
(2011) 11 UK CK 0082
In the Uttarakhand High Court
Case No : Criminal Revision No. 62 of 2004

Smt. Saraswati Devi

APPELLANT

Vs

State of Uttaranchal and 7 others

RESPONDENT

Date of Decision : 25-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 319
Penal Code, 1860 (IPC) — Section 147, 149, 307, 336, 427

Citation : (2011) 11 UK CK 0082

Hon'ble Judges : Umesh Chandra Dhyani, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble U.C. Dhyani, J.—Smt. Saraswati Devi has filed the criminal revision no. 62 of 2004 against the respondents State of Uttarakhand & 7 others. Smt. Saraswati Devi was the reporter, injured and prosecution witness in the trial before the Sessions Judge, Bageshwar.

2. The Sessions Judge, Bageshwar in his judgment dated 17th April, 2004 acquitted the accused persons, viz., Prem Singh, Dinesh Singh, Nandan Singh, Smt. Rajni Singh, Smt. Saraswati, Smt. Devki and Dhiraj Singh of the charges under sections 147, 307 read with sections 149, 336, 427, 504 & 506 IPC framed against them. Their bail bonds were cancelled and the sureties were discharged. It is against this judgment and order that the witnesses / injured has preferred this revision. State has not challenged the order passed by the learned Sessions Judge on 17.04.2004.

3. This criminal revision is preferred on the grounds, inter alia, that the learned Sessions Judge has not properly considered the evidence tendered on behalf of prosecution. The revisionist has explained the delay in lodging the First Information Report and there is sufficient ground for lodging the First Information Report after a delay of three days but the trial court has not relied upon and illegally acquitted respondent nos. 2 to 8. There is no inconsistency in

the statements of revisionists i.e. reporter and injured witness P.W.1 Puran Singh but the learned trial court has not considered this important fact. There were several injuries on the body of P.W. 1 Puran Singh which were caused by respondent nos. 2 to 8. P.W. 5 Doctor N. D. Punetha who examined P.W. 1 Puran Singh has in his statement said that injury no. 2 may be caused by a blunt object and other injuries may be caused by lathis. The trial court has not considered this important fact. P.W. 5 Doctor N.D.Punetha has fully supported the prosecution story but the court has not properly appreciated his evidence. It is therefore, prayed that the revision may be allowed and the impugned order may be set aside.

4. It has been submitted by the learned counsel for the revisionist that although there is delay in lodging the First Information Report but that delay has been properly explained by the prosecution witnesses. The occurrence is alleged to have taken place on 19.03.2000 whereas the First Information Report has been lodged on 22.03.2000. There is delay of 3 days in lodging the First Information Report. Learned counsel for the revisionist has also submitted that there are minor contradictions in the statements of the prosecution witnesses but they are liable to be ignored. The injured witness has fully proved his injuries which have been corroborated by the medical evidence.

5. A charge-sheet for the offences punishable under sections 147, 307 read with sections 149, 336, 427, 504 & 506 IPC was filed by the Revenue Police, Koirali, district Bageshwar in the court of learned Magistrate having jurisdiction. The accused Dhiraj Singh was summoned under the provisions of section 319 Cr.P.C. Upon committal of the case, the same was tried by the learned Sessions Judge, Bageshwar.

6. Prosecution story is that on 19.03.2000 at 7:30 p.m at Khalatok, district Bageshwar all the accused persons (having common object) beaten Puran Singh. The injuries were inflicted on the person of Puran Singh. The accused persons hurled abuses on him and threatened him with dire consequences. The property of Sarasswati Devi was damaged. Puran Singh lodged the First Information Report in the Patwari Circle. Puran Singh was medically examined and thereafter charge-sheet against the said accused was submitted before the court.

7. Prosecution has produced P.W. 1 Puran Singh, P.W. 2 Saraswati Devi, P.W. 3 Umesh Ram, P.W. 4 Him Ram, P.W. 5 Doctor N.D. Punetha, P.W. 6 S.I. Harender Singh Bisht and P.W. 7 Hanif Beg. The statements of the accused u/s 313 Cr.P.C. were taken. No evidence has been adduced on behalf of the accused in defence. The documents which have been got exhibited on behalf of the prosecution are - First Information Report (Ext. Ka-1), injury report (Ext. Ka-2), charge-sheet (Ext. Ka-3), chik FIR (Ext. Ka-4), site plan (Ext. Ka-5), charge-sheet (Ext. Ka-8). The lower (paizama) and undershirt(baniyan) have been proved as material exhibits 1 & 2.

