

Pooran Singh Vs. State of Uttarakhand

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Court : Uttaranchal

Decided On : Mar-05-2008

Reported in : 2008CriLJ2693

Judge : J.C.S. Rawat, J.

Appellant : Pooran Singh

Respondent : State of Uttarakhand

Disposition : Appeal dismissed

Judgement :

J.C.S. Rawat, J.

1. This appeal has been preferred against the judgment and order dated 11-7-2002 passed by the then Sessions Judge, Almora in Sessions Trial No. 15 of 1997, State v. Pooran Singh, whereby the appellant has been convicted and sentenced to undergo rigorous imprisonment of three years Under Section 326, Indian Penal Code, 1860 (for brevity as I.P.C.).

2. Brief facts of the prosecution case are that on 21-7-1994 at about 11:30 am, injured Bache Singh had gone to graze his animals to the forest. In the meantime, the animals of one Jeet Singh of his village entered the field of informant Alam Singh to graze the crops of the informant. Bache Singh, son of informant Alain

Singh on the call of his mother went to his field to drive the animals out. When Bache Singh was ousting the animals, the appellant Pooran Singh, s/o Jeet Singh gave a blow by sickle (gandasa) on his neck from the back side resulting serious injury upon his neck. The parents of the injured-Bache Singh immediately rushed to the place of incident. Thereafter, a report was lodged by informant Alam Singh with Patti Patwari Dhansyari on the same day, i.e. 21-7-1994 at about 1 p.m. The distance between the place of occurrence and the revenue police chowki is about 4 kms. The matter was investigated by incharge Kanoongo Rajendra Singh Negi PW3. After recording the statement of the witnesses Under Section 161 Cr. P.C. and preparing the necessary documents during investigation as required, he submitted the charge-sheet Ex. Ka-4 against the accused appellant under Section 307/326. I.P.C.

3. After submission of charge-sheet, the accused/appellant was committed to the Court of Session for trial and the trial Court framed charge Under Section 307, I.P.C. against the accused/appellant. The accused/appellant denied the charge levelled against him and claimed his trial.

4. The prosecution in support of its case examined Khimuli Devi PW1, mother of injured-Bache Singh. She is the eye-witness of the incident. Bache Singh PW2 is the injured eye-witness. He has narrated the entire story. In-charge Kanoongo, Rajendra Singh Negi PW 3 is the Investigating Officer of the case who has submitted the charge-sheet Ex. Ka. 4.

5. The accused-appellant was examined Under Section 313, Cr. P.C. and he has pleaded not guilty to the offence. He has further stated that he has been falsely implicated in this case.

6. The learned Sessions Judge, after appreciation of the evidence and hearing the parties convicted the appellant and sentenced him as indicated above.

7. I have heard the learned Counsel for the parties and perused the record.

8. At the outset, it needs to be mentioned here that there is no dispute that injured-Bache Singh PW2 sustained injury on his neck on 21-7-1994 at about 11.30 a.m.

Dr. M.S. Bora medically examined injured-Bache Singh PW2 and found the following injury on his person:

i. An incised wound on left side of neck 6.6 cm. x 3 cm. x 2.5 cm. deep. Its anterior end was 2.5 cm. below and backwards from left ear's lobe and posterior end was 9.0 cm. backwards to left ear lobe. Margins were clean cut, wound was spindle shaped. Fresh bleeding was present.

9. According to the opinion of Dr. M.S. Bora, the injury was grievous in nature, caused by sharp cutting instrument's edge and the injury was fresh in nature. The doctor prepared the injury report Ex. Ka.5. The defence has admitted the genuineness of the injury received by the injured. Thereafter, the doctor has submitted a supplementary report Ex. Ka-6 on 1-8-1994. As such, the doctor was not examined before the trial Court. As per the supplementary report, the injury was not dangerous to life. It was further opined by the doctor that the injury could have been caused on 21-7-1994 at 11.30 a.m. by gandasa (a sickle). There is ocular testimony of Khimuli Devi PW1 and Bache Singh PW2 that Bache Singh PW 2 sustained the aforesaid injury on 21-7-1994 at about 11.30 a.m.

