
(2010) 07 UK CK 0002

In the Uttarakhand High Court

Case No : Government Appeal No. 1879 of 2001 and Old Government Appeal No. 879 of 2000

State of U.P. (Now Uttarakhand)

APPELLANT

Vs

Lakhan Singh and others

RESPONDENT

Date of Decision : 29-07-2010

Acts Referred:

Arms Act, 1959 — Section 25
Penal Code, 1860 (IPC) — Section 302, 364

Citation : (2010) 2 UC 1250

Hon'ble Judges : Nirmal Yadav, J;B.C. Kandpal, J

Bench : Division Bench

Advocate : Nandan Arya, A.G.A, for the Appellant; Lokendra Dobhal and Mr. Vinod Sharma Learned Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Nirmal Yadav, J.—This appeal has been preferred by the State against the judgment and order dated 14.10.1999 passed by the Additional Sessions Judge, Dehradun vide which the accused Respondents have been acquitted of the charges framed against them u/s 364 & 302 of the Indian Penal Code, 1860 (for short I.P.C.) and also against the acquittal of accused Respondent Lakhan Singh u/s 25 of the Arms Act.

2. The criminal law was set in motion in this case at the instance of Phool Chandra (PW-1) father of Pradeep (deceased), who submitted a written complaint (Ex. Ka-1) before In-charge Police Station Raipur, Dehradun. According to the complainant, on 13th July 1993 he along with his wife and son Pradeep were present at their house when at about 6:00 p.m. seven-eight boys came to their house, they asked Pradeep to accompany them to settle his dispute. Pradeep told them that he would accompany them after having bath. After ten minutes four boys again came on two scooters. Out of them, Lakhan Singh and Ravindra were known to the complainant and rest of the two boys, he could

identify if produced before him. On enquiry Pradeep told his parents that he had some dispute with Lakhan Singh and Ravindra on previous day. At about 7:30 p.m. Father-in-law of complainant came to his house and told him that Pradeep was being given beatings by Ravindra and Lakhan Singh and two other persons, when he tried to intervene, they took away Pradeep on a scooter towards Sahastradhara. The complainant searched for his son during the evening. He also went to the house of Ravindra and Lakhan Singh but they were not found present there. On 14th July 1993 at about 11:00 a.m. the complainant came to know that one dead body was lying in the jungle of village Kandoli. On reaching there he found the dead body of his son Pradeep. According to complainant, Lakhan Singh and Ravindra along with their two companions have committed the murder of his son Pradeep. On the basis of complaint Ex. Ka-1, chick F.I.R. Ex. Ka-3 was recorded on 14th July 1993 at 11:50 a.m. and G.D. report Ex. Ka-4 in this regard was also entered.

3. S.I. Hoshiyar Singh (PW-7) after receiving the copy of the F.I.R. went to the spot and prepared the Panchnama Ex. Ka-2 in the presence of the other witnesses. He lifted the bloodstained earth and simple earth from the spot and made them into two separate parcel which were taken into possession vide memo Ex. Ka-7. He inspected the spot and prepared site plan (Ex. Ka-8) of the place of occurrence. He also recorded the statement of Phool Chandra and sent all the papers to Police Station Dalanwala as the case related to the said police station. Thereafter the investigation was handed over to Darbari Singh (PW-10). On 15th July 1993 he recorded the statements of Smt. Shashi Kanta (PW-4) mother of deceased, Lal Singh (PW-2) and Kuldeep Singh (PW-3) maternal grandfather and maternal uncle of the deceased. He arrested accused Lakhan Singh and Ravindra on 16.07.1993. On their search one knife was recovered from the pocket of the pant of accused Lakhan Singh, which was taken into possession vide memo Ex. Ka-15. S.I. Ghanshyam Singh (PW-11) investigated the case u/s 25 of the Arms Act. He recorded the statements of the witnesses and prepared site plan (Ex. Ka-19).

4. The postmortem on the person of Pradeep (deceased) was conducted on 15th July 1993 by Dr. Anmol Singh Bisht (PW-6) who found the following injuries:

(i) Incised wound 3 cm. x.5 c.m. x muscle deep below mandible on right side.

(ii) Incised wound 2.5 c.m. x.5 c.m. x muscle deep on left cheek

(iii) Two parallel incised wounds 1 c.m. apart 2 c.m. x.5 c.m. x muscle deep and second 1.5 c.m. x.5 c.m. x muscle deep on the left side of neck 3 c.m. from mandible towards outer side.

