



Reserved Judgment

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

JUSTICE SHRI MANOJ KUMAR TIWARI

AND

JUSTICE SHRI VIVEK BHARTI SHARMA

4 December, 2024

Government Appeal No.199 of 2015

State Of Uttarakhand

..Appellant

Versus

Ranjeet Prasad & Ors.

...Respondents

Present:-

Mr. K.S. Bora, learned Deputy Advocate General assisted by Mr. J.P. Kandpal, learned Brief Holder for the State-appellant.

None for the respondents

JUDGMENT: (per Shri Vivek Bharti Sharma, J.)

This appeal preferred by the State under Section 378(3) of The Code of Criminal Procedure, 1973 (*in short, Cr.P.C.*), is filed against the judgment/order dated 27.05.2015 passed by learned Sessions Judge, Chamoli (Gopeshwar) in Sessions Trial No.14 of 2010 “*State vs. Ranjeet Prasad & Ors.*”, whereby the said court acquitted the respondents from the charge of offence punishable under Sections 302, 201 and 120-B of The Indian Penal Code, 1860 (*in short, IPC*).

2. Factual matrix of the case is that PW1 Jagdish Prasad gave a complaint (*Ext.Ka-1*) to Naib



Tehsildar, Tehsil Tharali, District Chamoli stating therein that on 01.03.2010 at about 11:00 a.m. *Chandra Mohan Prasad, Dinesh Chandra*, the respondent nos.2 and 3 came to his house and asked his nephew Jaiveer Prasad to come along with them to celebrate *Holi* in *Kasbinagar*; that, his nephew Jaiveer Prasad went with them to Kasbinagar to play Holi; that, at around 02:00 pm, he got the information that the respondents have killed his nephew and have thrown him into *Koya-Udiyar* gorge (*gadhera*); that, on this information he reached at the spot and saw that his nephew Jaiveer was lying dead.

3. On the basis of this report (*Ext.Ka-1*), case crime no.02/2010 was registered at Revenue Police Patwari Chowki Devrada, Tehsil Tharali, District Chamoli against the respondents *Ranjeet Prasad, Chandra Mohan and Dinesh Chandra* under Sections 302, 201 and 120-B of IPC; that, thereafter the Investigating Officer prepared the site-plan and the sketch of the dead body; that, the inquest report was also prepared allegedly in presence of *Jagdish Prasad, Jaishankar Tamta, Govind Prasad, Pushkaranand and Hari Ram*; that, thereafter the body of *Jai Veer Prasad* was sent for post-mortem and the post-mortem report (*Ext.Ka-4*) was prepared by the doctors who conducted autopsy; that, during the course of investigation, the seizure memo (*Ext.Ka-3*) of the stick allegedly used in the murder of the deceased was recovered.

4. On completion of investigation, charge-sheet



(Ext.Ka-19) was filed against the respondents, on which cognizance was taken by the court concerned.

5. On 28.01.2011, charges were framed against the respondents under Sections 302, 201 and 120-B of IPC to which they pleaded not guilty and claimed to be tried.

6. To prove its case, the prosecution examined total 11 witnesses viz. PW1 Jagdish Prasad, complainant, PW2 Ansuya Prasad, PW3 Smt. Hima Devi, PW4 Pratap Ram, PW5 Dr. Pawan Divedi, Medical Officer, PW6 Pushkaranand, PW7 Jagdish Ram, PW8 Dayali Ram, PW9 Govind Ram, PW10 Hari Mohan Khanduri and PW11 Keshwanand Joshi.

7. Thereafter, the statements of the respondents were recorded u/s 313 of Cr.P.C.

8. The Trial Court, on perusal of evidence and upon hearing the parties, acquitted the respondents vide the impugned judgment and order dated 27.05.2015. Hence, this appeal by the State.

9. Learned State Counsel would submit that the judgment and order passed by the trial court is based on conjectures and surmises and is therefore unsustainable in the eyes of law.

10. He would further submit that the trial court has acquitted the respondents on the ground that the PW2 Ansuiya Prasad, PW3 Smt. Hima Devi, PW4 Pratap Ram, PW7 Jagdish Ram and PW8 Dayali Ram who were



the important witness of the case did not support the prosecution case and they were turned hostile but the court failed to consider the fact that these witnesses in their statements recorded u/s 161 of Cr.P.C. had fully supported the contents of FIR and the prosecution case.

