

# **SUPREME COURT OF INDIA**

Ganesh Datt

Vs.

State of Uttarakhand

Crl.A.No.1881 of 2011

(Jagdish Singh Khehar and C.Nagappan JJ.)

11.06.2014

## **JUDGMENT**

### **C. NAGAPPAN, J.**

1. Both the appeals are preferred against the judgment and order dated 22.12.2010 passed by the High Court of Uttarakhand at Nainital in Criminal Appeal No.927 of 2001.

2. The appellants 1 to 4 in Criminal Appeal No. 1884 of 2011, Sudarshan Verma, Jagdish, Deep Narain and Rajendra were accused Nos. 1 to 4 and the appellant Ganesh Datt in Criminal Appeal No.1881 of 2011 was accused No.5 in Sessions Trial case No.109 of 1990 on the file of Vth Additional Sessions Judge, Nainital and were tried for the charges under Sections 147, 148, 302 read with 149, 307 read with 149 and Section 324 read with 149 IPC, and the Trial Court convicted and sentenced each of them to undergo life imprisonment under Section 302/149 IPC; Rigorous Imprisonment for a period of 7 years under Section 307/149 IPC; Rigorous Imprisonment for a period of one year under Section 324/149 IPC, Rigorous Imprisonment for a period of six months under Section 147 IPC and Rigorous Imprisonment for a period of one year under Section 148 IPC. Challenging the conviction and sentence they preferred Criminal Appeal No.927 of 2001 and the High Court of Uttarakhand at Nainital dismissed the appeal. Aggrieved by the same they have preferred the present appeals.

3. Shorn of unnecessary details the case of the prosecution is as follows : PW1 Bali Raj, PW2 Moti Lal deceased Prabhunath and Raj Bali are sons of PW3 Ram Lakhan. On 26.8.1989 at about 6.00 a.m. they along with servant Bahadur, were sitting in the verandah of the house of Prabhunath and at that time accused persons Sudarshan Varma armed with country made pistol, Deep Narain armed with gun, Jagdish armed with axe (Farsa), Rajendra and Ganesh Datt armed with lathis came there and accused Sudarshan shouted to kill them today itself and by so saying he fired at Prabhunath with pistol and accused Deep Narain fired gunshots at PW2 Motilal and Raj Bali and accused Jagdish attacked PW2 Motilal with axe on neck which he defended by left hand resulting in injuries and accused Rajendra and Ganesh attacked them with lathis. On the sound of fire and shouting the villagers came there and accused fled away.

4. Accused Sudarshan who was then the village Pradhan went to the Police Station Rudrapur and lodged a First Information Report against Prabhunath, Motilal and Bali Raj at 7.25 a.m. on 26.8.1989 and a case was registered as Crime No. 583 of 1989 for the alleged offences under Sections 307 and 324 IPC. PW3 Ram Lakhan took the injured Prabhunath, PW2 Moti Lal and Raj Bali to the Police Station Rudrapur and lodged a First Information Report at 8.10 a.m. on the same day against accused Sudarshan, Jagdish, Deep Narain, Rajendra and Ganesh Datt, on which a case was registered as Crime No.583-A for the alleged offences under Section 147, 148, 149, 307, 324 and 323 IPC and the injured were sent to hospital.

5. PW6 Dr. A.K. Rana, Medical Officer in Jawahar Lal Hospital Rudrapur examined Prabhunath at 9.40 a.m. on 26.8.1989 in the hospital and found the following injuries:

“i) An abrasion 4 cm x 4 cm on top of head 12 cm from left ear lobe. Fresh bleeding present.

ii) A contusion 15 cm x 10 cm on left jaw with multiple punctured wound on whole surface. Advised X-ray skull. Fresh bleeding present. Punctured wound size 0.5 cm x 0.25 cm x not probed (depth) with margins inverted. iii) A contusion 15 cm x 20 cm on left side of whole neck with multiple punctured wounds measuring 0.25 cm x 0.25cm x not probed (depth) with margins of wound inverted. Advised X-ray neck and left shoulder. Fresh bleeding present.

iv) An incised wound 7 cm x 5 cm x muscle deep on left upper arm, 4 cm above top of left elbow. Fresh bleeding present.

v) An incised wound 5 cm x 5 cm bone deep on tip of left elbow extending upwards. Fresh bleeding present.

vi) An incised wound 5 cm x 2 cm x muscle deep on left side bone of middle finger. Fresh bleeding present.”