(iv) Stab wound 1 c.m. x.5 c.m. x 3 c.m. x deep left shoulder 2 c.m. below achromio clavicular joint

(v) Stab wound 1.5 c.m. x.5 x muscle deep out side of left either 12 c.m. below elia crest.

(vi) Stab wound 2 c.m. x.5 c.m. x long cavity deep between 8-9 ribs over right side back 3 c.m. from midline.

(vii) Stab wound 1.5 c.m. x.5 c.m. x cavity deep between 4-5 ribs 5 c.m. from midline.

(viii) Incised wound 3 c.m. x.5 c.m. x muscle deep left hand towards inner side of the palm towards little finger.

6. According to him, these injuries could have been caused in the evening of 13th July 1993 at about 6:30 a.m. by a knife. The cause of death was due to ante mortem injuries, excessive bleeding shock and hemorrhage. He further stated in the cross-examination that the death could have been caused on 13th July 1993 at 1:00 p.m. or 2:00 p.m.

7. On completion of the investigation, challan was presented against the accused-respondents in the court and accused Respondents were charge sheeted under Sections 364 and 302 of the I.P.C. and accused Lakhan Singh was also charge sheeted u/s 25 of the Arms Act to which they pleaded not guilty and claimed trial.

8. In order to prove its case, the prosecution produced as many as twelve witnesses. Complainant Phool Chandra (PW-1), and Smt. Shashi Kanta (PW-4) are the father and mother of deceased respectively. Lal Singh (PW-2) and Kuldeep Singh (PW-3) are the maternal grandfather and maternal uncle of the deceased respectively. Head Constable Samar Pal Singh (PW-5) recorded the F.I.R. Dr. Anmol Singh Bisht (PW-6) conducted the postmortem on the person of deceased. S.I. Hoshiyar Singh (PW-7) partly investigated the case and thereafter investigation was handed over to Darbari Singh (PW-10). Head Constable Karan Pal (PW-8) is the formal witness. Dr. Vinod Nagpal (PW-9) medically examined accused Lakhan Singh on 16th July 1993 at 9:25 p.m. Darbari Singh (PW-10) is the Investigating Officer. S.I. Ghanshyam Singh (PW-11) investigated the case u/s 25 of the Arms Act against accused Lakhan Singh. Om Swaroop (PW-12) was working as Moharrir with Mr. K.D. Jwanda, the Magistrate (who has since expired) and identified the writing and signature (Ex.Ka-21) of Mr. K.D. Jwanda on the identification proceeding.

9. When examined u/s 313 Code of Criminal Procedure. the accused Respondents denied all the allegations of prosecution and claimed innocence and false implication. However the accused-respondents did not lead any evidence in defence. The trial court on appraisal of the evidence found that the prosecution has failed to prove guilt of the accused beyond reasonable shadow of doubt and accordingly acquitted all the accused-respondents.

10. We have heard Mr. Nandan Arya, learned A.G.A. for the State, Mr. Lokendra Dobhal Advocate with Mr. Vinod Sharma, Learned Counsel for the Respondents and perused the material available on record.

11. Learned A.G.A. by referring to the statements of complainant Phool Chandra (PW-1), Smt. Shashi Kanta (PW-4) and Lal Singh (PW-2) father, mother and

maternal grandfather of the deceased respectively, vehemently argued that accused-respondents were last seen with Pradeep (deceased) by all the three witnesses and the learned trial court has wrongly acquitted the accused Respondents by misinterpreting the evidence available on record. He further pointed out that both Lakhan Singh and Ravindra were known to Phool Chandra, Shashi Kanta and third accused Kalli alias Arvind has been correctly identified by complainant Phool Chandra, father of deceased during the identification parade. However, the learned trial court has totally ignored the material facts available on record by referring to minor discrepancies only.

12. Learned A.G.A. submitted that the prosecution has satisfactorily explained the delay in lodging the F.I.R. The complainant Phool Chandra categorically stated in the F.I.R. that his son Pradeep had accompanied Ravindra and Lakhan Singh, who were earlier known to him, for settling some dispute at about 6:00 p.m. and his father-in-law Lal Singh (PW-2) informed him on the same day at about 7:30 p.m. that Pradeep was being given beatings by accused Ravindra and Lakhan Singh and two of his companion. Thereafter he along with his other relatives had been searching for his son. He even went to the house of accused persons but in the morning he came to know that one dead body was lying in the jungle of Kandoli. Thereafter he found dead body of his son and went to the police station and lodged the report at 11:50 a.m., therefore, there is no delay in lodging the F.I.R.

