

Reserved Judgment

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 186/2011

Mahesh Singh	Versus	... Appellant
State of Uttarakhand		... Respondent

Mr. RS Sammal, Advocate, for the appellant.

Mr. Amit Bhatt, Deputy Advocate General, for the State/respondent.

Date of Judgment: 29.11.2013

Coram: Hon'ble Barin Ghosh, C.J.
Hon'ble Servesh Kumar Gupta, J.

Per : Servesh Kumar Gupta, J.

Convict Mahesh Singh is in appeal before us. Vide impugned judgment and order dated 16.6.2011/17.6.2011, learned Sessions Judge, Almora has held him guilty of the offence under Section 302 IPC and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs. 5,000/-. Judgment and order, impugned in this appeal, was passed in Sessions Trial No. 16/2010, State v. Mahesh Singh, pertaining to Crime No. 2/2010, PS Dwarahat (Revenue Circle Danar, Chaukhutia), District Almora.

2. Information of the crime was telephonically communicated in the police station at 9.40 AM on 28.4.2010, i.e. on the date of incident itself, by Narayan Singh, the younger brother of the deceased Lokpal Singh. The same was recorded in the GD vide Entry No. 12 of the concerned police station. Having received this information, the Station Officer left for the spot, but still the Chick FIR was not issued by that time and it could be reduced in the lodgment of the formal FIR only when Narayan Singh gave the report in writing at 4.30 PM on the same day. The report filed by Narayan Singh to the police station is Ex. Ka-1. Chick report thereof is Ex. Ka-2. It was alleged in the said report that in the

morning of 28.4.2010, Narayan Singh left his house to purchase some articles from the nearby shop. In his way to the shop, he sat for a while in the house of his elder brother Lokpal Singh (deceased). At that very time, his elder brother Lokpal Singh was taking his she-buffaloes towards the jungle. After moving about 15 paces from his house, when Lokpal Singh saw the fire under the chestnut tree in his field, he asked Mahesh Singh (accused appellant) not to set the fire in such a manner. Mahesh Singh was ploughing his agricultural field in the close vicinity. He took the words of Lokpal Singh otherwise and began to hurl abuses. Hearing the abuses, the informant Narayan Singh proceeded towards his brother in order to pacify the quarrel. Meanwhile, Mahesh Singh came up on the road from his field hurling abuses in the same manner. He was armed with an axe in his hand. All of a sudden, he gave blow of that axe on the head of his brother Lokpal Singh, who died immediately at the spot.

3. Inquest proceedings commenced at 12.00 hours on the date of incident itself (28.4.2010) and ended at 14.00 hours. In the inquest report Ex. Ka-8, the witnesses have opined that the deceased died on account of excessive bleeding from the wound present on his head. Nonetheless, body was sent for the post-mortem. The autopsy was conducted by PW3 Dr. Ramakant Sagar on 28.4.2010 at 4.20 PM in Ranikhet Civil Hospital. Post-mortem report is Ex. Ka-6. The deceased, who was 55 years' old, suffered the following ante mortem injury:

Incised wound over head about 12 cm
inside from right ear and 12 cm anterior
from posterior hairline. Size of wound is 12

cm long, 2 cm wide and bone deep underlying bone occipital, left parital and right parital are fractured. Blood and blood clots present over it. Margins of wound are clear-cut.

As per the doctor, the deceased died 6 to 8 hours prior to conducting the autopsy and cause of the death was coma and haemorrhagic shock due to anti mortem injury.

4. Site plan of the place of occurrence is Ex. Ka-9. The accused got arrested by the police on 29.4.2010 from the close vicinity of the village, where the incident had taken place. Copy of the GD showing the information of his arrest is Ex. Ka-4. Memo of arrest is Ex. Ka-10. At the instance of victim, the axe (weapon of assault) was recovered on 29.4.2010. Recovery memo thereof is Ex. Ka-7. Spot map of the recovery site Ex. Ka-12 was prepared by the Investigation Officer (PW5). The bloodstained and plain soils were recovered from the spot. Recovery memos thereof are Ex. Ka-18 and Ka-19 respectively. Report of the Forensic Science Laboratory Ex. Ka-20 reveals the presence of human blood on the bloodstained soil and on the axe, however the blood was found disintegrated. Investigation culminated into submission of the chargesheet Ex. Ka-21 against accused Mahesh Singh for the offences under Section 302, 504 IPC. Learned Sessions Judge levelled the charges accordingly. The accused abjured the guilt and claimed trial. He was, accordingly, put on trial by the learned Sessions Judge.

