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Court : Uttaranchal

Decided On : Jul-10-2012

Judge : The Honourable Chief Justice Mr. Barish Ghosh &Amp; U.C. Dhyani

Appeal No. : Criminal Appeal No. 01 of 2007 along with Criminal Appeal No. 08 of 2007

Appellant : Dhan Singh and Another

Respondent : State of Uttarakhand

Judgement :

U.C. Dhyani, J.

1. Present criminal appeals have been filed on behalf of the appellants Dhan Singh and Pooran Singh 2 who have been convicted by learned Sessions Judge, Pauri Garhwal on 18.12.2006 for the offence punishable under Section 302 IPC read with Section 34 IPC. Both the appellants have been awarded imprisonment for life along with a fine of Rs. 5,000/- in relation to the said offence.

2. Prosecution story in brief is that Informant Kumari Shobha lodged a complaint (Ext. Ka-1) on 22.07.2004 with pradhan of gaon sabha Dabrad, district Pauri Garhwal alleging that on 22.07.2004 at 12:30 pm her father Balwant Singh son of Madho Singh was killed by Pooran Singh and Dhan Singh, both sons of Gabar Singh in the courtyard (chowk) of Bhagwan Singh with a wooden flat used for sitting in villages (chaukla). Since the injury was inflicted on Balwant Singhs head

therefore, victim died. The incident was seen by informants mother and brother.

3. The occurrence took place on 22.07.2004 at about 12:30 pm and written report was submitted to village pradhan who forwarded the same to Patwari Circle -9 on the same day, on the basis of which chik FIR (Ext. Ka-3) was prepared on 23.07.2004 at 8:00 am at police station Lansdowne, district Pauri Garhwal. The distance between the police station and the place of occurrence was about 10 kilometers and hence there appeared to be no delay in lodging First Information Report.

4. After registration of crime, investigation proceeded and on completion, charge-sheet was submitted against accused appellants Dhan Singh and Pooran Singh. Accordingly, charges were framed against the accused-appellants for the offence punishable under Section 302 IPC read with Section 34 IPC to which they pleaded not guilty and claimed to be tried. Prosecution examined as many as six witnesses. Statements of the accused under Section 313 Cr.P.C. were taken. Appellants did not adduce any evidence in defence. The accused persons/appellants were convicted after the trial. Aggrieved against the Judgment and Order of trial court, present appeals were preferred.

5. Informant Km Shobha came to depose before the trial court as PW 3. She said that on 22nd July, 2004 at 12:30 pm she was near water tap. She heard the sound of quarrel in Bhagwan Singhs courtyard (chowk). When she reached Bhagwan Singhs chowk, she saw that her father was lying on the ground in a pool of blood. Her mother and her brother Digpal were trying to give support to her father. When she enquired about the incident, her father said that Dhan Singh and Pooran Singh have beaten him. Many a villagers reached there. Her father was seriously injured. He was taken to his home. He survived only for 5-6 hours because the injuries were serious. PW 3 Shobha proved her complaint (Ext. Ka-1) which was handed over to village pradhan. In cross-examination, she said that water tap was at a distance of 15-20 paces from Bhagwan Singhs chowk. The tap and chowk were opposite to each other. An altercation took place all of sudden. Harendra Singh and Narayan Singh reached on the spot. She admitted that she did not see the incident. She also said that her father was not given medical treatment. A

person was sent to call the doctor but by then her father was dead. Her house was situated in the middle of village. Some 40-50 families were residing there. She gave the report to patwari on the same day the occurrence took place. She denied the suggestion that the accused-appellants did not cause hurt to the victim and the victim sustained injuries because he fell down from the projection of a verandah (chhajja).

6. Thus PW 3 Kumari Shobha admitted in her cross-examination that she did not witness the occurrence. The injured was not given proper medical aid. The injured was not provided medical treatment (under an expert medical practitioner). She also conceded that it was sudden and grave provocation that resulted into the death of victim.

