
(2011) 07 AHC CK 0170
In the Allahabad High Court
Case No : Criminal Appeal No. 57 of 2002

Sarvajeet Singh and two others	Vs	APPELLANT
State of Uttaranchal (Uttarakhand)		RESPONDENT

Date of Decision : 15-07-2011

Acts Referred:

Citation : (2011) 07 AHC CK 0170

Hon'ble Judges : Prafulla C.Pant, J and Sudhanshu Dhulia, J

Final Decision : Disposed Of

Judgement

Prafulla C. Pant & Sudhanshu Dhulia, J.—This appeal, preferred under section 374 of the Code of Criminal Procedure, 1973 (for short ?Cr.P.C.?), is directed against the judgment and order dated 18.01.2002 passed by Sessions Judge, Udham Singh Nagar in Sessions Trial No. 185 of 1999 whereby said court has convicted accused appellants, namely, Sarvajeet Singh, Tandeep @ Tandeepjeet Singh and Sukhdeep Singh under sections 302, 436 and 427 of Indian Penal Code, 1860 (for short ?IPC?). Each one of 2

convicts has been sentenced to imprisonment for life under section 302 IPC, rigorous imprisonment for a period of 5 years under section 436 IPC and rigorous imprisonment for a period of one year under section 427 IPC.

2. Heard learned counsel for the parties and perused the evidence led in the lower court.

3. Prosecution story, in brief, is that accused appellant no. 1 Sarvajeet Singh is father of the other two accused appellants Tandeep @ Tandeepjeet Singh and Sukhdeep Singh. They are residents of village Sahdaura within the limits of police station Kichcha, District Udham Singh Nagar. Amarjeet Singh (deceased) was real brother of accused no. 1 Sarvajeet Singh. They had some partition dispute over the ancestral landed property. In the intervening night of 21/22 of April, 1999, Amarjeet Singh was sleeping in his residential hut in the village, when accused appellants came there and set his hut on fire, which resulted not

only loss of property but also the death of Amarjeet Singh. Prosecution case is that PW4 Baljeet Kaur (widow of deceased), (who normally used to live in Avas Vikas Colony, Rudrapur with her children) on that day had come to the village. PW5 Paramjeet Singh, brotherinlaw of deceased, who is resident of Shakti Farm, Sitarganj had also gone to village Sahdaura on the day of incident. It is said that two witnesses saw accused appellants Sarvajeet Singh, Tandeep @ Tandeepjeet Singh and Sukhdeep Singh setting the hut on fire. As per the prosecution case, the said two witnesses ran towards jungle to save themselves and came out in the morning. PW4 Baljeet Kaur lodged First Information Report (exhibit A8) on 22.04.1999 at 08.30 a.m. at police station Kichcha against the three accused, on the basis of which Check Report (exhibit A5) was prepared at the police station and crime no. 363 of 1999 was registered against the accused Sarvajeet Singh, Tandeep @ Tandeepjeet Singh and Sukhdeep Singh relating to offences punishable under sections 436, 302, 427, 343 IPC. The investigation was taken up by PW6 Mahfuz Ali, Station House Officer. He along with police force went at the spot and after taking dead body of deceased Amarjeet Singh in his possession, prepared the inquest report (exhibit A1) in presence of the witnesses. He also got prepared police form no. 13 (exhibit A9), sketch of the dead body (exhibit A10), sample seal (exhibit A11) and letter to Chief Medical Officer (exhibit A12) requesting him for postmortem examination. Dead body was got sent for postmortem examination and PW2 Dr. Chandra Shekhar of Sobhan Singh degree all over the body and opined in the autopsy report (exhibit A4) that the deceased had died of 6th degree burn injuries. The medical officer recorded the ante mortem burn injuries of 6th degree burn injuries. The Investigating Officer after interrogating the witnesses, collected ash and soil from the place of incident, and prepared recovery memo (exhibit A3). He also prepared the site plan (exhibit A13). After completion of the investigation, the Investigating Officer submitted a chargesheet against all the three accused, namely, Sarvajeet Singh, Tandeep @ Tandeepjeet Singh and Sukhdeep Singh for their trial in respect of offences punishable under sections 436, 427, 302/34 IPC.

