

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No.303 of 2004

1. Manoj Kumar S/o Late Sri Padi Ram
R/o Lab Assistance State Observatory, Nainital
2. Smt. Neelam Shilang W/o Late Sri Ajay Susheel
Shilang, R/o State Observatory Campus, Nainital
P.S. Tallital, District Nainital.

....Appellants

Versus

State of Uttaranchal (Now State of Uttarakhand)

...Respondent

Mrs Pushpa Joshi, Advocate present for appellant no.1.

Mr. Sandeep Tandon, Advocate with Ms. Deepa Arya, Advocate present for appellant no.2.

Mr. Amit Bhatt, AGA present for State.

**Coram: Hon'ble Prafulla C. Pant, J.
Hon'ble V.K. Bist, J.**

Prafulla C. Pant, J. (Oral)

This appeal, preferred under Section 374 of Code of Criminal Procedure, 1973 (*for short Cr.P.C.*) is directed against the judgment and order dated 28.09.2004 passed by Sessions Judge, Nainital in Sessions Trial No.106 of 2003, whereby said court has convicted the accused/appellants Manoj Kumar and Neelam Shilong under Section 302 and 120-B I.P.C. and each one of the convicts has been sentenced to imprisonment for life under Section 302 of Indian Penal Code, 1860 (*for short I.P.C.*) and rigorous imprisonment for a period of three years under Section 120-B I.P.C.

2. Heard learned counsel for the parties and perused the lower court record.

3. Prosecution story in brief is that Ajay Kumar Shilong (deceased) was Laboratory Assistant in Government Observatory Manora Peak, Nainital. On 09.04.2003 he had gone to Nainital in the bus of Observatory alongwith other employees in the evening. He returned by that bus back to the Observatory (premises) around 07:00 pm. However, he did not reach home and his wife Neelam (appellant no.2) said to have made queries from other employees who had gone and came back to Nainital in the bus. On coming to know that her husband Ajay Susheel Shilong had got down from the bus in the premises at about 07:00 pm, a search was made for him. At 07:30 pm it was noticed that dead body of Ajay Susheel Shilong was lying by the side of Kaccha road near his residence. There was mark of injury around his neck. The Chief Administrative Officer of the Observatory P.W.1 Ram Lakhan Vishvkarma was immediately informed about the incident who gave a telephonic information to the Police Station at Tallital that dead body of Ajay Susheel Shilong was lying by the side of Kaccha road near his residence. However, it appears that on the basis of said telephonic report since no cognizable offence was disclosed, no First Information Report was registered by the Police. However, on the next day, 10.04.2003 Police went to the spot, took dead body in their possession and prepared Inquest Report (Ext.A-4) and other necessary papers like Sketch of the dead body (Ext.A-5), letter to

Chief Medical Officer (Ext.A-6), Police Form No.13 (Ext.A-7) and Sample Seal (Ext.A-8). P.W.11 Dr. Chandra Mohan Singh Dhami conducted post mortem examination on the dead body of Ajay Susheel Shilong on the very day (10.04.2003) at about 12:45 pm. He recorded ante mortem lacerated wound on the right upper eye brow, and ligature mark around the neck of the deceased. He opined in the autopsy report (Ext.A-10) that the deceased had died of asphyxia due to strangulation. Thereafter, it appears that on 12.04.2003, (P.W.1) Ram Lakhan Vishvkarma, Chief Administrative Officer wrote a formal letter/First Information Report addressed to the Station Officer, Police Station Tallital suspecting murder of Ajay Susheel Shilong. On the basis of the said report, on 14.04.2003 Police registered crime no.212 of 2003 relating to offence punishable under Section 302 I.P.C. against unknown persons, and check report (Ext.A-12) was prepared and necessary entry (Ext.A-13) was made in the General Diary. The crime was investigated by P.W.12 Sub Inspector Nityanand Pant, who went to the spot and prepared site plan (Ext.A-14). Accused/appellant Neelam Silong and her neighbours were interrogated by the Investigating Officer. During investigation the Investigation Officer recovered rope allegedly used in the crime by accused/appellant Manoj Kumar in the commission of crime. Prosecution has come up with the story that accused/appellant no.1-Manoj Kumar had illicit relations with accused/appellant no.2-Neelam and as such, they conspired to kill Ajay Susheel Shilong (husband of Neelam) to get rid of him. On completion of investigation,

charge sheet (Ext.A-17) was filed against accused/appellants Manoj Kumar, Smt. Neelam Silong and one Arjun Kumar (since acquitted by the trial court), for their trial in respect of offences punishable under Section 302 and 120-B I.P.C.

