

Surendra Kumar Vs. State

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Court : Uttaranchal

Decided On : May-12-2009

Reported in : 2009CriLJ3287

Judge : Prafulla C. Pant and; B.S. Verma, JJ.

Appellant : Surendra Kumar

Respondent : State

Advocate for Pet/Ap. : Sri. Vinod Sharma

Disposition : Appeal dismissed

Judgement :

Prafulla C. Pant, J.

1. This appeal, preferred under Section 374 of Code of Criminal Procedure, 1973 (hereinafter referred as Cr. P. C.), is directed against the judgment and order dated 13-7-1994, passed by II Additional Sessions Judge, Dehradun, in Sessions Trial No. 21 of 1993, whereby accused/appellant Surendra Kumar has been convicted under Section 302 of Indian Penal Code, 1860 (hereinafter referred as I. P. C), and sentenced to imprisonment for life and also directed to pay fine of Rs. 2,000/-. In default of payment of fine, the convict (appellant) is directed to undergo rigorous imprisonment for a further period of six months.

2. Heard learned Counsel for the parties and perused the Lower Court Record.

3. Prosecution case is that on 17-10-1992 (a day before the incident in question), Ashok Kumar (deceased) was to play a role in Ram Leela in Banjarwala, Dehradun. His brother Vinod Kumar was making sitting arrangements for ladies. Meanwhile, accused/appellant Surendra Kumar came there and objected as to why Vinod Kumar is standing on the side meant for ladies. This caused a scuffle between the two. Ashok Kumar (deceased) came there, slapped the two, which subsided the quarrel. On this, accused/appellant Surendra Kumar threatened him (Ashok Kumar) to see later. Next day, on 18-10-1992 at 8.15 p. m., before the start of Ram Leela, Ashok Kumar (deceased) proceeded from his house to play his role in Ram Leela. When he reached near the house of Village Pradhan Rajendra Singh, accused/appellant Surendra Kumar armed with a CHAPAR (DAO/long knife, meant for peeling the fishes), came there and started giving blows on the person of Ashok Kumar, who raised alarm. On this P. W. 1 Banwari Lal (father of the deceased/complainant), Vinod Kumar (brother of the deceased), P. W. 3 Dayal Singh and some women reached there and saw accused Surendra causing injuries on the person of Ashok Kumar, whereafter, the accused Surendra ran towards north. Complainant and others took the injured immediately to Doon Hospital for treatment, but he was declared brought dead. Thereafter, P. W. 1 Banwari Lal got written First Information Report (Ext. A-1) through P. W. 3 Dayal Singh and gave it on the same day (18-10-1992) at 22.30 hours at the Police Out Post Patel Nagar, within the limits of Police Station Kotwali, Dehradun. On the basis of said First Information Report, Check Report (Ext. A-10) was got prepared by the Police. A Crime No. 116 of 1992 was registered against accused Surendra Kumar, relating to offence punishable under Section 302 I.P.C. Investigation was taken up by P. W. 7 Sub Inspector Harendra Singh Bhandari. On the next day i.e. 19-10-1992, the Police took the dead body of Ashok Kumar in their possession and prepared Inquest Report (Ext. A-17) at 11.00 a. m. Other necessary papers Police Form No. 13 (Ext. A-12), Sketch of the Dead Body (Ext. A-13), Letter to Chief Medical Officer (Ext. A-14), requesting for postmortem examination and Sample Seal (Ext. A-15) were also prepared. The dead body was sent for postmortem examination at 3.25 p. m. on 19-10-1992. Postmortem examination was conducted by P. W. 6 Dr. Rakesh Shamsheeri, who prepared Autopsy Report