4. The Chief Judicial Magistrate, Udham Singh Nagar, on receipt of the chargesheet, after giving necessary copies to the accused, as required under section 207 Cr.P.C., committed the case to the court of Sessions for trial. Learned Sessions Judge, after hearing the parties on 06.04.2000 framed charge of offences punishable under sections 436, 427 and 302 IPC against all the three accused, namely, Sarvajeet Singh, Tandeep @ Tandeepjeet Singh and Sukhdeep Singh, who pleaded not guilty and claimed to be tried. On this prosecution got examined PW1 Mohd. Hussain (witness of inquest report), PW2 Dr. Chandra Shekhar, who conducted the postmortem examination, PW3 Head Constable Bishan Swaroop Verma, who prepared Check Report of First Information Report and made entry in the General Diary, PW4 Smt. Baljeet Kaur (widow of deceased and eye witness), PW5 Paramjeet Singh, brotherinlaw of deceased, who was declared hostile, and PW6 Station House Officer Mahfuz Ali (Investigating Officer).

5. The oral and documentary evidence were put to the accused under section 313 Cr.P.C. by the trial court in reply to which they pleaded that they have been falsely implicated in the crime due to enmity over the ancestral landed property. It is also pleaded by them that PW4 Baljeet Kaur and PW5 Paramjeet Singh are brother and sister. No evidence in defence was adduced. The trial court after hearing the parties found that prosecution has successfully proved the charge of offences punishable under sections 302, 436, 427 IPC against all the three accused, namely, Sarvajeet Singh, Tandeep @ Tandeepjeet Singh and Sukhdeep Singh and convicted them accordingly. After hearing on sentence, each one of the convicts was sentenced to imprisonment for life under section 302 IPC, rigorous imprisonment for a period of 5 years under section 436 IPC and rigorous imprisonment for a period of one year under section 427 IPC. Aggrieved by the said judgment and order dated 18.01.2002 passed by Sessions Judge, Udham Singh Nagar in Sessions Trial No. 185 of 1999, this appeal is preferred by the convicts.

6. Before further discussion, we think it just and proper to reproduce the ante mortem injuries recorded by PW2 Dr. Chandra Shekhar, who conducted the postmortem examination on the dead body of Amarjeet Singh. The ante mortem injuries are being reproduced from the autopsy report (exhibit A4) as under:

?i. Ante mortem burn of 6th degree present all over body. Soft tissue over face, head and neck all charred. Eyes facial muscle and scalp adrway and other soft tissues all burnt. Soft tissue of chest and abdomen is charred and having cracks. Intercostal muscle of lower part of chest showing congestion. Lungs in the upper part of chest coagulated and in lower part congestion present. Internal organs such as liver, spleen and kidney are hard and coagulated. Stomach and intestine congested. Left upper limb charred, and up to elbow bones fragmented. Left lower limb up to mid thigh completely charred and fragmented. Right upper limb charred with fragmentation of forearm bones and hand fragmented. Soft tissue of the extremities, which are attached to body, is charred and completely burnt. Tongue when cut showing congestion. Muscle of right scapula region shows congestion.?

7. PW2 Dr. Chandra Shekhar has opined, after autopsy, that deceased had died due to 6th degree burn injuries. In his statement, he has stated that deceased could have died in the intervening night of 21/22 April, 1999. The above medical evidence on record clearly establishes that Amarjeet Singh died unnatural death due to burn injuries, in the intervening night of 21/22 April, 1999. This court has to examine whether accused appellants Sarvajeet Singh, Tandeep @ Tandeepjeet Singh and Sukhdeep Singh committed murder of Amarjeet Singh after setting his hut on fire and destroyed the property, as suggested by the prosecution or not.