13. On the other hand, Learned Counsel for the accused-respondents submitted that the trial court has rightly come to the conclusion that the prosecution has failed to prove its case beyond shadow of doubt. Learned Counsel for the accused Respondents further argued that the F.I.R. has been lodged after a considerable delay and pointed out that as per the complainant, his son had accompanied Ravindra and Lakhan Singh and two of his companion at about 6:00 p.m. on 13th July 1993 thereafter his father-in-law informed him at about 7:30 p.m. that Pradeep was being given beatings by accused Ravindra and Lakhan Singh and two of his companion and they took away Pradeep towards Sahastradhara. The matter could have been reported to the police in case the complainant after searching for his son could not find him till late in the evening. He could have reported the matter immediately to the police as he could very well imagine that some serious incident could have taken place as Lal Singh (PW-2) had informed him about the beatings having been given by four persons to Pradeep. Learned Counsel for the accused Respondents, therefore, argued that the lodging of the F.I.R. after 15-16 hours create serious doubt in the prosecution case. It has further been argued that admittedly there is no eyewitness account in the present case to prove that injuries caused on the person of Pradeep had been caused by accused-respondents, which resulted in his death. The case is based on circumstantial evidence. Complainant Phool Chandra, Smt Shashi Kanta, father and mother of deceased had last seen Pradeep in the company of Ravindra and Lakhan Singh and of his two companion and one of them was identified during the identification parade as Kalli alias

Arvind. Thereafter the testimony of Lal Singh (PW-2), who had seen accused Lakhan Singh along with other three boys giving beatings to Pradeep at Sahasrdhara Road, is not conclusive to prove that all the accused were known to him. According to him, he had seen that one person was being given kick blows by four persons. He continued watching those persons giving beatings to the person who was lying with his face towards the earth but later on all the accused suggested that they should take away the person to whom they were giving beatings towards Sahastradhara and when he saw the face of that person, he identified him to be his grandson Pradeep. Thus he caught hold of arm of one of the person, but said person pushed him push and took away the injured person on the scooter towards Sahastradhara and thereafter only he came and informed his son-in-law Phool Chandra. This witness could not identify any of the accused except Lakhan Singh in the court. During the identification parade, he could not identify any of the accused. Except the statement of Lal Singh (PW-2) who had seen some person near Sahastradhara giving kick blows to Pradeep and there is no other evidence as to who had given the injuries, which were found on the person of deceased.

14. The medical evidence does not support the testimony of Lal Singh. According to Lal Singh four persons were giving kick blows to the injured, however, a perusal of the postmortem report shows that Pradeep received incised wound and stab wounds and as per the opinion of Dr. Anmol Singh Bisht, all the injuries could have been caused by sharp edged weapon i.e. knife, thus medical evidence does not support the statement of Lal Singh.

15. A careful perusal of the statement of complainant Phool Chandra shows that it suffers from material discrepancies and contradictions. In the cross-examination deposing before the court he stated that 7-8 persons came to call his son Pradeep and at that time he was at his shop, and he informed them that Pradeep was not at home. However, in his examination in chief he stated that when those boys came, he along with his wife Shashi Kanta and Pradeep were present at the house and similar is the statement given by him in the first information report. This witness further stated that he had known Ravindra and Lakhan Singh only 10-15 days prior to the occurrence. However, he also stated that his son Pradeep was friendly with Lakhan Singh. Learned Counsel for the Respondents pointed out that the conduct of complainant Phool Chandra and Lal Singh is quite abnormal. It is quite improbable that even after noticing that his grandson was being taken away on scooter after giving beatings at Sahastradhara Road, he did not report the matter to the police but went to the house of his son-in-law and even thereafter he along with Phool Chandra did not go to the police station nor they went towards Sahasradhara as Pradeep had been taken away by the accused persons towards that side. Another circumstance pointed out by Learned Counsel for the Respondents is that Lal Singh (PW-2) himself stated that he could not see properly and therefore, it is also not possible that he had correctly identified Pradeep as well as other accused persons. He also pointed out that Sahastradhara Road is frequented by

many persons and the vehicles therefore it is not possible that no one was attracted to the place when the accused persons were allegedly giving beatings to Pradeep. Moreover, Lal Singh could also raise an alarm to attract other persons so that the life of Pradeep could be saved immediately.