He opined in his report Exh.A8 that injury No.1 was simple and could have been caused by any hard object; injury Nos. 4, 5 and 6 could have been caused by some sharp edged weapon and injury No.2 and 3 were kept under observation and general condition of the injured was very serious.

PW6 Dr. A.K. Rana examined PW2 Moti Lal at 9.45 a.m. in the hospital on 26.8.1989 and found the following injuries:

i) A contusion 6 cm x 4 cm on right side of forehead at hairline with a puncture wound 0.25 cm x 0.25 cm x not probed (depth) Fresh bleeding present Advised X-ray skull. 7

ii) A contusion 4 cm x 3 cm just below left eyelid with a puncture wound 0.25 cm x 0.25 cm x not probed (depth) in its middle, wound margins inverted. Advised X-ray skull. Fresh bleeding .

iii) Multiple punctured wounds 0.25 cm x 0.25 cm x not probed (depth) on right side of chest frontal aspect and left side chest. Fresh bleeding present. Advised X-ray of chest. iv) A punctured wound 0.25 cm x 0.25 cm X not probed (depth) on right forearm anterior aspect. Advised X-ray forearm. Fresh bleeding. v) A punctured wound 0.25 cm x 0.25 cm x not probed (depth) on right base of thumb, wound margins inverted. Fresh bleeding present. Advised X –ray right hand.

vi) An incised wound 7 cm x 5 cm x muscle deep on right side forearm on upper and proximal ½ part. Fresh bleeding present”

He opined that injury Nos. 1 to 5 were kept under observation and they were fresh and injury nos.6 was simple and could have been caused by a sharp edged weapon.

PW6 Dr. A.K. Rana examined Raj Bali at 9.50 a.m. in the hospital and found a contusion 6 cm x 4 cm on lower side of left eye and opined that the injury was simple in nature.

6. PW7 Sub-Inspector Surender Singh took up the investigation and visited Jawahar Lal Nehru Hospital on 26.8.1989 and after coming to know the death of Prabhunath in the hospital on the same day altered the offence to one under Section 302 IPC and examined PW2 Motilal and Rajbali in the hospital on the same day. He conducted inquest and recorded the statement of Panchas and complainant. He gave the requisition for post-mortem.

7. PW4 Dr. S.M. Pant conducted post-mortem at 2.30 p.m. on 27.8.1989 and found the following injuries:

i) Lacerated wound 2 cm x  $\frac{1}{2}$  cm x scalp deep on the head, 11 cm above left eyebrow.

ii) Multiple abrasions in an area of 30 cm x 10 cm of sizes 0.25 cm to 0.5 cm from left side of face, left side of neck and left upper chest. All injuries painted with some red coloured medicine.

iii) Contusion in an area 10 cm x 8 cm around left nipple.

iv) Contusion right side of abdomen 12 cm x 15 cm area. 3 cm right to naval.

v) Stitched wound with two stitches 4 cm long on the porterior aspect of left upper arm, 1 cm from elbow joint.

vi) Stitched wound with 3 stitches 5 cm long, 5 cm above injury No.

(v)

vii) Lacerated wound 1.5 cm x muscle deep on left middle finger proximal phalanx painted with medicine.

viii) Lacerated wound 1 cm x muscle deep on the middle phalanx of index finger.”

He opined in the autopsy report that the deceased had died of shock and haemorrhage as a result of ante mortem injuries.

8. PW7 Sub-Inspector Surender Singh went to the occurrence place and prepared site-plan and seized blood-stained soil and sample soil in the presence of witnesses. He also seized 10 bullets of 12 bore from the occurrence place out of which 4 were emptied and 6 were live, by preparing a Memo. He examined the wife of the deceased Smt. Raj Kumari on 27.8.1989 and recorded her statement. Thereafter PW5 Inspector Vijender Kumar Bhardwaj continued the investigation and recorded the statements of other witnesses including the seizure witnesses and completed the investigation, filed charge sheet against the accused and it was taken on file in Sessions Trial Case No.109 of 1990 on the file of Vth Additional Sessions Judge.

