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Court : Uttaranchal

Decided On : Apr-07-2010

Judge : B.C. Kandpal and; Nirmal Yadav, JJ.

Appellant : State

Respondent : Paramjeet Singh and ors.

Advocate for Def. : Mr. R.P. Nautiyal

Judgement :

Nirmal Yadav, J.

1. Accused respondents Paramjeet Singh, Ramesh, Khalil and Bhola stood trial for the offence punishable under Section 302 read with Section 34 IPC for committing the murder of Manohar Lal and his wife Hardeep Kaur at midnight intervening 25th and 26th of May 1995. Accused Birsa Singh was charged for the offence punishable under Section 120-B IPC. Accused Paramjeet Singh and Ramesh were also charged under Section 25 of Arms Act. The trial court, after taking into consideration the facts and evidence, acquitted all the accused for the charges framed against them. The State has challenged the judgment of acquittal passed by the trial court.

2. The facts, in brief, are that on 25.05.1995 Manohar Lal (deceased) and his wife Hardeep Kaur (deceased) were sleeping in the courtyard of their farm house while

PW3 Janak Kapoor, who is resident of Indore and is son of Hardeep Kaur's brother, was sleeping inside the room adjoining the courtyard. He had come to visit her Bhuaa on that very day in the evening. Electricity bulb and tube lights were emitting light in the courtyard. In the midnight, Janak Kapoor woke up after hearing some noise and from the window of the room, he saw accused Paramjeet Singh firing at his uncle Manohar Lal while accused Ramesh firing at Hardeep Kaur with their respective country made pistols. Meanwhile, accused Bhola and Khalil gave one 'patal' blow each to Hardeep Kaur and Manohar Lal respectively. On receiving the injuries, both the accused died at the spot. The accused left the spot by giving threat that no one should raise any noise nor should disclose anything to anyone, otherwise he will also face the same consequences. Janak Kapoor being a heart patient got scared and he did not report the matter to the police and remained in the house itself. However, in the morning he came to know that someone had already informed the police about the occurrence. He submitted written application to SO, police station - Bajpur disclosing the above mentioned facts. He also stated in the application that occurrence was witnessed by Harnam Singh, Abdul Hakeem and Birendra Majumdar. He knew Ramesh and Paramjeet Singh, who were related to the deceased, as he had been visiting the deceased. However, he had not seen Bhola and Khalil prior to the occurrence. It further finds mention in the application that Paramjeet Singh and Birsa Singh wanted to grab the land of Manohar Lal and his family and on this account Birsa Singh, Paramjeet Singh, Ramesh, Khalil and Bhola had committed murder of Manohar Lal and his wife.

3. Information with regard to murder of Manohar Lal and Hardeep Kaur had already been given on telephone by PW1 Ram Prakash, Munshi of Laxmi Rice Mill, Badripur. Report in this regard had been lodged at 05.40 a.m. in the police station - Bajpur. On receipt of the information, PW8 Devendra Singh went to the spot and recorded the statements of Birendra Majumdar, Ravindra Kumar, Ram Prakash and others. Dead bodies of Manohar Lal and his wife were taken into possession after preparing the inquest reports. Inquest reports were prepared by Udai Veer Singh. Thereafter, he arrested Paramjeet Singh and Ramesh on 26.05.1995. On the same day, at about 04.45 p.m. both of them got recovered one country made pistol each. On further investigation rest of the accused i.e. Khalil,

Bhola and Birsa Singh were also arrested by the police. After completion of the investigation, challan was presented and the accused were charged as referred to in the beginning of the judgment to which they pleaded not guilty and claimed trial.

4. The prosecution, in order to prove it's case produced as many as eight witnesses. PW1 Ram Prakash is the informer who had given telephonic message to the police with regard to the murder of both Manohar Lal and Hardeep Kaur. PW2 Birendra Majumdar had seen the accused Khalil, Bhola, Paramjeet Singh along with Birsa Singh, near tubewell of accused Birsa Singh. He had heard the conversion between them. Birsa Singh was saying that work should be done in the night and the payment would be made after a week. PW3 Janak Kapoor had seen the occurrence from inside the room. PW4 Virendra Pal Singh received the dead bodies of Manohar Lal and Hardeep Kaur in a seal cover after completion of the inquest report and took the dead bodies to the mortuary along with constable Phool Singh. PW5 Rajendra Shukla is the dog master, who brought the dog Sultan to the scene of occurrence. PW6 Dr. Surendra Singh conducted autopsy on the dead bodies of Manohar Lal and Hardeep Kaur. PW7 Vijay Kumar is son of Manohar Lal and Hardeep Kaur. He has proved the motive for committing the murder of the deceased persons. PW8 Devendra Singh is the Investigating Officer.

