

Phool Chandra and Another Vs. State of Uttarakhand and Another

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Court : Uttaranchal

Decided On : Apr-16-2013

Judge : The Honourable Chief Justice Mr. Barin Ghosh & Alok Singh

Appeal No. : Criminal Appeal No. 293 of 2008 With Government Appeal No. 318 of 2008

Appellant : Phool Chandra and Another

Respondent : State of Uttarakhand and Another

Judgement :

Alok Singh, J.

1. Since both the appeals have been preferred against the same judgment and order dated 29.07.2008 passed by Additional Sessions Judge / 1st FTC, Dehradun in Sessions Trial No. 17 of 2007 whereby accused Phool Chand was found guilty for the offences punishable under Section 396, 201 IPC and sentenced to undergo life imprisonment and to pay fine of Rs. 10,000/-, failing which to undergo six months additional rigorous imprisonment for the offence punishable under Section 396 IPC; sentenced to undergo 3 years rigorous imprisonment and to pay fine of Rs. 5,000/-, failing which to undergo three-months additional rigorous imprisonment for the offence punishable under Section 201 IPC, so both the appeals are being disposed of by this common judgment.

2. As per the content of FIR lodged by PW1 Saroj Bala, on 25.11.2002, when she went to meet his brother Mukesh, at his residence situated at 26, Aadhat Bazar, Dehradun, she found his shop locked; she made inquiry from PW3 Surendra, who ran a Betel shop in front of his brother, to know the whereabouts of Mukesh and his family; he told her that he had seen her brother on the last Thursday at about 08.00 p.m. leaving his shop-cum-house in order to attend a marriage, thereafter, he had not seen them. On this, she made enquiries from other neighbours and being not satisfied, she went to her Aunts house (BUAA fathers sister) and therefrom, she along with her cousins Raj Kumar (PW7) and Anil Kumar, came back on the spot and having obtained the key of shop from one loader namely Asha Pal opened the shop entered therein where they found Mukesh Kumar, his wife Neelam and two sons namely Siddharth and Yash were lying dead and they also noticed that household articles were scattered; on enquiry, she came to know that two other loaders, who were working with her brother Mukesh, namely Phool Chand, son of Chucha and Viddhan, son of not known were missing from the fateful day, so she believed that Phool Chand and Viddhan along with their other companions, after committing loot in the house of Mukesh, had murdered her brother Mukesh, sister-in-law Neelam and their children Siddharth and Yash.

3. On the report of PW1, police registered a case against Phool Chand and Viddhan for the offences punishable under Section 302, 394 IPC. On 26.11.2002, PW1 has submitted another application before the police stating that having searched the house, they came to know that miscreants had looted gold and other ornaments, which were mentioned at serial no. 1 to 19 in the application and she and her elder sister Meenakshi, could identify those articles, if the same were recovered.

4. Co-accused Ram Manohar, Ramesh and Jai Chandra were arrested by the police and looted cash and jewellery were also recovered from their possession, however, present appellant and Viddhan could not be arrested by the police. After completing all the requisite formalities of the investigation police submitted charge-sheet against Ram Manohar, Ramesh and Jai Chand under Section 396, 412, 201 IPC. Co-accused Ramesh, Ram Manohar and Jai Chand were put to trial in Sessions Trial No. 33 of 2003 and were ultimately convicted by the Additional

Sessions Judge/ 4th FTC, Dehradun vide judgment and order dated 13.05.2004. They were directed to undergo life imprisonment with fine of Rs. 10,000/- each and in default, to further undergo rigorous imprisonment for one year each under Section 396 IPC; to undergo 10 years rigorous imprisonment with fine of Rs. 10,000/- each and in default, to further undergo rigorous imprisonment for one year under Section 412 IPC; and to undergo rigorous imprisonment of three years with fine of Rs. 10,000/- each and in default, to further undergo rigorous imprisonment for one year under Section 201 IPC.

5. Criminal jail appeals no. 248 and 316 of 2004 and criminal appeal no. 70 of 2005 were preferred by co-accused Ram Manohar, Jai Chandra and Ramesh while Government Appeal No. 117 of 2005 was preferred by the State for enhancement of the sentence by awarding death penalty. All the four appeals were heard together by the Division Bench of this Court. This Court has dismissed all the appeal vide judgment dated 12.04.2010. Co-accused Viddhan could not be arrested, therefore, he was declared absconder.

6. Phool Chand was found languishing in District Jail, Fatehpur, U.P. and on Warrant B, he was summoned from District Jail on 17.10.2006 and thereafter, Phool Chand was taken on police remand; while he was on police remand, on 31.10.2006, he took the police party to village Sheer Ibrahimpur, District Fatehpur. After digging the soil, beneath the Peepal tree, in front of house of Harish Chand, son of Shripati Harijan, he took out a polythene bag containing one gold necklace, one pair of earrings, one pair of JHUMKE, one gold chain, one pair of gold ear tops, four nose rings, one pair of silver BICHUAE. All the ornaments, so recovered, were kept in the sealed cover and memo of recovery thereof was prepared.

7. During the course of investigation, police came to know that a fixed deposit of Rs. 50,000/- was also made by Phool Chand in the name of his brother Hari Lal with Sahara India Branch, Fatehpur, on 25.11.2002 for 10 years. After investigation, police has submitted a charge-sheet for the offence punishable under Section 396, 412 and 201 IPC.

