

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL APPEAL No. 178 of 2004

Manoj Kumar @ Manna
S/o Sri Rajpal,
R/o Chandranagar (Maldhan),
P.S. Ramnagar, District Nainital

..... Appellant/Accused

Versus

State of Uttaranchal

..... Respondent

July 31, 2009

Mr. Ganga Singh Negi, Amicus Curiae for the appellant.
Mr. M.A. Khan, Brief Holder for the State/respondent.

HON'BLE DHARAM VEER, J.

This appeal, preferred by the appellant u/s 374(2) of the Code of Criminal Procedure, 1973 (*hereinafter referred to as Cr.P.C.*), is directed against the judgment and order dated 14.5.2004 passed by the Additional Sessions Judge/2nd Fast Tract Court, Nainital in Sessions Trial No. 113 of 1999, *State v. Manoj Kumar @ Manna & Anr.*, whereby the appellant/accused *Manoj Kumar @ Manna* has been convicted under Sections 308 of Indian Penal Code, 1860 (*for short, I.P.C.*) and sentenced to undergo R.I. for four years.

2. In brief, the prosecution case is that an FIR was lodged by Ramesh Chandra (PW3) with the averments that on 29.5.1999 at about 7 pm, his niece Km. Meena (PW1), the victim, who was 9 years' old at the time of the incident, had gone to buy some articles from the shop. When she did not return till very late in the evening, then he tried to search her in the village but she could not be located. He again tried to search her in the early next morning, then he found Km. Meena in the field of Mentha in unconscious condition. He found signs of fingers on her neck, on the basis of which he doubted that some unknown person had tried to kill her niece. He also found

injuries on her back, mouth and head. He got admitted Km. Meena in LD Bhatt Government Hospital, Kashipur with the assistance of the villagers. From there she was referred to Mohan X-rays, CT Scan and Ultrasound Centre, Harpal Nagar, Moradabad. With these averments, FIR Ex. Ka-1 was lodged by PW3 Ramesh Chandra on 7.6.1999 at about 5.15 pm further stating therein that victim Km. Meena was still lying in critical condition and since he and his family members were busy in her treatment and because of mental tension, he did not lodge the report of the said incident in time.

3. On the basis of the aforesaid report, chick FIR Ex. Ka-4 was prepared by Constable Clerk Bhagwat Ram. Necessary entries were made in the GD. Carbon copy of the GD is Ex. Ka-5. Investigation of this case was entrusted to S.I. Karn Singh (PW6). Km. Meena was medically examined at LD Bhatt Govt. Hospital, Kashipur on 30.5.1999 and her medical report is Ex. Ka-3 which was prepared by PW5 Dr. Yashpal Singh Rawat. Her CT Scan report Ex. Ka-2 which was prepared by PW4 Dr. Ram Mohan Agarwal. During the course of investigation, the I.O. inspected the place of occurrence and prepared the site plan Ex. Ka-6. He also recorded the statements of the witnesses during the course of investigation and after completing the investigation he filed the chargesheet Ex. Ka-7 against the appellant/accused Manoj Kumar @ Manna and the co-accused Sukhdev @ Babli.

4. Learned Chief Judicial Magistrate, Nainital after giving the necessary copies of the documents to the appellant/accused and the co-accused as prescribed under Section 207 Cr.P.C., committed the case to the Court of Sessions on 28.10.1999.

5. Learned Sessions Judge, Nainital framed the charge against the appellant/accused and the co-accused on 13.8.2001 under Section 308 IPC. The charge was read over and explained to the appellant/accused and the co-accused, who pleaded not guilty and claimed to be tried.

6. During the course of the trial, the co-accused Sukhdev @ Babli died on 8.6.2002 and, therefore, the trial against him was abated by the Sessions Judge vide his order dated 19.7.2002.

7. Lateron, the case was transferred to the Additional Sessions Judge/2nd Fast Track Court, Nainital for its disposal according to law. Learned Additional Sessions Judge/2nd Fast Tract Court, Nainital framed the amended charge on 17.3.2004 against the appellant/accused under Sections 308 IPC. The charge was again read over and explained the appellant/accused, who pleaded not guilty and claimed to be tried.

8. To prove its case, the prosecution has examined PW1 Km. Meena, the victim; PW2 Km. Savita; PW3 Ramesh Chandra, the complainant and maternal uncle of the victim; PW4 Dr. Ram Mohan Agarwal, who conducted the CT Scan of the victim and prepared the report Ex. Ka-2; PW5 Dr. Yashpal Singh Rawat who had prepared the medical report of the victim Ex. Ka-3 and PW6 S.I. Karn Singh, the I.O. of the case.