5. In all, the prosecution examined five witnesses. PW1 is the informant Narayan Singh; PW2 is Head Constable Prakash Chandra, who had received the telephonic information about the incident in the police station; PW3 is Dr. Ramakant Sagar, who had conducted the autopsy; PW4 is SI Bahadur Singh, he is the witness of recovery of weapon; and PW5 is Station Officer Thakur Singh Adhikari, Investigation Officer of the case.

6. Thereafter statement of the accused, under Section 313 CrPC, was recorded. He has simply denied his complicity in the offence and has stated that at 8.45 AM on 28.4.2010, he slipped at the gate of his school and got injured. So, his father took him to Ranikhet Government Hospital, where he was medically examined. In defence, he got examined DW1 Dr. PS Kholia. This doctor was posted in Civil Hospital, Ranikhet. He has stated that on 28.4.2010, he had medically examined the accused Mahesh Singh at 1.25 PM and had found one injury on his body. It was a cut wound 7.5 x 2.5 cm in front part of the right side head. Fresh blood was oozing out from that injury and the wound was bone deep. The edges were cut and lacerated, but not sharp.

7. We have heard learned Counsel for the appellant as well as learned State Counsel and have perused the evidence available on the record.

8. PW1 is the informant Narayan Singh. He is the real younger brother of the deceased and an eyewitness of the incident. He has deposed that on 28.4.2010 at about 9 AM, when he was going to fetch some household items from a nearby shop, he stopped

in the house of his elder brother Lokpal Singh for a while. At that time, his brother was taking his she-buffaloes towards the jungle for grazing. When his brother moved 15-20 metres from the house, he heard his voice asking the accused not to ignite the fire beneath the chestnut tree standing in the field of his brother. Accused Mahesh Singh was ploughing his field in close proximity. Accused took exception of what was asked by the deceased and began to hurl abuses. Hearing this altercation, PW1 proceeded towards the spot and asked his brother not to engage in verbal sparring with the accused. Meanwhile, Mahesh Singh gave blow of the axe on the head of his brother Lokpal Singh, who fell down on the earth and died on the spot. After this incident, Mahesh Singh escaped from the spot with the weapon of assault. PW1 also went shouting towards the house of his brother and subsequently gave information of the incident to the Dwarahat Police Station by telephone at 9.30 AM on that day itself. Police arrived at the spot and the inquest report was prepared in the presence of the witnesses including PW1 also. Thereafter dead body was sent for the post-mortem. Thereafter PW1 prepared the written report narrating the entire incident and went to the police station and lodged it there at 4.30 PM on the same day. This witness was cross-examined at length by the defence counsel, but he could not be shaken on any point.

9. It has been argued by the learned Counsel for the appellant that PW1 is the real brother of the deceased and, therefore, his testimony is not believable, as the same has not been corroborated by any other independent eyewitness. In our opinion, the argument of

learned Counsel has no substance. No doubt, PW1 is the real brother of the deceased, but we cannot lose sight of the fact that he is an eyewitness of the incident. It is the settled position of law that testimony of a witness, if otherwise trustworthy and reliable, cannot be disbelieved merely because he/she happens to be the close relative of the victim. Further, the spot map Ex. Ka-9 shows that there is only one house of Mohan Singh near the place of occurrence. This is nobody's case that Mohan Singh was present at the time of incident and had witnessed the same. So, no fault can be attached to the prosecution if Mohan Singh has not been made a witness. Presence of any other natural eyewitness at the place of occurrence was not probable in these circumstances. Moreover, the Investigation Officer has not been questioned on the point as to why he did not examine any other ocular witness. No suggestion has been put forth to the Investigation Officer in this regard that such and such persons could have witnessed the occurrence, but they have been spared by him from being examined. As such, contention of learned Counsel for the appellant that no independent witness has been examined by the prosecution is not acceptable.

10. Among other witnesses, PW2 Head Constable Prakash Chandra is a formal witness. He recorded the FIR and has proved the GD entry of the same. PW3 is Dr. Ramakant Sagar, who has conducted the post-mortem examination and has proved the injury as mentioned above. PW4 SI Bahadur Singh is the witness of recovery of weapon (axe) made at the instance of the accused himself. He has identified his signature on the recovery memo Ex. Ka-7, which was prepared by the Investigation Officer (PW5). He has proved the same.