9. In the cross case, final report came to be filed and it was taken on file in Sessions Trial No.177 of 1990 on the file of the same Court. Both the cases were tried by the same Court. In the case of Sessions Trial No.109 of 1990, prosecution witnesses PWs 1 to 7 were examined and documents in Exh.A1 to A17 were marked and wife of the deceased Raj Kumari was examined as CW-1. The trial court in Sessions Trial No.109 of 1990 found all the five accused guilty of the charges framed against them and sentenced them as mentioned above. The appeal preferred came to be dismissed and that is now appealed against. At the same time the trial court in the cross case in Sessions Trial No.177 of 1990 found that Sudarshan Verma and his associates were aggressors and acquitted accused Motilal and Bali Raj of the charges framed against them. Challenging the acquittal the State preferred Government Appeal No.2017 of 2001 and the complainant Sudarshan Verma independently challenged the acquittal by preferring Criminal Revision No.92 of 2001 and the High Court after hearing all the matters together dismissed both the Government appeal as well as Criminal Revision, by a common judgment and it has become final since there was no further challenge.

10. Mr. Mukesh K. Giri, learned Additional Advocate General appearing for the

respondent State submits on instructions that 2nd appellant Jagdish in Criminal Appeal No.1884 of 2011 died on 9.1.2012 while undergoing the sentence in jail. Submission is recorded. The appeal insofar as he is concerned stands abated.

11. The learned senior counsel appearing for the appellants strenuously contended that appellant Sudarshan Verma suffered 19 injuries and appellant Deep Narain also suffered injuries in the occurrence. The ocular witnesses namely PWs 1 to 3 are interested and inimical witnesses and in their testimonies they have not stated as to how the appellants/accused mentioned above sustained injuries during the occurrence and they are lying on a most material point, and therefore, their evidence is unreliable and further their ocular testimony with respect to the assault is inconsistent with the medical evidence and the weapons of offence were not recovered and situs of the assault was also not fixed and so the prosecution has failed to prove the case against appellants beyond reasonable doubt and the conviction and sentence imposed on the appellants are liable to be set aside.

12. Per contra learned Additional Advocate General appearing for the respondent State contended that the injuries on the person of appellants/accused are not very grievous in nature and the ocular evidence is clear, cogent and non explanation of the injuries on the appellants/accused ipso-facto cannot be the basis to discard the prosecution case and the conviction and sentence imposed on the appellants are sustainable.

13. The prosecution case is that the appellants armed with dangerous weapons came and attacked PW3 Ram Lakhan and his sons resulting in the death of Prabhunath and injuries to PW2 Moti Lal. The prosecution examined PW1 Bali Raj, PW2 Moti Lal and their father PW3 Ram Lakhan as having witnessed the occurrence. They have testified that on 26.8.1989 at about 6.00 a.m., when they were sitting in front of their house accused persons Sudarshan armed with country made pistol, Deep Narain with a gun, Jagdish with axe, Rajendra and Ganesh Datt with lathies, came there and Sudarshan shouted to kill them today by so saying he and Deep Narain fired shots at Prabhunath and PW2 Moti Lal and Jagdish tried to attack on the neck of PW2 Moti Lal with axe which he defended by his left hand resulting in injuries and Rajendra and Ganesh Datt attacked them with lathies. On hearing the sound of firing and shouting villagers gathered there and accused fled away. PW3 Ram Lakhan took his injured sons Prabhunath and PW2 Moti Lal to Police Station Rudrapur and lodged complaint and the injured were admitted in Jawahar Lal Nehru Hospital. PW6 Dr.A.K. Rana

examined injured Prabhunath at 9.40 a.m. on 26.8.1989 and found 3 incised wounds on the left arm, 2 contusions with multiple puncture wounds on neck and left shoulder and an abrasion on the top of head. He directed to take x-ray of head, neck and left shoulder and found the general condition of the injured very serious. He opined that the incised wounds were simple and could have been caused by any sharp edged weapon and the abrasion was simple and could have been caused by any hard object. He has not expressed any opinion with regard to contusions since they were kept under observation. He also examined PW2 Moti Lal at 9.45 a.m. in the same hospital and found 2 contusions; on the forehead and below left eye-lid, punctured wounds on chest and right arm and an incised wound on right fore- arm and opined that the injuries were simple in nature. Prabhunath died on 26.8.1989 itself in the hospital. PW 4 Dr. S.M. Pant conducted autopsy and found the same injuries mentioned above and opined that the deceased had died of shock and haemorrhage as a result of ante mortem injuries and further observed that the death has occurred a day before and there was no fire arm injury. Exh. A-8 is the autopsy report. From the above it is clear that Prabhunath died of injuries sustained during the occurrence.

