
(2011) 06 UK CK 0044
In the Uttarakhand High Court
Case No : Criminal Appeal No. 1772 of 2001

Vijay Thapa

APPELLANT

Vs

State of Uttaranchal (Uttarakhand)

RESPONDENT

Date of Decision : 14-06-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 313, 374
Penal Code, 1860 (IPC) — Section 302, 307

Citation : (2011) 06 UK CK 0044

Hon'ble Judges : Sudhanshu Dhulia, J; Prafulla C. Pant, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—This appeal, u/s 374 of Code of Criminal Procedure, 1973 (for short Code of Criminal Procedure .), is directed against the judgment and order dated 13.7.2001/17.7.2001 passed by Additional Sessions Judge/ First Fast Track Court, Dehradun in Sessions Trial No. 43 of 1990, whereby the said Court has convicted accused-Appellant Vijay Thapa under Sections 302 & 307 Indian Penal Code, 1860 (for short IPC). The Appellant has been sentenced by the trial court to imprisonment for life and directed to pay fine of Rs. 2,000/- u/s 302 IPC. He has been further sentenced to rigorous imprisonment for a period of 10 years and directed to pay fine of Rs. 2,000/- u/s 307 IPC.

2. Heard learned Counsel for the parties, and perused the lower court record.

3. Prosecution story, in brief, is that PW1 Vidya Devi (informant) was landlady and Jay Singh (brother of the accused Vijay Thapa) was her tenant. On 26.12.1998, at about 6.30, PM accused/Appellant Vijay Thapa came to the house of the informant and kicked at her door. PW1 Vidya Devi asked him to desist from doing such act, on which Vijay Thapa started hurling abuses at her. Meanwhile, Binder @ Devendar @ Virendra (deceased and son of informant) came from market along with his friend Yogesh Ghai @ Bunty (PW3). When Binder @ Devendar @ Virendra asked accused Vijay Thapa not to hurl abuses, he

took out a knife and inflicted blows on person of Binder @ Devendar @ Virendra. Yogesh Ghai @ Bunty (PW3) tried to intervene to stop accused Vijay Thapa on which he (Vijay Thapa) gave a knife blow on the person of Yogesh Ghai @ Bunty. PW1 Vidya Devi took her injured son (Binder @ Devendar @ Virendra) to Doon Hospital, where she got him admitted at about 7.20 PM. PW5 Dr. Ajay Ghai medically examined Binder @ Devendar @ Virendra and prepared injury report (Ext. A9), at the time he was admitted in the hospital. Another injured PW3 Yogesh Ghai was also taken to the hospital, and he was also admitted in Doon Hospital where his injuries were recorded at 7.45 PM (on 26.12.1998) by the same medical officer (Dr. Ajay Ghai). Injured Binder @ Devendar @ Virendra succumbed to injuries at about 2.00 AM (on 27.12.1998). Next day morning, hospital sources sent a report at the Police Station Kotwali, Dehradun, on which PW13 Sub Inspector Basudev Singh along with two constables came to Doon Hospital, and prepared inquest report (Ext. A2) after taking the dead body of Binder @ Devendar @ Virendra in his possession. Other necessary papers, letter (Ext. A17) to Chief Medical Officer requesting for post mortem examination, sketch of dead body (Ext. A20), Police Form No. 13 (Ext. A21) and sample seal (Ext. A22) were also prepared. Soon thereafter, PW1 Vidya Devi gave a written report (Ext. A1) at the police station, on the basis of which Check First Information Report (Ext. A2) was prepared by PW2 constable Suresh Chandra and Crime No. 856 of 1998 was registered relating to offences punishable under Sections 302 and 307 IPC against accused Vijay Thapa for commission of murder of Binder @ Devendar @ Virendra and attempt to commit murder of Yogesh Ghai. Investigation was taken up by PW12 Sub Inspector Jawahar Lal. The dead body of the deceased was sent in sealed condition for post mortem examination. PW6 Dr. C.M. Tyagi conducted post mortem examination on dead body of Binder @ Devendar @ Virendra on 27.12.1998 at about 2.30 PM. He recorded two ante mortem injuries (one stab wound and one stitched wound), and opined in the Autopsy Report (Ext. A11) that deceased had died of shock and haemorrhage as a result of ante mortem injuries. During investigation, the accused was arrested and knife used in the crime was recovered in respect of which Recovery Memo (Ext. A8) was prepared by the police. After interrogating witnesses, inspecting the spot and on completion of investigation, charge-sheet (Ext. A24) was filed by PW14 Sub Inspector Dinesh Chandra Thapaliyal who took over investigation from PW12 Sub Inspector Jawahar Lal. The charge-sheet was filed against accused Vijay Thapa for his trial in respect of offences punishable under Sections 302 and 307 IPC.

