
(2010) 06 UK CK 0148
In the Uttarakhand High Court

Ram Singh Negi and Keshar Singh Negi, Both sons of Mohar Singh Negi APPELLANT

Vs

State of Uttarakhand RESPONDENT

Date of Decision : 28-06-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 313, 374
Evidence Act, 1872 — Section 134
Penal Code, 1860 (IPC) — Section 427, 436, 504

Citation : (2010) 06 UK CK 0148

Hon'ble Judges : Dharam Veer, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dharam Veer, J.—This appeal, preferred by the appellants u/s 374(2) of The Code of Criminal Procedure, 1973 (hereinafter to be referred as Cr.P.C.), is directed against the judgment and order dated 26.8.1996 passed by Additional Sessions Judge/Special Judge, Dehradun in S.T. No. 13 of 1995, State v. Ram Singh and Anr., whereby the learned Addl. Sessions Judge/Special Judge convicted the appellants/accused Ram Singh Negi and Keshar Singh Negi u/s 436 of The Indian Penal Code, 1860 (hereinafter to be referred as the IPC) and sentenced each of them to undergo rigorous imprisonment for a period of two years with fine of Rs. 1,000/- each and in default of payment of fine, six months" simple imprisonment was further awarded to each of them. However, the appellants/accused were not found guilty of the charge u/s s 427 and 504 of IPC and were therefore acquitted by the trial court under the same sections.

2. Heard learned Counsel for the parties and perused the entire material on record.

3. In brief, the prosecution case is that P.W.1 Baishakhu Das lodged an oral report at P.S. Raiwala, District Dehradun on 1.10.1992 stating therein that he was living with his family at Tehri Farm by making a hut there from last five to

six years. On 1.10.1992 at about 4 PM, in his absence, appellants/accused Ram Singh and Keshar Singh came there and started hurling abuses to his wife and told that when they are having possession of the adjoining field then the place where the complainant is living also belongs to them and asked them to go from there. Thereafter, the appellants/accused started throwing out goods from the hut and lit fire on the hut. Meanwhile, some villagers arrived at the spot, who witnessed the said incident and who also tried to extinguish the fire but all were in vain. Thereafter the appellants/accused fled from the place of occurrence. The complainant stated that he will provide the list of goods which were burnt in fire later on. With the same averments, Baishakhu Das lodged an oral report at P.S. Raiwala, District Dehradun on 1.10.1992 at 5:45 PM. On the basis of this report, Chik F.I.R. of the case was prepared by Constable Clerk Jasveer Singh, which is Ext.Ka-1. Necessary entries were also made by him in the G.D, carbon copy of which is Ext.Ka-5. The investigation of the case was entrusted to P.W.5 Sub Inspector Anil Singh Manral, who during the course of investigation, recorded the statement of witnesses, prepared the site-plan Ext.Ka-4 of the place of occurrence and took some ash from the place of occurrence vide Fard Ext.Ka-2. On completion of investigation, he filed the charge sheet against the appellants/accused, i.e. Ext.Ka-3.

4. After receiving the charge sheet, learned Munsif Magistrate, Rishikesh, District Dehradun committed the case to the court of Sessions on 10.1.1995, after giving necessary copies to the appellants/accused as provided u/s 207 Cr.P.C.

5. It seems from record that the case was transferred to Additional Sessions Judge for hearing and disposal according to law.

6. On 19.7.1995, Additional Sessions Judge, Dehradun framed the charge of offence punishable under Sections 436, 504 and 427 of IPC against the appellants/accused. The charge was read over and explained to each of them, who pleaded not guilty and claimed to be tried.

7. To prove its case, the prosecution has examined P.W.1 Baishakhu Das, complainant of the case, P.W.2 Smt. Budhi Devi, eyewitness, P.W.3 Pratap Singh, P.W.4 Trilok Singh Negi and P.W.5 S.I. Anil Singh Manral, Investigating Officer of the case.

8. Thereafter the statements of the appellant/accused were recorded u/s 313 Cr.P.C. The oral and documentary evidence were put to them in question form, who have denied the allegations made against them. In defence, they have examined Manohar Lal as D.W.1.

9. After appreciating the entire evidence on record and hearing learned Counsel for the parties, learned Additional Sessions Judge/Special Judge, Dehradun vide his judgment and order dated 26.8.1996 convicted and sentenced the appellants/accused as mentioned above. Against the said judgment and order dated 26.8.1996, the appellants/accused have preferred the present appeal.