5. Dr. Surendra Singh found following ante-mortem injuries on the persons of:

Manohar Lal:

i. Incised wound 17 cm. X 4 cm. X brain cavity deep present over top of head. Skull bone divided into different pieces. Brain matter coming out with brain matter cut into pieces.

ii. Firearm wound 6 cm X 3 cm X brain cavity deep present around left eye brow extending upto the upper 1/3rd of left side face. Left eye missing. Left orbit broken into pieces. Margin inverted. Blackening present. (wound entry) Direction downward and backward.

Hardeep Kaur:

i. Incised wound 22 cm. X 9 cm X brain cavity deep present on the left side face extending from left angle of mouth upto middle of head. Part of left face with left eye missing. Brain tissue coming out from the injury. Brain divided into pieces.

ii. Fire arm wound 6 cm X 3 cm X brain cavity deep, present on the left side head, 5 cm. above the left ear. Margin inverted. Direction forward and downward. (wound entry). Brain tissue coming out from the wound.

6. As per the opinion of doctor, gun shot injury might have been caused by country made pistol and the incised wound could be caused by 'patal'. Death of both the persons might have been caused in the intervening night of 25th and 26th of May, 1995 at about midnight.

7. The prosecution also submitted the certified copies of documents showing that there had been litigation between Birsa Singh and deceased regarding the cultivation of land.

8. When accused were examined under Section 313 Cr.P.C., they denied all the allegations and pleaded false implication.

9. We have heard learned AGA for the appellant and Mr. R.P. Nautiyal, learned Counsel for the respondents. The case of the prosecution mainly rests on the testimony of PW3 Janak Kapoor, PW1 Ram Prakash and PW2 Birendra Majumdar. PW1 Ram Prakash is the person who had given telephonic message to police station - Bajpur with regard to the murder of Manohar Lal and his wife Hardeep Kaur. According to him at about 5.30 a.m. on 26.05.1995 Birendra Bangali who was the servant of Manohar Lal came to him and informed that Manohar Lal and his wife had been murdered by some persons. According to him, informant was in a very disturbed and perplexed condition at that time. PW2 Birendra Majumdar was working in the sugarcane field of Manohar Lal. On the date of occurrence at about 5.00 p.m. he was present near the tubewell, where he found Birsa Singh, Paramjeet Singh and two other persons namely Bhola and Khalil were present. Birsa Singh was telling those persons that work should be done today in the night and money would be paid to them after one week. Thereafter, the witness came back to the farmhouse of Manohar Lal where he

found three guests sitting with Manohar Lal. After serving the meals to the guests and his master, he laid beds for Manohar Lal and his wife in the courtyard and for the guests in the rooms. Thereafter, he went to his own hut. At midnight, he heard noise of two fire arm shots, thereafter, he went near the wall and saw, Bhola standing near Manohar Lal and Khalil standing near his wife Hardeep Kaur. Both the accused were armed with 'patals'. Khalil caused 'patal' injury on the face of Hardeep Kaur while Bhola caused 'patal' injury on the head of Manohar Lal. Birsa Singh was standing near tubewell and from there only he exhorted that both Manohar Lal and Hardeep Kaur be killed and should not be spared. Meanwhile, Paramjeet Singh accused at that very moment saw and threatened the witness that he should not disclose the incident to anyone. In cross examination, the witness categorically stated that he knew all the accused prior to the occurrence, however, he did not dare to go out during the night but went in the morning to Laxmi Rice Mills and told Ram Prakash to inform the police about the occurrence. This witness was thoroughly cross examined, however, he has fully supported the prosecution case. 7

10. PW3 Janak Kapoor deposed that Hardeep Kaur was his Bhuaa. He had been visiting the farm of his Bhuaa and Phupha frequently. He disclosed the relationship of Birsa Singh with the deceased. Birsa Singh is samdhi of Kishori Lal, who is the brother of deceased Manohar Lal. He also knew Paramjeet Singh, who is son of Birsa Singh while Ramesh is his nephew. According to him, he came from Indore on 25.05.1995 along with Abdul Hakeem. On the same day Harnam Singh also came from Jalandhar. They had taken meals together along with deceased and his wife. After taking the meals, Abdul Hakeem and Harnam Singh went to sleep in a separate room and he went to sleep in another room while his Bhuaa (Hardeep Kaur) and Phupha (Manohar Lal) were sleeping in the courtyard. He has categorically stated that there was sufficient light in the courtyard. Bulb outside the rooms and one tube light above the tube well were emitting light. He reiterated the version given by him in his written report. This witness stated that he, being the heart patient, did not have the courage to inform the police during the night. In the morning, he gathered himself and inquired from Birendra Majumdar about the names of other two accused and thereafter, he scribed the written report (exhibit Ka 1) and handed over the same to the SO, police station - Bajpur. This witness

