

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No.18 of 2012

Kamlandra Singh Rawat Appellant

Versus

State of Uttarakhand ... Respondent

Mr. R.S. Sammal, Amicus Curiae, and Mr. Deep Chandra Joshi, Advocate for the appellant.
Mr. D.K. Sharma, Additional Advocate General, assisted by Smt. Farida Siddiqui, Brief Holder,
for the State of Uttarakhand/respondent.

Judgment reserved on :16.12.2015

Judgment delivered on :23.12.2015

Coram: Hon'ble Alok Singh, J.
Hon'ble Servesh Kumar Gupta, J.

(Per : Servesh Kumar Gupta, J.)

This appeal challenges the judgment and order of conviction rendered by the learned Sessions Judge, Udham Singh Nagar at Rudrapur dated 6.1.2012, whereby the appellant was found guilty for the offence of Section 302 IPC and has appropriately been sentenced for the same. The case pertains to the crime number 6067/2007, PS Kashipur and depicts a mind startling, inconceivable cold blooded murder of a woman aged 35 years, which was cruelly executed at the hands of her husband within the four corners of their bedroom. Kamlandra Singh Rawat (for brevity, hereinafter referred to as 'Mr. Rawat') was a literally educated person and employed as an Instructor in the trade of Motor Mechanic in the Industrial Training Institute based at Kashipur and the couple were the parents of as many as three children, out of whom two elder ones Km. Rashmi Rawat, aged 17 years, and Master Rohit Rawat, aged 18 years, have deposed against their father in the witness box. The family was residing on the ground floor dwelling unit of a

quadruple residential complex within the close corners of training institute. The couple though blessed with two sons and one daughter, out of their wedlock, but the unfortunate aspect was that Mr. Rawat was nurturing the estrange relationship with his spouse suspecting her illicit intimacy with some police constable of a nearby Police Outpost. So, in this backdrop, it was the late evening of 26.11.2007 when all the three children were either had slept or in the process of sleeping with their mother, Mr. Rawat present in the adjoining room gave a conjugal call to his wife at around 9.30 PM with the assurance that he will not beat her any further. Hearing these words, the wife Smt. Krishna Rawat @ Phoolmati Rawat acceded the request of her husband and left her children to be in the company of the husband. Soon after PW4 and PW5 heard some verbal spat between the couple, but perhaps such quarrel could not escalate at that moment and the family went asleep.

Now, it was the morning of next day 27.11.2007. Still the door of the couple was closed for quite good time inasmuch as up to 10.45 AM. Prior to such time, even in the early morning at about 6 AM, PW4 and PW5 knocked the door of their parents with the intention to get it opened. Their father threatened them with dire consequences, so much to be killed with the axe. This threatening voice made the children silent. Thereafter at about 9 AM, the children heard the screams of their mother. Hearing such shrieks, they (PW4 and PW5) approached the neighbours and requested them to make the ring call to the police. With their assistance, PW4 herself gave the information to the nearby Police Outpost

telephonically which was recorded in the General Diary and has been got proved by the prosecution as Ex. Ka-1. Having received this telephonic information, Assistant Sub Inspector Yad Ram Singh (PW1) along with Head Constable Jagdish Prasad (PW2) reached at the spot and took the neighbour Kishori Lal, residing in the same complex, with them and knocked the door of the concerned room. Still, cries were surging piercing across the walls and door of such room. They all mandated the culprit to open the door, but their asking was unheeded. Police personnel then forcibly pushed the door to get it opened. They all found the fearsome scene at the spot where Mr. Rawat had hacked his wife with multiple blows of axe. She being blood soaked was lying on the double bed of the room and writhing in pain. She was almost mortally wounded, while Mr. Rawat was standing there with the bloodstained axe in his hands and at the same time, abusing his wife with invectives, saying she had crossed all the limits of raveling dispositions. So, he will not let her live alive. ASI immediately snatched the bloodstained axe from the hands of Mr. Rawat and managed to commute Smt. Krishna Rawat to the Government Hospital with the assistance of Constable Harish Chand and Pradeep Bhatt.

Subsequently, ASI returned to the Outpost and lodged the FIR Ex. Ka-4. Chick report whereof is Ex. Ka-3, which was reduced into writing on 27.11.2007 at 2 PM by Head Constable Jagdish Prasad (PW2). ASI also picked the pieces of floor with or without blood and collected the blood-splashed bed sheet. The recovery memo Ex. Ka-2 was prepared

under the signature of neighbouring witness Gopal Datt Sharma (PW8).