4. The Magistrate, on receipt of the charge sheet and after giving necessary copies to the accused, as required under Section 207 of Cr.P.C., committed the case to the Court of Sessions for trial. On 20th October, 2003 learned Sessions Judge, Nainital after hearing the parties framed charge of offence punishable under Section 302/34 I.P.C. against the two accused Manoj Kumar and Arjun Kumar. A separate sheet was framed against the accused Neelam Silong relating to offence punishable under Section 302 and under Section 120-B I.P.C. All the accused pleaded not guilty and claimed to be tried. On this prosecution got examined P.W.1 Ram Lakhan Vishvkarma, Chief Administrative Officer of the Government Observatory (informant), P.W.2 Pratap Singh, a Driver/employee of the Observatory, who accompanied the deceased on his way back from Nainital to Observatory in the bus, P.W.3 Laxman Singh, another employee of the Observatory and the witness of the same fact, P.W.4 Nitin Joshi (declared hostile), P.W.5 Ashok (declared hostile), P.W.6 Professor Ram Sagar, Director of the Observatory, who made a statement that Neelam was interrogated in his presence by the Investigating Officer, P.W.7 Deshmukh Jon Jackab, brother-in-law of the deceased, who has stated that the appellants had illicit relations, P.W.8 Mohan Lal Sah

(declared hostile), P.W.9 Jagdish Bann (declared hostile), P.W.10 Sub Inspector Ram Kumar Juyal, who prepared the inquest report and also witnessed the recovery of rope, P.W.11 Dr. Chandra Mohan Singh Dhami, who conducted post mortem examination and P.W.12 Nityanand Pant, who investigated the crime. Oral and documentary evidence was put to the accused under Section 313 Cr.P.C. in reply to which accused alleged same to be false. Accused Neelam further stated that she was harassed during investigation after she was taken in to custody and compelled to make a false statement. However, no evidence in defence was adduced. The trial court after hearing the parties found that prosecution has failed to prove charge of offence punishable under Section 302 I.P.C. against accused Arjun Kumar but it has successfully proved charge of offences punishable under Section 302 and 120-B against accused Manoj Kumar and Neelam Silong. The two were convicted, accordingly. After hearing on sentence, the trial court sentenced each one of the convicts to imprisonment for life under Section 302 I.P.C. and rigorous imprisonment for a period of three years under Section 120-B I.P.C. Aggrieved by the said judgment and order dated 28.09.2004 passed by Sessions Judge, Nainital in Sessions Trial No.106 of 2003, this appeal is preferred by the two convicts.

5. Before further discussion, we think it just and proper to mention the ante mortem injuries recorded by P.W.11 Dr. Chandra Mohan Singh Dhami, who conducted post mortem examination on 10.04.2003 on the body of

Ajay Susheel Shilong and prepared autopsy report (Ext.A-10). Following are the ante mortem injuries found on the dead body by the said Medical Officer:

- “i. Lacerated wound 1.5 x .5 x bone deep over lateral part of right upper eyebrow. Clotted blood present.**
- ii. Ligature mark continuous all around neck 35 cm x 1 cm in size 5 cm below lower margin of both ear. Ligature mark depressed. The base of the mark is dark reddish, hard and parchment like. There are abrasion and echimosis in the adjacent skin of ligature mark. Clotted blood present. Adjacent tissue of ligature mark with extra vasseson of blood into the subcutaneous tissue and neck muscle. Fracture of hyoid bone, laceration of right carotid artery sheath”.**

The Medical Officer P.W.11 Chandra Mohan Singh Dhami opined in the autopsy report that the deceased had died of asphyxia due to strangulation. From the medical evidence on record as adduced by prosecution, it is established on the record that Ajay Susheel Shilong died homicidal death on 09.04.2003 around 7:00 pm. Now, we have to examine whether the accused/appellants Manoj and Neelam conspired to kill Ajay Susheel Shilong and committed his murder as suggested by prosecution.

