

(2011) 09 UK CK 0068

In the Uttarakhand High Court

Case No : Criminal Appeal No. 33 of 2002

Ramfal and Mohinder Singh Yadav

APPELLANT

Vs

State of Uttaranchal

RESPONDENT

Date of Decision : 13-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319
Penal Code, 1860 (IPC) — Section 308, 323, 34

Citation : (2011) 2 NCC 798 : (2012) 1 UC 657 : (2011) 2 UD 455

Hon'ble Judges : Servesch Kumar Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Servesch Kumar Gupta, J.—This appeal has been directed against the judgment and order dated 23.01.2002 rendered by learned Sessions Judge, Dehradun in Sessions Trial No. 125 of 1998 State v. Ramfal and Mohinder Singh (appellants). In the said judgment, learned Sessions Judge found both the Appellants guilty for the offence u/s 323/34 Indian Penal Code and sentenced to pay fine of Rs. 2000/- each. In default of payment of fine, they have been ordered to undergo rigorous imprisonment for a period of three months.

2. Feeling aggrieved, the convicts have filed the present appeal. During the pendency of the appeal in this Court, one of the Appellants - Mohinder Singh, died on 30.08.2007, this way, appeal stands abated against him. However, learned Counsel, who was engaged on behalf of both the Appellants, has submitted the arguments in favour of the Appellants.

3. The incident relates to highhandedness, to the extent of barbarism, of a superior officer to his subordinate in Indo Tibetan Border Police Academy, Mussoorie, District Dehradun. The accused persons and injured Surat Ram were posted together. Surviving accused Ramfal was a Subedar Major (a non commissioned officer) while injured Surat Ram was an Instructor of Trainees (an Inspector rank official). On 14th or so, of October, 1997, Surat Ram was handed

over a charge of Subordinate Officers' Mess, which was overall supervised by Subedar Major Ramfal. Although the charge was informally entrusted on 14th or 17th of October, 1997 but Surat Ram was taking all the things into accounts formally till 19.10.1997 afternoon and could not sign upon the requisite papers of taking charge. Feeling aggrieved, accused Ramfal, having his room at arm's length (8 - 10 steps), sent a message to Surat Ram to be in attendance in his room. Surat Ram defied that call because he was busy in tallying the accounts books and other related things, so in the evening accused Ramfal sent further message through Inspector Mohinder Singh. Surat Ram this time obeyed the command and went to the room of accused Ramfal along with Inspector Mohinder Singh with all the relevant papers of the Mess to which he was hitherto preparing. Surat Ram sat on the chair, placed in front of the room of Ramfal. After a short moment, he entered in the room of Ramfal, who questioned, as to why the charge list is not being signed. He was giving his explanation to accused Ramfal, meanwhile, Inspector Mahindra Singh took an iron rod from the attached bathroom and hit on the head of Surat Ram. By this blow of iron rod, darkness was engrossed in front of his eyes. He sat down on the earth. Accused Ramfal also gave a blow of iron rod, abusing him, but the same could be skipped from hitting his head and the same was slipped to hit the left hand of Surat Ram. Surat Ram raised the alarm, meanwhile, accused Ramfal pressed his both cheeks and Inspector Mohinder Singh thrustured the opened liquor bottle in the mouth of Surat Ram forcibly. After this, accused Ramfal and Mohinder Singh, both beat him brutally by iron rods/pipes, so as to make him unconscious at the spot and his body was thrown out of the room. Having heard the noise and commotion, the nearby sepoy's came at the spot but none was the eyewitness of this barbaric beating at the hands of the accused persons.

4. Injured Surat Ram was shifted to ITBP Hospital where his injuries were recorded. Since his condition was too serious, the doctor of Chief Medical Officer rank, who examined Surat Ram referred him to the Military Hospital at Dehradun. The matter was inquired internally in the ITBP Academy by some officers and after verifying the truthfulness of the incident, the same was reported to the police with the consent of superior officer. Thus, the First Information Report could be lodged on 20.10.1997 at 06.30 p.m. in police station Mussoorie, District Dehradun due to internal inquiry within the Academy by some superior officers and observing all necessary formalities of according permission from the concerned officer, this way the delay of 22 hours in lodging the First Information Report is very well explained because this is not the incident of a street but within the precinct of Government Training Academy of Para Military Force, which is supposed to be very strict in discipline matters and no access to the police is permitted without notice or due permission of the superior officers.

5. After investigation, the chargesheet was submitted against accused Subedar Major Ramfal for the offence u/s 308 Indian Penal Code but when PW1 Injured Surat Ram was examined, he narrated the incident, assigning the similar role to another accused Inspector Mohinder Singh. The trial court summoned the

accused Mohinder Singh u/s 319 Code of Criminal Procedure and thus, the charge was levelled upon him too, the trial proceeded further.