9. Thereafter, statement of the appellant/accused was recorded under Section 313 of Cr.P.C. The oral and documentary evidence were put him in question form, who denied the allegations made against him and stated that they he has been falsely implicated in the case. However,

in defence, he did not produce any documentary or oral evidence on record.

10. After hearing learned counsel for the parties and after appreciating the evidence available on record, the learned Additional Sessions Judge/2nd Fast Track Court, Nainital vide his judgment and order dated 14.5.2004 convicted and sentenced to the appellant/accused as discussed above. Against the aforesaid judgment and order dated 14.5.2004, the appellant/accused has preferred the present appeal.

11. I have heard learned Amicus Curiae for the appellant/accused and learned Brief Holder for the State and have carefully perused the entire material available on the record.

12. Before any further discussion, it would be pertinent to mention the injuries found on the body of the victim Km. Meena as stated in medical report Ex. Ka-3 and the same are reproduced as under:

“Injuries: (1) Red eye of both eyes. Sub conjunctiva haemorrhage present.

(2) Abrasion with neck whole circumference reddish scribbling present in area of 5 cm x 2.5 cm.

Opinion: Injury no. (1) & (2) are caused by hard blunt object. Duration about 12-18 hours, kept under observation.”

13. To prove the aforesaid medical report Ex. Ka-3, the prosecution has examined PW5 Dr. Yashpal Singh Rawat who was posted as Medical Officer at LD Bhatt Govt. Hospital at Kashipur on 30.5.1999. He has stated that Km. Meena was examined by him on that day at 6 pm and he found the abovementioned injuries on her body and

prepared the medical report Ex. Ka-3. He has further stated that the said injuries could have been inflicted upon the victim in the night of 29.5.1999. He has also stated that due to critical condition of the victim, she was referred to the Neurosurgeon.

14. CT Scan of the brain of the victim was conducted by PW4 Dr. Ram Mohan Agarwal on 5.6.1999 and he had prepared the report thereof which is Ex. Ka-2. This witness has stated the injury in the brain might have been caused by strangulation of neck because of which the blood supply stopped. The report Ex. Ka-2 is reproduced as under:

“small hyperdense areas are seen in lower parts of both frontal lobes.

Hypodense areas, larger on left side are seen in region of basal ganglion of both sides.

Ventricles are normally visible.

Sulci, cisters and fissures are normally visible.

Posterior fossa shows normal brain stem, cerebellum and IVth ventricle.

No bony cervical and extra cerebral abnormality is noted.

Conclusion:

These findings are suggestive of

- (1) infarction of both basal ganglion, more on left side indicating damage due to strangulation.
- (2) Resolving cerebral haemorrhage in lower parts of small area of both frontal lobes.”

15. To further prove its case the prosecution has examined PW1 Km. Meena, the victim whose statement was recorded on 7.11.2001 and who has stated that the accused Sukhdev @ Babli (now deceased) was known to her. About three years ago, when she was going to the shop in the evening, appellant/accused Manoj Kumar @

Manna and Sukhdev @ Babli met her in the way. They gave me tophy (chocolate). Babli hit on her head. She became unconscious. The accused took her to the field of Mentha where she regained some consciousness for a short period. Thereafter she again became unconscious. There she met a girl Savita (PW2) who came there after the daybreak. She has further stated that thereafter she was treated by the doctor. She had got the injuries on her head. In her cross-examination, she has stated that there never was any dispute pertaining to the drain between her father and the father of the appellant/accused Manna. She used to call the appellant/accused Manoj Kumar @ Manna by Mama (maternal uncle). She has further stated that Manna hit on her head by a kara (a metal ring worn on the wrists). When she regained consciousness she was forcibly made to drink liquor by Manna. The colour of the liquor was like water which was usually made in the village. She became unconscious at the very place where she was hit. She pleaded ignorance as to where Babli and Manna ran off after leaving her in the field.

16. PW2 Km. Savita has stated that she had not seen anybody in the field. She has further stated that she did not know as to who had hit her. Km. Meena had injuries on her neck. She was lying in the field of Mentha and was unable to speak. Thereafter she called her maternal uncle Mahesh Chandra and took her from there.

