

A

CHETRAM

v.

STATE OF UTTARAKHAND

(Criminal Appeal No. 543 of 2014)

MARCH 04, 2014

B

[T.S. THAKUR AND C. NAGAPPAN, JJ.]

*PENAL CODE, 1860:*

C

*s.302 r/w s.34 - Murder - Two accused - One of them stabbed the victim resulting into his death - Conviction by courts below of both - Plea of appellant that no role was attributed to him in the crime - Held: No role was assigned to appellant in FIR or in statement u/s 161 by solitary eye-witness - His testimony before court stating that appellant caught hold of victim is an improvement over his statement in FIR and u/s 161 CrPC - This creates a suspicion about overt act attributed to appellant - His involvement in the incident remains doubtful - Accordingly, appellant is entitled to benefit of doubt and, as such, acquitted.*

D

E

**The appellant along with another was prosecuted for the murder of the brother of PW-1. In the written report, PW-1 stated that when the deceased was selling guavas on the roadside, A-1 and A-2/appellant reached there. A-1 stabbed the deceased and thereafter both of them fled away. PW-3 and PW-4 saw both the accused fleeing from the scene. The trial court convicted and sentenced both the accused u/s 302/34 IPC. The High Court affirmed the conviction and sentence.**

F

G

**In the instant appeal, it was contended for the appellant that as the deposition of sole eye-witness, PW-1, in court was an improvement upon the information recorded in FIR and his statement made u/s 161 CrPC**

wherein he attributed no role to appellant, his conviction was liable to be set aside.

Allowing the appeal, the Court

HELD: 1.1 PW2 and PW3 have not seen the occurrence but have witnessed accused persons fleeing away after the occurrence. Therefore, the solitary eye-witness to the occurrence is PW1 and his testimony in court is an improvement on the version given by him in the FIR in which he has not attributed any overt act to accused No.2 in the attack made on the deceased during the occurrence. Further, no role was assigned to accused no. 2 by PW1 in his statement given u/s 161 Cr.P.C. before the Investigation Officer. For the first time in his deposition before the court he has come out with the version that accused No.2 caught hold of the deceased while the attack was made by accused No.1 on him during the occurrence. Thus, there is a lurking suspicion so far as the overt act of accused No.2 is concerned. It is difficult to place any reliance on the testimony of PW1 as regards the involvement of the appellant in the incident. [para 11] [75-G-H; 76-A-C]

*Anil Prakash Shukla vs. Arvind Shukla* 2007 (5) SCR 1053 = (2007) 9 SCC 513; *Idrish Bhai Daudbhai vs. State of Gujarat* 2005 (1) SCR 885 = (2005) 3 SCC 277; and *Baital Singh v. State of U.P.* (1990 Cri. L.J. 2091) - relied on.

1.2 Though the prosecution, by adducing medical evidence, has established that the deceased died of homicidal violence, the involvement of the appellant in the said incident remains doubtful and the benefit of doubt has to be given to him in the circumstances. Accordingly, the conviction and sentence imposed on the appellant-accused No.2 are set aside and he is acquitted of the charge. [para 13-14] [76-E-F]

**A Case Law Reference:**

**2007 (5) SCR 1053** relied on para 11

**2005 (1) SCR 885** relied on para 11

**B 1990 CrI. L.J. 2091** relied on para 11

**CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 543 of 2014.**

**C** From the Judgment and Order dated 09.07.2013 of the High Court of Uttarakhand at Nainital in Criminal Appeal No. 176 of 2010.

Kamini Jaiswal, Shilpi Dey, Krishna Tiwari for the Appellant.

**D** Abhishek Atrey, Babita Tyagi for the Respondent.

The Judgment of the Court was delivered by

**C. NAGAPPAN, J. 1.** Leave granted.

**E** 2. This appeal is preferred against the judgment of the High Court of Uttarakhand at Nainital in Criminal Appeal No.176 of 2010.