(Ext. A-5). He recorded as many as seven incised wounds on the dead body and opined that deceased had died due to shock and haemorrhage on account of ante mortem injuries. During investigation, the Police collected blood stained soil and sample soil from the place of incident and prepared memorandum (Ext. A-2). On 19-10-1992, at about 14.30 hours, a Jacket, containing bloodstains, was recovered from the accused/appellant Surendra Kumar and a memorandum (Ext. A-3) was prepared in the presence of the witnesses. Also, CHAPAR (DAO/long knife), used in the crime, was recovered on the pointing out of the accused and a memorandum (Ext. A- 4) was prepared in the presence of witnesses P. W. 4 Manwar Singh and P. W. 5 Rajendra Singh, who were also witnesses of recovery of Jacket. Witnesses of the incident were interrogated, Site Plan was prepared and blood stained Shirt/Jacket, knife and soil were sent for chemical examination. After completing the investigation, the Investigating Officer submitted Charge Sheet (Ext. A-9) against accused Surendra Kumar for his trial in respect of offence punishable under Section 302 I.P.C.

4. The Magistrate, on receipt of the Charge Sheet, after giving necessary copies to the accused, as required under Section 207 of Cr. P. C., appears to have committed the case to the Court of Session for trial. Learned Additional Sessions Judge, Dehradun, to whom the case was transferred, on 1-3-1993, after hearing the parties, framed charge of offence punishable under Section 302 I. P. C, against the accused Surendra Kumar, who pleaded not guilty and claimed to be tried. On this, prosecution got examined P. W. 1 Banwari Lal, complainant, eyewitness and father of the deceased; P. W. 2 Dhaneshwari Devi, an eyewitness, in front of whose house incident took place; P. W. 3 Dayal Singh, an eyewitness and scribe of the report; P. W. 4 Manwar Singh, in whose presence Police made recovery of blood stained Jacket of the accused, and recovery of blood stained knife on pointing out of the accused; P. W. 5 Rajendra Singh, another witness of recoveries of blood stained knife and blood stained Jacket; P. W. 6 Dr. Rakesh Shamsheri, who conducted postmortem examination, and P.W. 7 Harendra Singh Bhandari, the Investigating Officer. The oral and documentary evidence was put to the accused Surendra Kumar, in reply to which he alleged that the witnesses have deposed false evidence due to enmity (Party-BANDI). However, no evidence in defence was adduced. The trial Court, after hearing the parties found accused

Surendra Kumar guilty of offence punishable under Section 302 I.P.C. After hearing the parties on sentence, the convict was sentenced to imprisonment for life and also directed to pay fine of Rs. 2,000/-, in default of payment of which he was directed to undergo rigorous imprisonment for a further period of six months. Aggrieved by said judgment and order dated 13-7-1994, passed by II Additional Sessions Judge, Dehradun, in Sessions Trial No. 21 of 1993, this appeal was filed by the convict Surendra Kumar before Allahabad High Court on 26-7-1994. The appeal is received by this Court under Section 35 of U. P. Reorganisation Act, 2000 (Central Act 29 of 2000) for its disposal.

5. Before further discussion we think it just and proper to mention the ante-mortem injuries recorded in the postmortem examination report (Ext. A-5) by P. W. 6 Dr. Rakesh Shamsheri, on the dead body of Ashok Kumar on 19-10-1992 at 3.25 p. m. The said injuries are being reproduced below:

(i) Incised wound (semi circular) 5 cm x 1 cm x bone deep on the right side forehead.

(ii) Incised wound 10 cm x 1/2 cm x bone deep across the upper part of nose and left side of face.

(iii) Incised wound 4 cm x 1/2 cm x muscle deep on the left side of face, near the lower maxia of left nostril.

(iv) Incised wound 4 cm x 1 cm x bone deep outer left angle of lower jaw.

(v) Incised wound 3 cm x 1/2 cm x muscle deep on the left shoulder.

(vi) Incised wound 3 cm x 1 cm x muscle deep on the left upper arm.

(vii) Incised wound 5 cm x 2 cm x bone and cavity deep on the left side of chest about 3 cm inner to left nipple. 8'O clock position.

The Medical Officer P. W. 6 Dr. Rakesh Shamsheri, after postmortem examination opined that deceased had died due to shock and haemorrhage as a result of ante mortem injuries. The Autopsy Report (Ext. A-5) read with oral testimony of P. W. 6 Dr. Rakesh Shamsheri, clearly proves on the record that Ashok Kumar (deceased)

has died a homicidal death. Now this Court has to see whether the accused/appellant Surendra Kumar committed murder of the deceased or not.

