

A SURENDRA SINGH & ANR.
v.
STATE OF UTTARAKHAND
(Criminal Appeal No. 1768 of 2010)

B DECEMBER 04, 2018

[ABHAY MANOHAR SAPRE AND INDU MALHOTRA, JJ.]

Penal Code, 1860:

C *ss.457, 380 and 302/34 – Prosecution under – Of three accused – Circumstantial evidence – Conviction of all the three accused by courts below – Appeal against A-1 abated due to death of A-1 during pendency of appeal to Supreme Court – Held: All the circumstances viz. motive, accused last seen, recovery of stolen articles at the instance of accused and identification of the articles, discovery of weapon of offence at the instance of accused; recovery of blood-stained clothes of the accused and discovery of lock and key of the shop of the deceased at the instance of A-1, were proved by the prosecution with the aid of oral evidence beyond all reasonable doubt – It is established by the prosecution that none else other than the appellants were the persons involved in the crime.*

E *Constitution of India:*

F *Art.136 – Jurisdiction under – Scope of – Held: When two courts below have appreciated the entire ocular evidence, the Supreme Court would be very slow in exercise of its appellate jurisdiction u/Art. 136 to appreciate the evidence afresh, unless the concurrent findings are wholly perverse or recorded without any evidence or recorded by misreading or ignoring the material evidence.*

Dismissing the appeal, the Court

G **HELD : 1. When the two Courts below in their respective jurisdiction have appreciated the entire ocular evidence, then this Court would be very slow in exercise of its appellate jurisdiction under Article 136 of the Constitution to appreciate the evidence afresh unless the appellants are able to point out that the concurrent findings of the two Courts below are wholly**

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perverse or are recorded without any evidence or are recorded by misreading or ignoring the material evidence. [Para 30] [1064-C-E] A

Lachman Singh v. State AIR 1952 SC 167 : [1952] SCR 839 – referred to.

2.1 The motive was held proved by the two Courts below with the aid of ocular evidence of PWs 3, 4, 10 and 11 by the prosecution. There is no reason to disbelieve the evidence of these four prosecution witnesses on this issue. Firstly, no evidence was adduced by the defense; Secondly, no explanation was given by the accused under Section 313 Cr.P.C. proceedings; Thirdly, all the four witnesses knew each other including the accused persons and ‘R’ because all were the residents of one village and of nearby area. [Paras 34 and 35][1065-A-D] B C

2.2 The second circumstance is of “appellants last seen”. This was held proved by the two Courts below with the aid of ocular evidence of PWs 3, 11 and 13. There is again no reason to disbelieve the evidence of these three witnesses on this issue. First, no evidence was adduced by the defense; Second, no explanation was given by the accused under Section 313 Cr.P.C. proceedings and lastly, this was one of the relevant circumstances to prove the chain of events which led to commission of the crime. [Paras 37 and 38][1065-E, F-G] D E

2.3 The third circumstance is of “recovery of stolen articles at the instance of accused persons”. This was held proved with the aid of evidence of PWs 3, 8, and 14. This was also one of the relevant circumstances to prove the chain of events, which led to commission of crime. The reason was that the deceased was sleeping in his shop where he was found dead and several articles kept in his shop for sale which were found missing were later recovered at the instance of the accused persons. Neither any evidence nor any explanation was given by the accused on this issue. Therefore, there is no reason to find fault in this circumstance for reversing the finding on this issue. [Paras 39, 40 and 41][1065-D-G] F G

2.4 The fourth circumstance is of “identification of stolen articles”. This was held proved with the aid of evidence of PWs H

A 3 and 8. It was proved that the items recovered at the instance of the appellants were got tallied with the stolen items with the aid of these two witnesses. As there was neither any defense evidence and nor any explanation given by the appellants under Section 313 Cr.P.C. proceedings, the two Courts below were justified in holding the fourth circumstance as proved. It was undoubtedly one of the relevant circumstances to prove the chain of the event in proving the commission of crime by the appellants. [Paras 42 and 43][1066-B-D]

C 2.5 The fifth circumstance is of discovery of weapon of crime at the instance of A-3. This was held proved with the aid of evidence of PW-10. It was one of the important circumstances to prove the chain of events in commission of offence. Ext. Ka-20 is the weapon “wheel-pana” that was used for assaulting deceased on his head. The doctor, who performed the post mortem, also confirmed that the injuries sustained by the deceased on his head could be caused with the use of wheel-pana. There is no reason to disbelieve this evidence and nor there is any material to discard this evidence. [Paras 44, 45 and 46][1066-D-G]