7. Out of two witnesses whose names were cited by PW 3 Kumari Shobha, one of them, viz., Narayan Singh entered into witness box as PW 4. He said in his examination-in-chief that victim was the eldest son of his uncle. That way he was cousin of deceased. On 22.07.2004 he was in his village. He heard the noise of cries in the chowk of Bhagwan Singh at 12:30 pm. When he came out of his house and reached Bhagwan Singhs courtyard, he saw that Balwant Singh (victim) sustained injuries on his head. Master Harendra Singh, Jiwali Devi, Shobha and Digpal were providing support to victim. Balwant Singh was lifted from place of occurrence and was rested in a cot. When enquired from Balwant Singh, he said that Pooran Singh and Dhan Singh inflicted blows on his head. Balwant Singh passed away after 5-6 hours of the incident.

8. In cross-examination, PW 4 Narayan Singh said that there was only one house where the incident took place. Three family members reside over there in different portions. He said that this house was in the middle of village. There were approx 25-30 families in the village. Bhagwan Singh had gone to plough his field when the occurrence took place. He was not present there. This witness was not aware whether Bhagwan Singhs wife was also present on the place of incident or not. Harendra Singh and members of the family of victim had reached there. This witness remained on the scene for 15-20 minutes. Harendra Singh was providing first aid to the victim. This witness admitted that he did not see with whom the

altercation took place. In other words, he did not see the culprits on the spot. He also did not witness the quarrel taking place between Balwant Singh (victim) and assailants. Bhagwan Singhs courtyard was situated at a distance of 25-30 meters from his house. He did not hear what was the subject matter of dispute. He told Patwari that PW 3 Shobha applied bandage on the forehead of victim Balwant Singh. Victim was looking normal after the incident. He denied the suggestion that he was telling a lie because he was related to victim. He also denied the suggestion that Balwant Singh sustained injuries on his own.

9. The other witness Harendra Singh whose presence was cited by PW 3 Kumari Shobha, did not come to depose before the trial court.

10. Learned Amicus Curiae argued that since the victim Balwant Singh received injuries on his own, therefore neither medical aid was given to him nor medical report was got prepared by family members. Learned Amicus Curiae also submitted that neither PW3 Shobha nor PW 4 Narayan Singh saw the incident. Both reached there when the incident was already over. PW 3 Shobha and PW 4 Narayan Singh did not see the appellants on the spot. They deposed before the trial court that they were narrating the incident as told to them by victim. It was hearsay evidence.

11. PW 1 Jivali Devi wife of victim Balwant Singh said in her examination-in-chief that accused appellants Pooran Singh and Dhan Singh belonged to her village. On the fateful day at about 12:30 pm when she was cooking food, appellants were quarrelling with her husband Balwant Singh in the courtyard of Hari Singh. The dispute was over water. Jivalid Devi first went to the courtyard of Hari Singh and then to the courtyard of Bhagwan Singh. When PW 1 Jivali Devi went to the courtyard of Bhagwan Singh along with her son Digpal then both the appellants also came there. The father of accused-appellants exhorted his sons to kill Balwant Singh and also said that he will face the consequences. Dhan Singh caught hold of Balwant Singh. Pooran Singh inflicted blow of wooden plank on the head of victim Balwant Singh. She (PW 1 Jivali Devi) tried to save him (victim) but she was pushed away. Appellants fled away after giving blows to victim. Thereafter, Narendra Singh, Harendra Singh, Narayan Singh and Shobha came to

courtyard. Victim Balwant Singh was taken to his house. Victim breathed his last after 4-5 hours. She sent her brother-in-law (dewar) to call the doctor from Government Hospital but doctor did not come and in the meantime victim Balwant Singh passed away. Next day when patwari came to village, he was handed over the wooden plank, shirt soaked in blood and chunni. Patwari reduced in writing something and got her thumb impressions over a piece of paper.

12. In cross-examination she said that Pooran Singh was her neighbour. There was only one house between her house and Bhagwan Singhs house. About a year ago, appellants picked up quarrel with her husband. Appellants father came to assault her husband. Patwari was told about the same. Patwari was also told that she went along with her son Digpal, firstly to Hari Singhs chowk and then escorted her husband to Bhagwan Singhs courtyard. She also told that accused persons followed them in Bhagwan Singhs courtyard but the same was not written by patwari in her statement. She also did not attribute the reason as to why Patwari did not record her statement under Section 161 Cr.P.C. that assailants father exhorted his sons to kill Balwant Singh and said that he will face the consequences. When the accused persons fled away, 6-7 persons came over there. Harendra Singh, Narayan Singh and Bhagwan Singh were amongst them. Narayan Singh was her brother-in-law (dewar) and Harendra Singh was the son of her sister. She tied chunni over the head of her husband. She denied the suggestion put forward on behalf of accused persons that victim sustained injuries on his own and appellants did not assault him.

