
(2013) 07 UK CK 0048
In the Uttarakhand High Court
Case No : Criminal Appeal No. 132 of 2010

Smt. Bhagirathi Devi and Another	Vs	APPELLANT
State of Uttarakhand		RESPONDENT

Date of Decision : 03-07-2013

Acts Referred:

Citation : (2013) 2 NCC 199

Hon'ble Judges : Barin Ghosh, C.J.;Serves Kumar Gupta, J

Bench : Division Bench

Advocate : R.S. Sammal, for the Appellant; Vinod Sharma, Dy. Advocate General, for the Respondent

Judgement

Barin Ghosh, C.J.—Three people, namely, Bhagirathi Devi, Khasti Ram and Puran Ram were tried for murder of Pratap Singh. As is evident from the post mortem report, prepared by Dr. D.P. Durgapal (PW3), hemorrhage shock led to death. It was reported in the post mortem report that there were multiple lacerated wounds and abrasions all over the body and there was also haematoma on the head. The First Information Report, in the instant case, was filed by Laxman Singh (PW2), the brother of the victim. It was stated in the First Information Report that Puran Ram phoned up PW2 and held out that the victim has stolen money from the truck, whose driver was Khasti Ram. It was stated that, in connection therewith, the victim has been done away with. The prosecution, accordingly, led the case before the trial court that allegedly the victim committed theft of money from the truck, of which Khasti Ram was the driver, and, in connection therewith, all the three accused people murdered the victim.

2. In course of tendering evidence, PW2 held out that he received a phone call around 10:44 p.m. from Puran Ram. He stated that Puran Ram held out to him that the victim has stolen money and that money is to be returned. He was also informed by Puran Ram that they are waiting at the milk depot, where the money is to be reached. He had also stated that Khasti Ram also held out so through the selfsame telephone. According to him, at 11:30 p.m., he went to the

milk depot, but could not notice anything. On the next date, he went along with his son, when the dead body was found in the vicinity. Narayan Ram (PW1) stated before the trial court that, around 10:00-10:30 p.m., after having had some food, he started playing cards. Some time thereafter, Khasti Ram asked them not to play cards. Thereafter, he went to his home. Soon after that, Bhagirathi Devi came to his house and informed him that Puran Ram is being beaten by the victim because of PW1. PW1 held out that Bhagirathi Devi is related to Puran Ram. PW1, then, held out that he, along with Bhagirathi Devi, then went and reached the place of occurrence, when he found that Puran Ram has already given good thrashing to the victim and is also giving thrashing to the victim. He, then, added that Khasti Ram took a stone and hit the victim with the stone. PW1, then, added that, thereafter, Khasti Ram and Puran Ram denuded the victim and, thereafter, Khasti Ram and Puran Ram phoned-up PW2. Believing the evidence of PW1, appellants have been convicted.

3. The sole question in the appeal is, whether this piece of evidence of PW1 is at all believable or not and, even if believable, whether any case punishable u/s 302 of the Indian Penal Code was at all made out against Bhagirathi Devi?

4. According to PW1, he was playing cards around 10:00-10:30 p.m. After having had played cards for some time, he and others were asked to stop playing cards. He, then, went to his home. Thereafter, Bhagirathi Devi came to call him. Then, with Bhagirathi Devi, he went to the place of incident, when he saw that Puran Ram has already beaten and is giving further beating to the victim and Khasti Ram has also given a beating to the victim with a stone and, thereafter, Khasti Ram and Puran Ram denuded the victim and, then, Khasti Ram and Puran Ram phoned-up PW2; whereas, PW2 received the call from Khasti Ram and Puran Ram around 10:44 p.m. The time does not match. In order to match the same, in much less than 10 minutes" time, all these things had happened as were witnessed by PW1, is quite difficult to accept. Further, PW1, even having had seen all these things happening before 10:44 p.m., did not make any attempt to contact PW2 until such time the dead body was recovered and the First Information Report was lodged on the next day. The above conduct of PW1 makes his deposition suspicious. Furthermore, Puran Ram did file an Application before the court below, which has been taken note of by the learned Judge while rendering the judgment under appeal. In that Application, he stated that the victim had stolen a sum of Rs. 89,000/- from the truck and, accordingly, he had a scuffle with the victim and, in course thereof, victim died. In answer to questions put to Puran Ram u/s 313 of the Code of Criminal Procedure, he stated that there was a scuffle in between him and the victim, but he never intended to cause death of the victim.

5. In the event, evidence of PW1 is not accepted, then, at the best, Khasti Ram, along with Puran Ram, told PW2 that the victim has stolen money and PW2 has to return the same. There is no corroboration of the said contention of PW2. An application though was made to BSNL for providing appropriate call information,

but the same was either not pursued further or, if answer thereto was received, was not produced in court. In other words, PW2 did receive such a call, apart from an assertion to that effect by PW2, there is no other evidence. For the reasons already indicated above, the evidence of PW1 is not safe to accept. In the absence of evidence of PW1, there is no evidence against Bhagirathi Devi and Khasti Ram pertaining to the crime, as was alleged against them.

6. We, accordingly, hold that the judgment under appeal, by which Bhagirathi Devi and Khasti Ram have been convicted relying upon the evidence of PW1, is interferable. We, accordingly, interfere and set aside the same. The appeal, accordingly, stands allowed.

7. Bhagirathi Devi is on bail. Her bail bond is cancelled and sureties are discharged. She need not surrender. Khasti Ram is in jail. He be released forthwith, if not detained in connection with any other matter. Let a copy of this judgment be sent to the court below, along with the lower court records, for compliance.