
(2010) 06 UK CK 0168
In the Uttarakhand High Court

Shri Atma Singh

APPELLANT

Vs

Sukhdev Singh, Balbir Singh, Gurmej Singh, Pyara Singh and
State of Uttarakhand

RESPONDENT

Date of Decision : 02-06-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2011) 3 UC 1655 : (2010) 2 UD 87

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Judgement

Prafulla C. Pant, J.—This revision is directed against the judgment and order dated 31.08.2000, passed by Additional Sessions Judge, Nainital, in Sessions Trial No. 1 of 1993, whereby said court has acquitted the respondent Sukhdev Singh, Balbir Singh and Gurmej Singh on the charge of offences punishable u/s 302/34 of I.P.C.

2. Heard learned Counsel for the parties and perused the Lower Court Record.

3. Prosecution story in brief is that on 06.03.1992, Milkha Singh(deceased) returned late to his house. Complainant Atma Singh (PW1) and Amar Singh (PW2) had gone at about 8.30 to the house of Milkha Singh to see as to whether Milkha Singh has come back to his house or not. At about 9 p.m on 06.03.1992 accused respondents Sukhdev Singh, Balbir Singh and Gurmej Singh came to the house of Milkha Singh, dragged him from this house in the village Mahuwa Dali within the limits of Police Station Bazpur, whereafter accused respondent Sukhdev Singh fired a shot at Milkha Singh, who suffered injury and succumbed to the same. On the next day i.e. 07.03.1992 at about 7.50 a.m. Atma Singh (PW1) lodged First Information Report (exhibit A1) at Police Station Bazpur, which was registered as crime No. 90 of 1992. PW4 Sub Inspector N.S.Tyagi look up the investigation. He got the dead body of the deceased sealed and prepared inquest report. He also got prepared other necessary papers and sent the body

for post mortem examination. Dr. R.S.Gupta (PW5) conducted post mortem examination on the dead body of Milkha Singh on 07.03.1992 and observed following injury in the post mortem report: "Single aperture with irregular and lacerated edges, size 5 c.m diameter with blackening and tattooing present around the injury at sternum in the level of 3rd and 4th enter castle space, no wound of exit seen."

The Medical officer further observed that of internal examination pleura and heart were found lacerated. He also found pellets inside the body. The cause of death mentioned by medical officer was shock and hemorrhage. PW5 Dr. R.S. Gupta prepared Autopsy Report (exhibit A11). After interrogating witnesses, and completing investigation, the investigating officer submitted charge-sheet against three accused Sukhdev Singh, Balbir Singh and Gurmej Singh.

4. The Magistrate, to whom the charge sheet was submitted after giving necessary copies to the accused as required u/s 207 of Cr.P.C, committed to the court of Sessions for trial. Learned Additional Sessions Judge, Nainital to whom the case was transferred, on 16.03.1993, after hearing the parties framed charge sheet offence punishable u/s 302 of I.P.C against accused Sukhdev Singh. The said court further framed charge of offence punishable u/s 302 read with Section 34 I.P.C against accused Balbir Singh and Gurmej Singh. The three pleaded not guilty and claimed to be tried. On this prosecution got examined PW1 Atma Singh (complainant), PW2 Amar Singh (eye witness), PW3 Gurmej Singh (witness of the incident report), PW4 N.S. Tyagi (Investigating Officer) and PW5 Dr. R.S. Gupta (who conducted the post mortem examination). The oral and documentary was to the accused regarding which they alleged same to be false. They pleaded that they have been falsely implicated due to enmity, However no evidence in defense was adduced. The trial court after hearing the parties found that the prosecution has failed to prove charge against the accused beyond reasonable doubt, and acquitted them of the charge framed against them. Hence this revision was filed by the complainant against the judgment and order dated 31.08.2000, passed by Ist Additional Sessions Judge Nainital, in Sessions Trial No. 1 of 1993.

5. Learned Counsel for the revisionist argued that there were two eye witnesses of the incident, and the trial court has erred in law is not believing their testimony. As against this learned Amicus Curiae, on behalf of the respondent 1 to 3 submitted that the trial court has given strong reasons for holding that the prosecution has failed to prove charge beyond reasonable doubt.

6. On going through the impugned judgment and the record of the trial court, this Court finds that the trial court has taken note of the following points before disbelieving the two eye witnesses namely PW1 Atma Singh and PW2 Amar Singh:

(i) The prosecution has come up with the case that deceased was in litigation with the accused, and due to that enmity the accused committed murder of the

deceased. However, in the cross examination both the eye witnesses admit that the accused were facing the cases filed by the officers of the forest department, not the case filed by the deceased. In the circumstances the trial court took the view that the motive of commission of murder which has been projected by the prosecution, was not found true.

(ii) The trial court took serious note of the fact on the deceased Milkha Singh had six children. He has also a wife named Surjit Kaur. Had the incident taken place in the house, the widow of the deceased and children of the deceased would have been the best witnesses to depose as to who killed Milkha Singh. Non examination of Surjit Kaur, according to the trial court, in the present case, shakes the prosecution story.

(iii) The trial court has also taken into consideration the fact that neither PW1 Atma Singh nor PW2 Amar Singh used to live in the house of Milkha Singh, as such evidence adduced by them is that of the chance witnesses.

(iv) The trial court has also taken note of the fact that no source of light was disclosed as to how at 9 p.m the two witnesses could see the incident as pleaded by prosecution.

7. In the opinion of this Court, the above reasons mentioned by the trial court can not be discarded lightly. Where the two views are possible in appreciating the evidence adduced by the prosecution, it is not desirable on the part of the revisional court to take another view unless the trial court has committed illegality in assessing the evidence.

8. Having considered submissions of learned Counsel for the parties and after going through the papers on record, for the reasons as discussed above, this Court is of the view that in the fact of circumstances of the case, it is not a fit case for interference in the revisional jurisdiction of this Court. Therefore, the revision is dismissed. The Lower Court Record be sent back.