17. PW3 Ramesh Chandra, the complainant has stated in his deposition that the victim Km. Meena was his niece (Bhanji). Her father has passed away. On 29.5.1999 at about 7 pm, she had gone to the shop to buy some articles. But she did not return till the late night. He tried to search her but she could not be traced. In the morning of 30th (next day), Savita (PW2) told his younger brother

Mahesh Chandra that Meena was lying in the field of Mentha. Then they went to that place where Km. Meena was lying in unconscious condition. She was immediately taken to Kashipur for her treatment. He has further stated that Km. Meena had injuries on her back and head and there were impressions of fingers on her neck. From Kashipur, she was taken to Moradabad for CT Scan of her brain. He lodged the report of this incident in his own handwriting at P.S. Ramnagar after seven days of its occurrence. He has further stated that he also gave the medical examination report and CT Scan report along with the FIR Ex. Ka-1. He has further stated that he could not earlier lodged the report because of her treatment and bad financial condition. She regained consciousness after ten days.

18. PW6 S.I. Karn Singh has stated that the chick Ex. Ka-4 of this FIR was prepared by Constable Clerk Bhagwat Ram on 7.6.1999. The necessary entries were also made by him in the GD. Carbon copy of the GD is Ex. Ka-5. The investigation of this case was entrusted to him on 8.6.1999. During the course of investigation he recorded the statements of the witnesses and after inspecting the place of occurrence, also prepared the site plan Ex. Ka-6. After completing the investigation, he filed the chargesheet Ex. Ka-7 against the appellant/accused Manoj Kumar @ Manna and the co-accused Sukhdev @ Babli (died during the trial and hence trail against him was abated).

19. After that, the statement of the appellant/accused was recorded under Section 313 of Cr.P.C. The oral and documentary evidence were put to him in question form, who denied the allegations made against him and stated that he has been falsely implicated in the case. However,

in defence, he did not produce any documentary or oral evidence on record.

20. Learned Amicus Curiae for the appellant/accused argued that the prosecution has not proved the case against the appellant/accused beyond reasonable doubt for the offence punishable under Section 308 IPC. I do not find any substance in the argument of the learned Amicus Curiae for the appellant/accused as PW1 Km. Meena, the victim herself has stated in her deposition that in the evening of 29th May 1999, when she was going to the shop for buying certain articles, the appellant/accused, who was known to her, met her in the way and gave her the tophy (chocolate). She was hit by the appellant/accused Manna in her head by a Kara (metal ring) and became unconscious. The appellant/accused Manoj Kumar @ Manna and the co-accused Sukhdev @ Babli (being dead, the trial against him was abated) took her to the field of Mentha where she regained some consciousness for sometime. Thereafter she again became unconscious. They put in a bottle of liquor in her mouth. Km. Savita (PW2) saw her in the next morning who came there to answer the call of nature after the daybreak. Thereafter she was treated by the doctor. She had got the injuries on her head and neck and there was steep redness in her both eyes, which is substantiated by PW5 Dr. Yashpal Singh Rawat who had medically examined the victim and prepared the medical report Ex. Ka-3 and is also further substantiated by the deposition of PW4 Dr. Ram Mohan Agarwal, who conducted the CT Scan of the brain of the victim and prepared the report Ex. Ka-2.

21. Thus, from the aforesaid discussion of the evidence and in view of the facts and circumstances of the case, it is proved beyond doubt that the appellant/accused Manoj Kumar @ Manna and the co-accused Sukhdev @ Babli

(now dead), in the evening of 29th May 1999, hit the victim Km. Meena in her head when she was going to the shop to buy certain articles, who was minor at the time of the incident and took her in the field of Mentha. They also tried to strangle her neck. She became unconscious and could regain her consciousness after ten days. Thus, the case against the appellant/accused stands proved. I do not find any illegality or infirmity with the findings recorded by the trial court and the impugned judgment and order dated 14.5.2004 is correct and justified.

22. Learned Brief Holder for the State has submitted that the appellant/accused Manoj Kumar @ Manna has been released from the jail after serving out the sentence imposed on him. CJM, Nainital has also reported that the appellant/accused has completed his period of sentence and has been set free from the jail on 2.1.2007. As such, the appeal has also been rendered infructuous.

23. In view of my above discussion and conclusion, the prosecution has proved the case against the appellant/accused beyond reasonable doubt and I do not find any merit in the appeal.

24. Resultantly, the appeal being devoid of merit is hereby dismissed. The judgment and order dated 14.5.2004 passed by the Additional Sessions Judge/2nd Fast Track Court, Nainital in Sessions Trial No. 113/1999 convicting the appellant/accused under Section 308 IPC and sentencing him to undergo R.I. for four years is upheld.

25. Let the lower court record be sent back.

(Dharam Veer, J.)
31.7.2009

