

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

THE HON'BLE SRI JUSTICE ALOK KUMAR VERMA

28th DECEMBER, 2023

CRIMINAL REVISION NO. 232 of 2011

Bittu alias Pradeep Revisionist

Versus

State of Uttarakhand. Respondent

Counsel for the Revisionist : Mr. Shashi Kant Shandilya,
Advocate.

Counsel for the State : Mr. Rakesh Negi, Brief
Holder.

Hon'ble Alok Kumar Verma,J.

Revisionist-accused was convicted and sentenced to undergo rigorous imprisonment for a period of two and a half years along with a fine of Rs. 10,000/- under Section 365 of the Indian Penal Code, 1860. Against the said judgment dated 22.01.2011, passed by learned Chief Judicial Magistrate, Haridwar in Criminal Case No. 166 of 2011, an Appeal (Criminal Appeal No. 24 of 2011) was filed. The said Appeal has been dismissed vide judgment dated 05.08.2011, passed by learned Additional Sessions Judge/IInd FTC, Haridwar.

2. The case of the prosecution is that the informant Janeshwar (PW3) informed the police on 24.06.1998 that his five year old son-Shubham Kumar was missing since 22.06.1998. A missing report was registered by the police. On 25.06.1998, when the police party along with the

informant-Janeshwar (PW3), Babu Ram (PW1), Vinay Pradhan (PW4) and one Sukkar were searching for the missing child, they received a secret information that the missing child could be recovered from a slum. Accordingly, the police party along with the above mentioned persons raided the said slum. Shubham Kumar was sitting scared outside the said slum. The revisionist's mother Smt. Sunita was standing outside the slum and the revisionist and his father-Ramesh were present inside the said slum. They were arrested by the police.

3. Upon conclusion of the investigation, a charge-sheet (Ext. Ka 4) was filed by Mr. B.S. Bhakuni (PW5).

4. Ramesh confessed his guilt. Due to absence of Smt. Sunita, the file of the revisionist was separated.

5. The charge was framed. Revisionist-accused pleaded not guilty and claimed to be tried.

6. Prosecution, in order to establish the charge, examined altogether five witnesses.

7. Statement under Section 313 of the Code of Criminal Procedure, 1973 was recorded. Revisionist-accused denied all the incriminating evidence, adduced by the prosecution.

8. Mr. Shashi Kant Shandilya, Advocate, appearing for the revisionist, contended that as per the prosecution

story, there were two eye-witnesses of the alleged recovery other than the informant. The said eye-witnesses have turned hostile and the evidence of other witnesses are contradictory to each other, and, in the complete story, no motive has been assigned.

9. Mr. Rakesh Negi, learned Brief Holder for the State, has supported the judgments of the Trial Court and the Appellate Court.

10. I heard learned counsel for the parties and carefully assessed the evidence, adduced by the prosecution.

11. According to the prosecution case, at the time when the missing child was recovered, the revisionist was also present in the said slum. Babu Ram (PW1) and Vinay Pradhan (PW4) were present with the police party at the time of recovery of the missing child. But, these two witnesses have not supported the prosecution case. Both these witnesses have been declared hostile by the prosecution.

12. It has been deposed by Babu Ram (PW1) that Bittu (revisionist) was not present inside the slum at the time when the missing child was recovered, whereas, it has been stated by Vinay Pradhan (PW4) that the missing child was not recovered in his presence.

13. According to the prosecution, Ravindra Kumar Chamoli (PW2) was posted in-charge at the police chowki Har-ki-Pauri at the time of recovery of the missing child. He had recovered the missing child from the slum. The informant-Janeshwar (PW3), the father of the missing child, was also present with him at that time, but, serious contradictions are found in their statements due to which, the case of the prosecution against the revisionist cannot be said to be proved beyond reasonable doubt.

14. The prosecution's case is that when the slum was raided, missing child-Shubham Kumar was sitting scared outside the slum. Ravindra Kumar Chamoli (PW2) stated that Shubham Kumar was recovered in front of the slum, while, Janeshwar (PW3) stated that Shubham Kumar was present inside the said slum. He had brought Shubham Kumar out of the said slum.

15. The prosecution's case is that Smt. Sunita was found standing outside the slum at the time of the raid, whereas, it was stated by Ravindra Kumar Chamoli (PW2) that Smt. Sunita was sitting inside the slum at the time of the raid.

16. In **Bhagwan Singh and others vs. State of M.P., (2002) 4 SCC 85**, the Hon'ble Supreme Court observed that the golden thread which runs through the

web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other of his innocence, the view which is favorable to the accused should be adopted.

17. It is also a basic rule of the criminal jurisprudence that suspicion, however, strong cannot take place of proof. In **Sujit Biswas vs. State of Assam, AIR 2013 SC 3817**, the Hon'ble Supreme Court held that suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved, and something that "will be proved." In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between "may be" and "must be" is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between "may be true" and "must be true", must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied.

18. On a detailed examination and scrutiny of the evidence, produced by the prosecution, it is considered view of this Court that the prosecution has failed to establish the commission of the alleged offence by the revisionist beyond all reasonable doubt, therefore, he deserves benefit of doubt.

19. As a result, this Court accepts the case of the revisionist. Accordingly, the present Criminal Revision (No. 232 of 2011) is allowed.

20. The impugned judgment dated 05.08.2011, passed by learned Appellate Court and judgment dated 22.01.2011, passed by learned Chief Judicial Magistrate, Haridwar, are hereby set aside. The revisionist is acquitted of the charge under Section 365 of the Indian Penal Code, 1860. Revisionist is on bail. His bail bonds are cancelled and sureties are discharged.

ALOK KUMAR VERMA, J.

Dt: 28.12.2023
Shiksha