6. P.W. 1 Banwari Lal, father of the deceased, has stated on oath that his son Ashok Kumar was murdered on 18-10-1992 at about 8.15 p. m., near the house of Village Pradhan Rejendra Singh. The witness has narrated that on said date and time, his son Ashok Kumar was going for Ram Leela. He (P. W. 1) along with his another son Vinod Kumar, was also going to see Ram Leela, when they heard Ashok Kumar crying BACHAO, BACHAO ! (Save, Save!). The witness has further stated that he saw accused Surendra Kumar giving blows with CHAPAR (DAO/long knife, meant for peeling fishes). The witness has further stated that on the alarm being raised by his son witness Dayal Singh Rawat (P.W.3) also reached there. The witness has further stated that P. W. 2 Dhaneshwari Devi, wife of Rajendra Singh (Village Pradhan) in front of whose house the incident took place also came out and saw the incident. The witness (P. W. 1) has further stated that a day before the incident there had been a quarrel between Vinod Kumar (brother of the deceased) and Surendra Kumar (accused/appellant) in Ram Leela, in which Ashok Kumar (deceased) intervened and slapped the two (Vinod Kumar and Surendra Kumar). On this accused Surendra Kumar had threatened the deceased to see him. The witness has further stated that after the incident of 18-10-1992, he took his son Ashok Kumar in injured condition to Hospital, where he was declared brought dead. P. W. 1 Banwari Lal has further stated that thereafter he got scribed Report (Ex. A-1), through P. W. 3 Dayal Singh and gave it at the Police Out Post Patel Nagar. According to this witness, he saw the incident in the light of electric pole.

7. The statement of P. W. 1 Banwari Lal gets corroboration from the statement of P. W. 2 Dhaneshwari Devi, who has stated on oath that on the day of incident on coming out of her house she saw Ashok Kumar lying injured and Surendra Kumar (accused/appellant) having a long knife in his hand was running away. This witness has further stated that by the time she came out from the her house Banwari Lal (P. W. 1), his another son Vinod Kumar, and Dayal Singh (P.W. 3) had already reached at the spot.

8. P. W. 3 Dayal Singh, the third eyewitness, has fully corroborated the testimony of P. W. 1 Banwari Lal that on 18-10-1992 at about 8.15 p. m., when he was going towards Ram Leela ground, he heard noise of BACHAO, BACHAO! (Save, Save!), and saw accused Surendra Kumar armed with CHAPAR giving blows on the person of Ashok Kumar. This witness has further stated that Banwari Lal (P. W. 1) had also reached there. The witness has further stated that the incident took place in front of house of, Village Pradhan Rajendra Singh (Husband of Dhaneshwari Devi). The witness has further stated that he tried to chase the accused but he escaped in the darkness. The witness has stated that at a distance of 7-8-ft. from the place of incident there was an electric pole and he saw the incident in the light of the electric pole. P. W. 3 Dayal Singh has further stated that after the incident he along with Banwari Lal (PW. 1) took the injured Ashok Kumar to District Hospital, Dehradun (also known as Doon Hospital), where Ashok Kumar was declared brought dead. This witness has also corroborated the motive of commission of crime by accused Surendra Kumar as in para 3 of his statement, he has told that on 17-10-1992, Vinod Kumar (brother of the deceased) was making sitting arrangements for ladies in Ram Leela, whereafter he had a quarrel with accused Surendra. On this, Ashok Kumar (deceased) intervened and mediated. According to this witness, Surendra Kumar told Ashok Kumar (deceased) that he would see him next day.

