

HAR SINGH

v.

STATE OF UTTARAKHAND
(Criminal Appeal No. 816 of 2005)

SEPTEMBER 18, 2008

[ALTAMAS KABIR AND MARKANDEY KATJU, JJ]

PENAL CODE, 1860:

ss. 302/34, 201/34 and 394 – Dispute ensuing between deceased and accused persons over money won in gambling – Accused assaulting the deceased – Dead body of deceased recovered at the instance of one of the accused – Conviction by trial court – Upheld by High Court – HELD: Events upto assault of deceased were found to have been established by both the courts below – Deceased was last seen with accused and was killed soon thereafter – Time of death of deceased corroborated by medical evidence – Crucial circumstance of recovery of dead body at the instance of one of the accused found to have been established by both the courts below – There is no reason to interfere with judgment of High Court – Circumstantial evidence.

Three appellants alongwith another accused were prosecuted for commission of offences punishable u/ss 302/34, 201/34 and 394 IPC, on the allegations that on a dispute over money won in gambling by the deceased from the accused persons, the latter robbed him of his money and killed him. The trial court, on the basis of the evidence of PWs 2,5,6 and 9 convicted the accused of the offences charged. The High Court upheld the conviction. One of the accused died meanwhile and the remaining three filed the instant appeals.

Dismissing the appeals, the Court

HELD: 1.1 It has been well established that the de-

A ceased and the accused were involved in gambling in front of the tea stall of PW-2 and that when the deceased and PW-1 left the place where the gambling was being conducted they were followed by the accused persons. From the evidence of PW-1, it is also established that the
B accused persons assaulted the deceased and when he tried to intervene he was threatened and was made to leave the place, though he heard the deceased requesting the accused persons not to kill him from the nearby wheat field. [para 10] [625 D-F]

C 1.2 The events upto the assault of the deceased were found to have been established by both the Courts below. In addition, the circumstances also establish the fact that the accused and the deceased were last seen together by PW-1 and he was killed soon thereafter. The time of
D death stands corroborated from post-mortem examination. [para 11] [626 G-H 627-B]

E 1.3 The crucial circumstantial evidence was recovery of the body of the deceased. Although, an attempt was made to raise doubts as to whether PW-6 and PW-9 had actually seen accused 'MS' pointing out the location from which the dead body could be and was subsequently recovered, since both the courts below have accepted the said evidence and there were no other intervening
F circumstances, there is no reason to discard the same. [para 12] [627 C-D]

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
No. 816 of 2005

G From the Judgment and final Order dated 1.12.2004 of the High Court of Uttaranchal at Nainital in CrI. Appeal No. 851 of 2001

K.B. Sinha, Subhash Chandra Birla and Subrat Birla for the Appellant.

H Sunil Kumar Singh and Jatinder kumar Bhatia for the Respondent.

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. These three appeals arise out of the judgment and order dated 1st December, 2004, passed by the Uttaranchal High Court dismissing the appeal filed by the appellants herein (Criminal Appeal No. 851/01) against the judgment and order of the Sessions Judge, Almora, in ST No.36 of 1987, convicting the appellants under Sections 302/34, 201/34 and 394 Indian Penal Code. One of the accused, Ratan Singh, died during the trial which abated against him and continued against the other accused persons.

2. According to the prosecution, on 26th February, 1987, the deceased Bhupal Singh @ Joga Singh of village Sain Bagaria, District Almora, Uttaranchal, went to the Mela held at village Dabra on the occasion of Shiv Ratri along with his wife and two children. He had taken an amount of Rs.3,000/- with him for purchasing two bullocks and a goat. While at the Mela, he met Gusain Singh and remained at the Mela with his wife and children till 4.30 p.m. when he sent them back to their village after telling them that he would return on the next day. Thereafter, Bhupal Singh and Gusain Singh came back to the Mela and found several persons, including the accused Mohan Singh, Har Singh, Ratan Singh and Lachham Singh, gambling in front of the tea stall of one Bhuwan Singh. Bhupal Singh also joined in the gambling and won Rs.200/- from Mohan Singh and Rs.600/- from Lachham Singh. When it started to get dark, Bhupal Singh stopped gambling as he had to go to Village Bhaisora with Gusain Singh.

3. It was also the prosecution case that the above-named accused persons followed Bhupal Singh and asked him to continue the gambling so that they could have a chance to recover the money which they had lost. In the alternative, they asked Bhupal Singh to return the money which he had won in the gambling in front of the tea stall of Bhuwan Singh. Bhupal Singh refused to listen to either of the two proposals. Thereafter, accused Mohan Singh allegedly lifted Bhupal Singh and threw him

A on the ground with force. When Gusain Singh tried to intervene
in an attempt to save Bhupal Singh, he was also threatened by
the accused as a result whereof he ran away from the place. He
has, however, come out in his evidence with the statement that
while fleeing the place he had hidden in a nearby wheat field
B from where he heard Bhupal Singh requesting the accused not
to kill him and subsequently even the said sounds ceased. When
Bhupal Singh did not return to his house even after the second
day, his mother, Smt. Chana Devi and Shri Soor Singh came to
Gusain Singh's house on the third day to enquire about him.
C Gusain Singh is reported to have told them about the entire in-
cident and then all of them went to the place of occurrence,
known as Khuti Aam, to search for the body of Bhupal Singh,
but the same could not be found. Thereafter, a written complaint
was filed by Smt. Chana Devi at Bhatroajkhan Police Station
D on 2nd March, 1987.

