

(Non-Reportable)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 859 OF 2007

Tara SinghAppellant

Vs.

State thr. Home Secretary, UttarakhandRespondent

WITH

CRIMINAL APPEAL NO. 1722 OF 2012

J U D G M E N T

A.K.SIKRI,J.

1. The appellants in these two separate appeals challenge the impugned judgment and order dated 16.5.2006 passed by the High Court of Uttranchal whereby the High Court has been pleased to confirm the conviction and sentence of the appellant to undergo life imprisonment u/s 302 IPC and further sentence of four years rigorous imprisonment u/s 201 IPC.

2. The appellants were charged for committing murder of 5 years old boy named Bharat Singh. As per the prosecution version, Bharat Singh was the grandson of Ram Singh. Ram Singh was grazing the cattle on 15.10.1982. At about 1.30 p.m. on that day,

he instructed his grandson Bharat Singh (the deceased) to look after the cattle as he was going to his house for lunch. The boy obeyed the instructions of his grandfather and started grazing the cattle. After some time, when Ram Singh came back from his house, he found the boy missing. He called out his grandson by name but without any response. On this, Ram Singh along with his son Pratap Singh (Uncle of missing boy and the complainant) started their search for the boy. When the boy was not traced till evening Pratap Singh (PW-4) even informed the Patwari (Revenue Officer) about this. He also joined the father and grandfather in searching the missing boy. The search went on till late night but with no results. However, when the search began next morning i.e. on 16.10.1982, at about 11.00 a.m. the dead body of the boy Bharat Singh was found lying in a cave. FIR No.A-5 was lodged with the Patwari in which Diwan Singh son of Nathu Singh, Ramesh Singh s/o Diwan Singh and Diwan Singh s/o Mahendra Singh were named on suspicion by the complainant. The dead body was taken into custody by Patwari (PW5) who prepared the inquest report (Ex.A6), sketch of the dead body (Ex.A-7) and the sample seal (Ex.A-10). At about 3.10 P.M. on 18.10.1982 the autopsy was

conducted of the deceased Bharat Singh by Dr.C.B.Pal (PW2) in the district Headquarters at Pithoragarh who prepared the post-mortem report (Ex.A1). The said Medical Officer found following ante mortem injuries on the body of the deceased:

- a. Legature marking 2.5 cm. in bredth encircling the next transversely and obliquely. The whole of the legature mark depressed encircling upto back of both ears, knot on the left side.
- b. Lacerated wound on the back of head measuring 3.5 cm. x 1 cm. x bone deep.
- c. Abrasion mark measuring 3.5. cm x 0.5 cm. obliquely on the left side of the forehead.
- d. Contusion mark measuring 5 cm x 2 cm on the anterior part of left axial.
- e. Multiple contusion and abrasion mark present all over the body.
- f. Contusion mark 4 cm x (six) just below the chin.

JUDGMENT

3. The Investigation Officer after investigation, submitted the charge-sheet (Ex.A-17) on 29.1.1983 against four accused persons namely Ramesh Singh s/o Diwan Singh (S/o Mahendra Singh), Diwan Singh s/o Mahendra Singh, Diwan Singh s/o Nathu Singh, Tara Singh s/o Diwan Singh s/o Nathu Singh. The name of

appellant Tara Singh figured in the charge sheet, though in the FIR it was not mentioned.

4. On 27.9.1983, the ld. Sessions Judge Pithoragarh framed the charges against the accused Diwan Singh s/o Nathu Singh and accused Diwan Singh s/o Nathu Singh relating to offence punishable u/s 302 r/w Section 34 of the IPC and he further framed charges against accused person Ram Singh and Tara Singh (the appellant herein) under 3 heads i.e. u/s 302 of the IPC, u/s 364 of the IPC and u/s 201 of the IPC. All the accused persons pleaded not guilty and claimed to be tried.

5. After the trial, the learned Sessions Judge pronounced his judgment dated 16.11.1984 thereby acquitting Diwan Singh s/o Nathu Singh and Diwan Singh s/o Mahendra Singh of the charge of murder under Section 302 IPC. However, in so far as the appellants are concerned, they were convicted under Section 302 IPC for committing the murder of Bharat Singh as well as under Section 201 IPC for concealing the dead body in a cave. Both were sentenced to imprisonment for life under Section 302 IPC and 4 years rigorous imprisonment under Section 201 IPC. Both the

convicted persons filed their separate appeals in the High Court questioning the veracity of the judgment of the learned Sessions Judge. State also filed appeal against that part of the said judgment whereby other two accused persons were acquitted by the Sessions Judge. All these three appeals were heard together and decided by the High Court vide judgment dated May 16, 2006. All the three appeals viz. that of the State as well as of the appellants herein have been dismissed. In essence, the judgment of the Sessions Judge stands affirmed in its entirety by the High Court.

6. Still not satisfied, the appellants have approached this Court claiming themselves to be innocent persons who are wrongly framed and convicted in the said case.

7. At the time of hearing, nobody appeared for the appellant Ram Singh. Mr. J.S. Attri, learned senior counsel appearing for Tara Singh submitted that on the basis of purported evidence appearing on record there could not have been any conviction of the appellant, particularly that of Tara Singh. His first submission was that Tara Singh was not named in the FIR and was unnecessary roped in at a later stage. His first submission was that even as per the

complainant (PW4) who had lodged the FIR, the suspects were other three persons and not Tara Singh. This argument hardly carries any substance. Merely because the complainant did not suspect the involvement of the appellant Tara Singh would not mean that he could not be named in the charge sheet when during investigation it came to light that he was also perpetrator of the crime. Rather in such a situation not implicating him would have been the travesty of justice. It is a matter on record that there was no known eye witness to the crime and because of this reason. Other three names were also mentioned only on suspicion. During the investigation when the statement of Tara Dutt (PW1) and Diwan Singh (PW3) were recorded, role of the appellant Tara Singh in the crime surfaced. Therefore, non-mentioning of the name of Tara Singh in the FIR would be of no significance.

