

UPREME COURT OF INDIA

Dinesh Lal

Vs.

State of Uttarakhand

CrI.A.No.1314 of 2015

(T.S.Thakur and V.Gopala Gowda,JJ.,)

06.10.2015

JUDGMENT

V.Gopala Gowda,J.,

SLP(CrI.) NO. 10250 of 2014

1. Leave granted.

2. This criminal appeal by special leave is directed against the impugned judgment and order dated 3.7.2013 passed in CrI. A. No. 153 of 2010 by the High Court of Uttarakhand at Nainital whereby it affirmed the judgment and order dated 10.6.2010 passed by the District & Sessions Court, Tehri Garhwal, New Tehri (for short the “the Trial Court”) in Sessions Case No. 16 of 2009, convicting the appellant herein for the offence punishable under Section 302 of Indian Penal Code, 1860 (for short “IPC”) and Section 4/25 of the Arms Act, 1959 and sentenced him to life imprisonment with a fine of Rs.20,000/- for the offence punishable under Section 302 of IPC and two years rigorous imprisonment with a fine of Rs.10,000/- for the offence punishable under Section 4/25 of the Arms Act, 1959. Both the sentences imposed upon him for the abovesaid offences were to run concurrently. Brief facts are stated hereunder to appreciate the rival legal contentions urged on behalf of the parties:

3. On 11.03.2009 complainant Jotar Das submitted a written complaint to Naib Tehsildar, Jakhnidhar, District Tehri Garhwal, Uttarakhand regarding the murder of his daughter, Kumari Kusum (hereinafter referred to as “deceased”).

4. In the said complaint it was stated by him that a proposal for the marriage of the deceased was made by the appellant about 4 months back from the date of the said written complaint. The appellant used to visit the house of the complainant but he refused to give his daughter in marriage to the appellant after hearing complaints about his activities. On 11.03.2009, it is alleged that at about 11.30 AM the appellant reached Vartyakhund, through jungle where the deceased was cutting grass along with her grandmother Smt. Madi Devi (PW-1) and her aunt

Smt. Ram Maya Devi (PW-2). After reaching there the appellant attacked the deceased with a 'khukri' (a sharp edged weapon), at the left side below her heart, as a result of which she died on the spot. Thereafter, he hit himself with the same 'khukri' below his naval and fell unconscious. This information of murder was given to the complainant by his mother Smt. Madi Devi (PW-1), who witnessed the murder of the deceased along with PW-2. On the basis of the written complaint, FIR in Crime Case No. 02/2009 was registered against the appellant. The matter was investigated by the investigation officer and the charge sheet was filed against the appellant for the offences punishable under Sections 302 and 309 of IPC and under Section 4/25 of the Arms Act, 1959.

5. The Trial Court convicted the appellant for the offences punishable under Section 302 of IPC and Section 4/25 of the Arms Act, 1959 and he was awarded the sentence of life imprisonment with a fine of Rs.20,000/- for the offence punishable under Section 302 IPC and sentence of two years rigorous imprisonment with fine of Rs.10,000/- for the offence punishable under Section 4/25 of the Arms Act, 1959. The above sentence was imposed upon the appellant for the offences referred to supra were to run concurrently.

6. Aggrieved by the decision of the Trial Court, the appellant filed an appeal before the High Court urging various grounds and prayed for setting aside the judgment and order passed by the Trial Court and acquit him of the charges framed against him. The High Court upheld the decision of the Trial Court holding that no attempt was made by the appellant to establish his plea. Hence, this appeal.

7. Mr. A.S. Pundir, learned Amicus Curiae for the appellant contended that the High Court has gravely erred in placing reliance on the depositions of Smt. Madi Devi (PW-1), Smt. Ram Maya Devi (PW-2), Smt. Shanti Devi (PW-3), Jotar Das (PW-4) and Ramesh (PW-8) as all were the members of same family and it was natural for these interested witnesses who have stated a concocted version against the appellant in order to save the main assailant Ramesh (PW-8), who actually attacked the two victims i.e., the deceased and the appellant, in his outrage against the deceased. The said attack resulted into the death of the deceased and serious injuries caused to the appellant. He further urged that the courts below have erred in not noticing the concocted case set up by the prosecution against the appellant which is most unnatural. He further submitted that there is lot of inconsistency in respect of the time of occurrence of incident that was stated by Smt. Madi Devi (PW-1) and Ram Maya Devi (PW-2) in their statements of evidence, which is sufficient to show that none of said witnesses could have been available on the spot at the time of the incident.