4. On the basis of the said complaint investigations were
commenced and Mohan Singh was arrested after interroga-
tion. At Mohan Singh's instance Bhupal Singh's dead body was
recovered in the presence of witnesses. The other accused were
E also arrested and the body of the deceased was sent for post-
mortem, which was conducted by Dr. S.N. Srivastava, Medical
Officer, Civil Hospital, Ranikhet, on 4th March, 1987. During the
post mortem examination the following injuries were found on
the body of the deceased:

- F "1. Sharp cut wound on left side of face extending to
lower jaw left. Mandible cut sharp, edge on bone
seen, blood clots in an area 8 cm x 4 cm. Maggots
were present.
- G 2. Sharp cut would on right side of forehead extending
through temple and just above right ear 6 cm x 4 cm.
Blood clots present. Sharp edge of temple bone and
parietal bone seen. Maggots were present.
- H 3. Contusion and abrasion on the left side of chest, 4
cm below nipple, area 5 cm x 4 cm.

4. Contusion on the left side of chest 2 cm medial to injury no.3, area 4 x 2 cm. A
5. Contusion and abrasion, just below right knee, area 4 cm x 3 cm.
6. Contusion on the left wrist ventral surface, area 3 cm x 2 cm." B

5. After completion of the investigation a charge-sheet was filed and the accused-appellants were sent for trial.

6. Relying on the evidence of PW 1, Gusain Singh, who was accompanying the deceased at the time of the incident, the evidence of PW 5, Smt. Chana Devi, mother of the deceased, who lodged the First Information Report, the evidence of PW 2, Bhuwan Singh, before whose shop the gambling was conducted, Soor Singh, PW 6, who claimed to be present when appellant-Mohan Singh stated that he could point out the place from where the body of the deceased could be recovered, and PW 9, Kamrool Haq, who was present when the body of the deceased was recovered, the trial Court came to the conclusion that the prosecution had been able to prove its case against the appellant beyond all reasonable doubt. C
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7. The High Court, on a reappraisal of the evidence, confirmed the decision of the trial Court and upheld the conviction of the appellants herein.

8. On behalf of the appellants an attempt was made to convince this Court that from the materials on record there is nothing to connect the appellants with the commission of the offence. Even Gusain Singh (PW 1), who was allegedly accompanying the deceased and was produced as an eye-witness, had clearly stated that he had not seen the actual murder of the deceased but had only heard the shrieks of the deceased requesting the appellants not to kill him and that the said shrieks finally ended. It was, therefore, suggested that in the absence of any evidence to connect the appellants with the commission of the offence, both the Trial Court and the High Court had erred F
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A in convicting the appellants under Sections 302 and 201 read
with Section 34 IPC and Section 394 IPC.

B 9. An attempt was also made to show that the evidence of
PW 6, who was allegedly present both when Mohan Singh has
stated before the Investing Officer that he could locate the body
of the deceased and also when the body was recovered, did
not indicate that the said body was recovered at the instance of
accused Mohan Singh. Learned counsel tried to convince the
Court that the accused had only been taken to the place of oc-
C currence and that during the search which was conducted, the
body was recovered, but not at the specific instance of Mohan
Singh. In other words, learned counsel tried to establish that the
recovery of the body was not at the instance of Mohan Singh,
but in his presence.

D 10. We are not convinced with the submissions advanced
on behalf of the appellants who were convicted mainly on the
basis of circumstantial evidence and the evidence of PWs 1, 2,
5, 6 and 9 in support thereof. It has been well established that
the deceased and the accused were involved in gambling in
E front of the tea stall of PW 2, Bhuwan Singh, and that when the
deceased and PW 1, Gusain Singh, left the place where the
gambling was being conducted they were followed by the ac-
cused persons. From the evidence of PW 1, Gusain Singh, it is
also established that the accused persons assaulted the de-
ceased and when he tried to intervene he was threatened and
F was made to leave the place, though he heard the deceased
requesting the accused persons not to kill him from the nearby
wheat field.

G 11. The events upto the assault of the deceased were found
to have been established by both the Courts below. In addition,
the circumstances also establish the fact that the accused and
the deceased were last seen together by PW 1 and he was
killed soon thereafter. The post-mortem report clearly indicates
that the body had started decomposing and that maggots were
H found on the body. It has to be kept in mind that while the date of

occurrence is 26th February, 1987, the First Information Report was filed by PW 5, Smt. Chana Devi on 2nd March, 1987, the body of the deceased was recovered on 3rd March, 1987, and the post-mortem was conducted on 4th March, 1987. In other words, between Bhupal Singh's death and the post-mortem conducted, almost a week had elapsed which fact stands corroborated from the state of the body at the time of post-mortem examination.

12. The last and, in our view, the crucial circumstantial evidence was recovery of the body of the deceased. Although, an attempt was made to raise doubts as to whether PW 6 and PW 9 had actually seen the accused Mohan Singh pointing out the location from which the dead body could be and was subsequently recovered, since both the courts below have accepted the said evidence and there were no other intervening circumstances, there is no reason for us to discard the same.

13. In that view of the matter, we find no reason to interfere with the judgment of the High Court and the Appeals are, therefore, dismissed.

R.P.

Appeals dismissed. E