

Kishan Ram & Others

v.

State of Uttarakhand

(Supreme Court Of India)

HON'BLE MR. JUSTICE A.K. PATNAIK HON'BLE MR. JUSTICE RANJANA
PRAKASH DESAI

Criminal Appeal No. 1196 Of 2007 | 01-10-2013

A.K. Patnaik, J.

1. This is an appeal against the judgment dated 16.04.2007 of the High Court of Uttarakhand in Criminal Appeal No. 1951 of 2001 by way of special leave under Article 136 of the Constitution.

Facts:

2. The facts very briefly are that on 03.07.1986 Smt. Gulachi Devi lodged a First Information Report (for short 'FIR') at the Police outpost at Kotabagh. In this FIR, she alleged that her husband Suresh Chandra was working on the post of Beldar with Kumaun Jal Sansthan and on 03.07.1986 after he had returned to his quarter at about 7.00 p.m. Kishan Ram and Pani Ram came to his quarter which is inside the water works, called Suresh Chandra and took him along with them. She further stated in the FIR that her neighbour Puran Ram told her that he has heard the scream of Suresh Chandra from the side of Chilkiya Temple and she went along with Puran Ram near the Chilkiya Temple and saw that the hands and legs of Suresh Chandra were tied with rope and he was being assaulted by Kishan Ram, Pani Ram, Dev Singh, Har Ram and Chandan Singh with lathis and dandas. She also stated in the FIR that the assailants did not permit them to go near Suresh Chandra and she went running to Roorkee and gave information of the incident to Dan Singh, who is a Fitter of the Jal Sansthan, and again came along with Puran Ram and Dan Singh near the Chilkiya Temple to see Suresh Chandra, but found that Suresh Chandra had lost his breath and the assailants were standing near the dead body. She further stated in the FIR that she then went to give information of this incident to the Chowki of Patwari Halka at village Pandey, but the Patwari was not available and, therefore, she had come to lodge the FIR in the Police outpost at Kotabagh. Sub-Inspector Roop Singh Bisht proceeded to the place of incident and saw Suresh Chandra lying dead with his hands and legs tied. He could not prepare the inquest report in the night, but next morning on 04.07.1986 prepared the site plan, took the rope into possession, prepared the inquest report and sent the dead body of Suresh Chandra (hereinafter referred to as 'the deceased') for post mortem examination. Dr. S.C. Pant, Medical Officer, Civil Hospital, Haldwani, conducted the autopsy on the dead body of the deceased and

prepared the post mortem report. On 05.07.1986, the Sub-Inspector Roop Singh Bisht entrusted the investigation to Ani Ram, a Supervisor Kanoongo, who recorded the statements of witnesses, inspected the spot, prepared the site plan and arrested Dev Singh, Chandan Singh, Kishan Ram, Pani Ram and Har Ram and after completing investigation, submitted a chargesheet against the aforesaid five accused persons as well as three others, namely, Nain Singh, Gopal Ram and Hari Ram.

3. All the accused pleaded not guilty and were tried. At the trial, nine witnesses were examined. The informant Gulachi Devi was examined as PW-1, Puran Ram was examined as PW-2, Dan Singh was examined as PW- 6, Dr. S.C. Pant was examined as CW-1 and Ani Ram was examined as PW- 8. The accused persons were examined under Section 313 of the Criminal Procedure Code, 1973 (for short 'Cr.P.C.'), but they did not examine any witness and relied on some documents. After hearing the arguments, the trial court found the accused Kishan Ram, Pani Ram, Dev Singh, Har Ram and Chandan Singh guilty of the offences under Section 147 and Section 302 read with Section 149 of the Indian Penal Code, 1860 (for short 'IPC'). The trial court, however, acquitted Nain Singh, Gopal Ram and Hari Ram of all the charges. After hearing on the question of sentence, the trial court imposed the sentence of one year rigorous imprisonment for the offence punishable under Section 147, IPC, and imprisonment for life under Section 302/149, IPC. Aggrieved, the five accused persons who were found guilty filed Criminal Appeals before the High Court and by the impugned judgment, the High Court has dismissed the appeals. Of the five accused persons found guilty, Dev Singh and Chandan Singh have already expired and hence we are called upon to decide the appeals of only Kishan Ram, Pani Ram and Har Ram. Contentions on behalf of learned counsel for the parties

