

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE MANOJ KUMAR TIWARI

CRIMINAL APPEAL No.341 OF 2012

12th January, 2021

Between:

Devendra Singh Rawat.

...Appellant (In Jail)

and

State of Uttarakhand.

...Respondent

Counsel for the appellant : Mrs. Shruti Joshi

Counsel for the respondent : Mr. J.S. Virk, learned
Deputy Advocate
General.

The Court made the following:

JUDGMENT : (per Hon'ble The Chief Justice Sri Raghvendra Singh Chauhan)

The appellant, Devendra Singh Rawat, has challenged the legality of the judgment dated 26.11.2012, passed by the learned District and Sessions Judge, Tehri Garhwal, in Sessions Trial No. 18 of 2011, whereby the learned Trial Court has convicted the

appellant for the offence under Section 302 IPC, and sentenced him to life imprisonment, and has imposed a fine of Rs. 5,000/-, and further directed him to undergo a sentence of two years of rigorous imprisonment in default thereof.

2. Briefly, the facts of the case are that on 24.11.2010, one Bijendra Singh Rawat, (P.W. 1) submitted a written complaint at Chambha Police Station wherein he stated that on 23.11.2010, there was a marriage at the house of one Sri Hukum Singh Rawat (P.W. 2). His brother, namely Uttam Singh, had attended the said marriage. On the next day, i.e. on 24.11.2010, the dead body of his brother, Uttam Singh, was discovered in a field. Some unknown persons have killed his brother. The complainant was not present in the said marriage.

3. On the basis of the said report, the police chalked out a formal FIR, namely FIR No. 24 of 2010 (Ex. Ka. 1) for the offence under Section 302 IPC. Upon receiving the said report, the Police visited the site and recovered the dead-body. Subsequently, during the

course of investigation, on 27.11.2010, the accused was arrested by the Police and was put up for trial.

4. In order to prove its case, the prosecution examined nineteen witnesses, and submitted thirty documents. After going through the evidence, by judgment dated 26.11.2012, the learned Trial Court convicted the appellant for offence under Section 302 IPC. Hence, the present appeal before this Court by the appellant.

5. Mrs. Shruti Joshi, the learned counsel for the appellant, has raised the following contentions before this Court:-

Firstly, the entire case is based on circumstantial evidence. However, the prosecution has failed to establish the complete chain of circumstances, which would unerringly point towards the guilt of the accused. Therefore, the learned Trial Court has erred in convicting the appellant.

Secondly, the learned Trial Court has relied on five circumstances in order to convict the appellant : (i) the presence of the appellant at the marriage of Hukum

Singh Rawat's son; (ii) the alleged recovery of the flap (cap) of the pocket of the shirt worn by the accused from the scene of the crime; (iii) the recovery of the shirt worn by the accused at his instance; (iv) the forensic examination report (Ex. Ka. 20) of the shirt establish that the flap (cap) of the pocket of the shirt belongs to the same shirt which was recovered from the appellant; and (v) the recovery of a blood stained stone, which was discovered at the instance of the appellant.

However, an in-depth analysis of the evidence would reveal that even these pieces of evidence are not sufficient for convicting the appellant.

Thirdly, according to the prosecution, the flap (cap) of the pocket of the shirt was discovered near the dead-body. However, the *Panchnama* (Ex. Ka. 2) drawn at the time of the discovery of the dead-body, does not indicate the recovery of any flap (cap) of the pocket of the shirt from the scene of the crime. Even Guman Singh Negi (P.W. 18), the Investigating Officer, clearly admits that the recovery of the flap (cap) of the pocket of the shirt is not indicated in the *Panchnama* (Ex. Ka. 2). If, indeed, the flap (cap) of the pocket of the shirt were

discovered at the scene of the crime, the Police would not have failed in recording an important clue in the *Panchnama*. After all, the flap (cap) of the pocket of the shirt was a vital clue for linking the accused to the alleged murder. Moreover, the recovery memo of the flap (cap) of the pocket of the shirt does not indicate the presence of any blood. Therefore, the possibility cannot be ruled out that the alleged recovery of the flap (cap) of the pocket of the shirt at the scene of the crime is a planted evidence by the Police.

