IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Jail Appeal No.03 of 2015

Ganga Ram ....Appellant

Versus

State of Uttarakhand ....Respondent

Present:-Mr. Trilochan Pandey, Amicus Curiae, for the appellant.
Mr. J.S. Virk, AGA, for the State.

Coram: Hon'ble Sudhanshu Dhulia, J.
Hon'ble Narayan Singh Dhanik, J.

Hon'ble Sudhanshu Dhulia, J. (Oral)

This criminal jail appeal has been filed by the appellant challenging the judgment and order dated 24.11.2014 passed by the learned Sessions Judge, Chamoli in Session Trial No.24 of 2013 whereby the accused/appellant has been convicted under Sections 302 and 201 of IPC, and has been sentenced for life imprisonment with a fine of Rs.20,000/- (Rupees Twenty Thousand Only) under Section 302 of IPC, and to undergo rigorous imprisonment for a period of three years with a fine of Rs.5,000/- (Rupees Five Thousand Only) under Section 201 of IPC, with default stipulation. All the sentences were directed to run concurrently.

2. The crime was committed in a village, in the hills of Uttarakhand, i.e. is in district Chamoli. From the perusal of the records as contained in the first information report and from the evidence on record, what emerges is as follows:-

> On 29.08.2013 in Village "Harmal", a village meeting was organized to oversee the

completion of “Devi Pooja” in the village. The meeting concluded some time in the afternoon and thereafter the villagers, including the deceased, went to their respective homes for lunch. After having his lunch, the deceased Jaman Ram, was walking towards his shop (as narrated in the first information report dated 31.08.2013), when he was apprehended by the accused/appellant Ganga Ram, who started throwing stones on the deceased Jaman Ram. The first two stones did not get their mark but the third hit Jaman Ram on his head and he fell down. The incident was seen by at least two eyewitnesses, who are residents of the same village. These are PW 2 – Dhanuli Devi and PW 7 – Hema Devi respectively. Whereas PW 7 – Hema Devi has subsequently turned hostile. PW 2 – Dhanuli Devi stuck to her earlier statement given under Section 164 of CrPC and has supported the case of the prosecution.

3. At this stage, it must be mentioned that as per the old Government Orders which pertain to the Colonial period in India, relating to North West provinces, in most of the hill areas of the State of Uttarakhand, Police powers have been given to a Revenue Official, who is called a “Patwari”. In other words, for all nature of crimes which are reported in a “Patwari” Police Chowki, the investigation is done by a Revenue Official called “Patwari”, as was done in the present case.

4. In the present case, the matter comes under a Patwari Police area, and hence the First Information Report was lodged at “Naldhura, District Chamoli” on 31.08.2013 at 6:30 PM before the concerned Patwari, after two days of the incident.

5. The accused/appellant was arrested by the “Patwari” not from his village where the incident occurred, but from the village of his in-laws, where he had run away, after the incident. The charge-sheet was filed by the Patwari under Sections 302 and 201 of IPC in the matter. Subsequently, the learned Sessions Judge, Chamoli framed the charges against the accused/appellant on 07.12.2013 under Sections 302/201 of IPC.

6. In order to establish its case, the prosecution has examined as many as 10 witnesses.

7. The incident is of 29.08.2013 at 4:15 PM, which was seen by two eyewitnesses, namely, Dhanuli Devi (PW 2) and Hema Devi (PW 7)*, who immediately reported this incident to the brother of the deceased, which is the informant i.e. Aalam Ram. The informant Aalam Ram (PW 1) along with PW 3 Bachi Ram reached the spot, where the deceased Jaman Ram was lying injured and they also saw the accused Ganga Ram running towards the forests.

8. Thereafter PW 1 Aalam Ram and other witnesses reported the matter to the “Pradhan” of the

* PW 7 Hema Devi declared hostile

Village through her husband. The matter was also reported through telephone to the concerned "Patwari", Naldhura, District Chamoli. The "Patwari" came in the morning and the inquest report was prepared, in which there were following witnesses:-

(1) Ajab Ram
(2) Dayal Ram
(3) Bhawan Ram
(4) Pan Singh
(5) Balwant Singh

9. The cremation was done in the afternoon and thereafter the First Information Report was lodged with Patwari Police on 31.08.2013 at 6:30 PM.