E 2.6 The sixth circumstance is of “recovery of clothes containing human blood”. The clothes were recovered at the instance of the appellants and it was held duly proved in evidence. This equally is one of the relevant circumstances in proving the chain of events, which led to commission of the crime and there is no ground to hold this fact as not proved for want of any challenge at the instance of appellants. [Paras 47 and 48] [1066-F-H]

F 2.7 The seventh circumstance is of “discovery of lock and key of shop of the deceased”. This was recovered at the instance of A-1 and was held proved with the aid of evidence of PWs-12 & 14. [Para 49][1067-A]

G 2.8 Thus, all the circumstances were proved by the prosecution with the aid of oral evidence beyond all reasonable doubt, which led to commission of the crime. All the circumstances, point the finger of guilt towards the appellants and their complicity in commission of the crime. It is established by the prosecution that none else other than the appellants who were the persons involved in the commission of offence in

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**question and that they conspired to eliminate the deceased. A
There is no perversity or arbitrariness or illegality in the
reasoning and conclusion arrived at by the two Courts below,
when it was held that it is the appellants who committed the crime
in question. [Paras 50 and 51][1067-A-D]**

Case Law Reference B

[1952] SCR 839 referred to Para 31

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1768 of 2010.

From the Judgment and Order dated 30.12.2009 of the High C
Court of Uttarakhand at Nainital in CRL.A. No. 1644 of 2001 (Old
No. 2113/1996)

C. N. Sree Kumar, Amit Sharma, P. R. Nayak, Advs. for the
Appellants.

Jatinder Kumar Bhatia, Tanmay Agarwal Advs. for the D
Respondent.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J.

1. This appeal is directed against the final judgment and order E
dated 30.12.2009 passed by the High Court of Uttarakhand at Nainital
in Criminal Appeal No.1644 of 2001 (Old No.2113/1996) whereby the
High Court dismissed the appeal filed by the accused-appellants herein
and confirmed the order dated 11.10.1996 passed by the Sessions Judge,
Tehri Garhwal in Sessions Trial No.7 of 1990.

2. In order to appreciate the issues involved in this appeal, it is F
necessary to state the relevant facts hereinbelow.

3. Three persons, namely, Rameshwar Singh (A-1), Surendra Singh G
(A-2) and Ram Singh (A-3) were prosecuted for commission of offence
of murder of one Rajendra Prasad. The Sessions Judge held all the
three accused persons guilty for having committed murder of Rajendra
Prasad and accordingly convicted all the three accused under Sections
457, 380 and 302/34 of the Indian Penal Code, 1860 (hereinafter referred
to as "IPC"). They were accordingly sentenced to undergo rigorous
imprisonment for two years and a fine of Rs.1500/- and in default of H

A payment of fine to further undergo rigorous imprisonment for six months under Section 457 IPC, rigorous imprisonment for two years and a fine of Rs. 1500/- and in default of payment of fine to further undergo rigorous imprisonment for six months under Section 380 IPC and life imprisonment under Section 302/34 IPC. However, all the sentences were to run concurrently.

B 4. All the three accused felt aggrieved and filed criminal appeal in the High Court of Uttarakhand. By impugned judgment/order, the High Court dismissed the appeal and confirmed the conviction and the sentence awarded by the Sessions Judge to all the three accused.

C 5. All the three accused, therefore, felt aggrieved by dismissal of their appeal and filed appeal by way of special leave in this Court. During the pendency of appeal, Rameshwar Singh(A-1) expired and, therefore, the appeal against him stood abated. The appeal is now survived for its consideration on merits at the instance of remaining two accused persons, namely, Surendra Singh (A-2) and Ram Singh (A-3).

D 6. The question, which arises for consideration in this appeal, is whether the two Courts below were justified in convicting the appellants, i.e., Surendra Singh (A- 2) and Ram Singh (A-3) for the offences in question or in other words, whether the prosecution was able to prove its case beyond all reasonable doubt against the present two appellants

E as was held by the two Courts below against them.

7. In order to examine the issues, it is necessary to set out the case of the prosecution in brief.

F 8. Rajendra Kumar (deceased) was the resident of village Amni, PS Deoprayag, District Tehri Garhwal. The deceased was running a shop in village for his livelihood. Rameshwar Singh (A-1) used to visit the village Amni to meet one person, namely, Rakshanand, who was involved in some unlawful trading business. Having noticed this, Rajendra Kumar had objected Rameshwar Singh's (A-1) visits to Rakshanand's place. Due to this, Rameshwar Singh had developed grudge against

G Rajendra Kumar and in retaliation he had threatened him with dire consequence in presence of three persons, namely, Km. Asura(PW-3), Smt. Surati(PW-4) and Dhirendra Prasad(PW-11).