10. To prove its case, the prosecution has examined P.W.1 Baishakhu Das, who stated that he along with his family were residing in a hut at Tehri Farm. On 1.10.1992, he had gone for work near Raiwala. At 5 PM, he came back to his house and found his hut burnt. On being asked, his wife told him that the appellants/accused Ram Singh and Kesar Singh have burnt their hut. Many people from the village had come to extinguish the fire. His wife also told him that the appellants/accused abused her and also threatened her to life. He further stated that the oral report of the incident was lodged by him in the police station. He proved the report Ext.Ka-1.

11. P.W.2 Smt. Buddhi Devi stated that on the date of incident at about 4 PM while she was in her hut, the appellants/accused Ram Singh and Keshar Singh came there and set the hut at fire. They also hurled abuses to her. After setting the hut at fire, the appellants/accused also damaged the hut. The goods kept inside the hut also got damaged. She stated that the appellants/accused have lit the fire on the hut by matchstick. She further stated that she had given the list of household articles to the Investigating Officer which were damaged in fire. She further stated that when her husband came to house, she told the entire incident to him. She had tried to extinguish the fire. She had also raised alarm on which some people from the village had arrived at the spot, who also tried to extinguish the fire. She stated that all the household goods kept inside the hut also got burnt. In the cross-examination, she stated that the appellants/accused had no land near her hut. 4-5 years prior of the said incident, she along with her family were living in the hut. She further stated that after the said incident, no comprise had taken place with the appellants/accused. This witness was cross-examined at length by the defence Counsel but nothing has come out from his evidence which may create any doubt in his evidence. The evidence of this witness is reliable, believable and inspires confidence.

12. P.W.3 Pratap Singh and P.W.4 Trilok Singh have not supported the prosecution case and both of them were declared hostile.

13. P.W.5 Anil Singh Manral stated that on 1.10.1992 he was posted as Sub Inspector at Police Station Raiwala. The investigation of the case was entrusted to him. During the course of investigation, he recorded the statement of the witnesses, inspected the place of occurrence and prepared the site-plan Ext.Ka-4 and also took into his possession some ash from the place of occurrence. He also received the list of articles given by Smt. Buddhi Devi. On completion of investigation, he filed the charge sheet Ext.Ka-3 against the appellants/accused. He also proved the carbon copy of G.D. prepared by C/c Jasvir Singh, i.e. Ext.Ka-5.

14. Thereafter the statements of the appellant/accused were recorded u/s 313 Cr.P.C. The oral and documentary evidence were put to them in question form, who have denied the allegations made against them. In defence, they have examined Manohar Lal as D.W.1.

15. D.W.1 Manohar Lal has stated that Baishakhu and appellant/accused Ram Singh were known to him. They were the residents of his village. Baishakhu had come in the village in the year 1991 and at that time, he had no residence. Accused Ram Singh had given him plot. There is a distance of 20-25 paces between their houses. He further stated that the plot which Ram Singh had given to Baishakhu was fixed in Rs. 5,000/- but that money was not given by Baishakhu. The hut was also constructed by Ram Singh. He further stated that at the time of incident, he was in his house. On hearing the alarm, he had gone at the spot. When he reached at the spot, there were no one at the spot. He further stated that thereafter both the parties had entered into compromise.

16. During the pendency of the appeal, appellant No. 1 Ram Singh Negi was reported to be died. Accordingly, the appeal preferred by appellant No. 1 Ram Singh Negi stood abated vide order of this Court dated 3.6.2010.

17. Learned Counsel for the appellant/accused argued that the prosecution has not proved the case beyond reasonable doubt against the appellants/accused. I do not find force in the argument put forth by learned Counsel for the appellant/accused for the reason that Smt. Buddhi Devi, who is the eyewitness of the incident, has stated in her deposition that on the date of incident i.e. 1.10.1992 at about 4 PM while she was in her residential hut, the appellants/accused Ram Singh and Keshar Singh came there and set the hut at fire. They also hurled abuses to her. After setting her hut at fire, the appellants/accused also damaged it. The goods kept inside the hut also got damaged. She stated that the appellants/accused have lit the fire on hut by matchstick. She further stated that she had also given the list of household articles which were damaged in fire to the Investigating Officer. When her husband came to house, she told the entire incident to him. It is also stated by her that she had tried to extinguish the fire but all were in vain. She had also raised alarm on which some people from the village had arrived at the spot, who had also tried to extinguish the fire. She stated that all the goods kept inside the hut also got burnt. Besides the above, she in her cross-examination, stated that the appellants/accused had no land near her hut. 4-5 years prior of the said incident, she along with her family were living in the hut. She further stated that after the said incident, no compromise had taken place with the appellants/accused. The evidence of this witness is reliable, believable, natural and inspires implicit confidence.