8. The alleged occurrence has taken place on 19.03.2000 at 7:30 p.m. at

Khalatok, district Bageshwar. The distance between the place of occurrence and Khalatok Patwari Circle is 5 kilometers only. In Patwari Circle, Amsarkot is situated at about 8 kilometers from Koirali where the alleged occurrence took place. Bageshwar is situated at a distance of 12 kilometers. The First Information Report is lodged on 22.03.2000 at 5 :00 p.m. Thus there is delay of three days in lodging the first information report. The delay in lodging the FIR has been tried to be explained by P.W. 2 Saraswati Devi. She has said that she was threatened with dire consequences and therefore, she could not go to lodge the report earlier. She has also said that when her husband became conscious on 22.03.2000 only then he disclosed the names of the accused persons. The evidence on record suggests that the prosecution has not been able to explain the delay in lodging the First Information Report satisfactorily.

9. P.W. 1 injured Puran Singh is the husband of P.W. 2 Saraswati Devi. He has said in his evidence that he had regained consciousness within half an hour of the incident. Somehow he could approach the shop of Shapteshwar. Mohan Singh and Balwanti Singh took him to his house and he narrated the entire story to his wife P.W. 2 Saraswati Devi. There are material contradictions in the testimony of P.W. 1 Puran Singh (husband) and P.W. 2 Saraswati Devi (wife) in this respect. So far as this aspect of lodging this First Information Report in Patwari Circle is concerned, Saraswati Devi has also said in examination-in-chief that the accused persons continued to beat her husband and came to her residence whereupon they hurled abuses on him, threw stones at her house and also threatened her with dire consequences. After sometime, Balwant Singh and Mohan Singh dropped her husband to her residence. (There is some confusion/anomaly in these two statements). Puran Singh was bleeding profusely. This Court agrees with the findings of the learned trial court that there has been inordinate delay in lodging the First Information Report and that has not been explained properly by the prosecution witnesses. P.W. 5 Doctor N.D. Punetha has examined the injuries of P.W. 1 Puran Singh and has supported the prosecution story but the corroboration of injuries by the Doctor alone cannot prove the prosecution story unless the court is able to satisfy itself on the basis of other evidence that the accused persons had inflicted injuries on the members of the complainant side in furtherance of their common object.

10. It may be mentioned here that two of the important public witnesses, viz. P.W. 3 Umesh Ram and P.W. 4 Him Ram have not supported the prosecution story. Umesh Ram and Him Ram were said to have been present at the time the alleged occurrence took place but none of them has supported the prosecution story. They were declared hostile. They were cross-examined by learned D.G.C. (Criminal) but nothing has come out in their testimony which might tend to help the prosecution agency. Had P.W. 3 Umesh Ram and P.W. 4 Him Ram supported the prosecution story, there was likelihood that the fate of this case would have been otherwise. But unfortunately that did not happen and two vital independent witnesses did not support the prosecution story.

11. The prosecution story could have been relied upon solely on the oral testimony of the injured and his wife had there been no material contradictions in their testimony and further, had there been no delay in lodging the first information report. Even if there was delay in lodging the First Information Report the said delay ought to have been properly explained. Unfortunately that too has not been done in this case. The injured Puran Singh in his oral testimony has said that although he became unconscious when the occurrence took place but he regained consciousness after half an hour. He has admitted that there was enmity between the parties on account of the election of Gram Pradhan. He has also admitted that he lodged the complaint case against the accused persons for the offence punishable u/s 307 IPC, but that was dismissed. It may be recalled here that enmity is a double edged weapon. While one party may cause injuries to the other party on account of enmity, there is every possibility that the other party might implicate the first party falsely on account of this enmity. Keeping this in mind, the oral testimony of Puran Singh and Saraswati Devi cannot be relied upon beyond reasonable doubt. It may be noted here that the prosecution story could have been proved solely on the oral testimony of Puran Singh duly supported by the oral testimony of Saraswati in the normal circumstances but for the reason that there are material contradictions in the testimony of these two witnesses coupled with the fact that there is enmity between the rival factions. In this view of the matter it cannot be said that prosecution has been able to bring home the guilt against the accused persons beyond reasonable doubt. This court is in complete agreement with the findings arrived at by the learned trial court to this extent. Learned trial court has also given other reasons as to why it has not believed the prosecution story including the reason that the people in hills take liquor during the festival of Holli. Since this fact is not in issue therefore, this court is refraining to comment upon this aspect of the case. It is not necessary to comment upon this fact in order to decide this case.

12. P.W. 6 S.I, Harendra Singh Bisht is the investigating officer who has submitted charge-sheet (Ext. Ka-3) against the accused persons.

13. Balwant Singh and Mohan Singh, who took the injured Puran Singh to his wife Saraswati, have also not been produced on behalf of prosecution. P.W. 7 Hanif Beg is a formal witness who has conducted the investigation of this case at some length and has also proved police documents. Blood stained clothes of the injured were also not sent for chemical examination either to FSL or to any other laboratory. The prosecution has not been able to prove the case against the accused persons beyond reasonable doubt as has been held by the learned trial court. There is no reason to differ from the findings of the learned trial court and interfere in the said order.

14. Consequently, the criminal revision filed on behalf of Smt. Saraswati fails and is accordingly, dismissed.