

CASE NO.:
Appeal (crl.) 805 of 2004

PETITIONER:
Sohan Singh

RESPONDENT:
State of Uttaranchal

DATE OF JUDGMENT: 28/10/2005

BENCH:
B.N.AGRAWAL & A.K.MATHUR

JUDGMENT:
J U D G M E N T
WITH

CRIMINAL APPEAL NO. 613 OF 2005

Mahendra Pratap Singh Gill

\005\005.Appellant

Versus

State of Uttaranchal & Ors.
t

\005\005..Responden

B.N.AGRAWAL, J.

Sohan Singh, the sole appellant in Criminal Appeal No. 805 of 2004 (hereinafter referred to as 'the appellant') along with accused Paramjeet Singh, Mohit Raza, Pradeep and Ashwani Kumar Mittal was tried and by judgment rendered by the trial court, they were acquitted of all the charges. Against the order of acquittal, State of Uttaranchal preferred an appeal before the High Court whereas Mahendra Pratap Singh Gill (PW 5), one of the injured, filed a revision application challenging the acquittal. The High Court upheld the order of acquittal in relation to accused Mohit Raza, Pradeep and Ashwani Kumar Mittal but reversed the same with regard to the appellant and accused Paramjeet Singh who have been convicted under Sections 147, 148, 302/149 and 307 of the Penal Code and sentenced to undergo imprisonment for life. Paramjeet Singh did not move this Court whereas appellant Sohan Singh challenged his conviction which by special leave gave rise to Criminal Appeal No. 805 of 2004. The order of High Court granting acquittal to the aforesaid three accused persons has been challenged by PW 5 giving rise to Criminal Appeal No. 613 of 2005.

The short facts are that one Bholu (PW 1) servant of Ram Singh, lodged a written report on 8th October, 2002 at about 8.30 a.m. at the Jwalapur Police Station within the district of Haridwar stating therein that on that day in the morning at about 7.45 a.m. when he went to the residence of Ram Singh to resume his work, found that Ram Singh, his wife Bhajan Kaur and another servant lying dead there on their cots and three of the family members of Ram Singh, namely, his daughter Gurdeep Kaur (PW 4), sons Mahendra Pratap Singh Gill (PW 5) and Shamsher Singh Gill (PW 6) were lying there unconscious in injured condition. It was stated in the first information report that the aforesaid persons were murdered and injured by some unknown person.

The police after registering the case inspected the place of occurrence, sent the three injured persons to the hospital and held inquest on the dead bodies of three deceased persons. During the course of investigation, the police recorded statements of injured witnesses from which it transpired that the aforesaid five accused persons including the appellant had complicity with the crime as they are said to have assaulted the injured witnesses. Later on

the case was investigated by crime branch, Criminal Investigation Department. Thereafter, upon completion of investigation, charge sheet was submitted against all the accused persons, on receipt whereof, the learned Magistrate took cognizance and committed them to the court of sessions to face trial.

Defence of the accused persons, in short, was that they were innocent, no occurrence much less the occurrence alleged had taken place, the members of the prosecution party might have received injuries in the dead of night at the instance of some unknown persons while committing dacoity in the house of Ram Singh on the fateful night and nobody had seen the occurrence but the accused persons have been falsely roped in to feed fat the old grudge.

During trial, the prosecution examined twelve witnesses in all, out of whom, Bholu (PW 1) was the informant, Gurdeep Kaur (PW 4), Mahendra Pratap Singh (PW 5) and Shamsher Singh Gill (PW 6) claimed to be injured eyewitnesses and stated that the accused persons assaulted them. Dr. S.S.Lal (PW 8) held postmortem examination on the dead bodies of three deceased persons and Dr. K.K.Karoli (PW 7) examined the injuries of PWs 4, 5 and 6. Vijay Singh (PW 10) was the first investigating officer and Nanke Singh (PW 11) was the investigating officer of C.B., C.I.D. whereas other witnesses were formal ones. Upon the conclusion of trial, all the accused persons were acquitted by the trial court but on appeal and revision being preferred on behalf of the State and PW 5 respectively, the High Court upheld the acquittal of accused Mohit Raza, Pradeep and Ashwani Kumar Mittal whereas convicted the appellant and accused Paramjeet Singh as stated above. Hence, these appeals by special leave by the appellant as well as PW5.

The question to be examined in the present case is as to whether members of the prosecution party had received injuries in the manner alleged by the prosecution or they might have received injuries during the course of dacoity committed in the house of Ram Singh in the dead of night by some unknown persons and nobody had seen the occurrence. PW 6 admitted in his evidence specifically that few days prior to the date of incident, his mother and sister had purchased clothes and jewellery from the market. PW 1 who is the informant admitted that all the almirahs and boxes in which jewellery and clothes were kept were found empty. Sonal Prince (PW 2) stated in his evidence that when upon receiving information about the incident, he went to the house of Ram Singh, it transpired that almirahs were lying open and no article was found therein. He also admitted during the course of cross-examination that it appeared to him that a dacoity had taken place and even the people who were present there were all talking about the commission of dacoity in the house of Ram Singh. None of these witnesses have been declared hostile and from their evidence, the possibility of members of the prosecution party having received injuries during the course of dacoity committed by some unknown persons in the dead of night cannot be ruled out and nobody had seen the occurrence which would be apparent from the facts stated hereinafter.