Fourthly, the mere presence of the accused and the deceased at Hukum Singh Rawat's son's marriage does not lead to a logical inference that it is the appellant, who has killed the deceased.

Fifthly, the existence of motive is an important link in a case based on circumstantial evidence. Despite the fact that Bijendra Singh Rawat (P.W. 1.) and Girvir Singh (P.W. 4.) claimed that the accused and the deceased Uttam Singh were seen at the marriage, both they and the other witnesses such as Hukum Singh Rawat (P.W. 2.), Dhanbir Singh Rawat (P.W. 3.), Pradeep (P.W. 5.) and Mangsiru (P.W. 6.) clearly state that "there was

no altercation, or any quarrel which had occurred between the appellant and the deceased". Thus, the prosecution has failed to establish any motive which would have propelled the appellant to get rid of Uttam Singh, the deceased. In the absence of any motive, there is no rhyme or reason why the appellant would kill the deceased. Hence, a major gap exists in the story presented by the prosecution.

Lastly, even the recovery of a blood stained stone at the instance of the appellant does not necessarily connects the appellant to the alleged offence. For, according to the FSL report, (Ex. Ka. 21), the stone merely had human blood. But the FSL report (EX. Ka. 21) has failed to establish that the said human blood belonged to the deceased. Therefore, the possibility that human blood may belong to any other person cannot be ruled out. Since, there are gaping holes in the chain of circumstances presented by the prosecution, the prosecution has failed to establish its case against the appellant. Hence, the conviction of the appellant should be set-aside by this Court.

6. On the other hand, Mr. J.S. Virk, the learned Deputy Advocate General for the State of Uttarakhand, has raised the following counter-contentions :-

Firstly, according to Bijendra Singh Rawat (P.W. 1.) and Dhanbir Singh Rawat (P.W. 3.), both the accused Devendra Singh Rawat, and the deceased, Uttam Singh, were present at the marriage of Hukum Singh's son.

Secondly, on the next day, the dead-body of Uttam Singh was discovered. According to Bijendra Singh Rawat (P.W. 1.), one Ratan Singh Rawat (P.W. 10.), the Gram Pradhan, had informed him that the dead-body of his brother, Uttam Singh, was lying in a field.

Thirdly, Dr. Sanjay Kansal (P.W. 16.) had performed the autopsy of Uttam Singh. He discovered as many as ten injuries on his body. The cause of death was "shock due to haemorrhage and head injuries". Thus, the death was a homicidal one.

Fourthly, according to Surendra Singh Bhandari, S.I., (P.W. 19.), he had arrested the appellant on 27.11.2010. Upon a statement made by the

appellant, a blood stained stone was recovered by Surendra Singh Bhandari, S.I. (P.W. 19.). According to the FSL report (Ex. Ka. 21), there was presence of human blood on the said stone.

Fifthly, according to Guman Singh Negi, S.I. (P.W. 18.), the Police had recovered a piece of cloth, which was the flap (cap) of the pocket of the shirt (one feet away from the dead-body), and a button was also attached with it.

Sixthly, according to the FSL report (Ex. Ka. 28), the flap (cap) of the pocket of the shirt matched with the shirt, which was recovered at the instance of the appellant. Since the flap (cap) of the pocket of the shirt was recovered from the scene of the crime, the presence of the flap (cap) clearly proves that the appellant is the offender who committed the murder of Uttam Singh. Therefore, the prosecution has established a complete chain of circumstances, which unerringly point towards the guilt of the accused. Therefore, the learned Deputy Advocate General has supported the impugned judgment.

7. Heard the learned counsel for the parties, perused the impugned judgment, and examined the record submitted before the Court.