disclosed that Kishori Lal, who is the real brother of Manohar Lal, had given his land situated at Badripur on lease to Birsa Singh, however, after sometime Kishori Lal had told Birsa Singh that he wanted to sell his land and gave him an offer to purchase the same. Birsa Singh refused to purchase the land, however, Kishori Lal agreed to sell the land to the daughter-in-law of Manohar Lal for Rs. 75000/-. Birsa Singh did not relish this sale land as he wanted to grab the land of Kishori Lal. He threatened Manohar Lal and his wife many times on this account. This witness was strenuously examined in detail by the defence, however, no contradictory or discrepancy could be pointed out on all material facts. This witness of course is resident of Indore. If he was not present at the farm house of Manohar Lal on the date of occurrence, it was not possible for him to reach Badripur from Indore on the next very day and submit the report to SO, Badripur. Thus, his presence at the spot on the fateful night cannot be doubted.

11. The trial court has disbelieved the statement of this witness mainly on the ground that it was not possible for this witness to see the faces of the assailants from the room and that he did not know two of the assailants i.e. Khalil and Bhola prior to the occurrence. The trial court has also discussed that conduct of Janak Kapoor in not reporting the matter to the police during the night time, after collecting other persons namely Harnam Singh and Abdul Kaleem as well as Birendra Majumdar is doubtful. He could have taken some steps to inform the police about the occurrence during the night by giving names of the accused to the police. The learned trial court has observed that there was no question to being frightened as all of them were resident of different States and there was no danger to their life from the accused. The observations of learned trial court appear to be quite misconceived. One cannot lose sight of the fact that two persons have been murdered by persons armed with deadly weapons in the midnight and threats were given by the accused Paramjeet Singh that in case, anyone reported the matter to anyone he will face the same consequence. Moreover, it depends on each individual, as to how and in what manner one reacts in such circumstances. Some persons may be very bold to face such situation and others may not be very strong to bear and face such incident. This witness has clearly narrated the fact with regard to the manner and mode of the occurrence. He knew accused Paramjeet Singh and Birsa Singh as he had been visiting his Bhuaa (Hardeep

Kaur) and uncle (Manohar Lal) prior to the occurrence and the accused lived in close vicinity of the house of Manohar Lal. We, therefore, do not find his conduct to be abnormal nor we doubt his presence at the place of occurrence.

12. The testimony of PW2 Birendra Majumdar is also supporting the material facts of the prosecution case. Though his statement with regard to the conspiracy does not appear to be probable against Birsa Singh accused. By simply saying that work should be done and you will get your money after a week would not prove any planning or conspiring of crime. Moreover, nothing was reported by Birendra Majumdar to his master. Admittedly, he did not inform the facts about meeting of Birsa Singh, Bhola, Khalil and Paramjeet Singh near the tubewell to Manohar Lal. Though he has given explanation that he could not find occasion to inform Manohar Lal about conspiracy as guests were sitting along with him even then, we find that the evidence relied by the prosecution to prove conspiracy is insufficient, therefore, conviction cannot be based on such evidence. 10

13. In these circumstances, we are of the opinion that no charge of conspiracy against Birsa Singh has been proved beyond the reasonable doubt. Accordingly, Birsa Singh has rightly been acquitted by the trial court for the charge punishable under Section 120-B IPC.

14. However, the entire statement of Birendra Majumdar cannot be disbelieved. He has categorically stated that when he heard two fire arm shots, he woke up while he was sleeping in his hut. Thereafter, he saw while standing near the wall, accused Khalil and Bhola causing 'patal' injuries on the person of Manohar Lal and his wife Hardeep Kaur respectively. He also saw Paramjeet Singh and Ramesh present on the spot and thereafter, Paramjeet Singh threatened him of dire consequences.

15. A perusal of the site plan K - 19 shows that Birendra Majumdar was present at point 'M'. Points 'A' and 'B' are place of occurrence where the deceased Manohar Lal and Hardeep Kaur were sleeping in the courtyard. The distance between points 'M' and 'A' &'B' is not much. The occurrence could very well be seen by Birendra Majumdar. Presence of Birendra Majumdar at point 'M' was quite natural as his hut was very close to the said place.

16. The trial court has discarded the testimony of Birendra Majumdar mainly on the ground that he was employed with Manohar Lal and thereafter with his son Vijay Kumar. This, in fact, cannot be a ground for rejecting the testimony of this witness. His presence was rather natural near the place of occurrence, as he had been living in the hut within the premises of the farmhouse of Manohar Lal and was working as servant with him. He has given true picture of the incident witnessed by him. He has not stated that he had seen Paramjeet Singh and Ramesh causing fire arm injuries with their country made pistols to the victims. According to him, he woke up after hearing the fire arm shots but he has categorically stated that he had seen Khalil and Bhola causing 'patal' injuries to the victims. If he wanted to tell the lie he could have stated that he had seen Paramjeet Singh and Ramesh also causing fire arm injuries to the victims.