4. The Chief Judicial Magistrate on receipt of the charge-sheet, after giving necessary copies to the accused, as required u/s 207 Code of Criminal Procedure., appears to have committed the case to the Court of Sessions for trial. On 11.6.1999, the trial court, after hearing the parties, framed charge of offences punishable u/s 302 and 307 IPC against accused Vijay Thapa, who pleaded not guilty and claimed to be tried. On this, prosecution got examined PW1 Vidya Devi (informant and eye witness), PW2 Constable Suresh Chandra

who prepared the Check First Information Report and made an entry in the General Diary, PW3 Yogesh Ghai (injured eye witness), PW4 Head Constable Kuwar Pal Singh who witnessed the arrest of accused and the recovery made from him, PW5 Dr. Ajay Ghai who medically examined Binder @ Devendar @ Virendra on 26.12.1998 at Doon Hospital at the time of admission of the patient and prepared injury report of both the injured of this incident in the hospital, PW6 Dr. C. M. Tyagi who conducted post mortem examination on dead body of Binder @ Devendar @ Virendra, PW7 Smt. Asha Devi (widow of the deceased and eye witness), PW8 Dr. J. P. Ghildiyal who proved the Bed Head Ticket relating to the deceased, PW9 Smt. Sumitra who reached at the place of incident immediately after incident, PW10 Shyam Lal (declared hostile), PW11 Bhagwan Singh (in whose presence blood stained soil and simple soil was taken by the police), PW12 Sub Inspector Jawahar Lal who started investigation, PW13 Sub Inspector Basudev Singh who prepared inquest report and PW14 Sub Inspector Dinesh Chander Thapaliyal who completed the investigation and submitted charge - sheet. The oral and documentary evidence was put to the accused u/s 313 Code of Criminal Procedure In reply to which he pleaded that he has falsely been implicated in the crime. However no evidence in defense was adduced. The trial court after hearing the parties found that prosecution has successfully proved the charge of offences punishable under Sections 302 and 307 IPC against accused Vijay Thapa. After hearing on sentence the trial court sentenced the convict to imprisonment for life and directed to pay fine of Rs. 2000/- u/s 302 IPC, and rigorous imprisonment for a period of 10 years and directed to pay fine of Rs. 2,000/- u/s 307 IPC. Aggrieved by said judgment and order dated 13.7.2001/17.7.2001 this appeal is preferred by the convict.

5. Before further discussion, we think it just and proper to mention that ante mortem injuries recorded by PW6 Dr. C. M. Tyagi, who conducted post mortem examination on dead body of Binder @ Devendar @ Virendra on 27.12.1998 prepared Autopsy Report (Ext. A11). The ante mortem injuries recorded by said medical officer are being reproduced below:

(i) a stab wound 2 cm x 1 cm cavity deep on right side back of chest lateral 5 cm below lower angle of right scapula.

(ii) A stitched wound 4 cm x 1.5 cm on back of chest middle 35 cm below lower angle of neck.

6. In the internal examination, PW6 Dr. C. M. Tyagi found that the right lung was ruptured and cavity was full of blood. Liver was also found ruptured. The aforesaid medical officer opined that deceased had died of shock and haemorrhage as a result of ante mortem injuries. The medical evidence adduced by PW6 Dr. C. M. Tyagi establishes on the record that deceased had died of homicidal death. Now we have to examine whether accused Vijay Thapa has committed murder of Binder @ Devendar @ Virendra, and attempted to commit murder of Yohesh Ghai, as suggested by prosecution or not.