**F** 3. The present appellant was appellant No.2 in Criminal Appeal No. 176 of 2010 and he along with appellant No.1 therein Ganga Ram, was tried in Sessions Trial No.1 of 2008 on the file of Sessions Judge, Pauri Garhwal for the alleged offence under Section 302 read with Section 34 IPC and they were found guilty of the charge and convicted and sentenced each to undergo imprisonment for life and to pay a fine of Rs.50,000/- each and in default to undergo imprisonment for 5 years. Aggrieved by the conviction and sentence both the accused preferred appeal in Criminal Appeal No.176 of 2010 and the High Court by judgment dated 9.7.2013 dismissed the appeal. Challenging the conviction and sentence appellant/ accused No.2 Chetram has preferred the present appeal.

**H** 4. The case of the prosecution in brief is as follows: PW1

Dharam Singh and deceased Udairaj are sons of PW5 Sohan Singh. Accused No.1 Ganga Ram is the son of Rampal, the brother of PW5 Sohan Singh. Accused No.2 Chetram is brother-in-law of Ganga Ram. Accused No.2 Chetram had come to the house of Accused No.1 Ganga Ram about 10 days prior to the occurrence. PW5 Sohan Singh's family was not in talking terms with the family of accused No.1 Ganga Ram. On 4.9.2007 Dharam Singh and his brother Udairaj who are residents of Meerapur Modiwala village had gone to New Colony, Kalagarh and Udairaj was selling guavas on the side of road near the motor-cycle mechanic shop and PW1 Dharam Singh was selling guavas on other side of the road near the bank. In the afternoon at 1.30 p.m. both the accused came there and while accused No.2 Chetram caught hold of Udairaj, accused No.1 Ganga Ram stabbed him with knife. On seeing this PW1 Dharam Singh ran towards them and both the accused fled away. PW2 Danwari Lal and PW3 Balwant saw the accused persons fleeing away from the occurrence place. Blood was oozing out from the injury on the left thigh of Udairaj and PW1 Dharam Singh took him to the hospital but Udairaj died on the way. PW1 Dharam Singh lodged the complaint in writing at 2.20 p.m. in FIR Ka-1 in Police Station Kalagarh. On the said complaint chickreport Ex.Ka-18 was prepared registering the case under Section 302 IPC. Ex. Ka-7 is the relevant entry in genral diary. Inquest was conducted in the presence of Panchayatdars - and Ex. Ka-11 Inquest Report was prepared and the body was sent for post-mortem. Blood soaked earth and sample earth were taken from the occurrence place under Ex.Ka-17 and Ex.P-8 is the spot map.

5. PW4 Dr. J.C. Dhyani conducted autopsy on the body of Udai Raj at 3.00 p.m. on 5.9.2007 and found the following ante-mortem injuries:

"(1) an elliptical shaped incised wound of the size 8 cm length x 4 cm width at 3 cm depth over middle part of front of left thigh, about 15 cm above left knee, the wound is reddish in colour, clotted blood present underling soft tissues, muscles and great vascular blood vessels are

A injured.

(2) Another incised wound, elliptical shaped, of size 5 cm length x 1 cm width over back of the left elbow, the wound is superficial deep only."

B He expressed opinion that death has occurred on account of shock and hemorrhage due to excessive bleeding as a result of ante-mortem injury No.1 and issued Ex.Ka-4 post-mortem certificate.

C 6. The investigation officer seized blood stained trouser of deceased Udairaj under Ex.Ka-3 and sent the other articles for examination at the forensic laboratory. He also recovered the knife on 16.10.2007 under recovery Memo Ex. Ka-5. He completed the investigation and filed Ex.Ka-10 charge-sheet against both the accused.

D 7. In order to prove the case prosecution examined PW1 to PW9 and marked the documents. No witness was examined on the side of the defence. The accused were questioned under Section 313 Cr. P.C. and their answers were recorded. The trial court found both the accused guilty of the charge and  
E sentenced them as narrated above. Both the accused preferred appeal and the High Court dismissed the appeal by confirming the conviction and sentence imposed on them. Challenging the conviction and sentence appellant No.2/accused No.2 Chetram alone has preferred this appeal.

