
Shankar Singh Vs State of Uttaranchal

Criminal Appeal No. 212 of 2006

Court: Uttarakhand High Court

Date of Decision: Feb. 26, 2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 207, 313, 374, 389#Penal Code, 1860 (IPC) â€” Section 302, 506(2)

Citation: (2008) NCC 491 : (2008) 8 UC 949

Hon'ble Judges: Prafulla C. Pant, J; Dharam Veer, J

Bench: Division Bench

Advocate: Pushpa Joshi, for the Appellant; Amit Bhatt, A.G.A., for the Respondent

Judgement

Prafulla C. Pant, J.

This appeal, preferred u/s 374 read with Section 389 of Code of Criminal Procedure, 1973 (hereinafter referred as

Code of Criminal Procedure), is directed against the judgment and order dated 26-07-2006, passed by Sessions Judge, Champawat, in Sessions

Trial No. 12 of 2004, whereby accused/Appellants, Shankar Singh, has been convicted u/s 302 of Indian Penal Code, 1860 (hereinafter referred

as I.P.C.) and sentenced to undergo imprisonment for life and directed to pay fine of Rs. 10,000/-, in default of payment of which further one

year's imprisonment was directed to be served out. The trial court further convicted the accused Shankar Singh (Appellant) u/s 506(II) I.P.C. and

sentenced him to undergo imprisonment for a period of one year and directed to pay fine of Rs. 1,000/-. In default of payment of fine of Rs.

1000/- the convict is ordered to undergo rigorous imprisonment for further period of one month.

2. We heard learned Counsel for the Appellant and learned Additional Government Advocate for the State.

3. Prosecution story in brief is that on 23-04-2004 at about 4.30 P.M., complainant Bishan Singh (P.W.1) had gone to find out the details of his

election duty. When he came back, he heard cries in his house. He rushed towards his house and saw that accused/Appellant Shankar Singh was

brutally hitting with stone on the head of Kailash Singh (nephew of the complainant). When Saruli Devi (P.W.2) tried to save Kailash Singh,

accused/Appellant Shankar Singh caught hold of her neck and injured her. Kailash Singh succumbed to the injuries suffered by him in the incident.

The accused/Appellant Shankar Singh was apprehended at the spot. On the basis of the First Information Report lodged with the Patwari Circle

Wardakhan, District Champawat, where it was registered as Crime No. 1 of 2004. In Uttarakhand Hills certain patwaries are given police

powers. The Investigating Officer took the dead body of deceased in his possession, prepared inquest report (Ext.A-10), memorandum of blood

stained clothes (Ext.A-7), site plan (Ext.A-3), sketch of dead body (Ext.A-1.2), Police Form No. 13 (Ext.A-13) etc. He interrogated the

witnesses. After investigation, the charge sheet was submitted against the accused/Appellant Shankar Singh for his trial in respect of offence

punishable u/s 302 and 506(II) of I.P.C.

4. The Magistrate on receipt of the charge sheet registered it and after giving necessary copies as required u/s 207 Code of Criminal Procedure to

the accused, committed the case to the court of Sessions for trial. Learned Sessions Judge, after hearing the parties framed charge of offence

punishable under Sections 302 and 506 (II) I.P.C. on 04-08-2004. Accused Shankar Singh pleaded not guilty and claimed to be tried. On this,

prosecution got examined P.W.1 Bishan Singh, complainant, P.W.2 Saruli Devi, an eyewitness, P.W.3 Kalyan Singh, another eyewitness, P.W.4

Dr. K.S. Mehta, who conducted postmortem examination on the dead body of Kailash Singh and prepared report (Ext.A-9), P.W.5 Ramesh

Singh, witness of inquest report and P.W.6 Bahadur Singh Mehta. The oral and documentary evidence was put to accused u/s 313 Code of

Criminal Procedure in respect of which he alleged the same to be false. However, no evidence in defence was adduced on behalf of the

accused/Appellant Shankar Singh. After hearing the parties, learned Sessions Judge found the accused Shankar Singh guilty of offence punishable

under Sections 302 and 506(II) of I.P.C. He was heard on sentence and thereafter sentenced to rigorous imprisonment for life and directed to pay

fine of Rs. 10,000/- u/s 302 I.P.C. and rigorous imprisonment for a period of one year and directed to pay fine of Rs. 1,000/- u/s 506(H) I.P.C.

Aggrieved by said judgment and order dated 26-07-2006, passed by learned Sessions Judge, Champawat, in Sessions Trial No. 12 of 2004 this

appeal is filed by the convict Shankar Singh. After admitting the appeal lower court record was summoned by this Court.

5. Before further discussions, it is pertinent to mention here the ante mortem injuries found on the dead body of deceased (Kailash Singh) by Dr.

K.S. Mehta (P.W.4), which are recorded in Ext. A-9. The same are being reproduced below-

(1) Frontal bone absent from whole of forehead (size 10cm $\times$ 6cm) from eyebrow to hairline. Brain matter absent in skull cavity (brain matter

and bony pieces present in a separate white bag). Blood clot present over skull and cavity.