8. There are two witnesses examined on behalf of the prosecution namely, PW4 Baljeet Kaur and her brother PW5 Paramjeet Singh. It is pertinent to mention here that PW5 Paramjeet Singh has stated in his examination in chief that he did not see the accused setting the hut on fire. In the cross examination, he states

that he could not identify the accused persons. The said witness (PW5) was got declared hostile by prosecution. As such, the only testimony showing the role of accused appellants is that of PW4 Baljeet Kaur (widow of deceased). She has supported the prosecution story that she saw the accused appellants setting the hut on fire but her statement does not appear to be truthful for the following reasons:

(i). PW4 Baljeet Kaur has admitted that she used to live in Avas Vikas Colony, Rudrapur with her children and her presence in the hut in village Sahdaura is only per chance.

(ii). It is unnatural conduct on the part of PW4 Baljeet Kaur that she along with her brother PW5 Paramjeet Singh ran away towards jungle after accused came to the hut. Had the accused been armed with any weapon, it could have been said that PW4 Baljeet Kaur and her brother PW5 Paramjeet Singh got frightened and ran towards the jungle. It has come in the evidence of PW4 Baljeet Kaur, (in paragraph 15 cross examination) that the accused (appellants) were not armed with any weapon.

(iii). Statement of PW1 Mohd. Hussain, witness of inquest report shows that Paramjeet Singh (PW5) came to the place of incident only after coming to know of the incident, which indicates that actually PW5 Paramjeet Singh, who is resident of Shakti Farm came to the village Sahdaura on 22.04.1999 at the time of preparation of inquest report.

(iv). Had PW4 Baljeet Kaur seen the incident she would have raised alarm and neighbours could have come to the place of incident. She, in her cross examination, states that she did not raise any alarm. She has stated in paragraph 11 (cross examination) that on the west side of JHALA (hut) 1516 families used to live.

(v). It is strange that PW4 Baljeet Kaur and her brother PW5 Paramjeet Singh with whom, she says that she was in the hut, did not try to save Amarjeet Singh. It is not a case where any kerosene oil or any inflammable material is said to have been used by the accused. PW4 Baljeet Kaur says that the fire caught firstly from the cot of BAN (hand made thread of some grass material). It is not clear when the accused were not armed with any weapon, what prevented the brother and sister, if they were there to save Amarjeet Singh or to take him to hospital.

9. Apart from the above, there are other reasons also which create reasonable doubt in the truthfulness of the prosecution story. PW1 Mohd. Hussain in his cross examination states that accused appellant Sarvajeet Singh accompanied, after the incident, in getting lodged the First Information Report. Had it been a case that accused appellants concealed their identity, it could have been said that his going to police station at the time of lodging First Information Report is of not much significance. But in the present case, prosecution story is that the accused (appellants), who were known and relative of PW4 Baljeet Kaur and PW5 Paramjeet Singh, had not concealed their identity at the time of incident. In such

circumstances, when PW1 Mohd. Hussain (witness of inquest report) says that at the time of lodging First Information Report accused appellant Sarvajeet Singh (real brother of the deceased) went to police station creates a serious doubt in the testimony of PW4 Baljeet Kaur that accused Sarvajeet Singh with his sons committed the murder and mischief in the manner suggested by the prosecution.

10. For the reasons as discussed above, this court is of the view that the trial court has erred in law, in appreciating the evidence and reaching the conclusion that prosecution has proved the charge against the accused (appellants). This court is of the view that prosecution has failed to prove charge of the offences punishable under sections 302, 436, 427 IPC beyond reasonable doubt against any of the accused Sarvajeet Singh, Tandeep @ Tandeepjeet Singh or Sukhdeep Singh. Therefore, this appeal deserves to be allowed. The same is allowed. Impugned judgment and order dated 18.01.2002 passed Sessions Judge, Udhham Singh Nagar in Sessions Trial No. 185 of 1999 whereby the accused Sarvajeet Singh, Tandeep @ Tandeepjeet Singh and Sukhdeep Singh are convicted and sentenced under sections 302, 436, 427 IPC is hereby set aside. All the three appellants are acquitted. They are in jail. Send a copy of this judgment to the Superintendent of Jail concerned. Lower court record be sent back. (Short term bail application no. 932 of 2006 stands disposed of).