4. Mr. T.N. Singh, learned counsel for the appellants, submitted that the trial court and the High Court have relied on the eye-witness account of PW-1 and PW-2 for holding the appellants guilty. Referring to the evidence of PW-1, he submitted that PW-1 did not belong to the locality in which the incident took place and she has not been able to identify the assailants of the deceased. He referred to the evidence of PW-1 to show that she has relied on Dan Singh (PW-6) to know the name of the accused persons. He submitted that it will be clear from the evidence of PW-1 that she is confused between the two accused persons Har Ram and Hari Ram and she does not know the name of the father of either Har Ram or Hari Ram. He submitted that PW-3, PW-4 and PW-7 have not supported the prosecution case and PW-6 (Dan Singh) has stated that the names of the accused persons were given by PW-1 but PW-1 has not been able to identify the assailants.

5. Mr. Singh next submitted that the incident took place on 03.07.1986 at about 7.30 p.m. whereas the FIR was lodged four hours thereafter at 11.50 p.m. on the same day and, therefore, there was a delay of four hours in lodging the FIR itself. He argued that the delay in lodging the FIR is a good ground to disbelieve the prosecution story as given out by PW-1 PW-2 and PW-6.

6. Mr. Singh finally submitted that even if the evidence of PW-1, PW-2 and PW-6 in this case are to be believed, the appellants could not be convicted for the offence of murder under Section 302, IPC, read with Section 149, IPC, because the common object of the appellants was not to commit the offence of murder and, therefore, they were not liable for the sentence of imprisonment for life. He submitted that this is at best a case of culpable homicide not amounting to murder under Section 304, IPC, read with Section 149, IPC. In support of this submission, he relied on the decisions of this Court in Bhudeo Mandal & Ors. v. State of Bihar [(1981 (2) SCC 755)], Sarman & Ors. v. State of M.P. [1993 Supp (2) SCC 356], Thakore Dolji Vanvirji & Ors. v. State of Gujarat [1993 Supp (2) SCC 534] and Rajaram v. State of M.P. [1994 Supp (2) SCC 153].

7. In reply, Mr. Jatinder Kumar Bhatia, learned counsel appearing for the State, submitted that it is true that PW-1 did not belong to the locality in which the incident took place, but she has taken the help of PW-2 and PW-6 to identify the assailants and to lodge the FIR. He submitted that the trial court has held in the judgment that PW-1 being an outsider from the plains and not belonging to the hill area was not expected to differentiate between Hari Ram and Har Ram and there is nothing improbable or unnatural in it and the testimony of Puran Ram (PW-2) and Dan Singh (PW-6) coupled with the written FIR (Ext. Ka.2) leaves no room for doubt that Kishan Ram, Pani Ram, Dev Singh, Har Ram and Chandan Singh attacked Suresh Chandra with lathis and dandas. He also submitted that PW-3, PW-4 and PW-7 have been declared hostile but they also have supported the prosecution case with regard to the date, time and place of occurrence.

8. Regarding the delay in lodging the FIR, Mr. Bhatia submitted that the trial court had found that soon after the incident on 03.07.1986 at 7.30 p.m. PW-1 and PW-2 had first gone to the Chowki at village Pandey to lodge the report and then from there they proceeded to Kotabagh Police out-post, which is about eight kilometers away from the place of occurrence by a tractor and lodged the FIR at 11.50 p.m. on 03.07.1986 and in these circumstances there was no delay in lodging of the FIR.