8. In the case of **Anwar Ali and another v. The State of Himachal Pradesh [(2020) 10 SCC 166]**, the Hon'ble Supreme Court has reiterated the principles with regard to the assessment of evidence in a case based on circumstantial evidence. The principles are as under:-

5.4 It is also required to be noted and it is not in dispute that this is a case of circumstantial evidence. As held by this Court in catena of decisions that in case of a circumstantial evidence, the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else and the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. In the case of Babu (supra), it is observed and held in paragraphs 22 to 24 as under:

“22. In Krishnan v. State (2008) 15 SCC 430, this Court after considering a large number of its earlier judgments observed as follows: (SCC p. 435, para 15)

“15. ... This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

(i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(ii) those circumstances should be of definite tendency unerringly pointing towards guilt of the accused;

(iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See Gambhir v. State of Maharashtra (1982) 2 SCC 351)”

23. *In Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116 while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity or lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent before conviction could be based on circumstantial evidence, must be fully established. They are: (SCC p. 185, para 153)*

(i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned “must” or “should” and not “may be” established;

(ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(iii) the circumstances should be of a conclusive nature and tendency;

(iv) they should exclude every possible hypothesis except the one to be proved; and

(v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

A similar view has been reiterated by this Court in State of U.P. v. Satish (2005) 3 SCC 114 and Pawan v. State of Uttaranchal (2009) 15 SCC 259.

24. *In Subramaniam v. State of T.N (2009) 14 SCC 415, while considering the case of dowry death, this Court observed that the fact of living together is a strong circumstance but that by alone in absence of any evidence of violence on the deceased cannot be held to be conclusive proof, and there must be some evidence to arrive at a conclusion that the husband and husband alone was responsible therefor. The evidence produced by the prosecution should not be of such a nature that may make the conviction of the appellant unsustainable. (See Ramesh Bhai v. State of Rajasthan (2009) 12 SCC 603)."*

(emphasis supplied)

5.5 *Even in the case of G. Parshwanath (supra), this Court has in paragraphs 23 and 24 observed as under:*

"23. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The court thereafter has to consider the effect of proved facts.

24. *In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total*

cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the court."

9. According to the aforesaid principles, it is not only the duty of the prosecution to produce cogent and convincing evidence in the form of a complete chain of circumstances, which would unerringly point towards the guilt of the accused, but it is also the duty of the prosecution to eliminate every possibility which may point towards the innocence of the accused. If there are breaks in the chain, or gaping holes in the story of the prosecution, *ipso facto* the benefit of doubt has to be given to the accused. Moreover, the burden of proof, which lies on the shoulders of the prosecution, has to be discharged with the presentation of both oral and

documentary evidence. The evidence should be cogent and convincing to convince the Court that the accused is the only person who could be the author of the crime, and that there is no possibility that the crime could have been committed by any other person.

10. Moreover, there is a vast distance between “may be true” and “must be true” – a distance the prosecution is required to cover. [**Shivaji Sahebrao Bobade v. State of Maharashtra** (AIR 1973 SC 2622)]. It is also a settled principle of criminal jurisprudence that, “while a man may lie, circumstances do not”.

11. These settled principles of law necessarily have to be kept in mind while assessing the evidence produced by the prosecution before the Trial Court.

12. Bijendra Singh Rawat (P.W. 1.), the brother of the deceased, clearly states that there was no animosity between the accused and the deceased. In fact, they were known to each other, and both he and his brother, Uttam Singh, used to often visit the house of the accused.

13. Similarly, Dhanbir Singh Rawat (P.W. 3.) claims that the accused and the deceased were present at his marriage, and no untoward incident occurred between the accused and the deceased at his marriage.

14. Likewise, Pradeep (P.W. 5.) informs the Court that he and his father Mangsiru (P.W. 6.) are musicians, who had gone to play music at Hukum Singh's son's wedding. At the wedding, both Uttam Singh, the deceased, and Devendra Singh Rawat, the accused, were present. He further claims that there was no quarrel between the two. A perusal of the testimony, especially the testimony of Bijendra Singh Rawat (P.W. 1.), clearly proves that the prosecution has failed to establish any motive for the appellant to kill the deceased. Needless to say, motive is an important link in a case based on circumstantial evidence. However, in the present case motive is conspicuously missing.