13. PW 2 Digpal Singh was the son of victim. He said that accused persons hit upon the head of his father with wooden plank (Ext.-1). He also said that on 22.07.2004 at about 12:30 pm appellants Pooran Singh and Dhan Singh were quarrelling with his father. When he along with his mother went to Hari Singhs courtyard her mother rescued him from accused persons and took him to Bhagwan Singhs courtyard. Accused persons followed them. Gabar Singh, father of the appellants, was standing there. He exhorted his sons Dhan Singh and Pooran Singh to kill Balwant Singh. Dhan Singh caught hold of victim and Pooran Singh hit on the head of victim with wooden plank which was lying in the courtyard of Bhagwan Singh. His father sustained serious injuries. He fell down on the

ground in a pool of blood. When they started crying, his sister Shobha reached on the spot. Harendra Singh and Narayan Singh also reached there. Since his father was serious, he was taken to home. His uncle was sent to call the doctor but the victim could not survive and he passed away within 4-5 hours.

14. In the cross-examination, he said that Bhagwan Singh was his neighbour. Harendra Singhs house was situated at a distance of 20-25 paces. Dhan 10 Singh had gone to assault his father in cowshed about a year ago. No altercation took place since that incident (till present incident). The altercation on the fateful day took place over water. He denied that the incident took place instantaneously. Various suggestions were put to this witness regarding the statement given by him to patwari under Section 161 Cr.P.C., to which he said that he cannot assign reasons for non-recording of such statements. He also said that Shobha came there soon after the victim sustained injuries. Harendra Singh and Narayan Singh also came there. Harendra Singh applied bandage on victims forehead. A person was sent to call the doctor but the victim passed away by then. His father was not suffering from any ailment before this incident.

15. PW5 Doctor Bagesh Chandra Kala conducted postmortem on the dead body of victim Balwant Singh on 24.07.2004 at 03:15 pm. He proved his report Ext. Ka-2. He found following ante-mortem injuries on the dead body of victim:

Lacerated wound of size 4 cm x 3 cm x bone deep. Depressed of underlying skull bone is present of size 4 cm x 3 cm. Transverse in direction over just above forehead and 8 cm above base of nose.

16. According to the doctor, the cause of death of victim was head injury as a result of ante-mortem injuries. He also said that injuries were possible on 11 22.07.2004 at 12:30 pm and could be sustained, if hit by a wooden plank.

17. PW 6 Narendra Singh Rawat, Patti Patwari, Paino-4, Tehsil Lansdowne proved chik FIR (Ext. Ka-3) which was lodged on the basis of complaint (Ext. Ka-1). He also proved site plan (Ext. Ka-5), inquest report (Ext. Ka-6), memo of blood stained clothes of victim (Ext. Ka-7), memo of taking wooden plank (Ext. Ka-8), memo of taking blood stained soil and simple soil (Ext. Ka-9), other papers relating

to dead body (Ext. Ka-10 to Ext. Ka-14), application written by father of appellants (Ext. Ka-15) and charge-sheet (Ext. Ka-16).

18. Eyewitness account tendered by PW 1 Jivali Devi and PW 2 Digpal Singh would lead us to believe at first blush that the victim received thrashing from the hands of accused persons/appellants. Since the injury was caused on the vital organ therefore, the victim succumbed to head injury as was opined by Medical Officer that cause of death was head injury as a result of ante-mortem injuries. Although other witnesses did not see the incident but PW 1 Jivali Devi and PW 2 Digpal Singh came on the spot no sooner the altercation took place. It was not a case of sudden and grave provocation. The appellants had knowledge that if wooden plank was hit up on the vital organ like forehead of victim, it will result in his death. The 12 injuries sustained by victim were such that the same caused his death. It was not a case of Section 304 IPC at all. It will be either an offence punishable under Section 302 IPC or no offence at all but certainly it will not fall within the category of offence punishable under Section 304 IPC.

