge sheet, after giving necessary copies to the accused, as required u/s 207 of Cr.P.C, appears to have committed the case to the court of Sessions for trial. The trial court on 13th of September 1997, after hearing, framed charge of offences punishable u/s 147 and 302 read with Section 149 I.P.C., against accused Ram Kumar, Jitendra and Jaibeer. A separate charge was framed against accused Rajdev, Rampal and Satvir relating to offences punishable u/s 148 and 302 read with Section 149 I.P.C. All the six accused, pleaded not guilty and claimed to be tried. On this prosecution got examined PW1 Saroj (widow of the deceased and eye witness), PW2 Dr. K.K. Karoli (who conducted post mortem examination), PW3 Sub Inspector Chandra Shekhar Yadav (who investigated the crime), PW4 Head Constable Mahipal Singh (who prepared check First Information Report) and PW5 Sub Inspector Ram Prakash Yadav (who prepared inquest report and other necessary papers). The other witnesses of facts Baburam, Tejpal and Hari Singh were got discharged by the prosecution on the ground that they have been won over by the accused. Oral and documentary evidence was put to the accused u/s 313 Cr.P.C., in reply to which they alleged prosecution evidence to be false. However, no evidence in defense was adduced. The trial court, after hearing the parties, found that prosecution has successfully proved charge of offences punishable u/s 147 and 302 read with Section 149 against accused Ramkumar, Jaibeer @ Pappu and Jitendra @ Jasvir. As against accused Rampal , Rajdev and Satvir charge of the offences punishable u/s 148 and 302 read with Section 149 I.P.C, were found proved. After hearing on sentence, the convicts were sentenced as mentioned

above. Aggrieved by said judgment and order dated 16.03.1999, passed by Additional Sessions Judge, Roorkee, in Sessions Trial No. 183 of 1997, this appeal was filed before Allahabad High Court by the convicts on 1st of April 1999, where it was admitted on 2nd April 1999. The appeal is received by this Court u/s 35 of U.P. Reorganization Act, 2000 (central Act No. 29 of 2000), for its disposal.

5. Before further discussion, we think it just and proper to mention here the ante mortem injuries found on the dead body of Hempal by PW2 K.K. Karoli on 10.02.1997 who prepared autopsy report (Ex-A1) . The ante mortem injuries are being reproduced below:

(i) Incised wound with clear cut margins size 6cm x 3cm x muscle deep on the right side of chin.

(ii) Contusion in an area of 8cm x 4 cm on the right side of cheek.

(iii) Lacerated wound in an area of 4cm x 2 cm x abdominal cavity deep on the upper most part of abdomen to the tendon of the lowest rib, 15 cm above the umbilicus.

(iv) Lacerated wound in an area of 1cm x 1cm x cavity deep 8 cm above injury No. 3.

(v) Contusion in an area of 5cm x 3cm on the right side of forehead just above right eye brow.

(vi) Lacerated wound right side of head in an area of 4 cm x 3cm x bone deep 10 cm to lateral to right ear.

(vii) Contusion in an area of 6cm x 4cm on the left side of head, 5 cm above the left ear.

(viii) Lacerated gun shot wound of entry with tattooing, blackening and charring on the right side of chest 8cm away from nipple. Size 6cm x 4 cm x chest cavity deep.

(ix) Contusion in an area of 3cm x 2cm on the left upper arm.

(x) Contusion 4cm x 3cm on the left elbow.

(xi) Abraded contusion 8cm x 6cm on the right elbow.

(xii) Lacerated wound on the right leg in an area of 8 cm x 4cm x bone deep.

(xiii) Lacerated wounds on the left leg, one in an area of 2cm x .5cm x muscle deep and Anr. 4cm x 3cm x bone deep.

The Medical Officer in the autopsy report , after post mortem examination, opined that deceased had died of shock and hemorrhage, as a result of ante mortem injuries. PW2 Dr. K.K. Karoli had stated that the deceased could have died on 09.02.1997 at 5 p.m. He further disclosed that one bullet was discovered

from scapular region about which there is mention in the autopsy report. From the medical evidence on record as discussed above, it is established on record that Hempal died homicidal death on 09.02.1997. Now, we have to examine as to whether the accused/applicants were members of the unlawful assembly and committed murder of Hempal with common object, or not.