Struggling to her life, Smt. Krishna Rawat breathed her last around 7.30 PM while, having been referred to the higher centre, on the way to Sanyi Hospital, Moradabad. By that time, Mr. M.S. Rawat (real brother of deceased) got telephonic information about the incident. So, he rushed to the spot from village Padul, Pauri Garhwal. He could reach up to the late evening in the L.D. Bhatt Government Hospital, Kashipur to find his sister no more.

The inquest was conducted at 9.20 PM of the same day 27.11.2007 in presence of Mr. M.S. Rawat and other witnesses. The inquest report is Ex. Ka-8. Next day at 2 PM, the autopsy was conducted in the same hospital by Medical Officer Dr. Tarun Kumar Pant (PW3), who found the multiple stitched wounds on the head and face and on removal of stitches, following injuries were found:

- (1) Incised wound 5 cm, skin deep on outer side of scalp left side.
- (2) Incised wound 7 cm x 1 cm, bony deep. Underlying bone is sharply cut over outer side of head on left side.
- (3) Incised wound extending from left ear to near the left eye, 6.5 cm in length x 1 cm bony deep, underlying bones are fractured over left side of face.
- (4) Incised wound on left side of face extending from 2 cm from left ear to left nostril, size 8 x 4 cm. Bony deep. Underlying bones are fractured.

- (5) Left eye is black, swollen. Conjunctiva is congested.
- (6) Swelling of left wrist, size 2.5 cm x 1 cm.

Huge haematoma was present below injury nos.1 and 2 as in external examination. Bones were found fractured with sharp margins as in external injuries. In the brain, sub dural haematoma underneath injury nos.1 and 2 was found. In all, the opinion of the doctor discloses the reason of death as a result of excessive heamorrhage and shock due to multiple ante mortem injuries and the period of death was 24 hours before, which is matching with the date and time of incident when Smt. Krishna Rawat passed away. This post-mortem report has been proved by the doctor as Ex. Ka-6.

Brother M.S. Rawat (PW6) lodged the First Information Report in the evening of 28.11.2007 with the police resulting the conversion of the case from 307 IPC to 302 IPC. This report is Ex. Ka-7, which has been proved by the informant.

All those articles, recovered by the ASI from the spot, were sent for the forensic science test and such report is Ex. Ka-12, which discloses the presence of human blood on axe, bedsheet and the pieces of floor of the room. On bedsheet and pieces of floor of the room, the human blood was detected, while on axe such blood had been found disintegrated. So, its nature could not be determined.

The investigation culminated into submission of chargesheet Ex. Ka-11 against Mr. Rawat for the offence of Section 302 IPC. Learned Sessions Judge levelled the charges in accordance and

the accused was put to trial. The statements of all the witnesses were recorded, as have been indicated above. In addition to, PW9 S.I. P.C. Joshi (Investigation Officer); PW10 Raj Kishor Singh Farshwan Inspector, Special Task Force, Dehradun (another I.O.) and PW11 Constable Subodh Kothari, who carried the recovered articles to Forensic Science Laboratory, Dehradun, were also recorded. They have proved their role and indulgence in the whole episode.

Thereafter, the statement of the accused was recorded under Section 313 CrPC, who denied the occurrence and raised the plea of alibi to be present in Kundeshari village having been deputed by the State Election Commission to prepare the photo identity cards of the people. He has stated that in the said fateful night of 26/27.11.2007, he was staying in the house of Master Manoj Tiwari, one of the students of his institute. Further, he has stated that on 27.11.2007, he was arrested by the police suddenly while he was indulged in the assessment of identity cards in village Jaipur. He has also examined three witnesses in his defence.

We have rendered our thoughtful considerations on the pros and cons as submitted by learned Counsel of either parties and feel that the incident has been graphically described by all the fact witnesses. Firstly by daughter and son of the culprit, who though were children but touching the age of attaining the majority. So, in that way, they were not immature children. The whole sequence of the incident has been described right from the late evening of 26.11.2007 up to the noon of the next day, when the police came and forcibly got opened the door

of the couple and found the scene of the barbaric conduct of their father Mr. Rawat. They were the eyewitnesses of all throughout beginning from the time around 9:30 of the previous night when their father called their mother, who joined him in the room with the assurance that she will not be further assaulted.