In order to prove the prosecution case, three injured witnesses, namely, PWs 4, 5 and 6 claimed to have witnessed the incident. None of these persons stated in their evidence that any of the accused persons assaulted any of the three deceased persons. PW 4, daughter of Ram Singh stated that in the midnight of 7/8th October, 2002 between 12.30 and 1.00 O'clock, her parents were sleeping in the outer verandah of the house and she and her two brothers were sleeping inside the room whereas servant was sleeping in the adjoining room. She further stated that the door of the house was not bolted from inside and she woke up upon hearing groaning sound of her brothers and found in the light of bulb that appellant, accused Paramjeet Singh and accused Lakhbir Singh were beating her brothers and apart from them, there were also six to seven other persons present there, whom she could not recognize. She then stated that seeing her awakened, the accused persons attacked her with dandas and saris and she became unconscious.

This witness candidly stated that she regained some consciousness after three to four days and full conscious after a week of the occurrence, which shows that she regained consciousness by 14th October, 2002 but curiously enough, the investigating officer PW 10 as admitted by him recorded her statement for the first time on 23rd October, 2002 and no explanation has been furnished by the prosecution as to why there was delay of nine days in recording the statement of this witness by the police. PW 4 also stated that she received injuries while she was on the bed in the room, but curiously enough, she was found lying unconscious by the investigating officer in the courtyard of the house and not in the room. Apart from this, the witness stated that the accused persons assaulted her on the front portion of her body as well as backside but the doctor PW7 did not find any injury either on the front portion of the body or on the back side rather he found all the three injuries on the left side of the body near the eye and head.

Other injured witness is PW5 who stated that he was inflicted only one blow but the doctor (PW 7) found three injuries on his person. This witness stated that he regained consciousness after three days, i.e., on 11th October, 2002. He stated specifically that his statement was recorded for the first time by the investigating officer 15 to 20 days after the occurrence though he regained consciousness after three days for which no explanation has been furnished by the prosecution for his examination by the police after such a long delay. This witness further stated that his statement was recorded by a magistrate in the hospital either on 9th October, 2002 or 10th October, 2002 which cannot be accepted as according to his own statement, he regained consciousness only on 11th October, 2002 and that apart the prosecution has failed to produce any such statement of this witness recorded by a magistrate. In the present case, the prosecution has produced two statements of this witness said to have been recorded by the investigating officer, one on 10th October, 2002 and another on 25th October, 2002. So far, statement said to have been recorded on 10th October, 2002 is concerned, it does not appear to be possible to record statement of this witness on 10th October, 2002 as according to his own statement, he regained consciousness on 11th October, 2002. In relation to the statement of this witness recorded by the police on 25th October, 2002, no reason has been assigned why the same was recorded after 14 days when the witness regained consciousness on 11th October, 2002.

Last injured eyewitness is PW 6 who stated that he was assaulted by the accused persons including the appellant. This witness as admitted by him regained consciousness after 20 to 25 days of the alleged occurrence, i.e., in the first week of November, 2002. But curiously enough, his statement was recorded for the first time only a month thereafter on 9th December, 2002 by the investigating officer for which no explanation whatsoever is forthcoming.

It is well settled that delay in examination of prosecution witnesses by the police during the course of investigation, ipso facto, may not be a ground to create doubt regarding veracity of the prosecution case. But in the facts and circumstances of the present case, veracity of the prosecution case becomes highly doubtful as in view of the evidence of prosecution witnesses, namely, PWs 1, 2 and 6, the possibility of dacoity in the house of Ram Singh and receiving injuries by the members of the prosecution party during the course of dacoity cannot be ruled out more so when there is no evidence whatsoever to show that any of the accused persons much less the appellant assaulted the three deceased persons in view of the fact that none of the injured witnesses, namely, PWs 4, 5 and 6 stated that the accused persons assaulted any of the three deceased persons. For the foregoing reasons, we are of the view that the prosecution has failed to prove its case beyond reasonable doubt and the High Court was not justified in reversing the order of acquittal recorded by the trial court as the same was not perverse in any manner. As we have doubted veracity of the prosecution case in relation to all the accused persons, it would be just and expedient to extend same benefit to accused Paramjeet Singh as well in spite of the fact that his conviction recorded by the High Court has attained finality as he did not move this Court.

Accordingly Criminal Appeal No. 805 of 2004 filed by the appellant is allowed, the order of conviction and sentence rendered by the High Court in relation to the appellant Sohan Singh as well as accused Paramjeet Singh is set aside, their order of acquittal recorded by the trial court is restored and they are directed to be released forthwith, if not required in connection with any other case. Consequently, Criminal Appeal No. 613 of 2005 filed by Mahendra Pratap Singh Gill (PW 5) is dismissed.

JUDIS