PW5 Thakur Singh Adhikari was the Station Officer of Police Station Dwarahat at the relevant time. He has proved that since all the revenue officials were on strike and abstaining from work, therefore, he had conducted the investigation and submitted the chargesheet.

11. In view of our above discussion of evidence, ocular as well as medical, we have no hesitation in coming to the conclusion that it was the accused appellant Mahesh Singh, who on the fateful day, had assaulted the victim Lokpal Singh with an axe, as a result of which the victim died on the spot.

12. Now, we have to give our attention as to the manner in which the incident occurred and what offence is made out in the circumstances of the case. In this respect, it may be proper to refer to the provisions contained in Sections 299, 300 and 304 IPC. Section 299 provides as to what acts done by a person can be said to be an offence of culpable homicide. The offence of culpable homicide is divided into two categories as some acts of culpable homicide amount to murder, while some though included in the offence of culpable homicide but do not amount to murder. Murder will be said to have been committed by an accused if the act by which the death is caused falls within the four categories mentioned in Section 300 IPC. If the act of the accused falls under any of these four categories, then the offence is punishable under Section 302 IPC. However, if the act of the accused falls within any of the five exceptions to Section 300 IPC, in that case, the offence would be of culpable homicide not amounting to murder and that will be punishable under Section 304 IPC. This provision further sub-divides the offence of culpable homicide not amounting to murder in two

categories. The first category is covered by Part-I of Section 304 IPC, according to which, if the act, by which the death is caused, is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, the same shall be treated as culpable homicide not amounting to murder. The second category is where the act is done with knowledge that it is likely to cause death, but without any intention to cause death or cause such bodily injury as is likely to cause death. This sub-division is again based on the classification of the definition of culpable homicide as given in Section 299 IPC. Whether in a particular case the offence of culpable homicide amounts to murder or not would depend upon whether the act of the accused falls under any of the first four clauses of Section 300 IPC or it is covered by any of the five exceptions provided to this section.

13. In our opinion, the circumstances of the case go to show that the act of the appellant falls within Exception 4 to Section 300 IPC, which reads as under:

Exception 4--Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

14. It has come in the evidence and is also an admitted case of prosecution that the incident occurred all of a sudden and there was no premeditation on part of the accused appellant. Moreover, it is the case of prosecution itself that the accused appellant was not having any previous enmity with the deceased. On the fateful date, deceased Lokpal Singh started his day as

usual. While taking his she-buffaloes towards the jungle, he saw the fire lit under his chestnut tree. He asked the accused not to do so. Accused was ploughing his field. Heated arguments took place between the duo. The accused got enraged and all of a sudden gave blow of axe on the head of the victim, who died immediately. All these facts and circumstances clearly indicate that crime was committed in the heat of passion, the accused had no motive to cause the death of the deceased and his act was without premeditation. Death was not the desire. Our view is also fortified by the fact that only one blow of axe was given to the victim by the accused, and this fact stands proved by the medical evidence as well. In such state of affairs, it cannot be said that the accused intended to kill the deceased.

15. When the circumstances, enumerated in the aforementioned exception to Section 300 IPC, exist then the offence of the appellant would be culpable homicide not amounting to murder and is covered under Part-II of Section 304 IPC. Thus, it is established on record that the appellant did not cause the death of the deceased with the intention of causing death. However, it can be said that the act was done with the knowledge that it was likely to cause death and, as such, it would fall under Part-II of Section 304 IPC. We, accordingly, convict the accused appellant. In the circumstances of the case, we consider ten years' rigorous imprisonment to be the adequate punishment to be awarded to the appellant.

16. So far as the presence of injury on the front portion of the head of the culprit is concerned, which has also been proved by DW1, it has not been argued by the learned Counsel for the appellant that this injury

was caused in the course of duel between the accused and the victim. Hence, we refrain ourselves from saying anything about it in this judgment.

17. In the result, we partly allow the appeal. The conviction and sentence of appellant Mahesh Singh Under Section 302 IPC are set aside. He is, instead of, convicted Under Section 304, Part II IPC and sentenced to ten years' rigorous imprisonment. He is already in jail and shall serve out the remaining period of sentence as awarded by this Court. The period in which the convict appellant remained in the gaol during trial or anytime afterwards shall be adjusted in the total period of sentence so awarded. Impugned judgment and order stands modified to the extent indicated above. Let a copy of this judgment and order, along with LCR, be sent to the court below to ensure its compliance.

(Servesch Kumar Gupta, J.)

(Barin Ghosh, C.J.)