10. Now, I have to examine as to whether the appellant is the author of the injury caused on the person of the injured or not. The case rests on direct evidence of Khimuli Devi P.W. 1 and injured-Bache Singh P.W. 2. Injured eye-witness Bache Singh P.W. 2 in his evidence has stated that on 21-7-1994 at about 11.30 a.m., he went to the jungle with his animals. In the meantime, his mother Khimuli Devi P.W. 1 saw that some of the animals of Jeet Singh who is the father of appellant-Pooran Singh, were entering in her field and started grazing the crops cultivated in the field. After seeing this, Khimuli Devi P.W. 1 raised alarm and asked the injured-Bache Singh to drive the animals out from the field. When injured-Bache Singh P.W. 2 reached at the spot and tried to oust the animals of Jeet Singh, a conversation took place between appellant-Pooran Singh s/o Jeet Singh and injured-Bache Singh P.W. 2. Immediately, thereafter Bache Singh P.W. 2 started repairing wall which was damaged by appellant-Pooran Singh at the time of entering the animals in the field. Meanwhile, the appellant-Pooran Singh gave a blow on his neck by a gandasa by which he sustained injury on his neck. In his

turn, he also thrown a stone upon appellant-Pooran Singh and started to run away from the place of incident in order to get scot-free from the appellant. The appellant-Pooran Singh followed him to some distance but in the meantime, father and mother of the injured-Bache Singh P.W. 2 came there. Thereafter, accused-Pooran Singh escaped. Alam Singh, the father of the injured-Bache Singh P.W. 2 went to Patwari Headquarter and lodged the report of this effect. The evidence of the injured is further corroborated by the evidence of Khimuli Devi P.W. 1. Khimuli Devi P.W. 1 has also narrated the entire incident. She has stated that she was in her field nearby the place of incident from where she asked his son, injured-Bache Singh P.W. 2 to oust the animals of the appellant from her field. Khimuli Devi P.W. 1 has corroborated the evidence of injured-Bache Singh P.W. 2 on all material particulars. The witnesses were cross-examined at length but nothing could be elicited from their cross-examination.

11. It is also pertinent to mention here that Alam Singh, father of the injured-Bache Singh P.W. 2 has died during the pendency of trial and he could not be examined before the Court. Alam Singh has promptly reported the matter to the police station at about 1.00 p.m. on the date of the incident. The distance of police station and place of occurrence is about 4 kms. as shown in the F.I.R. The prompt F.I.R., thus, inspires confidence that it was not an outcome of any consultation or deliberation. F.I.R. In a criminal cases and particularly in a case where injury has been caused on the injured, is a valuable piece of document for the purposes of appreciating the evidence laid at the trial. The object of insisting upon prompt lodging of F.I.R. Is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the culprits and the parts played by them, and the weapons, if any, used. The delay in lodging the F.I.R. often results in an embellishment, which is a creature of an afterthought. In the instant case, the prompt F.I.R. Inspires confidence. The manner of the incident and the participation of the appellant has rightly been indicated in the F.I.R. It is also pertinent to mention here that Bache Singh P.W. 2 is an injured witness whose testimony cannot be washed off lightly. It is a settled position of law that injured eye-witness stands on a higher pedestal than an ordinary witness. Bache Singh P.W. 2 had sustained injury at the time of the incident and the prosecution has proved the same. It is also well settled principle of law that the testimony of an injured witness

is sufficient to base the conviction and no further corroboration is required. The presence of the injured witness cannot be discarded lightly. There is no doubt about the presence of the injured witness at the time of the incident. Bache Singh P.W. 2 was cross-examined at length but nothing could be elicited from his evidence to discard his testimony. The testimony of an injured witness has its own relevance and efficacy. (See Narendra Nath Khaware v. Parasnath Khaware 2003 SCC (Cri) 1144 : 2003 Cri LJ 2340 and State of U.P. v. Kishan Chand 2004 SCC (Cri) 2013 : 2004 Cri LJ 4878.

12. After considering the evidence in toto, the trial Court found the evidence to be implicitly truthful and reliable. Though the presence of the eye-witness Khimuli Devi P.W. 1 was attempted to be shown as doubtful. I do not find any reason to accept the said plea. The presence of Khimuli Devi P.W. 1 and Bache Singh P.W. 2 at the place of occurrence was explained and their evidence cannot be thrown out as unreliable or tainted because Khimuli Devi P.W. 1 the eye-witness is related to the deceased. The manner of the assault as described by the prosecution witnesses has been corroborated by the medical evidence. I have gone through the entire oral evidence and found whatever was stated by way of clarification, cannot be termed as improvements or contradictions. The learned Counsel for the appellant contended that the eye-witnesses could not be believed for so many reasons, main among which is that they made improvement in their version to suit the prosecution case. Improvement which was said to be made is that the injured tried to repair the wall damaged by the animals of the appellant while entering into the field. I have gone through the entire evidence and noticed that such evidence cannot be dubbed as improvement made with any sinister motive. The evidence of Khimuli Devi P.W. 1 and Bache Singh P.W. 2 is credible and cogent. It is also pertinent to mention here that the evidence of the injured-Bache Singh P.W. 2 is sufficient to bring the guilt against the appellant. It is also pertinent to mention here that the incident took place on 21-7-1994 and the appellant had not pleaded in his statement recorded under Section 313, Cr. P.C. that there was any previous enmity against the injured so that he has been falsely implicated in the case. No specific detail of the enmity was put forward either in the defence or by way of suggestion during the cross-examination of the prosecution witnesses. Khimuli Devi P.W. 1 and the injured witness Bache Singh P.W. 2 must be interested to

give their evidence so as to convict the appellant for his wrong doings and they would not like to adopt a course by which some innocent person would be convicted in place of the person really guilty of causing injury to Bache Singh P.W. 2. In such a situation, it would not be just and proper to discard the prosecution evidence on account of their relationship with the injured.