14. The eye-witnesses namely PWs 1 to 3 and CW-1 Smt. Raj Kumari, widow of deceased Prabhunath have testified that accused Sudarshan and accused Deep Narain fired shots with pistol and gun respectively at Prabhunath during the occurrence resulting in injuries but as per the medical evidence there was no gun shot injury found on any part of the body of Prabhunath. Thus in short, the deceased Prabhunath is concerned the ocular evidence is totally inconsistent with the medical evidence with respect to assault by accused Sudarshan and Deep Narain. If this matter is false, there is no guarantee that the other assault deposed to by the eye-witnesses was also not false.

15. As per the ocular testimony the weapons used in the occurrence are country made pistol, gun, axe and lathis. In his testimony PW7 Sub-Inspector Surender Singh has stated that he went to the occurrence place during investigation and seized 10 bullets of 12 bore from the spot out of which 4 were empty and 6 were live, under Exh. A-16 Memo. Initial investigation was done by PW7 Sub-Inspector Surender Singh and thereafter it was continued and concluded by PW5 Inspector Vijender Kumar Bhardwaj. They have not taken any steps to recover the weapons alleged to have been used in the occurrence. No scientific method of investigation was pressed into service. We did not find any explanation in the testimonies of the Investigating Officers in this

regard. The lethargic attitude of the officers conducting investigation is deplorable.

16. It is contended that the appellant/accused Sudarshan sustained extensive injuries and appellant Deep Narain was also injured during the occurrence. In the cross-case Dr. J.P. Arora has testified that he examined Sudarshan at 7.30 a.m. on 26.8.1989 at Jawahar Lal Nehru Hospital, Rudrapur and found the following injuries on his body:

“i) Incised wound 4 cm x 0.5 x scalp deep on left side of head parietal region 11 cm left from ear. Blood oozing present. Intervening tissues clean cut.

ii) Incised wound 2 cm x 0.25 cm x scalp deep on left side head, 7.5 cm above left ear. Blood oozing present. Intervening tissues clean cut.

iii) Incised wound 5 cm x 2 x scalp deep on right side of forehead, ½ cm above right eyebrow. Intervening tissues clean cut. Blood oozing present.

iv) Incised wound 4 cm x ½ x skin deep on right cheek, 3 cm in front of left ear. Intervening tissues clean cut. Blood oozing present.

v) Incised wound 4 cm x 0.2 x scalp deep on left side of head, 6 cm above right eyebrow.

vi) Abrated contusion ½ cm x ½ cm on right side of face, 4 cm away from right eye outer angle.

vii) Abrated contusion 5 cm x ½ cm on front of neck left side, 3 cm above right clavicle.

viii) Incised wound 2 cm x 0.2 cm x bone deep on front of left little finger, 4 cm above root of finger. Intervening tissues clean cur. Blood oozing present.

ix) Incised wound 2 cm x 0.2 cm x bone deep on front of left ring finger, 3.5 cm above base. Intervening tissues clean cut. Blood oozing present.

x) Incised wound 1 cm x 0.2 cm x skin deep on front of tip of left ring finger. Also blood oozing. Intervening tissues clean cut. xi) Incised wound 3.75 cm x 0.25 cm x bone deep on ground of left middle finger, oblique 4.5 cm above base of finger. Intervening tissues clean cut. Blood oozing present.

xii) Incised wound 4.5 cm x  $\frac{1}{2}$  cm x bone deep on front of left index finger. Oblique. Intervening tissues clean cut. Blood oozing present.

xiii) Incised wound 4 cm x 0.2 cm x bone deep on outer side of left hand, 2 cm above index finger, intervening tissues clean cut.

xiv) Incised wound 2 cm x 0.2 cm x skin deep – inner side left thumb, root, intervening tissues clean cut. Blood oozing present.

xv) Two lacerated wound each size 2 cm x  $\frac{3}{4}$  cm x depth went to deeper tissue and  $\frac{1}{2}$  cm x  $\frac{1}{2}$  cm x depth went to deeper tissue,  $\frac{1}{2}$  cm apart from each other. Blood oozing. On right scapular region upper part, in area of 8 cm x 3 cm.

xvi) Abrasion 2 cm x 1 cm on right scapular region, 3.5 cm inner to injury No.