6. PW3 Dr. B.B. Panighari, doctor of Chief Medical Officer rank, has proved the following injuries on the body of Surat Ram, recorded on 19.10.1997 at 08.45 p.m.:

- i. The right eye of injured was swollen making it complete black from outside.
- ii. There was punctured wound in the right wrist joint and blood was oozing out from it.
- iii. There was swelling on the left side of forehead above the eyebrow.
- iv. The injured was unconscious and was not responding to any question

7. Looking into the serious condition of the injured, he was referred to Military Hospital, Dehradun because some internal injury was suspected on the head, which could be fatal. Surat Ram remained in the consistent supervision of able doctors of Military Hospital and he was discharged from there on 27.10.1997. After discharged from Military Hospital, as the evidence discloses, he again admitted in ITBP Hospital, Mussoorie for two months and even thereafter, he remained on medical leave for quite considerable a time. There was CT Scan too of his head.

8. It would be relevant to mention here the precedent of Hon''ble Apex Court in the case of State of Himachal Pradesh v. Lekh Raj and Anr. reported in 1999 (3) A. Cr. R. 2754 SC. In this case the Hon''ble Apex Court has held as under:

Criminal trial cannot be equated with a mock scene from a stunt film. The legal trial is conducted to ascertain the guilt or innocence of the accused arraigned. In arriving at a conclusion about the truth, the courts are required to adopt a rational approach and judge the evidence by its intrinsic worth and the animus of the witnesses. The hypertechnicalities or figment of imagination should not be allowed to divest the court of its responsibilities of sifting and weighing the evidence to arrive at the conclusion regarding the existence or otherwise of a particular circumstance keeping in view the peculiar facts of each case, the social position of the victim and the accused, the larger interests of the society particularly the law and order problem and degrading values of life inherent in the prevalent system. The realities of life have to be kept in mind while appreciating the evidence for arriving at the truth. The courts are not obliged to make efforts either to give latitude to the prosecution or loosely construe the law in favour of the accused. The traditional dogmatic hypertechnical approach has to be replaced by rational, realistic and genuine approach for administering justice in a criminal trial. Criminal jurisprudence cannot be considered to be a utopian thought but have to be considered as part and parcel of the human civilization and the realities of life. The courts cannot ignore the erosion in values of life which are a common feature of the present system. Such erosions cannot be given a bonus in favour of those who are guilty of polluting society and the

mankind.

9. Learned Counsel for the Appellant has pointed out very minor contradictions and discrepancies, here and there, in the entire evidence, which are of no avail while taking into consideration the heinousness of crime because discrepancies in the matters of details always occur in the evidence of truthful witnesses. Such variations creep in because there are always natural differences in the faculties of different individuals in the manner of observation, perception and description. Natural variances are bound to be there regarding same occurrence in the version of different eye witnesses unless they give tutored or crammed evidence in parrot like manner. The same observations were reiterated by Hon'ble Apex Court in the case of *Leela Ram v. State of Haryana* reported in 2000 SCC (Cri.) 222 and also by Uttarakhand High Court in the case of *Gaudam Bahadur v. State* reported in 2006 (1) UD 449.

10. In evidence, it has been unequivocally clear that the incident happened within the room of accused Subedar Major Ramfal and no other witness was present except another co-accused Mohinder Singh, who himself gave a blow of iron rod upon the head of Surat Ram. Otherwise also, since the accused Ramfal was an officer of pretty stratum, hence, nobody could have gathered the courage to enter in his room without permission and by the time few persons came there, his body in unconscious state was thrown outside the room. In Para Military Force Academy where too regimental discipline is observed nobody can dare to be a witness easily against an officer and this much evidence has been recorded during trial that injured Surat Ram was lying in front of the room of accused Ramfal from where he was shifted to ITBP Hospital and in turn, to the Military Hospital, Dehradun. Injured Surat Ram has well proved the entire occurrence without any noticeable contradiction, his evidence transpires confidence. His single testimony is enough to convict the accused. Regarding minor discrepancies the Hon'ble Apex Court again in the same judgment *State of Himachal Pradesh v. Lekh Raj and Anr.* reported in 1999 (3) A. Cr. R 2754 SC has held that discrepancies in law may render credentials to the depositions. Parrot like statements are disfavoured by the courts, mere congruity or consistency is not the sole test of truth in the depositions.

11. The Hon'ble Apex Court in the case of *Vahula Bhushan v. State of Tamil Nadu* reported in AIR 1989 236 SC has held that if the evidence of sole witness found to be cogent and trustworthy and medical evidence corroborates his testimony then conviction based on such evidence is proper.

12. Rest of the witnesses are formal in nature and they have proved the document, which has either been scribed or executed by them. Doctor of ITBP Hospital has proved the injury report as well as doctor of Military Hospital has also proved the same injury report. The entire prosecution case is well proved and cannot be thrown out on the basis of any discrepancy, incongruity or lapse (if any, although none) on the part of the investigating agency.

13. The suggestion made on behalf of the accused Ramfal that on account of differences with his Commanding Officer he has been implicated falsely is not understandable because just to implicate the accused Ramfal, it is not possible for the victim Surat Ram to have suffered such grievous injuries on his body and remain in hospital for months together.

14. It may be pertinent to mention that even taking note of the gravity of this barbarous incident, the trial court has awarded a very token negligible punishment, probably on the basis of the fact that the accused Ramfal is an officer of Para Military Force while being inproportionate to the severity vis-a-vis to the guilt it ought to have been much more.

15. This appeal is bereft of merit and is liable to be dismissed. Accordingly, the appeal is dismissed.