
(2012) 12 UK CK 0023

In the Uttarakhand High Court

Case No : Government Appeal No. 281 of 2006

State of Uttaranchal

APPELLANT

Vs

Rajeev Failbus alias Bhaiyu

RESPONDENT

Date of Decision : 14-12-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 302, 309

Citation : (2013) CriLJ 620 : (2013) 1 NCC 304

Hon'ble Judges : Barin Ghosh, C.J; Umesh Chandra Dhyani, J

Bench : Division Bench

Advocate : V.P. Bahuguna, Brief Holder, for the Appellant; S.R.S. Gill, for the Respondent

Final Decision : Dismissed

Judgement

Umesh Chandra Dhyani, J.—Present Government Appeal was preferred by the State of Uttaranchal against the judgment and order dated 6-5-2002, passed by learned Sessions Judge, Almora in Session Trial No. 44 of 1998, whereby accused/respondent Rajeev Failbus was acquitted of the charge of offences punishable under Sections 302, 309 IPC. The informant Laxman Singh Rautela wrote a complaint in Police Station Kotwali, Almora, on 21-5-1998, at 2:20 p.m., enumerating the facts contained therein that on the selfsame day, his son Yaspal Singh Rautela went to N. T. D. crossing at 11.00 a.m. to bring the kitchen gas. His neighbour Bhaiyu Failbus, who was inimical to his son (victim), assaulted him on his head with the intention of killing him by a Khukhri (curved knife). The witnesses Dhiru Martolia and Guddu Khan came there. They tried to save him, but Rajeev Failbus gave many a blows on the head of his son and fled away. Dhiru Martolia informed Laxman Singh Rautela about the incident. Laxman Singh Rautela immediately went to the place of occurrence and took his son to District Hospital, Almora. He was under the treatment of doctors, when the complaint was written. The injured was medically examined by the doctor. Subsequently, the victim died and the doctor sent the information to this effect to the Police

Station, Almora. This information was entered in the G. D. No. 31 dated 21-5-1998 at 2:35 p.m. Thereafter, the inquest report was prepared in the hospital by SI Man Singh and the dead body was sealed and sent to the hospital for post-mortem. The post-mortem was conducted on the selfsame day at 5:00 p.m. The death, according to the doctor, was caused on account of haemorrhage and shock due to head injury. Thereafter, the investigation was conducted by the Investigating Officer. He took the statements of witnesses, prepared site plan and submitted the charge-sheet against the accused Rajeev Failbus alias Bhaiyu.

2. It was also alleged by the prosecution that the accused tried to commit suicide on the selfsame day by causing injuries to himself with a broken piece of glass. He was admitted to the Base Hospital, Almora. There, he was medically examined by the doctor, who prepared the injury report. He found one incised wound 1 cm x 0.5. cm on the abdomen above the mumbilicus. Blood was oozing, the patient was normal and in conscious state. The injury was simple. On the selfsame day again, the accused was admitted by Smt. Ratna Wilson in the Base Hospital at 2:00 p.m. Smt. Ratna Wilson told the doctor attending on the patient (accused) that he consumed an insecticide an hour ago. After medical examination of the accused, the doctor found that the accused was not in normal condition, his blood pressure was very low and the pulses also were very low. Eyesight was very weak and the eyes were red. Smell of organo phosphorus was emitting. In the opinion of doctor, accused consumed organo phosphorus.

3. As many as 09 witnesses were examined on behalf of the prosecution, viz., PW-1 Dhirendra Singh Martolia, PW-2 Ahmad Khan alias Guddu Khan, PW-3 Dr. N. Bhatt, Medical Officer, Base Hospital, PW-4 Laxman Singh Rautela (informant), PW-5 Dr. R. S. Samant of Base Hospital, PW-6 Dr. Ramesh Chandra Pant of District Hospital, PW-7 Dr. Bipin Pant of Base Hospital, PW-8 Const. Jagish Singh (scribe of FIR) and PW-9 Anand Singh Gusai, (I.O.). The prosecution also adduced documentary evidence, such as, post-mortem report, written report, injury report of accused, photocopy of injury report of the deceased, chik FIR, site plan, inquest report, photo of dead body, sample of seal, recovery memo of bloodstained earth, site plan and the charge-sheet. Material Exhibits were also proved in the course of evidence. Incriminating evidence was put to the accused, in reply to which, he said that, he was falsely implicated in the case. No evidence was given in defence. After considering the evidence on record, learned trial Court did not believe the prosecution story and therefore, acquitted the accused of the charges levelled against him. Aggrieved against the judgment and order of acquittal, present Government Appeal was preferred on behalf of the State.

4. It will be worthwhile to mention at the very outset that nothing was brought on record to show that there was enmity between the victim and the respondent. The informant nowhere said, as to wherefrom the enmity sprang? Mere assertion of him was not substantiated by any evidence.

5. Prosecution led the evidence through PW-1 and PW-2. PW-1. Dhirendra Singh Martolia, in his examination-in-chief, said that he knew accused Rajeev. PW-1

along with PW-2 used to live together. PW-1 and PW-2 saw that the accused respondent killed Yashpal with a curved knife. Yashpal tried to save himself. PW-1 could not tell as to on which part of the body of victim, the respondent gave a blow. PW-1 said that injured sustained injury on his right hand. PW-1 and PW-2 tried to intervene. PW-1 also said that the accused also gave blows of brick on victim's head. Accused fled away from the place of occurrence. Victim's sister-in-law also reached on the place of incident. Victim's brother also reached there and took the victim to hospital. PW-1 heard that accused-respondent tried to commit suicide. There were many a contradictions in the statement u/s 161, Cr. P.C. and statements of PW-1 given in the Court in course of deposition. The same could not be reconciled. Learned Court below held out that the evidence given by PW-1 was not believable.

6. PW-2 Ahmad Khan alias Guddu Khan, tried to corroborate the evidence of PW-1, PW-2 said that he along with PW-1 saw the incident, but learned Court below did not rely upon the evidence of PW-2 either.

7. PW-3 Dr. N. Bhatt, who conducted post-mortem on the dead body of the victim, found stitched wound on right hand; abrasion on right side of the face; stitched wound on right side of lower lip and three stitched wounds over parieto occipital region of the scalp. According to the Medical Officer, the cause of death of victim was haemorrhage and shock due to head injury.

8. Learned Court below held out that the factum of assault by brick on the victim was not mentioned in the first information report. There was no recovery memo of brick either. It was also held out by the Court below that the story of assault by brick was an afterthought. Even the story of assault by Khukhri was not tenable. Learned Court below found material inconsistency in the eye-witness account, vis-a-vis, medical evidence. The discrepancies were highlighted in para Nos. 10 & 11 of the impugned judgment.

9. The accused respondent also faced a charge in connection with offence punishable u/s 309 IPC. Considering the nature of injury, which was sustained by accused respondent in the abdomen, it could not be said that he tried to commit suicide. Such injury was a superficial injury. The same was not even a muscle deep injury. The Court below did not rely upon such piece of evidence.

10. We have considered the grounds on the basis of which learned Court below did not accept the prosecution story. We are unable to take a view contrary to what was taken by learned trial Court. Prosecution was not able to prove the case against the accused-respondent beyond reasonable doubt. The accused respondent was rightly entitled to be given benefit of doubt. There is no scope of interference in the judgment rendered by learned trial Court. Government Appeal is liable to be dismissed and is accordingly dismissed.