(xv)

xvii) Abrasion 1.5 cm x 1 cm on outside of right shoulder

xviii) Abrasion 1.5 cm x 1 cm on back of right arm, 8 cm below armpit.

xix) Abrasion 1 cm x  $\frac{1}{2}$  cm on right side of chest on back side and below the hair of 4.5 cm 22

He has opined that all the injuries were fresh and injury Nos. 1,2,3,5, 8 to 14 and 15 to 19, were kept under observation and rest of the injuries were simple. He has also testified that he examined Deep Narain at 9.15 a.m. on the same day at the hospital and found lacerated wound 1.25 cm x 0.5

cm x bone deep transverse over right eye brow. Afterwards he has expressed opinion that injury Nos.1 to 5 and 8 to 14 found on Sudarshan could have been caused by sword.

17. In the trial, in examination-in-chief PW1 Bali Raj, did not state anything about the injuries on Sudarshan and Deep Narain. In the cross- examination he has testified that Sudarshan Verma and Deep Narain did not suffer any injury during the occurrence and further stated that 16-17 days prior to occurrence Sudarshan Verma suffered injuries in a jeep accident. This testimony cannot be true for the reason that Dr. Arora has examined him in the hospital on the occurrence day and has found injuries which were fresh on his body. PW2 Moti Lal in his examination-in-chief did not state anything about the injuries on the accused. In the cross- examination he has stated that during the occurrence accused Sudarshan Verma snatched the axe from the hands of accused Jagdish and his hand was injured during snatching process and an injury was also caused near the eyes by the axe. He has also stated that he did not see whether any injury was caused to Deep Narain during the occurrence. It is his further testimony that he is mentioning above for the first time before the Court. It is needless to say that no reliance can be placed on such a testimony. In the same way PW3 Ram Lakhan has not stated anything about the injuries of the accused in his testimony-in-chief. In the cross- examination he has stated that he did not see accused Sudarshan suffering any injury during the occurrence.

18. In Babulal Bhagwan Khandare and another vs. State of Maharashtra [(2005) 10 SCC 404] this Court held:

“Non-explanation of the injuries sustained by the accused at about the time of occurrence or in the course of altercation is a very important circumstance.”

The eye-witnesses who deny the presence of injuries on the person of the accused are lying on most material point, and therefore, their evidence is unreliable. It assumes much greater importance where the evidence consists of interested or inimical witnesses. In the present case admittedly there was enmity between the accused family and the deceased family and PWs 1 to 3 are interested as well as inimical witnesses and their denial of injuries on the person of accused, makes their evidence unreliable.

19. The situs of attack is also alleged to be not established by the prosecution. In the First Information Report the complainant PW3 Ram Lakhan has stated that he and his sons were sitting in their flour mill and were chatting at about 6.00 a.m. when the assailants came and attacked them. In the testimony, PW1 Bali Raj has stated that they were sitting in front of their house when the assault took place. PW2 Moti Lal has testified that the attack did not occur on flour mill but occurred in the verandah of house of Prabhunath. PW3 Ram Lakhan has testified that the place of occurrence is about 50 steps away from the flour mill. Thus there is inconsistency about the place of occurrence in their testimonies and a doubt creeps in. Though blood- stained earth was claimed to have been seized from the occurrence place by the Investigating Officer PW7 Surender Singh, it was not sent for chemical examination which could have fixed the situs of the assault. In almost all criminal cases the blood- stained earth found from the place of occurrence is invariably sent to the chemical examination and the report along with the earth is produced in the Court and yet this is one exceptional case where this procedure was departed from for reasons best known to the prosecution.

20. We are of the considered view that the prosecution has failed to prove the guilt of the appellants beyond reasonable doubt, and therefore, they are entitled to be acquitted.

21. In the result Criminal Appeal No.1881 of 2011 is allowed and the conviction and sentence imposed on appellant-Ganesh Datt are set aside and he is acquitted of the charges and he is directed to be set at liberty unless wanted in connection with any other case. Criminal Appeal No. 1884 of 2011 in respect of appellant Jagdish stands abated. As far as other appellants namely, Sudarshan Verma, Deep Narain and Rajendra are concerned, the said appeal is allowed and the conviction and sentence imposed on them are set aside and they are acquitted of the charges and they are directed to be set at liberty unless wanted in any other case.