(2) Crush injury face involving from upper lip to absent area whatever eyebrows, nose adjacent, area of nose in between eyes features of nose

upper lip and eyes disfigured. Multiple laceration upper jaw beneath fractured; blood clot and blood present.

(3) Lower lip lacerated. Inner aspect size 2cm $\times$ 1cm all inner teeth absent.

(4) Multiple abraded contusions in the back.

The Medical Officer in his report opined that cause of death of the deceased was due to shock and hemorrhage as a result of ante mortem injuries.

6. P.W.1, complainant Bishan Singh has stated that on the date of incident, he was returning after making inquiry as to his election duty for the

parliamentary elections scheduled to be held in April 2004. When he reached near his house, he heard cries and rushed towards the spot. It was

23-04-2004 at about 4.30 P.M., when he reached and saw that accused/Appellant Shankar Singh was giving blows with stone on the head of

Kailash Singh (nephew of the complainant). The witness has further narrated that head of Kailash Singh was brutally broken to pieces by the

accused Shankar Singh. The statement of this witness gets corroborated from P.W.2 Saruli Devi, an injured and eyewitness aged 60 years. She

has stated on oath that on 23-04-2004 at about 4.30 P.M. she was in her house and saw accused Shankar Singh caused injuries on the person of

Kailash Singh, who was crying for help. Shankar Singh was sitting on the chest of Kailash Singh at the time he was giving blows with stone. This

witness has further stated that she tried to intervene. On this accused/Appellant Shankar Singh tried to press her neck and threatened her to kill.

P.W.3 Kalyan Singh is also an eyewitness, who has corroborated the statement of above two eyewitnesses. Narration of prosecution story by the

three eyewitnesses is natural and trustworthy. Nothing has come out in their cross-examination, which discredits their testimony or creates any

reasonable doubt in it. There are no material contradictions in the statements of the witnesses.

7. In view of the above discussions of evidence, we are in agreement with trial court that the prosecution has successfully proved the charge of

offence punishable u/s 302 as well as one punishable u/s 506(II) I.P.C. It is established on record that accused/Appellant Shankar Singh

committed murder of Kailash Singh and also gave threaten to Saruli Devi to kill her. In the circumstances the conviction of the accused/Appellant

Shankar Singh recorded by the trial court does not need to be interfered with.

8. As to the sentence awarded by the trial court to the accused/Appellant Shankar Singh, learned Counsel for the Appellant argued that the

Appellant Shankar Singh was aged less than 18 years on the date of incident i.e. 23-04-2004. Though no such plea appears to have been taken

during the trial but an application was moved before this Court on 28-06-2007, which was numbered as 370 of 2007, in which prayer was made

on behalf of the Appellant that the Appellant be allowed to file School Leaving Transfer Certificate to show the age of the Applicant/Appellant. On

said application after hearing the parties on 24-09-2007, this Court directed the Sessions Judge, Champawat, to hold an inquiry about the age of

the Appellant Shankar Singh as on the date of incident i.e. 23-04-2004. It was observed in said order that Appellant is in jail for more than three

years since his arrest in the aforesaid crime as such the trial court was expected to submit its report within a period of three months in compliance

of said order dated 24-09-2007. Learned Sessions Judge, Champawat, submitted his report dated 01st February 2008 to this Court which was

concluded with the finding that the accused/Appellant was juvenile on the date of incident.

9. The aforesaid report submitted by Sessions Judge shows that the date of birth of the accused/Appellant Shankar Singh recorded in High School

examination mark sheet is 10-01-1987, which is corroborated from the Transfer Certificate and other documents. In view of the date of birth

recorded of the accused Shankar Singh in the High School mark sheet shows that on 23-04-2004 i.e. the date of incident, the accused Shankar

Singh was aged 17 years 2 months and 13 days. As such, under the Juvenile Justice (Care and Protection of Children) Act, 2000, which came into

force w.e.f. 1st April 2001, the accused/Appellant is a juvenile.

10. In the above facts and circumstances of the case, in view of principle of law laid down in Upendra Kumar v. State of Bihar (2005) 3 SCC 592

and Smt. Babita alias Neha and Ors. v. State of Uttaranchal 2006 (2) U.D. 148, we are of the view that while the conviction of the

accused/Appellant deserves to be affirmed, the sentence of imprisonment awarded against him by the trial court is liable to be set aside.

Accordingly the appeal is partly allowed. The conviction of the accused/Appellant Shankar Singh recorded by the trial court vide its judgment and

order dated 26-07-2006, in Sessions Trial No. 12 of 2004, in respect of offence punishable under Sections 302 and 506(II) I.P.C. is affirmed.

However, the sentence of imprisonment awarded under these sections is set aside for the reason that the accused/Appellant is a juvenile. The

Registry is directed to send the copy of this judgment to Superintendent of the Jail where the accused/Appellant is lodged. Send the lower court

record to the Sessions Judge, Champawat.