8. Another argument raised by Mr. Attri was that the testimony of Tara Dutt (PW1) is not reliable. We may record at this stage that PW1 is the witness to the 'last seen' incident. As per his statement, the accused persons live in Bhaati Gaon which is at a distance of one mile from his village. He further deposed that on 15th October,

1982 while he was returning after grazing the cattle, he had seen two accused named Tara Singh and Ramesh Singh (appellants herein) who were holding Bharat Singh (the deceased). They had clasped his mouth and were taking him from the side Ganga Nath Temple to downwards direction. Very next morning, he left his house for going to 'Diety Shanigaad Dewta' and he returned from there on fifth or sixth day. In his cross-examination, he stated that he had seen the child carrying from a distance of $\frac{3}{4}$ of a mile. He was 75 years of age. He admitted that his eye-sight was weak.

9. Inviting out attention to this part of the cross-examination, it was argued that an old man of 75 years with failing eye sight could not have seen or recognized the appellants and deceased from such a far away distance. We are not convinced with this argument either. Had it been an incident on planes, probably assertion of the learned senior counsel that it was difficult to recognize persons from such a distance could carry some weight. However we are dealing with the incident which occurred in a hilly area and it is not difficult to spot a person from higher height at that distance. In the hilly terrain, the aerial distance is much below than the land

distance. We have gone through the entire testimony of the said witness who seems to be the totally disinterested and independent witness.

10. Mr. Attri also made efforts to discredit the testimony of other witness namely Daan Singh (PW3). Mr. Daan Singh has made statement to the effect that his house is about $\frac{1}{2}$ km from the house of Diwan Singh s/o of Mahendra Singh. On 15th October 1982 when he was coming from Bisonia Tok, which is in his village, with bundle of chhilka on his head at about 1.30 or 2.00 p.m., he saw Bharat Singh taking care of his goats near Ganganath temple. Appellant Ramesh Singh came from downwards with appellant Tara Singh behind him and both of them sat with Bharat Singh. After few hours, he came to know Bharat Singh had disappeared as there was talk in the village to this effect. He joined the village persons who were searching for Bharat Singh. The next day, the Patwari came to the village and they started searching for the boy. He told village Pradhan as well as grandfather of Bharat Singh at that time that he had seen the deceased Bharat Singh with appellants on the previous day. The submission of Mr. Attri is that conduct of Daan

Singh is very natural unnatural as he should have told about the said incident on the same day when he found Bharat had disappeared. However, this fact by itself may not be sufficient to discredit the testimony of Daan Singh (PW3) when examined along with other circumstances. It has come on record that he is related to the informant's family as well as family of the accused persons. Thus, he was equally known to both and had no axe to grind. After going through his entire testimony including lengthy cross-examination, we find that it has remained unshaken. He is witness to 'last seen'. The High Court has rightly observed that his statement appears to be natural and true.

11. No doubt, it is not a case of direct evidence as there is no eye witness to the actual occurrence i.e. there is no witness who has seen the accused person strangulating Bharat Singh(deceased). However, at the same time having regard to the aforesaid discussion and after reading the testimony of all other witnesses, we agree with the conclusion of the courts below that there is a complete chain of circumstances proving the charges against the appellants herein. This chain of circumstances consists of following links:

“i) The accused persons were harbouring enmity against the family of deceased.

ii) Immediately three days before the date of incident from the side of accused persons threat was given to the family of the deceased that their family lineage would be brought to an end.

iii) Three days after the threat Bharat Singh(deceased), a young boy of five years, who was the only member of third generation in the family of Ram Singh (grandfather of the deceased) was found missing.

iv) Half an hour before he was found missing, when he was grazing the cattle all alone, it was seen by Dan Singh (PW3), one of the prosecution witnesses, that the appellants Ramesh Singh and Tara Singh came to near deceased and sat with him.

v) Thereafter Tara Datt(PW1) saw appellants Tara Singh and Ramesh Singh taking Bharat Singh with them by holding him physically and his mouth gagged.

vi) The boy (Bharat Singh) could not be traced out on 15.10.1982 even after in all the places where he could have been found. The next day i.e. on 16.10.1982, the dead body of the deceased, on search, was found in a cave.

vii) On postmortem of the dead body it was found that the boy had died of strangulation.”

12. The last argument of Mr. Attri was that investigation in this case was conducted by a Patwari and not by a Police Officer and therefore entire investigation is vitiated. In the first instance, we may point out that no such argument was raised before the trial court and the High Court. In any case, the learned counsel for the respondent has produced a copy of the Notification No.494/VIII/-/418-16 dated 7.3.1916 which was issued by the Lt. Governor of the United Province in exercise of power conferred upon him by Section 6 of the Scheduled Districts Act, 1874. Vide this Notification rules for appointing Police Officers and for regulating the procedure and for prescribing the powers and duties to be exercised and performed by them in the District of Almora and Garwal and the Hill Pattis of Nainital, have been framed. Appendix to this Notification confers various powers and duties which Patwaris are required to perform as police officers. It specifically confers upon them the powers to register the reports of crime and conduct the investigation in relation thereto. Though lots of other documents are filed to demonstrate this very legal position viz. Patwari is duly authorized to conduct such investigation in the

absence of a police officer, it is not necessary to dilate upon this aspect any further.

13. As a result, these appeals are held to be devoid of any merit and are accordingly dismissed.

New Delhi,
Dt. February 25, 2014



.....J.
(K.S.Radhakrishnan)

.....J.
(A.K.Sikri)

JUDGMENT