9. Mr. Bhatia submitted that the argument of learned counsel for the appellants that there was no common object of the accused persons to commit the offence under Section 302, IPC, should not be accepted by the Court as the post mortem report and the medical evidence reveal as many as 27 injuries on the body of the deceased. He vehemently argued that the evidence on record established that the common object of the accused persons was to commit the offence under Section 302, IPC, and hence the trial court and the High Court have rightly held the appellants guilty of the offence under Section 302 read with Section 149, IPC, and sentenced them to life imprisonment. Findings of the Court:

10. We have gone through the evidence of PW-1 and we find that she has deposed that at about 7.00 p.m. on 03.07.1986 Kishan Ram and Pani Ram came to their house and took away the deceased along with them and after some time PW-2 told her that he was hearing the

shrieks of the deceased from the side of the Chilkiya Temple and then both PW-1 and PW-2 went to the Chilkiya Temple and saw that the hands and legs of the deceased were tied up and he was being assaulted by all the five accused persons with their respective lathis and dandas. In her cross-examination, PW-1 has, of course, faltered when questions were put to her as to whether Har Ram and Hari Ram were the same persons and she has also admitted that she did not know the names of the fathers of either Har Ram or Hari Ram, but in the FIR she has named Har Ram along with Kishan Ram, Pani Ram, Dev Singh and Chandan Singh as the assailants of the deceased and, thus, the evidence of PW-1 is corroborated by her statement recorded in the FIR immediately after the incident.

11. The evidence of PW-1 is also corroborated by PW-2 who has stated in his deposition that he heard the scream of the deceased and then he along with PW-1 went to Chilkiya Temple from where the sound of the scream was coming and having reached there, he saw that the hands and legs of the deceased were tied with a rope and he was being assaulted by the five accused persons. Similarly, PW-6 has stated that on 03.07.1986 at about 8.30 p.m. in the night, PW-1 and PW-2 came to him and PW-1 told him that her husband was being assaulted by the accused Kishan Ram, Pani Ram, Har Ram, Dev Singh and Chandan Singh near Chilkiya Temple and after hearing this, he collected some persons from the village and reached near Chilkiya Temple where he saw that the hands and legs of the deceased were tied with rope and injuries were found on his body and the deceased was dead and the accused persons Har Ram, Kishan Ram, Pani Ram, Dev Singh and Chandan Singh were present there. PW-6 has further deposed that he went with PW-1 to lodge the report in village Pandey, but the Patwari was not present and they went to the police outpost at Kotabagh where PW-1 lodged the report (Ext. Ka.2). PW-6 has also stated that the report was written by him on the dictation of PW-1 and thereafter it was read over to PW-1 and she put her thumb impression on the report. Thus, the evidence of the three eye-witnesses as corroborated by the statement of PW-1 in the FIR within four hours of the incident clearly establish that the five accused persons including the three appellants had assaulted the deceased with lathis and dandas when the hands and legs of the deceased were tied with a rope.

12. PW-3 has stated that he had seen the dead body near Chilkiya Temple and the hands and legs of the deceased were tied and there were some persons also standing, but he had not seen the incident. PW-4 has stated that on 03.07.1986 at about 8.30 - 9.00 p.m. he had heard the scream of one lady and then he came out and saw that the persons of the village were proceeding towards Chilkiya Temple and he also went to Chilkiya Temple and saw that the deceased was lying dead and his hands and legs were tied with a rope and there were 40-50 persons present there but he could not identify them due to darkness. PW-7 has similarly stated that on 03.07.1986 at about 8.30 p.m. or 9.00 p.m. he was in his house when PW-6 and PW-1 came there and told him that some persons were assaulting the deceased in Chilkiya and they reached Chilkiya Temple and saw that there were number of persons assembled there and the husband of PW-1 was lying dead and his hands and legs were tied and blood was oozing out from his body. Thus, it appears that PW-3, PW-4 and PW-7 supported the prosecution case that the deceased had been assaulted when his hands and legs were tied but

they did not name the persons who had assaulted the deceased perhaps because they had arrived at the scene of occurrence only after the incident had taken place.