9. P. W. 4 Manwar Singh and P. W. 5 Rajendra Singh, are the two witnesses, who have stated that the Police took blood stained soil and simple soil in their presence and prepared memorandum (Ext. A-2). They have further stated that the Police took blood stained Jacket/Shirt of the accused Surendra Kumar from his possession and prepared memorandum (Ext.A-3) in their presence. The two have lastly stated that CHAPAR (DAO/long knife), was recovered by the Police on pointing out of the accused Surendra Kumar and memorandum (Ext. A-4) was prepared. The statement of these two witnesses gets corroboration from the statement of P. W. 7 Harendra Singh Bhandari, Investigating Officer, who has stated that the above articles were got sent through a Constable for chemical examination in a sealed condition. The Forensic Laboratory Report (Ext. A-18) is also on the record which shows that on examination, it was found that the Shirt/Jacket of Surendra Kumar contained human blood of Group B. The report

further discloses that the knife sent for chemical examination also contained blood stains but the same were not found fit for classification, as such the statement of the eyewitnesses not only gets corroboration from the postmortem examination report but also from the chemical examiner's report on the articles recovered by the Police during investigation.

10. On behalf of appellant, it is argued that motive of the commission of crime is not proved on the record as P. W. 1 Banwari Lal was not the eyewitness of the incident said to have occurred on 17-10-1992 (a day before the incident of murder). We have examined the oral testimony of the witnesses and found that though P. W. 1 Banwari Lal was not an eyewitness of the incident of 17-10-1992, but P. W. 3 Dayal Singh had narrated the incident of 17-10-1992 as an eyewitness. There is nothing unnatural in the testimony of the witnesses as it is a matter of common experience that many people go to Ram Leela every day till it is over. Even otherwise, where there is direct evidence of commission of crime by the accused, it is not necessary for prosecution to prove the motive of commission of crime.

11. The second argument advanced on behalf of accused/appellant is that it is not natural that Ashok Kumar (deceased) was being followed by his father Banwari Lal and brother Vinod Kumar, on his way to Ram Leela. On examination of the evidence on record, we do not find any unusual conduct on the part of P. W. 1 Banwari Lal, as it is natural that if Ashok Kumar was playing a role in Ram Leela, members of his family would also go to see him in Ram Leela.

12. The third contention advanced on behalf of appellant is that name of P. W. 2 Dhaneshwari Devi does not figure in the First Information Report, as such his testimony should not be believed. In our opinion P. W. 2 Dhaneshwari Devi is an independent eye witness and her presence is also natural, as the incident had taken place in front of her house, as such her coming out from her house on hearing the alarm shows her natural conduct. Though her name is not specifically mentioned in the First Information Report, but it is clearly stated that on the cries of Ashok Kumar certain women also came there and saw the incident.

13. Sri Vinod Sharma, learned Counsel for the appellant, submitted that P.W. 4 Manwar Singh and P. W. 5 Rajendra Singh could not have witnessed the recovery of Jacket/Shirt or knife as they were busy with the cremation of the deceased on that day i.e. 19-10-1992. We have carefully gone through the statement of P. W. 1 Banwari Lal. He has stated that at 4.30 P. M., the preparations of the cremation were going on and a large number of people were there including the above two Manwar Singh (P. W. 4) and Rajendra Singh (P. W. 5). 4-30 P. M. is not the time when the recovery was made. Recovery memorandum (Ext. A-3 and Ext. A-4) show that these were prepared on 19-10-1992 at 2.30 p. m. and 3.30 p. m. From the postmortem examination (Ext. A-5) also it appears that autopsy was done at 3.25 p. m. Only, thereafter, preparation for cremation could have started. As such, we do not find force in the submission of learned Counsel for the appellant.

14. For the reasons as discussed above, we concur with the trial Court that prosecution has successfully proved charge of offence punishable under Section 302 I.P.C. against the accused/appellant Surendra Kumar. We do not see any sufficient reason to interfere either with conviction recorded by the trial Court or the sentence awarded by it. Therefore, the appeal is liable to be dismissed. The same is dismissed. The appellant Surendra Kumar is on bail. His bail is cancelled. Registry is directed to send the Lower Court Record back so that the convict (appellant) may be taken into custody to serve out the sentence awarded by the trial Court.