8. He further contended that the High Court has failed to appreciate that the Trial Court erred in using the part of statement of the appellant made under Section 313 of the Code of Criminal Procedure, 1973 about the injury caused to him by 'khukri' while ignoring the rest of the statement regarding the assault being made by Ramesh, the brother of the deceased upon him. Therefore, the concurrent findings of fact recorded by the High Court on the charge framed against appellant in exercise of its appellate jurisdiction and upheld the Trial Court's decision, which is erroneous in law as the same is without proper re-appraisal of the evidence. On this ground itself the impugned judgment and order of the High Court is

required to be set aside by this Court in exercise of its appellate jurisdiction. On the other hand, Mr. Ashutosh Kumar Sharma learned counsel for the respondent-State sought to justify the concurrent findings of fact recorded in the impugned judgment and order by the High Court contending that Smt. Madi Devi (PW-1), who is an eye witness to the entire incident of murder, has clearly narrated the whole incident in her examination in chief evidence before the Trial Court and also successfully identified the accused in the Court. Smt. Ram Maya Devi (PW-2) supported the version of PW-

1. The deposition of the said witnesses and other prosecution witnesses were found to be reliable and trustworthy by the Trial Court, upon which the High Court also gave a concurrent finding. Therefore, the same does not need interference by this Court in exercise of its appellate jurisdiction. It was further contended by him that the plea of the appellant that PW-8 used 'khukri' against him but the deceased came in between as a result of which, she received fatal injuries which caused her death is totally untenable as the appellant has not made any effort at all to give any evidence before the Trial Court in support of the said plea and not even bothered to offer himself for examination to adduce evidence in support of his defence before the Trial Court. Therefore, the High Court was right in concurring with the judgment of the Trial Court. This Court at the admission stage vide its order dated 2.2.2015 issued notice only for limited purpose to find out as to whether the matter can be remitted back to the High Court for re-appraisal of the evidence. We have heard the learned counsel for the parties and carefully examined the concurrent findings recorded by the High Court on the charges. From a bare perusal of the impugned judgment and order it is abundantly clear that the High Court has passed a cryptic order without appraising the evidence properly and scrutinising the depositions of PW-1 to PW-4 and PW-8, who are all members of the same family and they are interested witnesses. The Trial Court appears to have ignored the appellant's version that it was PW- 8, who actually used 'khukri' to attack the appellant but unfortunately the deceased came in between as a consequence of which she received fatal injuries which resulted in her death. The Trial Court has paid little heed to this aspect of the matter while passing its judgment and order of conviction and awarding sentence upon the appellant. It has relied upon the depositions of the interested witnesses of the prosecution after disbelieving the case of the appellant holding that he did not tender himself for examination before the Trial Court in support of his defence. The impugned judgment and order passed by the High Court is neither a well reasoned order nor based on a careful re-appraisal of the evidence on record. The conclusion arrived at by the High Court in concurring with the findings of the Trial Court on the charges levelled against the appellant are based on proper appreciation of evidence is not sustainable in law for the reason that the High Court has not re-appraised the evidence on record while arriving at such conclusion.

The first Appellate Court is required in law to examine the case of the appellant with reference to the ground urged in the appeal. The High Court in law is required to re-appraise the evidence adduced by the prosecution witnesses particularly in the light of the ground urged on behalf of the appellant that PW-1 to PW-4 and PW-8 are interested witnesses and therefore, their depositions should not have been accepted to record findings of fact on the charges framed against him. As could be seen from the reasoning portion of the impugned judgment and order no such effort is made by the High Court, except recording the findings of fact on the charges levelled against the appellant holding that the same are proved. In view

of the foregoing reasons, the impugned judgment and order is liable to be set aside and we accordingly set aside the same and remand the case to the High Court for its fresh disposal of the same in accordance with law on merits after affording an opportunity to the parties. Needless to mention in this Order that as the appellant is undergoing sentence imposed upon him in the District Jail, Deharadun, Uttarakhand, and the matter is pending from 2009, therefore, the High Court is requested to dispose of the appeal expeditiously, but not later than 6 months from the date of receipt of this order. With the above observations this appeal is disposed of.