6. PW1 Saroj (widow of the deceased) is the sole eyewitness, who has narrated and supported the prosecution story. She has stated that on the day of incident she along with her husband Hempal, her mother in law, and infant daughter were coming from Laksar towards their village. PW1 Saroj further narrates that all of them got down from Tanga at Munda Kheda from where they started walking on foot. She further states that when they reached near their CHACK (field) at about 5 p.m accused Rampal, Ramkumar, Satvir, Jitendra @ Jasvir, Jaibeer @ Pappu came there. According to the witness accused Rajdev was also with them. The witness further states that Rampal was armed with TABAL (heavy sharp edged weapon), Satvir and Rajdev both armed with country made pistols, and rest were armed with LATHIE"S. They caught hold of Hempal and dragged him to field of Bhartu. PW1 Saroj further states that there after all the accused started beating Hempal with LATHIE"S and TABAL. A fire was also shot at Hempal. PW1 Saroj further states that she herself , her mother in law stepped away and stayed back. According to this witnesses Baburam and Tejpal had also reached at the spot. As to the motive of commission of crime PW1 Saroj states that since her father in law and mother in law used to live with Hempal, her father in law , had given 12 Beega of land to her due to which the other brothers of the Hempal namely Ram kumar and Rampal got annoyed. Lastly she has stated that after the incident, when a Chowkidar (Hari Singh) of the village came to the spot , she requested her to report about the incident to the police.

7. Statement of PW1 Saroj, the only eyewitness of the incident, who is said to have accompanied the deceased at the time of the incident runs into 26 pages in the lower court record. She was subjected to lengthy cross examination on several dates. On one of the dates of cross examination(21-09-1998) after she was put to lengthy cross examination she fell unconscious and her further cross examination was deferred. In all she was examined on 04.05.1998, 24.08.1998, 31.08.1998, 21.09.1998 and 08.10.1998, before her cross examination got completed, but nothing has come out in her cross examination which shakes her testimony. Her statement is natural and trustworthy. She has explained each and everything sought to be explained from her. Her oral evidence gets corroboration from medical evidence on record.

8. Learned Counsel for the appellants argued that the statement of PW1 Saroj does not get corroboration from any of the other alleged witnesses of facts, as they were got discharged without getting examined. We find that there is sufficient ground on the record as to why the other witnesses were discharged as it was complained by the complainant and prosecution that Baburam, Tejpal and Shravan (mother of the accused and deceased) have been was over by the

accused. It is pertinent to mention here that Sharavan (mother in law of PW1) who was accompanying her, was not only mother of the deceased but also mother of the accused Ramkumar and Rampal and grand mother of other accused. And as far as the Meenakshi (minor daughter of the deceased) is concerned it is also shown on the record that she was terror stricken to depose. As such we do not find any doubt in testimony of the PW1 Saroj on the ground that the other witnesses did not turn up to support her.

9. The next argument advanced on behalf of the appellants is that accused/appellant No. 2 Jaibeer @ Pappu (son of accused Rampal) and accused/appellant No. 6 Rajdev (son of accused Ram kumar) were minors on the day of incident. In support of this plea copies of the High School certificate of the accused Rajdev and High School mark sheet of accused Jaibeer are annexed along with corroborative evidence are filed before this Court which are not contradicted by the complainant or the state. Attention of this Court is also drawn to the case of Dharambir Vs. State (NCT of Delhi) and Another, in which the Apex court has given benefit of Juvenile Justice (Care and Protection of Children) Act, 2000 to the appellants who were aged more than 16 years and less than 18 years on the date and commission of crime, before the aforesaid Act came into force. Having gone through said case law and after considering the age of the two appellants namely Rajdev and Jaibeer @ Pappu ,we are of the view that the two are entitled to the benefit of the Act, as their appeal was pending on the date the Act came into force.

10. For the reasons as discussed above, we do not find force in the appeal of appellants Ram kumar, Satvir and Rampal. Their appeal is liable to be dismissed. However, appeal of Jaibeer Singh @ Pappu and that of appellant Rajdev deserves to be partly allowed by maintaining their conviction but setting aside, sentence recorded by the trial court against them. Accordingly, the appeal of Ram kumar, Satvir and Rampal is dismissed. Their conviction and sentence recorded by the trial court is affirmed. They are on bail. Their bail is cancelled. They shall be taken into custody to make them to serve out the remaining part of sentence awarded against them by the trial court. As far as the accused/appellants Jaibeer @ Pappu and Rajdev are concerned, their conviction is upheld as recorded by the trial court but sentence awarded against them is set aside. They are on bail. They need not to surrender. As far as the accused Jitendra @ Jasvir is concerned due to his death during pendency of this appeal, his appeal stands abated. Lower court record be sent back.