F 8. Ms. Kamini Jaiswal, learned counsel appearing on behalf of the appellant, would take us to the First Information Report as also the deposition of the complainant as PW-1, pointing out the improvements and inconsistencies contained therein. The learned counsel would contend that the  
G complainant in his complaint as well as in his statement given before the Investigation Officer has not assigned any role to accused No.2 Chetram in the attack made on the deceased during the occurrence, whereas at the trial he has deposed that  
H accused No.2 Chetram caught hold of Udairaj while accused No.1 Ganga Ram inflicted stab injuries on him and no reliance

can be placed on the testimony of the said witness as regards the involvement of the appellant herein in the occurrence. Per contra the learned counsel appearing on behalf of the respondent would contend that though discrepancy exist in the testimony of the complainant vis-a-vis the FIR, there is no reason to discard the evidence of the eye-witness who has proved the prosecution case as against the appellant.

9. The occurrence took place at about 1.30 p.m. on 4.9.2007 and the FIR came to be lodged at 2.20 p.m. on the same day. The distance between the occurrence place and the Police Station is said to be half a kilometer. The complainant PW1 Dharam Singh is the brother of deceased Udairaj and he alone has witnessed the occurrence. In his complaint FIR Ex.Ka-1 he has stated as follows:

"On 4.9.2007, we were selling Guavas on hand-carts in New Colony, Kalagarh. At that time Ganga Ram son of Rampal resident of Meerapur Modi who is son of my uncle (chacha) and one Chet Ram singh son of Ram Charan Singh who is resident of Kalaratan Pur, Pakwada, Police Station Moradabad, both of them had come to the Kalagarh market and Gangaram had stabbed my brother Udairaj with knife at 1.30 p.m. in the afternoon at New Colony Market, Kalagarh, and thereafter, they had fled away."

10. In the above complaint no role was assigned to accused No.2 Chetram in the attack made on Udairaj during the occurrence. During investigation PW-1 Dharam Singh was examined by investigation officer and in that statement also PW1 Dharam Singh has not stated that accused No.2 Chetram caught hold of his brother Udairaj during the occurrence. In fact during cross examination PW1 Dharam Singh has admitted the same.

11. During trial, in his testimony as PW1, Dharam Chand has stated that when he and Udairaj were selling guavas on the road side, he saw both the accused surrounding his brother Udairaj and accused No.2 Chetram had got hold of Udairaj and

A. accused No.1 Ganga Ram inflicted stab injuries on Udairaj with knife and when he ran towards them both the accused fled away. PW2 Banwari Lal and PW3 Balwant have not seen the occurrence but have witnessed accused persons fleeing away after the occurrence. Hence the solitary eye-witness to the  
B occurrence is PW1 Dharam Singh and his testimony in court is an improvement on the version given by him in the FIR in which he has not attributed any overt act to accused No.2 Chetram in the attack made on Udairaj during the occurrence. Further, no role was assigned to accused No.2 Chetram by  
C Dharam Singh in his statement given under Section 161 Cr.P.C. before the Investigation Officer. For the first time in his deposition before the court he has come out with the version that accused No.2 Chetram caught hold of Udairaj while the attack was made by accused No.1 Ganga Ram on him during the occurrence. We have a lurking suspicion in our mind so far  
D as the overt act of accused No.2 Chetram is concerned. It is difficult to place any reliance on the testimony of PW1 Dharam Singh as regards the involvement of the appellant herein in the incident.

E 12. The fact situation bears great similarity to that in *Anil Prakash Shukla vs. Arvind Shukla* (2007) 9 SCC 513; *Idrish Bhai Daudbhai vs. State of Gujarat* (2005) 3 SCC 277; and *Baital Singh v. State of U.P.* (1990 CrI. L.J. 2091).

F 13. Though the prosecution has established that Udairaj died of homicidal violence by adducing medical evidence the involvement of the appellant Chetram in the said incident remains doubtful and the benefit of doubt has to be given to him in the circumstances stated above.

G 14. In the result this appeal is allowed and the conviction and sentence imposed on the appellant Chetram/accused No.2 are set aside and he is acquitted of the charge. He is directed to be released from the custody forthwith unless required otherwise.

R.P.

Appeal allowed.