15. Both the prosecution and the learned Trial Court have relied on the recovery of the flap (cap) of the pocket of the shirt worn by the accused. According to Guman Singh Negi, S.I., (P.W. 18.), the Investigating Officer, the said flap (cap) of the pocket of the shirt was

discovered one feet away from the dead-body. However, the testimony of this witness is contradicted both by documentary and oral evidence. For, according to the Inquest Report (Ex. Ka. 2) and the *Panchnama* contained with the Inquest Report nothing was recovered from the scene of the crime. Moreover, even according to the testimony of Bijendra Singh Rawat (P.W. 1.), who was available at the scene of the crime when the police reached, nothing was recovered from the scene of the crime, except Rs. 3650/- were recovered from the pocket of the deceased. Both in his examination-in-chief and his cross-examination, he clearly states that, “*except for the said amount of money, nothing was recovered from the scene of the crime*”. He further states that he is one of the witnesses of the *Panchnama* (Ex. Ka. 2).

16. Girvir Singh (P.W. 4.) was examined by the prosecution in order to prove the recovery of the alleged flap (cap) of the pocket of the shirt worn by the accused. Even this witness clearly states that the recovery memos of flap (cap) of the shirt, and the alleged recovered blood stained stone, were drawn up at the police station. He further claims that both the flap (cap) of the pocket of the shirt, and the alleged recovered blood stained stone,

were shown to them at the Police Station. Since this witness has been declared as hostile, obviously this witness does not support the case of the prosecution. But interestingly both these witnesses, and the complainant Bijendra Singh Rawat (P.W. 1.), claim that no flap (cap) of the pocket of the shirt was recovered at the scene of the crime, when the witnesses were present at the place where the dead-body was recovered.

17. Of course, the prosecution has also relied on the recovery memo of the pocket of the shirt (Ex. Ka. 6). According to the said memo, the flap (cap) of the pocket of the shirt was recovered at the scene of the crime. However, the said document is belied by the testimony of the complainant Bijendra Singh Rawat (P.W. 1.) itself. Moreover, according to the said recovery memo (Ex. Ka. 6) there are no blood stains on the flap (cap) of the pocket of the shirt. The fact that there are no blood stains existing on the flap (cap) of the pocket of the shirt worn by the appellant is also supported by the FSL report (Ex. Ka. 20). For, according to the FSL report, no blood was found on the said flap (cap). Therefore, a holistic appreciation of evidence clearly establishes :-

Firstly, that the flap (cap) of the pocket of the shirt was not discovered at the scene of the crime, as testified by the complainant Bijendra Singh Rawat (P.W. 1.) himself.

Secondly, according to Girvir Singh (P.W. 4.), the said flap (cap) of the pocket of the shirt was shown at the Police Station, and was not recovered at the scene of the crime, as pleaded by the prosecution.

Thirdly, the possibility that the flap (cap) of the pocket of the shirt is a planted evidence cannot be ruled out.

18. The prosecution has also relied on the recovery of a blood stained stone, which was recovered on the basis of the statement of the appellant. However, according to the FSL Report (Ex. Ka. 21), only “human blood” was found on the said stone. It is not sufficient that human blood is discovered on the alleged weapon for committing the murder. In fact, it is the duty of the prosecution to further establish that the blood so discovered belongs only to the deceased, and not to the accused. The mere presence of human blood is neither here, nor there. Therefore, the recovery of the blood

stained stone, even at the instance of the accused, does not necessarily connect the accused to the alleged offence.

19. Since gaping holes exist in the prosecution case, it has failed to link all the circumstances presented by it to form a complete chain of circumstances, which unerringly point towards the guilt of the appellant. Therefore, this Court is of the opinion that the benefit of doubt necessarily has to be given to the accused. Thus, the conviction is unsustainable.

20. For the reasons stated above, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant, Sri Devendra Singh Rawat, S/o. Sri Mangal Singh, for the offence punishable under Section 302 IPC in the judgment dated 26.11.2012, passed by the learned District and Sessions Judge, Tehri Garhwal in Sessions Trial No. 18 of 2011, are set aside. The fine amount, if any, paid by the appellant shall be refunded to him. Consequently, Sri Devendra Singh Rawat, S/o. Sri Mangal Singh shall be set at liberty forthwith, if he is not required in any other criminal case.

21. As a sequel thereto, miscellaneous applications,
if any, stand disposed of as infructuous.

RAGHVENDRA SINGH CHAUHAN, C.J.

MANOJ KUMAR TIWARI, J.

Dt: 12th January, 2021
Rahul