11. He would further submit that this was a case of direct evidence against the respondents for the offence of murder and initially prosecution case rested on the eye-witness account of PW7 Jagdish Ram, who in his *statement u/s 164 Cr.P.C. dated 07.03.2010, had stated that on the day of Holi i.e. on 01.03.2010 at about 2:00 pm he was present in the verandah of the house of Bachi Ram to celebrate Holi; that during these celebrations the respondents started quarreling with the deceased Jai Veer and the respondent Ranjeet Prasad hit the deceased Jai Veer on his head thrice with stick while other respondents Dinesh and Chandra Mohan were holding him and thereafter the respondents took the deceased to Koya Udiyar gorge; that, he asked them not to quarrel but the respondents threatened him because of which he did not follow the respondents upto Koya-Udiyar gorge.*

Learned State Counsel would further submit that, however, this witness when examined in the trial court as PW7 Jagdish Ram turned hostile. In his examination-in-chief, he did not support the case of prosecution.

He would submit though the sole eye-witness



of this incident had turned hostile in the trial court but now the case of the prosecution is otherwise also proved on the basis of circumstantial evidences, which is proved beyond doubt against the respondents.

12. Heard submissions of learned State Counsel and perused the entire record.

13. At the very outset, it would be apposite to remind ourselves the law on the basis of which the prosecution can nail the case against the accused on the basis of circumstantial evidence. It is well settled law that where the case rests squarely on circumstantial evidence the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. In other words, there must be a chain of evidence so much complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

14. In *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116, the Hon'ble Supreme Court laid down the five golden principles i.e. the panchsheel of the proof of a case based on circumstantial evidence. Relevant paragraph of this judgment is quoted as under: -

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case



against an accused can be said to be fully established.

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and "must be or should be proved" as was held by this Court in Shivaji Sahab Rao Bobade v. State of Maharashtra where the following observations were made:

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground



for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

15. On perusal of the record, the circumstantial evidences which this Court could extract against the respondents are as under:

(i) The Last Seen Evidence

The FIR lodged by PW1 *Jagdish Prasad*, paternal uncle of the deceased, in which he stated that it was the day of *Holi* i.e. 01.03.2010 when at about 11:00 am the respondents *Chandra Mohan and Dinesh* had come at his house where his nephew i.e. the deceased was present and these respondents took his nephew with them to *Kasbinagar* to celebrate *Holi*.

(ii) PW1 *Jagdish Prasad* was informed at about 2 pm on the same day i.e. 01.03.2010 by *Pushkaranand* that the respondents have killed his nephew *Jaiveer Prasad* and have thrown him down the hill into a gorge.

(iii) When PW1 *Jagdish Prasad* reached at the spot he saw that all the three respondents were present there and there were bloodstains on their clothes.

(iv) The seizure memo of the bloodstained crooked stick of Mehal tree (*Ext.Ka-3*) recovered



about 10-15 metres away from the spot where the dead body of *Jaiveer Prasad* was found on 04.03.2010 at 12:30 on the pointing of the witness *Govind Ram*.

(v) The statement of PW7 *Jagdish Ram* recorded u/s 164 Cr.P.C. before the Judicial Magistrate Karnaprayag on dated 07.03.2010 wherein it was stated that on the fateful day i.e. on 01.03.2010 at about 2:00 pm on the date of festival of *Holi* he was in the verandah of *Bachi Ram* and they were celebrating *Holi*; that, during celebrations the respondents started quarreling with deceased *Jaiveer* and respondent *Ranjeet* hit *Jaiveer* on his head thrice with a stick and the respondents *Dinesh and Chandra Mohan* were holding *Jaiveer* at that time; that, thereafter they took him to *Kuya Udiyar*.

16. In view of the law enunciated by the Hon'ble Supreme Court in *Sharad Birdhichand Case (supra)*, now this Court has to see whether the chain of these circumstantial evidences, if conclusively proved, is so complete that it could give rise to the inevitable conclusion that the alleged offence of murder was committed by the respondents.

17. PW1 *Jagdish Prasad* in his statement recorded before the Trial Court stated that on the fateful day of 01.03.2010 the respondent *Dinesh and Chandra Mohan* came to his house and took the deceased *Jai Veer Prasad* to *Kasbinagar* for celebrating



Holi.

This statement of PW1 *Jagdish Prasad* is diametrically opposite to Section 164 statement of PW7 *Jagdish Ram (Ext.Ka-5)* recorded by the Magistrate, wherein PW7 stated that on the fateful day, the incident took place in the verandah of the house of Bachi Ram where the respondents quarreled with the deceased Jai Veer Prasad and respondents Ranjeet hit the deceased thrice on his head with stick while other respondents were holding the deceased. Though *Jagdish Ram* had not supported the prosecution case and had denied giving any such statement u/s 164 Cr.P.C. i.e. *Ext.Ka-5* but it is important to note that *Ext.Ka-5* is an admitted document of the prosecution and contents of it is inconsistent with the testimony of other witness i.e. PW1 *Jagdish Prasad* relied upon by the prosecution. *Jagdish Ram* in the statement u/s 164 Cr.P.C. had taken the name of all the three respondents while PW1 *Jagdish Prasad* in his examination-in-chief deposed that respondents *Dinesh and Chandra Mohan* had come at his house and had taken his nephew forcibly with them to *Kasbinagar* to celebrate *Holi*.

