

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
Criminal Appeal No. 187 of 2004

Balwant Singh

... Appellant

Vs

State of Uttaranchal
(Now Uttarakhand)

... Opp. Party

Mr. Lokendra Dobhal, Advocate, present for the appellant
Mr. M.A. Khan, learned A.G.A., present for the State of Uttarakhand

Coram: Hon’ble Sudhanshu Dhulia, J.
Hon’ble Servesh Kumar Gupta, J.

Hon’ble Sudhanshu Dhulia, J.(Oral)

This criminal appeal has been filed by the accused/appellant arises out of a judgment and order dated 14.06.2004 passed in Sessions Trial No. 3 of 2002 by the learned Sessions Judge, Chamoli under Section 302 of I.P.C.

2. The matter relates to hill area in the State of Uttarakhand and as per the First Information Report which was lodged on 01.12.2001 at about 06:00 a.m. before “Patwari*” Pokhri, District Chamoli by one complainant Kedar Lal (Kedaru Lal) states that he is the Gram Pradhan of Gram Sabha Khal Bajetha, Tehsil Pokhri, District Chamoli. On 30.11.2001 at about 09:00 a.m. one of the villagers of his village had gone towards his agricultural field in order to do agricultural work adjacent to the field of Lachchhi Lal i.e. the forest which is under the control of “Van Panchayat**” of village “Bhikona”. At about 12:00 noon, when the daughter of Lachchhi Lal – Km. Anita aged 17 years, Saroj D/o Prem Lal aged 20 years and Km. Sunita D/o Jaspal Lal aged 15 years had gone to the

* The matter pertains to the hill area in Uttarakhand where the revenue official have been authorized police powers.

** In the Hills of Uttarakhand is an elected body of villagers which regulates certain rights of the villagers in a limited area of the forest.

nearby agricultural field in order to pour manure in the agricultural field, they met a woman belonging to the village “Bhikona”, who inquired from these girls as to who has lit fire in the forest. These girls expressed ignorance and stated that they are not aware, as to who caused the fire in the forest. At that point, the “Sarpanch” of “Van Panchayat” of village “Bhikona” (whose name has come further in the FIR as Balwant Singh, who is present appellant before this Court) said that “those persons who had lit the fire had been taken care of and you better run otherwise I will break your head.” The girls were frightened and thus fled. However, when Lachchhi Lal did not return to his house to have his afternoon meals his son Vijay Pal went in search of his father but could not locate his father and returned. Thereafter, another son Arun Lal along with some of his relatives went in search of his father at about 03:00 to 04:00 in the afternoon in the agricultural field but again could not locate his father. Thereafter, he went towards the adjacent forest of “Van Panchayat” and when he reached the border wall of the “Van Panchayat”, he saw the dead body of his father. Thereafter, the complainant being the Head of his village and other persons belonging to the Scheduled Caste Community (apparently the deceased belong to a Scheduled Caste Community) went to the place where the dead body was lying. Arun Lal, his sister Km. Anita and his mother Smt. Bhoopali Devi, according to the complainant, said that his father has been killed by Balwant Singh because he had objections to his father about cutting of grass in the “Van Panchayat” area. The basis of this First Information Report, the investigation was started by “Patwari” village Pokhri.

3. On 14.12.2001, statements under Section 164 of Cr.P.C. Basanti Devi, Kedar Lal, Bhoopali Devi, Km.

Sunita, Km. Anita and Saroj were recorded before the learned Magistrate. Though the statement of other witnesses recorded under Section 164 of Cr.P.C. are not of much relevance as they are not seen the actual assault being committed by the accused Balwant Singh and of which we will come later.

4. The statement of Basanti Devi made under Section 164 of Cr.P.C. on 14.12.2001 have some relevance. She states in her statement under Section 164 of Cr.P.C. that about fifteen days back on Friday at about 11:00 a.m. when she was going to cut grass, she saw a lot of smoke coming out from the forest. At that point, "Sarpanch" Balwant Singh, who made no efforts to extinguish the fire, instead hit his brother by a "Thamali" (sharp edged weapon), which he was carrying. After seeing this incident she became unconscious and fell down. The rest of the statements recorded under Section 164 of Cr.P.C. are of other women and of one Kedar Singh, who have seen the accused Balwant Singh on the spot and some have also seen him running away from the spot.

5. The only material evidence before the Court is that of Basanti Devi, who was examined as P.W.6. She in her examination-in-chief recorded on 19.06.2003 states that her age is about 70 years. On the fateful day she had gone to the forest to cut the grass when she saw the fire, which was lit in the forest and accused Balwant Singh was trying to kill his brother Lachchhi Lal who was trying to extinguish the fire. In her cross-examination she states that Lachchhi Lal is her real younger brother. She could know only in the evening when she returned to her house that her brother has been killed. She also admitted that at the relevant time, she saw the incident happening from a

distance. She admitted that she has poor eyesight and that at the relevant time there was a lot of smoke, in other words the visibility was low.

6. P.W.1 is a Kedar Lal, who is the complainant and the “Pradhan” of the village at the relevant time. He is not the eyewitness of the crime and entire deposition is based on a hearsay, which has been told to him either by the daughters of the deceased or by other villagers. Some relevance had to be given to him though because he is the person who actually lodged the First Information Report and his evidence is seems to be bona fide and correct to the extent that the agricultural field of the deceased Lachchhi Lal was just adjacent to the “Van Panchayat” i.e. forest which was under the control of the village “Van Panchayat” and that there was some dispute between the “Van Panchayat” and Lachchhi Lal as they had common boundary.

7. The trial court though on the weight of the evidence convicted the accused under Section 302 of I.P.C. for the reasons of sole testimony of P.W.6, as according to the trial court the statement cannot be disbelieved merely because she is the sister of the deceased though it is not undoubtedly true that merely because this witness is a relative of the deceased or a close relative of the deceased, the statement cannot be disbelieved. However, it is an admitted fact that this witness is about 70 years of age who has poor eyesight and that particular day she watched the incident from a distance and admittedly at that time there was a lot of smoke in that area, which further makes visibility poor. We are of the considered view that on this evidence alone conviction could not have been made.

Therefore, we deem it fit and proper that the impugned judgment and order should be set aside.

8. Hence, the appeal is allowed. The impugned judgment and order dated 14.06.2004 thereby convicting the accused/appellant under Sections 302 of I.P.C. and sentencing him for life imprisonment is hereby set aside. Accordingly, the accused/appellant is acquitted of the offence under Section 302 I.P.C. levelled against him. The appellant is on bail. He need not surrender. His bail bonds are cancelled and sureties are discharged. Lower court records be sent back.

(Servesch Kumar Gupta, J) (Sudhanshu Dhulia, J.)

31.07.2012

ASWAL