6. It is a case of circumstantial evidence, and there is no direct evidence on commission of murder either by accused/appellant Manoj Kumar or by accused/appellant Neelam Shilong. The prosecution case is that the two accused/appellants had illicit relations and to eliminate Ajay Susheel Shilong, who was husband of

accused/appellant Neelam, the crime was committed by strangulating him. Now, we have to see whether the circumstance brought on record constitutes complete chain of circumstances to encircle the accused/appellants suggesting that it were only accused/appellants who could have committed the crime or not. We have to further examine whether the evidence adduced by the prosecution relating to circumstances shown is reliable and trustworthy or not.

7. The first point which suggests that the investigation of this case was not conducted properly, is that from the autopsy report (Ext.A-10) and the statement of P.W.11 Dr. Chandra Mohan Singh Dhami, it is shown that post mortem on the dead body of Ajay Susheel Shilong was conducted on 10.04.2003 at about 12:45 pm (noon). However, the inquest report (Ext.A-4) shows that the dead body was sealed by the Police after taking the same in their possession on 10.04.2003 at about 9:00 pm (21:00 hrs.) i.e. after the post mortem examination. Nowhere, the prosecution has explained this discrepancy. P.W.10 Sub Inspector Ram Kumar Juyal in his oral statement confirms that the inquest report was prepared in the night of 10.04.2003. On the other hand, P.W.11 Dr. Chandra Mohan Singh Dhami confirms that he conducted post mortem examination on 10.04.2003 in the noon (12:45 pm).

8. Now, we come to the delay on First Information Report lodged in the matter. P.W.1 Ram Lakhan

Vishvkarma Chief Administrative Officer of Government Observatory Manora Peak, Nainital states that on 09.04.2003 he gave oral information on phone at about 8:00-8:15 pm to the Police Station, Nainital regarding that dead body of his employee (Ajay Susheel Shilong) lying by the side of Kaccha road. It appears that on the basis of telephonic call, First Information report was not lodged, as no cognizable offence was reported by P.W.1 Ram Lakhan Vishvkarma. He (P.W.1) chose to write a letter/ report only on 12.04.2003 (copy Ext.A-1) to the Station House Officer, Nainital suspecting that Ajay Susheel Shilong was murdered. It appears that on the said letter/report crime was registered only on 14.04.2003 by the Police. No one is named in the report nor any suspicion has been expressed on anyone. However, that is not material in a case of circumstantial evidence and we would not like to discuss on this point further.

9. P.W.2 Pratap Singh and P.W.3 Laxman Singh are witnesses of same fact that Ajay Susheel Shilong (deceased) came back from Nainital in the bus of the Observatory on 09.04.2003 and got down at about 7:15 pm near his house (from where he was required to go on foot). These two witnesses are employees of the Observatory, who knew the deceased. None of these two witnesses have given any incriminating evidence either against accused/appellant Manoj Kumar or against accused/appellant Neelam that they were having illicit relations or that they conspired to kill Ajay Susheel Shilong or that they were seen doing anything in

connection with the crime. As such, evidence of these two witnesses P.W.2 Pratap Singh and P.W.3 Laxman Singh leads us nowhere as against the present appellants Manoj Kumar & Neelam.

10. The other two employees P.W.4 Nitin Joshi and P.W.5 Ashok, who were examined after the above two witnesses, did not support the prosecution story and declared hostile. In the statement of these two witnesses, it has come nowhere if the accused/appellants had any relationship or that they committed any conspiracy to commit murder of Ajay Susheel Shilong.