17. Another observation made by learned trial court with regard to this witness appears to be misconceived. He has referred to the statement of Birendra Majumdar where he stated that he was at Rudrapur for the last 15 days. This answer has been given by the witness on a query made by defence counsel. This answer could have been with regard to the presence of witness prior to his deposition in the court. He might have stated that he was in Rudrapur 15 days prior to the deposition. The answer appears to be out of context.

18. Presence of both the eye witnesses i.e. Birendra Majumdar and Janak Kapoor cannot be doubted at the place and time of occurrence. Mere fact that the police sought help of dog does not show that there was no eye witness. Sometime out of zeal or over anxiousness, the Investigating Officer uses all kinds of assistance in the investigation. Moreover, the use of dog squad corroborates the testimony of eye witnesses. It has given strength to the prosecution case. It is true that the conviction cannot be based on the evidence of dog alone, but it certainly corroborates the testimony of PW 2 and PW 3.

19. The trial court has also disbelieved the recovery of two empty cartridges mainly on the ground that in the inquest report Investigating Officer has not mentioned about the empty cartridges near the cot of the victims. The mere negligence or lapse on the part of the Investigating Officer cannot create no doubt

in the prosecution case, which is otherwise proved from the cogent and consistent testimony of PW 3 Janak Kapoor and PW 2 Birendra Majumdar duly supported by the medical evidence. One fire arm wound and one incised wound have been found on the body of each victim. Both the accused have been arrested on the very next date i.e. on 26.05.1995. Country made pistols have been got recovered at the instance of both the accused and there is nothing to disbelieve the recovery made by the Investigating Officer.

20. The facts and evidence discussed above indicate towards the guilt of the accused Paramjeet Singh, Ramesh, Khalil and Bhola. Now, it is to be seen as to whether under the circumstances, given above, this Court can interfere in the judgment of acquittal, which has been passed in favour of the respondents accused. Their Lordships of Apex Court in the case of Allahrakha K. Mansuri v. State of Gujrat reported in 2002 (1) RCR (Criminal) 748 has observed that the High Court has the power to review evidence, on which the order of acquittal has been passed. In cases, where judgment has been passed by the trial court on the basis of misreading of evidence, it is open to the high court to re-appraise the evidence and opine to the contrary. After analyzing the evidence in that case, it was observed thus:

The paramount consideration of the court should be to avoid miscarriage of justice. A miscarriage of justice which may arise from the acquittal of guilty is no less than from the conviction of an innocent. In a case where the trial court has taken a view based upon conjectures and hypothesis and not on the legal evidence, a duty is cast upon the High Court to re-appreciate the evidence in acquittal appeal for the purposes of ascertaining as to whether the accused has committed any offence or not. Probable view taken by the trial court which may not be disturbed in the appeal is such a view which is based upon legal and admissible evidence. Only because the accused has been acquitted by the trial court, cannot be made a basis to urge that the High Court under all circumstances should not disturb such a finding.

21. We have noticed in earlier part of the judgment that eye witness account is more probable than the arguments raised by the defence. Medical evidence fully

corroborates the ocular version. The trial court has misread the evidence on all counts and has given too much importance to the minor technicalities while giving benefit of acquittal to the accused respondents. A perusal of the entire evidence on record leads only to one conclusion that respondents accused Paramjeet Singh, Ramesh, Khalil and Bhola had committed offence with which they were charged.

22. In view of the above, the appeal qua accused Paramjeet Singh, Ramesh, Bhola and Khalil, is allowed, judgment and order under challenge is set aside. The accused respondents Paramjeet Singh, Ramesh, Bhola and Khalil are held guilty for commission of offence punishable under Section 302 read with Section 34 IPC and are convicted accordingly. They are sentenced to undergo imprisonment for life and are ordered to pay fine of Rs. 5000/- each, in default of payment of fine, to further undergo imprisonment for six months. Accused Paramjeet Singh and Ramesh, from whom country made pistols were recovered and the same were used in the commission of crime by them, are also convicted for the offence punishable under Section 25 of the Arms Act and are sentenced to undergo further imprisonment for six months each.

23. The appeal qua accused Birsa Singh however, stands dismissed, judgment and order of his acquittal is maintained.

24. Accused Paramjeet Singh, Ramesh, Bhola and Khalil be taken into custody forthwith in order to serve sentence as awarded by this Court.

25. The trial court is directed to ensure the compliance of the order. Let the lower court record be sent back.

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