13. The prosecution has also established the motive for committing the offence. According to the prosecution, the motive of the occurrence was that the animals of accused entered into the field of the injured to destroy the crop and on raising alarm by the mother of the injured-Bache Singh P.W. 2, the injured came there to drive the animals from the field due to which there was an altercation between the accused and the injured. Thereafter, the accused gave a blow by gandasa. There was sufficient motive of the appellant to cause the injury to the injured-Bache Singh P.W. 2. It is also pertinent to mention here that there is prompt medical examination of the injury sustained by the injured which further corroborates the incident as narrated by the prosecution.

14. The learned Counsel for the appellant further contended that the name of Khirnuli Devi P.W. 1 has not been incorporated in the F.I.R. and his presence is doubtful at the place of occurrence. It is true that her name does not find place in the F.I.R. There is no requirement of law for mentioning the names of the witnesses in the F.I.R. The object of lodging an F.I.R. is only to set the criminal case in motion. It is also pertinent to mention here that the F.I.R. lodged by the informant is not the encyclopedia of the facts of the incident. In the F.I.R., all the details are not required to be mentioned. If the genesis has been made in the F.I.R., it is sufficient. It is not reasonably accepted that the scared witness, especially the father of the injured would be able to give meticulous details of the incident whose son had sustained grievous injury on his neck. He would like to take him immediately to the hospital so that he would be saved. To keep a witness in such a situation and to expect him to give the meticulous details would not be possible at any stretch.

15. The learned Counsel for the appellant further submitted that as per the prosecution, the weapon used in the crime was a sickle (gandasa). It was further

pointed out that gandasas and sickles are two different weapons. Learned A.G.A. refuted the contention. The position would have been otherwise if the F.I.R. would have contained the averment about sickle in place of gadasa. The informant has mentioned the name of the weapon used in the crime 'sickle' (gadasa) in the F.I.R. The witnesses are rustic villagers, so their understanding may be different in the facts and circumstances of the situation. Thus, the prosecution has taken a consistent case that the appellant had a sickle (gadasa) in his waist and he took it out and caused the injury on the person of the injured. Thus, I do not find any force in the said contention.

16. The learned Counsel for the appellant further contended that there is a defective investigation in this case and the Investigating Officer has not taken the bloodstained soil from the spot and clothes which the injured was wearing at the time of incident. It is true that there are certain defects in the investigation. It is a settled position of law that in case of defective investigation, the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of defects. Doing so would tantamount to playing into the hands of the Investigating Officer if the investigation designedly defective. Thus, I do not find any force in the contention raised by the learned Counsel for the appellant. (See *Karnel Singh v. State of M.P.* 1995 Cri LJ 4173; *Chhotu v. State of Maharashtra* 1997 Cri LJ 4394 (SC) and *Dhanaj Singh alias Shera v. State of Punjab* MANU/SC/0203/2004 : 2004 CriLJ1807 .

17. On a conspectus of various relevant features of this case including the genesis; the nature of the incident; the nature of injury caused by the accused-appellant at the time of occurrence, it cannot be concluded from the prosecution evidence or from any probability arising from the record that the accused-appellant had falsely been implicated in this case. After going through the same, I do not find any reason to disbelieve the version of the prosecution witnesses. I am completely in agreement with the findings recorded by the trial Court and I find that the prosecution has been able to establish the case beyond reasonable doubt. Thus, I do not find any force in the contention of the learned Counsel for the accused-appellant.

18. In view of the aforesaid reasons. I hold that the prosecution has established the guilt beyond reasonable doubt against the accused-appellant. I find that the learned trial Court has rightly convicted and sentenced the accused-appellant and there is no infirmity in the impugned judgment and order passed by the learned trial Court. The accused-appellant is liable to be convicted and sentenced as awarded by the trial Court. Hence, the appeal is liable to be dismissed and is hereby dismissed.

19. The accused-appellant is on bail. His bail is cancelled. He shall be taken into custody forthwith by the Court concerned to make him serve out the sentence as awarded against him. Let the lower Court record be sent back to the Court concerned for compliance. Compliance report be submitted within three months from the date of receipt of order.

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