19. But following are the circumstances which lead us to take a different view granting the accused-appellants benefit of doubt. The facts and circumstances are enumerated herein below :

(i) Informant moved the complaint on 22.07.2004 alleging that the incident took place on the same day at 12:30 pm. The postmortem was conducted on 24.07.2004 at 3:15 pm. Doctor recorded that the death took place between 1 to 1 and days ago. That means the death of victim took place 24 + 12 = 36 hours ago (and not before that). It follows that the death of victim took place sometimes in the morning of 22.07.2004 around 3:00 am. In other words, the death of victim took place in the intervening night of 22.07.2004/23.07.2004 at 3:00 am according to medical report. Complaint was given by the informant on 22.07.2004. It was mentioned therein that informants father had died. It means that when the complaint was presented to patti patwari through village pradhan, the victim was no more. Conceding for the sake of arguments that the complaint was presented as late as at 11:59 pm on 22.07.2004 (farthest possible time extended for the purpose of calculation with a view to stretch the same to the maximum to bring it

closest to the time of death as opined by Doctor), the time does not coincide with the time of death as given by the doctor. There was still a difference of 3 hours. Going by the eyewitness account, Balwant Singh died on 22.07.204 between 4:00-5:00 pm on 22.07.2004. Only thereafter the complaint was given (it was mentioned in the complaint that the victim was dead). The time of death as given by the informant and time of death as given by doctor did not tally. This was the biggest lacuna in prosecution evidence. Eyewitness account was not corroborated by the medical evidence as regards the time of death.

(ii) The witnesses who rendered eyewitness account of assault upon victim were related witnesses. Although the eyewitness account rendered by the related witness is not liable to be thrown in the dustbin, the law only enjoins upon the court to scrutinize their evidence with vengeance. The eyewitness account of PW1Jiwali Devi and PW 2 Digpal Singh would have been treated with respect but there is no explanation of such a wide gap of time of death of victim in the oral statements and doctors report. The same was irreconcilable.

(iii) Dispute of water might be the possible reason but whether, in fact, there was a dispute of water between the parties, has not been investigated.

(iv) Allegation has it that Gabar Singh exhorted his sons to kill the victim. Gabar Singh was also alleged to have told his sons that he will face the consequences. Whereas Gabar Singhs sons were charge sheeted and tried, no charge sheet was submitted by I.O. against the person who instigated his sons to commit crime. This aspect of the matter was not investigated.

(v) No doctor came to depose that he was called by the uncle of PW 3 Shobha and he did not come.

(vi) PW 3 Shobha was educated girl. In normal course of events if an incident of this nature happened and her father was sinking, at least last minute efforts were to be made to take the victim to hospital. Ironically no such efforts were made in the case. (vii) Had proper medical aid been provided to victim in time, he could have been saved.

(viii) Neither medical report was prepared nor inquest witness was examined.

(ix) Gram Pradhan of the village was not examined. He could have thrown some light on the presentation of complaint and time of death of victim. Km. Shobha presented complaint to him and he forwarded the same to Patwari Circle -9.

(x) It was possible that the victim might have fell down on his own and sustained injuries. He might have died of those injuries. In the circumstances the possibility that the appellants were implicated for no just reason cannot be ruled out.

(xi) The one and only logical conclusion of the incident should be that the accused-appellants committed such crime. Unfortunately no such logical conclusion can be drawn in this case.

(xii) If two views are possible, then would it not be proper to give the appellants benefit of doubt?

20. In the given circumstances of the case as discussed above, the accused-appellants are liable to be given benefit of doubt as the prosecution has not been able to prove charge against them for the offence punishable under Section 302 IPC read with Section 34 IPC to the hilt. It is accordingly held that the prosecution has not been able to prove its case against the accused appellants Dhan Singh and Pooran Singh beyond reasonable doubt.

21. For the reasons as discussed above, the appeals preferred on behalf of appellants Dhan Singh and Pooran Singh are allowed. The

JUDGMENT / ORDER

dated 18.12.2006 passed by learned Sessions Judge, Pauri Garhwal is hereby set aside. The conviction recorded in respect thereof and sentence thus awarded to the appellants as regards offence punishable under Section 302 / 34 IPC is also set aside. Appellant Dhan Singh is on bail. His bail bonds are cancelled and sureties are discharged. He need not surrender. Appellant Pooran Singh is in jail. He be set at liberty forthwith, if not required to be detained in any other case. An information to this effect be sent to the Superintendent of Jail where the appellant

Pooran Singh is currently serving out the sentence.

Let a copy of the Judgment be sent to the court concerned for compliance. Lower court record be also sent back.

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