8. From the side of prosecution, 18 prosecution witnesses were examined. As per statement of PW2, Phool Chand was working in the shop of deceased Mukesh, as a loader. PW2 had given Rs. 31,000/- to Mukesh in presence of Phool Chand on 18.11.2002 in order to take delivery of wheat. On 22.11.2002, four trucks of wheat were supplied and in the last vehicle, Phool Chand came along with wheat and he had received Rs. 75,000/- from him towards the cost of wheat, so supplied, on behalf of Mukesh. PW3 Surendra deposed that on 21.11.2002, Mukesh had shut down his door at about 08.00 p.m. and at that time, Phool Chand appellant was with him. Next day, he had seen Phool Chand loading wheat in the truck along with Asha Pal. He had seen Phool Chand going in the truck loaded with wheat and Asha Pal had locked the shop. He further submitted that on 25.11.2002, PW1 came to the shop and made inquiry about Mukesh and his family and after taking keys from Asha Pal, she opened the shop and found dead bodies of Mukesh, Neelam and their children and house hold articles were scattered. He further stated that accused Phool Chand had been doing the work of loading in the shop of Mukesh and used to sleep in the shop itself.

9. PW7 Raj Kumar has stated that he and Mukesh along with their families had returned from the marriage of son of Shyam Sunder Ahuja at about 10.00 or 10.30 p.m. and at that time, Phool Chand and four other loaders were present in the shop-cum-house of Mukesh. After shaking hand with PW7, Mukesh entered into his house-cum-shop in presence of Phool Chand and four other loaders.

10. PW9 Dr. N. S. Tomar stated that postmortem examinations of dead bodies were conducted by him on 26.11.2002 and cause of death was asphyxia due to strangulation and death could have been caused in the intervening night of 21.11.2002 / 22.11.2002.

11. PW10 Mahesh Sharma stated that Mukesh was his real brother-in-law. Having received the information about the ill health of his own mother-in-law, he reached to Dehradun from Delhi and at about 11.00 p.m. on 21.11.2002 while passing through the house of Mukesh, he noticed that lights of Mukeshs shop were on, therefore, he thought that Mukesh might have brought his mother-in-law in his house. He called Mukesh and on his call, Viddhan came out from the shop and

told him that Mukesh had gone to Gurgaon to attend the marriage of his cousin, he noticed that Viddhan, Jai Chand, Ram Manohar along with Phool Chand were also there, thereafter, he asked Phool Chand and Viddhan, what they were doing in the shop and what type of noise was coming out, on this Phool Chand replied that LALA JI (Mukesh) had left them for watching the shop and one of the loaders had consumed more liquor, so he was crying inside the shop. However, he could not notice any suspicion thinking that Phool Chand might be right in saying that one of the loaders, after consuming more liquor, making noise in the shop. He further stated that on the next day, after meeting with his mother-in-law, he was going back to Delhi and then, he noticed that Phool Chand and Viddhan were loading wheat in a trolley and on inquiry appellant told him that LALA JI (Mukesh) had directed them to sell and transport the wheat, therefore, they were transporting the same, however, he could not suspect the activities of Phool Chand and Viddhan and went back to Delhi. However, having come to know about the loot and murder of Mukesh and his family on 25.11.2002 telephonically, he could realize everything.

12. Learned trial court, having found the statements of PW1, PW2, PW3, PW7, PW10 reliable, has rightly come to the conclusion that Phool Chand along with others co-accused were present in the shop-cum-house of Mukesh (deceased) and Mukesh was last seen in the company of Phool Chand in his house-cum-shop in the intervening night of 21/22.11.2002. Learned trial court, having placed the reliance on the recovery of looted ornaments as well as of the FDR made by Phool Chand in the name of his brother for 10-years with Sahara India Branch, Fatehpur, came to the conclusion that he was Phool Chand along with other co-accused, who had committed dacoity and murder of Mukesh and his family.

13. The very important fact in the present case is FDR of Rs. 50,000/- in the name of brother of Phool Chand with Sahara India Branch, Fatehpur. Considering the financial condition of Phool Chand and his brother, on being asked, what was the source of income of Rs. 50,000/- which was got deposited by Phool Chand in the name of his brother, learned counsel for the appellant Phool Chand failed to satisfy us. Not only this, ornaments got recovered by Phool Chand, were duly identified by PW1 in the presence of Magistrate. Conduct of Phool Chand that he

was missing from the intervening night 21.11.2002/22.11.2002 and did not report back to his master under whose employment he was working in the Aadhat Bazar also supports the prosecution story that he was the appellant Phool Chand, who had committed the crime along with his companions. Recovery of ornaments and FDR of Rs. 50,000/- also corroborates the prosecution story, so the appeal preferred by the appellant Phool Chand fails and is dismissed.

14. So far as, appeal filed by the State is concerned, we do not find any material, which may place the present case in the category of rarest of rare case justifying the death penalty. In our considered view, sentence awarded by the trial court appears to be justified and does not call for any interference; therefore, appeal, preferred by the State, is hereby dismissed.

15. Let a copy of this judgment be sent to the court below for information along with lower court record.

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