7. PW1 Vidya Devi (informant and eye-witness) has stated on oath that on 26.12.1998, at about 6.15 PM, accused Vijay Thapa kicked at her door and she asked him to desist from doing the same. On this, the accused Vijay Thapa started hurling abuses. Meanwhile, informant's son Binder @ Devendar @ Virendra came there and asked accused Vijay Thapa not to use foul language. Accused Vijay Thapa thereafter inflicted knife blows on the person of Binder @ Devendar @ Virendra. Yogesh Ghai @ Bunt (PW3) also came there and attempted to save Binder @ Devendar @ Virendra. Accused Vijay Thapa, on this, inflicted a knife blow on the person of Yogesh Ghai also. This witness (PW1) has further stated that she took her injured son to hospital. She has further told that she got lodged First Information Report (Ext. A1) at the Police Station on the next day.

8. The statement of PW1 Vidya Devi (informant-eye-witness) gets corroborated from the statement of PW3 Yogesh Ghai, who is an injured eye-witness. This witness has also narrated the prosecution story as stated by PW1 Vidya Devi. Presence of Vidya Devi (PW1) in her house is natural, and her statement is trustworthy. The statement of PW3 Yogesh Ghai is also reliable, and cannot be doubted for the reason that he has suffered the injury in the incident.

9. The fact that PW3 Yogesh Ghai suffered injury at the time of incident gets corroboration from the statement of PW5 Dr. Ajay Ghai, who has stated that at 7.45 PM (on 26.12.1998) he examined injuries on the person of Yogesh Ghai and recorded the same in Injury Report (Ext. A10). The injury suffered by Yogesh Ghai recorded by PW5 Dr. Ajay Ghai are being reproduced below:

(i) incised wound 2.5 cm X 1 cm left side back of chest 29 cm above the deep of the cally. Depth not proved.

10. PW5 Dr. Ajay Ghai has further stated that the aforesaid injury was kept under observation. According to him, duration was fresh and injury could have been caused on 26.12.1998 at about 6.00 PM by object like knife.

11. The prosecution story gets further corroboration from the statement of PW7 Smt. Asha Devi (widow of deceased) who also witnessed the incident in front of her house. Testimony of this witness is also natural. Even after lengthy examination of three eye-witnesses, nothing has come out which creates reasonable doubt in their statements.

12. On behalf of Appellant it is argued that the First Information Report is delayed one. It is contended that Yogesh Ghai (PW3) and Binder @ Devendar @ Virendra in drunken condition might have clashed and the Appellant is named due to admitted enmity. However, on careful examination of the prosecution evidence we do not find any scope of such possibility in the facts and circumstances of the case. Merely for the delay in lodging of First Information Report, it cannot be said that the prosecution story is doubtful. It has come on the record that soon after the incident PW1 Vidya Devi took her injured son to hospital where she got him admitted. The injured son of the informant died in

the wee hours on 27.12.1998. Naturally, she must have taken some time to recover herself. In the circumstances of the case, lodging of First Information Report on the next day at about 8.45 morning the delay stands sufficiently explained.

13. It is pointed out on behalf of the Appellant that from Injury Report (Ext. A9) prepared by PW5 Dr. Ajay Ghai there is only one injury mentioned on the person of Binder @ Devendar @ Virendra but the PW3 Yogesh Ghai (eye-witness) has stated that two injuries were inflicted on the person of Binder @ Devendar @ Virendra by the accused. As such it cannot be said that the incident has taken place in the manner suggested by the prosecution. We have gone through the statements of the eye-witnesses and other medical evidence on record and find that in fact the deceased received two knife blows. The eye-witness account on this point is consistent. Post mortem report also discloses two ante mortem injuries. Not only this PW8 Dr. J. P. Ghildiyal, who produced Bed Head Ticket and proved the same in the court, has stated in the cross examination that there were two injuries suffered by the deceased. As such, in our opinion the inconsistency gets explained and eye-witness account given by PW1 Vidya Devi, PW3 Yogesh Ghai (injured eye witness) and PW7 Smt. Asha Devi cannot be disbelieved on the above ground.

14. For the reasons as discussed above, we find no force in this appeal, which is liable to be dismissed. The appeal is dismissed. The Appellant is on bail. His bail is cancelled. Let lower court record be sent back to make Appellant Vijay Thapa serve out the sentence awarded by the trial court.