
(2015) 02 UK CK 0004
In the Uttarakhand High Court
Case No : Criminal Appeal No. 163 of 2010

Shekhar Joshi and Others

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 26-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 25, 27
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2015) 89 ALLCC 596 : (2015) 1 NCC 582 : (2015) 3 UC 1969

Hon'ble Judges : Servesch Kumar Gupta, J.;Alok Singh, J.

Bench : Division Bench

Advocate : Pushpa Joshi, Senior Advocate assisted by Chetan Joshi, for the Appellant; A.S. Gill, Deputy Advocate General assisted by Milind Raj, Brief Holder, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Alok Singh, J.—Present appeal is preferred assailing the judgment and order dated 02.06.2010/03.06.2010 passed by 1st Additional Sessions Judge/ FTC, Haldwani, Nainital in Session Trial No. 142 of 2006 whereby both the appellants were held guilty for the offence punishable under Section 302 read with Section 34 IPC and were sentenced to undergo rigorous life imprisonment and to pay fine of Rs. 20,000/- each and in default of making payment of fine, to undergo additional imprisonment of one year.

2. Brief facts of the present case, inter alia, are that Rajendra Singh Rawat PW1 reported on 01.05.2006 to police of police station Kathgodam, Haldwani, Nainital that previous day evening, his brother Devendra Singh Rawat, resident of Nawad Khara, Gaulapaar, Haldwani was taken by Ramesh Chandra Arya, son of Bacchi Ram Arya, with him on the pretext of attending marriage, at about 09.00 p.m. and on the next day i.e. on 01.05.2006, dead body of his brother Devendra Singh Rawat was recovered; we apprehends that either Ramesh Chandra Arya

himself or he with the help of someone else might have murdered Devendra Singh Rawat; Devendra Singh Rawat (deceased) was last seen in the company of Ramesh Chandra Arya by Ram Bisht and Heera Singh. On this, chik report was prepared and FIR was got registered as case crime no. 810 of 2006 under Section 302 IPC.

3. On 01.05.2006, dead body of Devendra Singh Rawat was recovered from Sultanpur Nagari turn, Gaulapaar, Haldwani; same was sealed on the spot and sent for post mortem examination. From the spot, Investigating Officer had also collected bloodstained stone, sand as well as plain sand and same were sealed. Motorcycle of deceased was also recovered from the spot on the same day. During the investigation, role played by both the appellants in the murder of Devendra Singh Rawat came into the knowledge of Investigating Officer Mohd. Zaheer (PW9) whereupon both the appellants were arrested on 11.05.2006.

4. On 12.05.2006, on the pointing out of the appellant Shekhar Joshi, purse of the deceased was recovered from the bushes in the presence of PW4 Kamal Singh Daramwal and on the same day i.e. on 12.05.2006, appellant Keshav Dutt Suyal took the police party to his house and on his pointing out, pant (light green jeans) wore by the appellant Keshav Dutt Suyal on the date of incident was recovered from a trunk. Pant (light green jeans) of Keshav Dutt Suyal was containing bloodstains, therefore, pant (light green jeans) was kept in a sealed cover and was sent for chemical examination to FSL.

5. Postmortem examination on the dead body of Devendra Singh Rawat was conducted on 01.05.2006 itself and as per postmortem report, death of Devendra Singh Rawat was due to head injuries.

6. Having investigated the matter, police submitted charge-sheet against Ramesh Chandra Arya, Shekhar Joshi and Keshav Dutt Suyal. After due compliance, trial was committed to the Sessions Court. Learned Sessions Judge was pleased to frame charges against all the three accused for the offence punishable under Section 302 read with 34 IPC. All the accused denied charges and claimed trial.

7. From the side of prosecution, Rajendra Singh Rawat PW1 informant, Harendra Singh Fartiyal PW2, Dr. Ram Avtar Kediya PW3, Kamal Singh Daramwal PW4, Chandan Singh PW5, Anand Singh Adhikari PW6, Amar Singh PW7, Constable Gopal Ram PW8 and Investigating Officer / SHO Mohd. Zaheer PW9 were examined. Thereafter, statements of accused were also recorded under Section 313 CrPC.

8. Learned Addl. Sessions Judge, having examined all the material available on record, was pleased to acquit Ramesh Chandra Arya, however, was pleased to hold the appellants guilty for the offence punishable under Section 302/34 IPC and was further pleased to sentence them rigorous life imprisonment and to pay fine of Rs. 20,000/- each. Feeling aggrieved, both the appellants have preferred present appeal.

9. We have heard Mrs. Pushpa Joshi, Sr. Advocate assisted by Mr. Chetan Joshi, Advocate for the appellants and Mr. A.S. Gill, Deputy Advocate General assisted by Mr. Milind Raj, Brief Holder for the State of Uttarakhand and have carefully perused the record.

10. PW1 Rajendra Singh Rawat informant handed over written report to the police of police station Kathgodam duly scribed by PW6 Anand Singh Adhikari.

11. As per the contents of FIR, on 30.04.2006, accused Ramesh Chandra Arya took Devendra Singh Rawat (deceased) with his motorcycle on the pretext of attending marriage and on the next day i.e. on 01.05.2006, Devendra Singh Rawat was found dead.

12. In the FIR, PW1 Rajendra Singh Rawat has shown his apprehension that Ramesh Chandra Arya, who has taken Devendra Singh Rawat along with him, might have killed Devendra Singh Rawat either himself or with the help of some other persons.