H 9. On 21.01.1990, Rajendra Kumar after taking dinner in his house in the night went to his shop to sleep there overnight. It is the case of the prosecution that three persons named above saw Rameshwar Singh

(A-1) with two more persons coming in one Maruti Van (UMT- 8062) in that area from Deoprayag side prior to commission of the offence. A

10. In the midnight, the shop was found unlocked and a cash of Rs.2000/- and some cloth items (two bundles of terry-cot, 4 Chaddars, one pant piece, one shirt, one trouser and torch) were found missing from the shop. Rajendra Prasad was found violently assaulted on his head causing him instant death. His dead body was seen lying at a distance of around 300 meters from water source of the village Amni next day morning, i.e., on 22.01.1990 by Surendra Bhatt-Pradhan of Gaon Sabha, Amni. B

11. He, therefore, lodged FIR (Ext. ka-1) around 9.35. a.m. at Police Station, Deoprayag, which was around 12 KM away from the place of occurrence. The FIR contained a narration that when Surendra Bhatt was going to Bus Station from his house, he noticed blood stains on the road and saw the dead body of a person lying downside of the road whose face was hidden in bushes. C

12. Thereafter, Surendra Bhatt went near to water source and informed Sita Ram, who was taking water from there, about the incident. Surendra Bhatt's child was also accompanying him. He also rushed to nearby area and called some persons. This is how 4-5 persons were assembled there on being informed of the incident. All persons then visited the place where the dead body was lying. It was recognized to be that of Rajendra Prasad. D E

13. On the basis of FIR, Head Moharir Jagdish Prasad registered a report (Ext. Ka-8) and then also registered the case (Ext. Ka-9). The case was then handed over to the investigating officer (IO) M.R. Dugtal, S.I. The IO then visited the spot and prepared the inquest report on the dead body (Ext. Ka-3). He also prepared the samples of seal (Ext. Ka-10), photo lash (Ext. Ka-11), letter sent to CMO (Ext. Ka-12), challan (Ext. Ka-13), and site plan (Ext. Ka-14). He also recorded the statement of Surendra Bhatt. The dead body was then removed from the place and sent for post mortem. Km. Asura, the daughter of deceased gave to IO the list of stolen articles. The IO then visited the shop of the deceased and prepared the site plan (Ext. Ka-15). He also took samples of blood stains and earth in two containers. (Exts. Ka-14 and 15) and also collected Biri (Ext. Ka-16), one match box (Ext. Ka-17), one cap (Ext. Ka-18), one pair of chappal (Ext.Ka-19) from the spot and took them into police custody after preparing memo (Ext. Ka-16). F G H

A 14. Dr. N.K.Saxena conducted the post mortem and found 9 injuries on the dead body, namely, (1) Lacerated wound 5cm x ½ cm bone deep on front of forehead, 4 cm above eye-brow, (2) Lacerated wound 3 cm x ½ cm x muscle deep, on right side lower jaw, ½ cm below lower lip, (3) Incised wound ½ x ½ cm on right side face, 2 cm lateral to injury no.2, (4) Incised wound ½ x ½ muscle deep on front of right
B fragus, (5) Incised wound ½ x ½ cm muscle deep on right side face, 3 cms below injury no.4, (6) Fracture of frontal bone, (7) Lacerated wound 3 cm x ½ cm x bone deep, on right parietal bone, (8) Lacerated wound 10 cm x 4 cms x bone deep, on right parietal and occipital bone and (9) Left ear outer part whole tear, lacerated wound which goes upto to
C bone- matter. All were *ante mortem*. On internal examination, he found the fracture of parietal and frontal bones of skull. He opined that cause of death was shock and hemorrhage due to *ante mortem* injuries. He also opined that the deceased died in the intervening night of 21-22nd around 8-9 p.m. The post mortem report is (Ext. Ka-5).

D 15. The IO then recorded the statements of Km. Asura, Dhirendra Prasad, Madho Singh and Sada Singh. This led to arrest of the accused persons on 11.02.1990.

E 16. On being interrogated at the instance of Rameshwar Singh (A-1), one bushshirt, pant, one pant piece of terry-cot, which was stolen from the shop were recovered. In addition, one blood stained jersey from Khoka situated at Mussorrie taxi stand, Dehradun was also recovered. At the instance of Surendra Singh (A-2), one blood stained shirt and pant, stolen shirt, pants and 2 chaddars from his house at Bharuwala, Dehradun were recovered. Likewise, at the instance of Ram
F Singh(A-3), one stolen pant, one shirt, two chaddars and one torch from his house were recovered. In addition, Maruti Van (UMT-8062), wheel-pana (Ext. Ka-20) which was used in commission of the offence, were also recovered from the house of one Anup Kumar at Dehradun.