13. It is true, as has been submitted by Mr. Singh, that the incident took place at about 7.30 p.m. on 03.07.1986 and the FIR was lodged about four hours thereafter at 11.50 p.m. on the same day, but this delay of four hours has been sufficiently explained by the evidence of PW-1 and PW-6. PW-1 has stated that she first rushed to village Roorkee and informed PW-6 and then PW-1, PW-2 and PW-6 came back to Chilkiya Temple and saw that the deceased had died and the accused persons were present there and then they went to the Patwari of village Pandey to give the information of the incident but there was a lock on the door and only thereafter they went to Police Chowki Kotabagh and handed over the report of the incident to the Chowki after it was scribed by PW-6. PW-6 has corroborated what PW-1 has stated by stating that at about 8.30 p.m. on 03.07.1986, PW-1 and PW-2 came to him and after hearing the incident they went to Chilkiya Temple and thereafter they went to village Pandey to lodge the report with the Patwari but Patwariji was not present and then they went to the police outpost at Kotabagh where PW-1 lodged the report (Ext. Ka.2). The delay of four hours from 7.30 p.m. to 11.50 p.m. in lodging the FIR is, thus, sufficiently explained and does not make the prosecution case doubtful.

14. We may now consider the submission of Mr. Singh that even if the evidence of PW-1, PW-2 and PW-6 in this case are to be believed, the appellants could not be convicted for the offence of murder under Section 302, IPC, read with Section 149, IPC, as the common object of the appellants was not to commit the offence of murder. The autopsy report (Ext.A-1) read with the statement of CW-1 Dr. S.C. Pant discloses as many as 27 injuries on the body of the deceased as detailed hereunder:

"1. Contusion 3 cm X 1 cm over left temporal region, 2 cm lateral to left eye. Clotted blood present underneath.

2. Contusion 3 cm X 1 cm over mid of forehead. Clotted blood present.

3. Contusion 4 cm X 3 cm over right temporal region. Clotted blood present.

4. Two contusions 5 cm X 0.5 cm parallel to each other, 1 cm apart over right lateral side of neck. Clotted blood present.

5. Two contusions 11 cm X 0.5 cm parallel and 1 cm apart over lateral side of right arm. Clotted blood present.

6. Contusion 4 cm X 4 cm over trip of right shoulder. Clotted blood present.
7. Contusion 10 cm X 5 cm over lateral aspect of right forearm. Clotted blood present.
8. Contusion around the right wrist with a groove.
9. Contusion 16 cm X 9 cm over lateral side of left arm. Clotted blood present.
10. Contusion 5 cm X 1.5 cm over left scapular. Clotted blood present.
11. Contusion 4 cm X 1.5 cm, 3 cm below the injury no.10. Clotted blood present.
12. Contusion 8 cm X 2 cm over right scapula. Clotted blood present.
13. Contusion 8 cm X 1.5 cm over left side of back, 4 cm below the injury no.11. Clotted blood present.
14. Contusion 2 cm X 0.5 cm over mid of back. Clotted blood present.
15. Contusion all over lateral aspect of thigh. Clotted blood present.
16. Contusion 18 cm X 10 cm over back and medical aspect of left thigh. Clotted blood present. 34 35 Contusion 6 cm X 1 cm over left knee joint. Clotted blood present.
17. Contusion 5 cm X 6 cm anterior side of left leg. Clotted blood present.
18. Contusion 7 cm X 0.5 cm over back of left elbow. Clotted blood present.
19. Contusion 3 cm X 2 cm over post aspect of left forearm. Clotted blood present.

20. Contusion 4 cm X 2 cm over post aspect of left arm. Clotted blood present.
21. Contusion alongwith groove around the left wrist. Clotted blood present.
22. Two contusions 10 cm X 0.5 cm and 1 cm apart over right side of abdomen. Clotted blood present.
23. Contusion all over right glutial region. Clotted blood present.
24. Contusion all over posterior and medical aspect of right thigh. Clotted blood present.
25. Two contusions 8 cm X 0.5 cm parallel and 1 cm apart and 6 cm above the right knee joint. Clotted blood present.
26. Contusion 6 cm X 0.5 cm over left ankle joint. Clotted blood present."