13. It is important to mention herein that PW1 Rajendra Singh Rawat and PW6 Anand Singh Adhikari are not the eyewitnesses. Both of them may be said to be informant simpliciter.

14. PW2 Harendra Singh Fartiyal has stated that in the intervening night of 30.04.2006 / 01.05.2006, he was coming on his motorcycle along with Naveen Singh Bisht; at about 11.00 - 11.30 p.m., when they reached near Sultanpur Nagari turn, they noticed in the light of motorcycle that scuffling was going on between Devendra Singh Rawat and Keshav Dutt Suyal and Shekhar Joshi and Ramesh Chandra Arya was standing about 6 - 7 steps away from the place of scuffling. PW2 Harendra Singh Fartiyal stopped his motorcycle and asked as to why they were fighting; on this, all the accused persons told him, he should mind his own business and leave the place; on this, PW2 Harendra Singh Fartiyal along with Naveen Singh Bisht proceeded towards their houses. On next day morning, PW2 Harendra Singh Fartiyal went to Mandi and while returning, in the evening at about 05.00 p.m., he came to know that Devendra Singh Rawat was found dead; on this, he went to the house of PW1 Rajendra Singh Rawat and told him that he has seen all the accused and saw the appellants scuffling with Devendra Singh Rawat near Sultanpur Nagari turn.

15. He has further stated that since he is resident of the same area, therefore, all the accused persons were known to him prior to the incident. He has identified all the accused in the courtroom while appearing in the witness box. In the cross examination, he has stated that in the evening of 30.04.2006, he went to attend dinner at his friend's house, as it was the last day of the month and after taking dinner, he was returning on motorcycle along with Naveen Singh Bisht.

16. PW4 Kamal Singh Daramwal stated that on 12.05.2006, on the point out of the appellant Shekhar Joshi, purse of the deceased Devender Singh Rawat was

recovered from the bushes and appellant Shekhar Joshi has disclosed to the police party that after killing Devendra Singh Rawat, Keshav Dutt Suyal had taken out the purse and given to him and while absconding from the spot, after killing Devendra Singh Rawat, he had thrown the purse behind the bushes. PW4 Kamal Singh Daramwal further stated that on the same day i.e. on 12.05.2006, appellant Keshav Dutt Suyal took the police party and PW4 Kamal Singh Daramwal to his house and appellant Keshav Dutt Suyal took out the pant (light green jeans) containing bloodstains from a trunk and handed over the same to the police and disclosed the police that at the time of killing of Devendra Singh Rawat, he was wearing the same; pant, so recovered, was kept in sealed cover by the police party under his signature.

17. As per statement of Investigating Officer PW 9 Mohd. Zaheer, pant (light green jeans), recovered from the house of accused appellant Keshav Dutt Suyal, was sent for chemical examination to FSL and as per FSL report, pant was having human bloodstains.

18. When question was asked to accused appellant Keshav Dutt Suyal under Section 313 CrPC about the recovery of pant (light green jeans), he replied that he did not want to say anything. Meaning thereby he did not deny the recovery of his pant (light green jeans) containing bloodstains. He has not explained as to how his pant was having human bloodstains.

19. Although confessional statement made by accused before the police party is not admissible in view of Section 25 of the Evidence Act, however, Section 27 of the Evidence Act is exception to it. Both the appellants disclosed to the police party, in the presence of PW4 Kamal Singh Daramwal, that after killing Devendra Singh Rawat, purse of Devendra Singh Rawat was taken out and was thrown by appellant Shekhar Joshi in the bushes and on his pointing out, purse of Devendra Singh Rawat containing his identity proof was recovered. Disclosure statement of accused Keshav Dutt Suyal that his pant (light green jeans) sustained bloodstains at the time of killing of Devendra Singh Rawat and recovery of pant (light green jeans) and purse of deceased are important piece of evidence. Both the appellants did not point out any enmity with PW4 Kamal Singh Daramwal. PW4 Kamal Singh Daramwal seems to be independent and fair witness.

20. Mrs. Pushpa Joshi, Sr. Advocate for the appellants contends that PW2 Harendra Singh Fartiyal, during his cross examination, has stated that on the next day i.e. on 01.05.2006, he went to Mandi and came back in the evening at about 05.00 p.m. and thereafter, came to know about the incident and thereafter, reported the matter to PW1 Rajendra Singh Rawat. However, PW1 Rajendra Singh Rawat stated that PW2 Harendra Singh Fartiyal was present at the time of preparation of inquest report. Therefore, there is a contradiction in the statement of PW1 Rajendra Singh Rawat and PW2 Harendra Singh Fartiyal.

21. In our considered opinion, incident took place in the intervening night of 30.04.2006/01.05.2006, however, statement of PW1 Rajendra Singh Rawat was

recorded on 28.11.2007, therefore, minor contradictions are bound to occur and are not sufficient to discard the prosecution story. It has not been pointed out what enmity PW2 Harendra Singh Fartiyal was having against the accused to falsely implicate them.

22. Not only this, if recovery of purse along with bloodstained pant (light green jeans) of Keshav Dutt Suyal are taken together with the statement of PW2 Harendra Singh Fartiyal, there remains no doubt at all about the prosecution story.

23. In view of the above, we do not find any reason to take contrary view to the view taken by learned trial Judge. Consequently, appeal fails and is hereby dismissed. Both the appellants are on bail. Their bail bonds are cancelled. Let the appellants be taken into custody to serve out the sentence awarded by the trial court.

24. Let copy of this judgment along with LCR be sent back to the trial court for compliance.