11. The next witness is P.W.6 Professor Ram Sagar, Director of the Observatory, has given a formal evidence. He has simply stated that the accused/appellant Neelam gave statement to the Investigating Officer in his presence. However, that again does not help the Court as against accused Manoj Kumar or accused Neelam, for the reason that on the basis of statement given by accused to the Police during investigation he/she cannot be convicted as Section 25 of Indian Evidence Act, 1872 provides that no confession made to a Police Officer shall be proved as against a person accused of any offence. Apart from this P.W.6 Professor Ram Sagar has nowhere stated that accused Neelam confessed the guilt.

12. P.W.7 Deshmukh Jon Jackab, brother-in-law of the deceased, is the sole witness who has adduced the evidence that accused/appellant Manoj had illicit relations with accused/appellant Neelam, wife of the deceased.

However, on careful examination of statement of this witness, we find that he is resident of 297 B Civil Lines, Bareilly. It is not clear that as to how he had knowledge of the fact stated by him. Of course P.W.7 Deshmukh Jon Jackab has stated that the deceased had told him that he had suspicion that his wife is having illicit relations with Manoj Kumar. Since, Ajay Susheel Shilong has died, as such, what he told to P.W.7 Deshmukh Jon Jackab, as to cause of his death, is admissible under Section 32 of Indian Evidence Act, 1872. As such, if the statement of other witness is accepted then only this much can be said that the deceased had suspicion about relationship between his wife and accused/ appellant Manoj. But merely on the basis of said circumstance, it cannot be said that the chain of circumstances is complete as against the two accused that they and none else committed the crime.

13. As far as the recovery of rope on pointing out of accused/appellant Manoj Kumar, the another circumstance attempted to be shown by prosecution is concerned, there is no public eyewitness of the recovery. Not only this P.W.10 Sub Inspector Ram Kumar Juyal who has stated that the recovery was made on pointing out of accused Manoj Kumar, in the cross examination says that “HAMAI USNE THANE MEIN YAHA NAHI BATAYA KI RASSI KAHA CHHIPAI HAI” (At Police Station he did not tell us as to where rope was concealed). We further find that P.W.10 Sub Inspector Ram Kumar Juyal states in his cross examination “BARAMAGADI KE SAMAY BHI VIVECHANA ADHIKARI SAATH GAYA THEY.

MEMO BANANA SAHBAN REH GAYA THA” (At the time of recovery Investigation Officer was there with him. By mistake memorandum could not be prepared). The above statement creates doubt as to the recovery suggested by prosecution mentioned in Ext.A-9.

14. On scrutinizing the evidence on record, we find one more reason which creates reasonable doubt in the story suggested by the prosecution that the two accused/appellants had illicit relations and to get rid of him, they conspired and killed him. On going through the evidence on record, we find that P.W.2 Pratap Singh who is not a hostile witness has stated that accused/appellant Neelam, wife of deceased, made quarries when Ajay Susheel Shilong (deceased) did not reach home on the very day after the bus came from Nainital to Observatory. Same fact has been stated by P.W.3 Laxman Singh. If accused/appellant Neelam had illicit relations with Manoj and got committed murder of Ajay Susheel Shilong, as suggested by prosecution, then she would not have enquired about her husband when he failed to reach to his house.

15. For the reasons as discussed above, we find that prosecution has failed in proving charge of offences punishable under Section 302 and 120-B I.P.C. against accused/appellants Manoj Kumar and Neelam Shilong. Therefore, we are of the view that the appeal deserves to be allowed. Accordingly, the appeal is allowed. Impugned judgment and order dated 28.09.2004 passed by the

Sessions Judge, Nainital in Sessions Trial No.106 of 2003 is hereby set aside, so far as it relates to the conviction and sentence recorded against the accused/appellants Manoj Kumar and Neelam Shilong. They are acquitted of the charge of offences punishable under Section 302 and 120-B I.P.C. They are on bail. They need not surrender. Let the lower court record be sent back.

(V.K.Bist, J.)
30.03.2011

(Prafulla C. Pant, J.)
30.03.2011

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