Any wife, born and brought up in the traditional values, naturally accedes to the request which is coming no less than from her husband sleeping in the adjoining room. The innocent children also slept. The third child being still younger had already fallen asleep. Further, the multiplicity of the deposition by the eyewitnesses is nowhere needed in the criminal jurisprudence. There is no reason why these children would depose against their own father. Ms. Rashmi Rawat and Master Rohit Rawat have otherwise also proved the ruthless behaviour of their father towards the mother inasmuch as to be in the habit of beating her often. When this unfortunate lady went in the room, responding to his call, the children also heard the voice of their mother asking Mr. Rawat as to why he has taken out the axe. It shows that accused has already exposed the axe to be noticed by the victim. Thereafter, the children slept and in the next morning, the sequence has further been deposed in the same manner as indicated hereinabove. Both the witnesses have corroborated, without being deviated on any point except the minor discrepancies which are altogether ignorable. More so, because the children were not so immature either at the time of the incident or while deposing in the witness box. Their testimony has well been supported, starting

from their telephonic information extended to the Police Outpost, arrival of police personnel and thereafter, getting opened the door by pushing and further, the horrendous scene at the spot.

All these factual aspects have been proved with sequence by PW1 ASI Yad Ram Singh, accompanying constable Jagdish Prasad and constable Jagdish Lal Tamta. The inquest has also been proved by neighbouring witness PW8 Gopal Datt Sharma besides the PW6 Mr. M.S. Rawat, the brother of deceased. This witness has also proved the inept estranged attitude of the culprit towards his deceased sister. The credibility of either of these witnesses could not be impeached by the learned defence counsel while cross-examining them on any point.

The accused has taken the plea of alibi, as has been indicated above, but has not produced either any paper or any witness ratifying the truthfulness of his assertions stated by him in his statement under Section 313 CrPC. Had he been in the election duty in village Kundeshwari and staying in the house of his student Manoj Tiwari, then at least he could have moved an application before the Trial Court to summon Manoj Tiwari to certify the verity of his version. Although, no such evidence has been produced, but even for a moment if it is believed that he was on the election duty in Kundeshwari village, then also it was accepted by his counsel in the Court that such village is at 5 kilometers distance from the place of occurrence. So, it is unusual for any person to stay in the house of his student Manoj Tiwari in village Kundeshwari leaving his family at the distance of 5 kilometers, which is easily commutable in the

plain terrain of the state. So, the statement of the accused does not inspire the confidence.

As regards the witnesses, examined by the accused in his defence, the deposition of DW1 Dr. S.M. Nabiya is in no way helpful for the accused because he was posted as Medical Officer in the Government Hospital when Smt. Krishna Rawat was got admitted by the constables on 27.11.2007. Rather, it runs counter to the argument of his counsel Mr. R.S. Sammal that the Doctor, who attended the injured first, has not been examined by the prosecution. It does not matter that much whether a particular witness has been examined by the prosecution or defence, but his testimony is significant as regards its nature corroborating the facts under consideration. The evidence of DW1, in our opinion, supports the prosecution version, rather than being otherwise.

In the same manner, DW2 Bachi Singh Rawat is just a constable, who at the relevant date and time, was posted in the Outpost concerned and he was the scribe of the General Diary entries, which are all supportive to the prosecution version. Likewise, DW3 Constable Dayal Arya is also the scribe of another G.D. So, in that way, these witnesses also strengthen the prosecution version.

We feel that there is no substance in the argument of learned counsel for the appellant that any of the three children did not give the written information to the police because in the moment of anxiety of such gravity, the natural conduct on the part of the children was to inform the police by telephone and such information was given, recorded

in the G.D. and it was the basis for PW1 ASI Yad Ram Singh to set out for the spot.

It was further contended by learned counsel on behalf of the appellant that the recovery memo does not bear the signature of the accused. This is further irrelevant for the reason that no question has been asked from the witness PW7 Jagdish Lal Tamta or from PW1 Yad Ram Singh as to why the signature of the accused was not procured on the recovery memo. So, it is not improbable, being a literate person and foreseeing the consequences of his act, that he might have refused to sign on such papers.

Having gone through the evidence, present on the record, and hearing the rival contentions, we are of the firm view that this is only the appellant, who committed the crime in most grotesque and diabolical way. It is very funny to shift the blame of this occurrence to a constable at the Outpost of I.T.I. on the basis of alleged illicit relationship with the deceased. We find that this appeal is quite bereft of any merit and liable to be failed.

We dismiss the appeal accordingly. The judgment and order, in question, is sustained. The appellant convict is in jail ever since the date of his arrest. He will serve out the sentence as awarded by the learned Trial Court.

Let a copy of this judgment, along with the LCR, be sent to the Court below to ensure its compliance.

(Servesch Kumar Gupta, J.)

(Alok Singh, J.)