Dr. S.C. Pant has opined that there was haematoma under injuries no.1 and 3 and the deceased died due to shock and haemorrhage on account of injuries no.1 and 3. PW-1 and PW-2 have stated that all the five accused persons were assaulting the deceased by their respective lathis and dandas and the hands and legs of the deceased were tied with rope. At the time of inquest on the morning of 04.07.1986, PW-5 also took into possession the rope from the spot. Considering the fact that all the five accused persons assaulted the deceased when the hands and legs of the deceased were tied and they caused as many as 27 injuries on different parts of the body of the deceased, there is no escape from the conclusion that the common object of the assembly was to commit the offence of murder under Section 302, IPC, and all the five members of the unlawful assembly were liable for the offence under Section 302, IPC, as provided in Section 149, IPC. Hence, the contention of the learned counsel for the appellants that the appellants were not guilty of the offence of murder under Section 302, IPC, is not correct.

15. In *Bhudeo Mandal & Ors. v. State of Bihar* (supra), cited by the learned counsel for the appellants, this Court had held that before convicting the accused with the aid of Section 149, IPC, the Court must give a clear finding regarding the nature of the common object which was unlawful. In the aforesaid case of *Bhudeo Mandal & Ors. v. State of Bihar* (supra), this Court had found that *Bhudeo Mandal* had given a blow to *Mainu Mandal*, but so far as the other appellants are concerned they were armed with lathis but they did not cause any injuries

either to the witnesses or to the deceased and on these facts, this Court held that they did not have the common object of committing the offence under Section 326, IPC, and hence could not be roped in with the aid of Section 149, IPC.

16. In *Sarman & Ors. v. State of M.P.* (supra), cited by learned counsel for the appellants, this Court found that all the appellants were armed with lathis and the doctor, who conducted the post mortem, noticed 17 injuries on the body of the deceased and only injury no.15 had resulted in the depressed fracture of parietal bone, which according to the doctor, was individually sufficient to cause death of the deceased. The Court further found that the prosecution case in general was that all of them were found with lathis and nobody had stated which of them caused injury no.15 which unfortunately resulted in the death of the deceased and the Court held that if anyone of the appellants had acted on his own exceeding the common object, it would be his individual act and in these circumstances, it was difficult to award punishment under Sections 302/149, IPC.

17. In *Thakore Dolji Vanvirji & Ors. v. State of Gujarat* (supra), cited by the learned counsel for the appellants, the Court found that accused no.1 had dealt a fatal blow on the head of the deceased with a sword and only omnibus allegations had been made against rest of the accused persons and the Court held that accused no.1 had to be convicted under Section 302, IPC, but it was not safe to convict every one of them for the offence of murder by applying Section 149, IPC.

18. In *Rajaram v. State of M.P.* (supra), cited by the learned counsel for the appellants, the Court found that by way of an omnibus allegation the witnesses deposed that all the nineteen accused persons inflicted injuries, but the medical evidence did not support such omnibus allegations. The Court held that it was highly unsafe to confirm the conviction of the appellants under Section 302, IPC, read with Section 149, IPC, particularly when the medical evidence had not fully supported the allegation made by the two witnesses particularly when only one injury was found to be fatal which was a multiple contusion on the back.

19. The facts of the present case, however, are different from the aforesaid cases cited by the learned counsel for the appellants. The oral testimony of the eye-witnesses, the recovery of rope from the spot and the medical evidence in this case establish beyond reasonable doubt that the five accused persons tied the hands and legs of the deceased and gave him jointly 27 injuries with lathis and dandas. Hence, the common object of the assembly was to commit the offence under Section 302, IPC. The trial court and the High Court, therefore, rightly held the appellants guilty of the offence of murder under Section 302 read with Section 149, IPC.

20. We do not, therefore, find any merit in this appeal and we accordingly dismiss the same.