In view of the above, the last seen theory given by PW1 *Jagdish Prasad* that before the death of his nephew *Jaiveer Prasad* the respondents had taken the deceased with them for celebrating *Holi* to *Kasbinagar*, is doubtful. Thus, it can be safely inferred that the first link of circumstantial evidence submitted in argument by the



state Counsel that few hours before the incident the deceased was seen last in the company of the respondents is not conclusively proved so as to prove the guilt of the respondents.

18. The second circumstantial evidence relied upon the State Counsel is that *Pushkaranand* informed PW1 *Jagdish Prasad* that his nephew has been killed by the respondents. However, when *Pushkaranand* was examined in the Trial Court as PW6, he did not state this fact, rather he did not support the prosecution story at all. Thereafter, this witness was cross-examined by the prosecution with the permission of the Court and in the cross examination he stated that he got the information of the death of *Jaiveer* at 8-9 am next day. Therefore, second alleged circumstantial evidence is also not conclusively proved.

19. Third circumstantial evidence relied upon by the State Counsel is that when PW1 *Jagdish Prasad* reached at the spot where the dead body was recovered, he found the respondents standing there and their clothes were stained in blood.

However, this Court is of the considered view that this circumstantial evidence is not conclusively proved from the ample evidence placed on record, which are contradictory with each other. The inherent contradiction is that PW10 *Hari Mohan Khanduri, Naib Tehsildar* who had reached at the spot did not depose that the respondents were there at the spot when he



reached there. If at all the clothes of the respondents were stained in blood of the deceased then why no such clothes were seized by the I.O. is important point which not only creates doubt about the presence of the respondents at the place of incident but also about the entire prosecution story. Besides, if the respondents were present at the spot with blood stained clothes then why they were not arrested at the spot immediately. It is only stated by PW10 that the respondents were arrested on the same day but his statement is silent about the place of arrest.

Last but not least, the presence of the respondents at the place where the dead body was recovered in the presence of PW1 *Jagdish Prasad* and PW10 *Hari Mohan, Naib Tehsildar* is inconsistent with the guilt of the respondents because if any person commits such a heinous crime of murder then the general human tendency is that first that he will flee away from the spot and will not remain present at there specially when the relatives of the deceased and the law enforcing agency are also present at the spot. So, in view of this Court, either the respondents were not present at the spot when the dead body was recovered or if they were present then, their presence is inconsistent with their guilt.

Therefore, in view of the above observations, the third alleged circumstantial evidence relied upon by the State Counsel that the respondents were present at



the place of recovery of dead body of *Jaiveer* is not conclusively proved and even if it is presumed to be true even then it is not consistent with the guilt of the respondents.

20. Fourth alleged circumstantial evidence relied upon by the prosecution is the seizure memo.

It would be important to note that this alleged crooked stick allegedly stained in blood was not recovered at the instance of either of the respondents but on the pointing out of PW9 Govind Ram and it is rather more important to observe that PW9 Govind Ram is none else but brother of PW1 complainant Jagdish i.e. the paternal uncle of the deceased. Therefore, even if this fact is presumed to have been proved conclusively then the recovery of stick at the instance of PW9 Govind Ram cannot point to culpability of the respondents.

21. Another important point which is quite evident on the face of record is that PW10 *Hari Mohan Naib Tehsildar* states in his testimony that he prepared the inquest report *Ext.Ka-2* at the spot whereas PW1 *Jagdish Prasad* in para 9 of his cross-examination stated that when he reached at the spot then people told him that his nephew is unconscious, therefore, he should be taken to the hospital immediately, whereafter his nephew was taken to the hospital in 108 ambulance service where they reached at 7 pm in the evening but as soon as they reached the hospital his



nephew died. The statement of PW1 *Jadish Prasad* and PW10 *Hari Mohan* regarding inquest report are diametrically opposite to each other which makes the case of the prosecution most improbable.

22. There is one another factor which is very relevant to note that when PW1 was being examined in presence of *Malkhana Mohirror* then in response to a query of the Court, *Malkhana Mohirror* and the DGC (*Criminal*) stated that the stick was not available in the *Malkhana*. When *Malkhana Mohirror* was inquired about the case property then he answered after verifying the *Malkhana* register that no case property was deposited in the *Malkhana* as it is not entered in the register then how come this stick allegedly seized by the I.O. vide *Ext.Ka-3* Seizure Memo could be produced in the Court.

23. In view of the above discussion, this Court is of the considered view that prosecution has miserably failed to prove the case against the respondents beyond reasonable doubt. The trial court, therefore, was justified in acquitting the respondents. That being the position, present government appeal fails. Same is, accordingly, dismissed.

(Vivek Bharti Sharma, J.)

04.12.2024

(Manoj Kumar Tiwari, A.C.J.)

04.12.2024

Rajni

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