10. The procedure apparently is not as per the book and is technically flawed, inasmuch as, although there is a reference of an FIR and of the incident in the inquest report itself which is of 30.08.2013, the first information report was technically lodged on 31.08.2013 at 06:30 PM, but considering the fact that the investigation in the present case was not done by the regular police but by Patwari Police, and that these discrepancies do not materially affect either the investigation or the merit of the case, as such we are not considering this apparent discrepancy.

11. PW 1 Aalam Ram in his statement says that there was a meeting in the village regarding "Devi Pooja" in the afternoon, which was attended by his brother, namely, Jaman Ram (deceased) and after that meeting Jaman Ram went to his house to have

his lunch, and later while going to his shop after lunch, the deceased Jaman Ram was attacked by the accused/appellant. This incident was seen by Dhanuli Devi and Hema Devi, who reported the matter to him (which has already been referred above).

12. PW 2 – Dhanuli Devi, who was one of the eyewitnesses, clearly states that the incident is of 29.08.2013 at about 04:00 PM, the deceased Jaman Ram, who was her brother-in-law was going towards his shop. At the same spot, the accused Ganga Ram stopped him. When the deceased Jaman Ram was only 10 feet away from the accused Ganga Ram, the accused Ganga Ram threw a stone attacking the deceased, which hit him on his head. When an alarm was raised by her (i.e. PW 2), the accused Ganga Ram ran towards her, throwing abuses on her. She also saw the accused/appellant hitting the deceased with "Sariya". PW 2 reported the incident to the villagers and these villagers reached the spot where the body of the deceased lay injured.

13. PW 3 Bachi Ram was in the village on the fateful day and at about 04:30 PM, Dhanuli Devi and Hema Devi came to him. At that time, PW 3 was standing along with other villagers. They said that Ganga Ram had killed Jaman Ram. All these villagers, including PW 3 went to the spot, where the body of Jaman Ram was lying. He also saw Ganga Ram running towards the forests.

14. These two eyewitnesses i.e. PW 2 and PW 3 were also cross-examined, but nothing worthwhile has come out, which may dilute or doubt their story.

15. PW 6 Laxman Singh is the Doctor who conducted the autopsy on the deceased. He states that on 31.08.2013, he was on duty at District Hospital, Bageshwar. The deceased Jaman Ram was brought to the hospital. On examination it was found that he had sustained four injuries. The first injury was on the top of his right eye, which was 6 cm x 2.5 cm lacerated wound. The second injury was on the back side of the head, which was 3 cm x 1 cm. The third injury was on the front side of the head, which was 4 cm x 1 cm. The fourth injury was on the right shoulder, which was 2 cm x 0.5 cm.

16. The postmortem report also shows that the parietal bone of the deceased was fractured, which is injury no.2. Therefore, the injury no.2 was fatal, which actually caused the death of deceased Jaman Ram. From the examination of the Doctor PW 6, it is clear that this injury was fatal and could be caused by a stone. The postmortem report shows that the cause of death was shock and hemorrhage due to ante-mortem head injury.

17. After examination of prosecution witnesses, the Court examined the accused under Section 313 CrPC, where relevant questions were put to him, which he denied.

18. Considering the nature of the case, the evidence, particularly, in the form of PW 2 Dhanuli Devi whose presence on the spot is natural. It is also corroborated by the evidence of other villagers, who have reached the spot subsequently thereafter on being informed about the incident by none other than but by PW 2. The remaining witnesses, though did not see the incident but saw the accused Ganga Ram running away from the spot. It hence clearly establishes the case of the prosecution, that the deceased Jaman Ram was hit by the accused/appellant which caused the death of the deceased. The only question is whether this amounts to murder or the nature of the crime is actually in the nature of culpable homicide not amounting to murder!