G 17. The IO accordingly prepared site plan of the houses of A-1, A-2 and A-3 and Anup Kumar (Exts. Ka-21 to Ka-24). The IO also discovered the lock and key of the shop of the deceased at the instance of A-1 near the road situated in village Gyuli. Accordingly, recovery memo (Ext.Ka-5 and site plan (Ext.Ka-25) was drawn up.

H 18. The IO then got the identification of the stolen articles from the two daughters of the deceased-Km. Asura and Guddi, who duly identified the items to be the ones stolen from the shop of the deceased. Accordingly, identification memo (Ext.Ka-7) was prepared.

19. On completion of the investigation, charge-sheet was filed and the case was committed to the Court of Sessions for trial. The prosecution examined as many as 14 witnesses. All the three accused denied the prosecution case in their statement under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Cr.P.C.”). The Sessions Judge, as mentioned above, found all the three accused guilty and accordingly convicted them under Sections 457, 380 and 302/34 IPC and sentenced each of them mentioned above. In appeal filed by the accused, the High Court confirmed the order of conviction and sentence and dismissed their appeal, which gives rise to filing of the present appeal by way of special leave in this Court by the accused persons.

20. Heard Mr. C.N. Sree Kumar, learned counsel for the appellants and Mr. Jatinder Kumar Bhatia, learned counsel for the respondent.

21. Learned counsel for the appellants(accused persons) mainly urged five points.

22. In the first place, the learned counsel submitted that the entire case is based on circumstantial evidence and, according to him, the prosecution has failed to adduce sufficient evidence to prove the case beyond all reasonable doubt.

23. It was his submission that as a matter of fact this is a case of no evidence against the appellants and, therefore, the conviction of the appellants by the two Courts below is wholly unsustainable in law.

24. In the second place, learned counsel submitted that the prosecution has failed to prove the chain of events, which was the basic requirement in cases of circumstantial evidence to connect the accused with the commission of offence and, therefore, the conviction is legally unsustainable.

25. In the third place, learned counsel submitted that whatever evidence the prosecution has adduced to prove the chain of events to connect the accused with the commission of the offence, the same is not sufficient to prove the complicity of the appellants in commission of the crime. In any event, according to learned counsel, the evidence adduced is not reliable for sustaining the appellants’ conviction.

26. In the fourth place, learned counsel submitted that no motive could be proved against the appellants for commission of the crime in question and, therefore, the conviction is legally unsustainable.

A 27. And lastly, the learned counsel took us through the evidence and the findings of the two Courts below while elaborating his submissions and contended that the concurrent findings of the two Courts below are wholly “perverse” inasmuch as they are based on the evidence which is not reliable for want of its quality or/and sufficiency.

B 28. In reply, learned counsel for the respondent (State) supported the conviction of the appellants and prayed that impugned judgment does not call for any interference and the appeal is liable to be dismissed.

C 29. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no force in any of the submissions urged by the learned counsel for the appellants (accused).

D 30. At the outset, we consider it apposite to state that when the two Courts below in their respective jurisdiction has appreciated the entire ocular evidence, then this Court would be very slow in exercise of its appellate jurisdiction under Article 136 of the Constitution to appreciate the evidence afresh unless the appellants are able to point out that the concurrent findings of the two Courts below are wholly perverse or are recorded without any evidence or are recorded by misreading or ignoring the material evidence.

E 31. We consider it apposite to recall the apt words of Justice Fazal Ali, a learned Judge, while speaking for the Bench in the case of **Lachman Singh vs. State** (AIR 1952 SC 167 at page 169) when His Lordship observed “*It is sufficient to say that it is not the function of this Court to reassess the evidence and an argument on a point of fact which did not prevail with the Courts below cannot avail the appellants in this Court.*”

F 32. Yet, we have gone through the evidence and examined the findings of the two Courts below with a view to find out as to whether they are sustainable in law.

G 33. It is not in dispute that the entire case is based on circumstantial evidence and that there is no eyewitness to the incident. It is, therefore, necessary to see those circumstances which found proved by the two Courts below on the basis of evidence adduced by the prosecution for holding the appellants guilty for commission of the crime in question resulting in their conviction.