18. Learned Counsel for the appellant-accused further argued that the trial court has convicted and sentenced the appellant-accused on the basis of the sole testimony of P.W.2 Smt. Buddhi Devi and it is not safe to convict the appellant-accused on the basis of sole testimony. This argument advanced by learned Counsel for the appellant has also got no force. It is settled principle of law that the conviction can be based on the sole testimony provided it must inspire implicit confidence. In the instant case, the sole eyewitness Smt. Buddhi Devi inspires implicit confidence and there is no reason to disbelieve her testimony. It is the quality of evidence of the single witness whose testimony has to be tested

on the touchstone of credibility and reliability. It is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. I am fortified in my view with the verdict of Hon''ble Supreme Court in case of Chittar Lal Vs. State of Rajasthan, in which it has been held that conviction can be based on sole evidence of a witness if it inspires confidence. Para 7 of the judgment is essential to mention here which is quoted as below:

Evidence of the person whose name did not figure in the FIR as witness does not perforce become suspect. There can be no hard-and-fast rule that the names of all witnesses, more particularly eyewitnesses should be indicated in the FIR. As was observed by this Court in Shri Bhagwan v. State of Rajasthan mere non-mention of the name of an eyewitness does not render the prosecution version fragile. The information was not lodged by an eyewitness. Mental condition of a person whose father has lost his life inevitably gets disturbed. Explanation offered by witnesses for non-mention of PW 3's name is plausible. Additionally, it is to be noted that in the present case the statement of PW 3 was recorded on the same day of incident, immediately after the investigation process was set into motion. Therefore, the plea that PW 3's testimony is doubtful lacks substance. The other plea was that conviction should not have been made on the basis of a single witness, PW 3's testimony. This plea is equally without essence. The legislative recognition of the fact that no particular number of witnesses can be insisted upon is amply reflected in Section 134 of the Indian Evidence Act, 1872 (in short "the Evidence Act"). Administration of justice can be affected and hampered if number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of one witness, leaving aside those cases which are not of unknown occurrence where determination of guilt depends entirely on circumstantial evidence. If plurality of witnesses would have been the legislative intent, cases where the testimony of a single witness only could be available, in number of crimes the offender would have gone unpunished. It is the quality of evidence of the single witness whose testimony has to be tested on the touchstone of credibility and reliability. If the testimony is found to be reliable, there is no legal impediment to convict the accused on such proof. It is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. This position has been settled by a series of decisions. The first decision which has become locus classicus is Mohd. Sugal Esa Mamasan Rer Alalah. R. The Privy Council focused on the difference between English law where a number of statutes make conviction impermissible for certain categories of offences on the testimony of a single witness and Section 134 of the Evidence Act. The view has been echoed in Vadivelu Thevar v. State of Madras, Guli Chand v. State of Rajasthan, Vahula Bhushan v. State of T.N., Jagdish Prasad v. State of M.P. and Kartik Malhar v. State of Bihar.

19. My view further stands fortified with another judgment of Hon''ble Apex Court in the case of Mahendra Singh v. State of M.P. reported in (2007) 3 SCC (Cri.) 583 in which in para 11, it has been held as under:

11. It is now a well-settled principle of law that conviction can be based on the basis of the testimony of a sole eyewitness.

20. After considering the aforesaid judgments rendered by Hon"ble Apex Court and in view of the evidence discussed above, the argument advanced by learned Counsel for the appellant is not sustainable in the eye of law and as per the foregoing discussion, it has been proved beyond any reasonable doubt that the evidence of P.W.2 Smt. Buddhi Devi is reliable, believable and inspires implicit confidence. The prosecution has successfully proved its case against the appellant/accused Kesar Singh Negi and Ram Singh Negi (now dead) beyond reasonable doubt u/s 436 IPC. The trial court has rightly convicted and sentenced the appellants-accused on the basis of sole testimony of P.W.2 Smt. Buddhi Devi and I concur the view taken by the trial court in convicting and sentencing the appellants-accused as discussed above.

21. For the foregoing reasons, the appeal is dismissed. The judgment and order dated 26.8.1996 passed by Additional Sessions Judge/Special Judge, Dehradun in S.T. No. 13 of 1995, State v. Ram Singh and Anr., needs no interference by this Court and is hereby made affirmed. (So far as the appeal preferred by appellant No. 1 Ram Singh Negi is concerned, vide order dated 3.6.2010, it stood abated due to his death during the pendency of appeal).

22. Appellant Keshar Singh Negi is on bail. His bail bonds are cancelled. Let him be taken into custody forthwith to serve out the sentence imposed upon him. However, it is made clear that the period of sentence already served out by him during investigation, trial and appeal shall be adjusted.

23. Let a copy of this order be sent to the trial court concerned for compliance of the order forthwith.