19. There is no premeditation, in the present case, and the facts also reveal that there is no prior enmity. No motive is shown by the prosecution. There was also no use of any lethal weapon in the crime. From the evidence, including postmortem report, one single blow was given to the deceased which hit him on the back of his skull. The remaining three injuries are not material, and could have been caused after the deceased fell on the ground.

20. All these factors clearly show that it is a culpable homicide not amounting to murder.

21. We are of the considered view that the nature of the incident brings the case in the category of a culpable homicide not amounting to murder.

This is in view of the fourth exception as given in Section 300 of IPC-

> "Exception-4 Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner."

22. To reiterate by all accounts, it is not a pre-meditated incident. The kind of the weapon used in the present case is a stone which even as per the prosecution the accused/appellant picked up from the spot. The allegations of "iron rod" being used in the incident have not been proved, since the alleged "iron rod" was never recovered nor is there any ante-mortem injury on the deceased of a nature which can be specifically ascribed to as "iron rod". The postmortem report shows that it was a single blow which hit the deceased on the back of his head, causing injury no.2, was the sole cause of his death.

23. There is a long line of decisions of the Hon'ble Apex Court explaining under what circumstances, a case would be "culpable homicide not amounting to murder". Some of the leading cases, where this distinction has been made, are as follows:-

> "(1) Surinder Kumar V. UT, Chandigarh, (1989) 2 SCC 217.
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> (2) Ghapoo Yadav V. State of M.P., (2003) 3 SCC 528.
>
> (3) Sukbhir Singh V. State of Haryana, (2002) 3 SCC 327.
>
> (4) Mahesh V. State of M.P., (1996) 10 SCC 668.

(5) Vadla Chandraiah V. State of A.P., (2006) 13 SCC 587.

(6) Shankar Diwal Wadu V. State of Maharashtra, (2007) 12 SCC 518.

(7) Alister Anthony Pareira V. State of Maharashtra, (2012) 2 SCC 648."

24. In the case of **Pulicherla Nagaraju V. State of A.P.**, reported in **(2006) 11 SCC 444**, the Hon'ble Apex Court held as under:-

"The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention."

25. In a more recent judgment passed by the Hon'ble Apex Court in the case of **Ankush Shivaji Gaikwad Vs. State of Maharashtra** reported in **(2013) 6 SCC 770**, the Hon'ble Apex Court has converted the finding of "murder" to one of "culpable

homicide not amounting to murder", almost in similar facts and circumstances as are in the present case. In the aforesaid case, the incident took place on a sudden fight without any premeditation. While the deceased and his wife were guarding their crop in their field at about 10.00 p.m., with their dog, the dog started barking at the appellant/accused and his companions. The appellant/accused started hitting the dog with rod and when it was objected by the deceased, he was given a single blow, which hit the deceased on his head resulting in his death, four days later. The accused/appellant was convicted for the offence of murder under Section 302 of IPC, however, ultimately the finding was reduced to culpable homicide not amounting to murder. The similar facts exist in the present case as well.

26. Considering the totality and circumstances of the case, we alter the finding of conviction under Section 302 of IPC to one under Section 304 Part 1 IPC.

27. In view of the above observations, the appeal is partly allowed. We convert the finding of murder to one of culpable homicide not amounting to murder under Section 304 Part I of IPC. There is absolutely no finding as to the offence committed under Section 201 of IPC, and hence we acquit the accused of the same.

28. Now as to the sentence. The appellant is in jail right from the next date of the incident i.e. 01.09.2013. He was in jail during trial and has already undergone six years and five months. In the

interest of justice, we award the sentence of the period already undergone in jail by him, with a fine of Rs. 5,000/- under Section 304 IPC.

29. Let the accused/appellant be released forthwith, unless he is wanted in any other crime.

30. Let a copy of this judgment along with the lower court records be sent back to the court concerned for onward compliance.

(Narayan Singh Dhanik, J.) **(Sudhanshu Dhulia, J.)**

10.02.2020

Nitesh