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34. First- the motive. This was held proved by the two Courts below with the aid of ocular evidence of PWs 3, 4, 10 and 11 by the prosecution. These witnesses stated that Rameshwar Singh(A-1) had a grudge against the deceased because much prior to the date of incident, it was seen and heard by them that the deceased used to object Rameshwar Singh (A-1) for his having close association with one Rakshanand, who was involved in carrying illegal business in the village. These witnesses stated that due to the deceased objecting to Rameshwar Singh, he had threatened the deceased to kill him one day.

35. In our view, there is no reason to disbelieve the evidence of these four prosecution witnesses on this issue. Firstly, no evidence was adduced by the defense; Secondly, no explanation was given by the accused under Section 313 Cr.P.C. proceedings; Thirdly, all the four witnesses knew each other including the accused persons and Rakshanand because all were the residents of one village and of nearby area.

36. We, therefore, find no good reason to discard their evidence which, in our opinion, was rightly believed by the two Courts below for recording the finding of fact on the question of motive against the appellants.

37. The second circumstance is of “appellants last seen”. This was held proved by the two Courts below with the aid of ocular evidence of PWs 3, 11 and 13. It was proved that Ram Singh (A-3) was the driver of Maruti Van which was owned by Anup. This Maruti Van was seen moving prior to commission of the offence in the area in question carrying the appellants. This Van was recovered at the instance of Ram Singh.

38. In our view, there is again no reason to disbelieve the evidence of these three witnesses on this issue. First, no evidence was adduced by the defense; Second, no explanation was given by the accused under Section 313 Cr.P.C. proceedings and lastly, this was one of the relevant circumstances to prove the chain of events which led to commission of the crime.

39. The third circumstance is of “recovery of stolen articles at the instance of accused persons”. This was held proved with the aid of evidence of PWs 3, 8, and 14.

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A 40. This was also one of the relevant circumstances to prove the chain of event, which led to commission of crime. The reason was that the deceased was sleeping in his shop where he was found dead and several articles kept in his shop for sale which were found missing were later recovered at the instance of the accused persons.

B 41. Neither any evidence nor any explanation was given by the accused on this issue. We, therefore, find no reason to find fault in this circumstance for reversing the finding on this issue.

C 42. The fourth circumstance is of “identification of stolen articles”. This was held proved with the aid of evidence of PWs 3 and 8. It was proved that the items recovered at the instance of the appellants were got tallied with the stolen items with the aid of these two witnesses.

D 43. As there was neither any defense evidence and nor any explanation given by the appellants under Section 313 Cr.P.C. proceedings, the two Courts below were justified in holding the fourth circumstance as proved. It was undoubtedly one of the relevant circumstances to prove the chain of the event in proving the commission of crime by the appellants.

E 44. The fifth circumstance is of discovery of weapon of crime at the instance of Ram Singh (A-3). This was held proved with the aid of evidence of PW-10. It was one of the important circumstances to prove the chain of event in commission of offence.

F 45. Ext. Ka-20 is the weapon “wheel-pana” that was used for assaulting deceased on his head. The doctor, who performed the post mortem, also confirmed that the injuries sustained by the deceased on his head could be caused with the use of wheel-pana.

46. We find no reason to disbelieve this evidence and nor there is any material to discard this evidence at the instance of the appellants.

G 47. The sixth circumstance is of “recovery of clothes containing human blood”. The clothes were recovered at the instance of the appellants and it was held duly proved in evidence.

48. This equally is one of the relevant circumstances in proving the chain of event, which led to commission of the crime and we find no ground to hold this fact as not proved for want of any challenge at the instance of appellants.

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49. The seventh circumstance is of “discovery of lock and key of shop of the deceased”. This was recovered at the instance of A-1 and was held proved with the aid of evidence of PWs-12 & 14. A

50. In our considered opinion, the aforementioned are the circumstances, which were proved by the prosecution with the aid of oral evidence beyond all reasonable doubt, which led to commission of the crime. All the circumstances, in our view, point the finger of guilt towards the appellants and their complicity in commission of the crime. It is established by the prosecution that none else other than the appellants who were the persons involved in the commission of offence in question and that they conspired to eliminate the deceased. It is proved that with such idea in mind they entered in the shop on the intervening night of 21-22nd and brutally assaulted the deceased with the aid of wheel-pana on his head, looted his shop and took away the stolen articles with them and threw away the body of the deceased near the downside of the road outside the shop at a distance. B
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51. We are unable to notice any kind of perversity or arbitrariness or illegality in the reasoning and conclusion arrived at by the two Courts below when it was held that it is the appellants who committed the crime in question. D

52. In view of the foregoing discussion, we find no merit in the appeal. It thus fails and is accordingly dismissed. E