16. He further pointed out that even the place from where the dead body has been recovered is also in dispute. According to Phool Chandra, the dead body was found in the jungle of village Kandoli whereas Lal Singh stated that the dead body was recovered in the guava garden. As per site plan Ex. Ka-8, the dead body was found on the road side of village Kandoli towards the southern side of Rajeev Nagar.

17. With regard to the identity of the accused, it is not disputed that Lakhan Singh and Ravindra were not put for identification parade. Only the two other accused were put for identification Parade out of which accused Kalli alias Arvind was identified by Phool Chandra and the other person was not identified any of the witnesses. of course Lal Singh did not know any of the accused. According to him, he came to know the name of Lakhan Singh at the spot when all the four accused were arguing amongst themselves. He did not know him prior to that date. It is not disputed that Lakhan Singh was not put for identification parade.

18. After going through the evidence and careful consideration of the rival submissions made by Learned Counsel for the parties, we find that prosecution has failed to prove its case beyond reasonable shadow of doubt. There are material contradictions in the testimony of the two star witnesses i.e. complainant Phool Chandra and Lal Singh. Both of them are the persons who had last seen the accused persons with deceased Pradeep, however, conduct of both of them appears to be abnormal and unnatural. In spite of the fact that Lal Singh had seen the accused giving beatings to Pradeep at Sahastradhara road and thereafter he saw them taking away Pradeep on scooter, he did not immediately report the matter to the police nor he raised an alarm at the spot to attract other people so that Pradeep could be immediately rescued. Even after Lal Singh had informed about the incident to his son-in-law at 7:30 p.m., none of them followed the accused towards the place where Pradeep was taken away by the accused persons. The information to the police was also given on the next day at 11:50 a.m. From the testimony of Phool Chandra, it appears that none of the accused were known to them earlier otherwise they would have immediately reported the matter to the police. It is quite possible that after the dead body was found they reported the matter to the police merely on the basis of suspicion.

19. The testimony of Lal Singh suffers from material contradictions. As per his testimony he could not see properly and therefore, he could not identify the person to whom the accused were allegedly giving beatings at Sahastradhara road but later on he identified Pradeep and questioned one of the accused i.e. Lakhan Singh as to why they were giving beatings to Pradeep but thereafter they lifted Pradeep on a scooter like a gas cylinder, even then Lal Singh did not react and reported the matter to the police nor he alerted other persons at the spot.

His testimony is also in variance with the medical evidence. According to him the accused were giving kick blows but no contusion or such injuries, which could be caused by kick blows are found on the person of Pradeep. All the injuries as per the postmortem report are either incised wounds or stab wounds. There is variance and contradictions with regard to the place of recovery of the dead body whether it was found in village Kandoli or it was found in the garden of guava but actually the dead body was found near the roadside.

20. The prosecution has also failed to explain the injuries on the person of Lakhan Singh accused. As per Dr. Vinod Nagpal, he found nine injuries on the person of Lakhan Singh. All the injuries are abraded contusions, which could have been caused 2-3 days prior to the medical examination of Lakhan Singh. According to Investigation Officer Darbari Singh, Lakhan Singh was arrested on 16th July 1993 at 8:30 p.m. and was medically examined at 9:25 p.m. on the same day and injuries had been found on his person, however, satisfactory explanation has not been given with regard to his injuries by the prosecution, which also creates doubt in the prosecution case. Even the recovery of knife from accused Lakhan Singh is doubtful as no independent witness was joined at the time of the recovery. He was arrested on the basis of information given by a police informer but still no public witness was joined at that time. The Investigating Officer Darbari Singh admitted that it was a residential area and many persons were passing at the place where the search of accused Lakhan Singh was conducted but none agreed to join the investigation. However, no action was taken by the police against those persons who had refused to join the police party. The recovery of knife is not beyond suspicion. We are therefore of the opinion that story regarding the recovery of knife from accused Lakhan Singh has also been rightly discarded by the trial court.

21. After going through the entire evidence and the material facts available on record, we are of the view that it is a case where in view of evidence on record, it can safely be said that the prosecution has failed to prove guilt of the accused. Even in cases where two views are possible, after acquittal, in appeal benefit has to be given to the accused. The Apex Court in the case of Ashok Kumar Vs. State of Rajasthan, held that interference in an appeal against acquittal would be called for only if the judgment under appeal was perverse or based on a misreading of the evidence and merely because the appellate Court was inclined to take a different view, could not be a reason calling for interference.

22. Learned Counsel for the State has failed to show that the judgment under challenge is perverse or based on misreading of evidence on record.

23. For the reasons stated above, this appeal fails and the same is accordingly dismissed.