

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1700 OF 2014

STATE OF UTTARAKHAND

...APPELLANT(S)

VERSUS

**DEEPU VERMA @ DEVENDRA LAL ...
RESPONDENT(S)**

J U D G M E N T

B.R. GAVAL, J.

1. The State of Uttarakhand has approached this Court being aggrieved by the judgment and final order dated 17th July 2013 passed by the Division Bench of the High Court of Uttarakhand at Nainital in Criminal Appeal No. 207 of 2010 thereby allowing the appeal filed by the respondent herein and setting aside the judgment and order of the Court of Sessions Judge, Almora (hereinafter referred to as “trial court”) in S.T. No. 15 of 2009 dated 9th August 2010 convicting the respondent herein for the offence punishable

under Section 302 of the Indian Penal Code, 1860 (for short, “IPC”) and sentencing him to life imprisonment and a fine of Rs.1,000/-.

2. The prosecution’s case is that on the date of the incident PW-1 (Ganeshi Lal) along with PW-2 (Nirmala Verma), who is the daughter of PW-1 and PW-4 (Hira Devi), wife of PW-1, were present in the courtyard. PW-1 heard a cry coming from the courtyard of the victim, which was situated adjacent to the courtyard of PW-1 and he saw the victim being assaulted by the respondent-accused by a sickle. On seeing PW-1, the accused ran away. Initially, the victim was taken to the PHC Takula and thereafter shifted to Base hospital at Almora. The victim succumbed to the injuries. PW-1 lodged a complaint at Police Station Takula, District Someshwar, Almora.

3. On the basis of the oral report of PW-1, a First Information Report (FIR) came to be registered. After completion of the investigation, the chargesheet was filed.

4. Since the case was exclusively triable by the Sessions Court, it was committed to the learned Sessions Judge, Almora (hereinafter referred to as “trial court”). The learned trial court, at the conclusion of the trial, convicted the

respondent and sentenced him to suffer imprisonment for life.

5. Being aggrieved thereby, the respondent-accused preferred an appeal before the High Court.

6. The learned Division Bench of the High Court, by the impugned judgment and order allowed the appeal. Hence the present appeal filed by the State.

7. We have heard Shri Kaushalpati Gautam, learned Additional Advocate General (AAG) appearing on behalf of the appellant-State and Smt. S. Janani, learned Senior Counsel appearing on behalf of the respondent.

8. Shri Kaushalpati Gautam, learned AAG appearing for the appellant-State submits that the learned Division bench of the High Court has grossly erred in reversing the well-reasoned judgment and order passed by the trial court. It is submitted that the testimony of PW-1, PW-2 and PW-4, who are the eye-witnesses is consistent. He further submits that the testimony of PW-1 is also duly corroborated by PW-3 (Shankar Lal Verma). It is also contended that merely because there are inconsistencies in the evidence, the testimony of the eye-witnesses cannot be discarded.

9. Shri Gautam submitted that all the witnesses are rustic villagers and therefore minor inconsistencies and

contradictions would be natural in their evidence. It is submitted that, however, insofar as the role of assault attributed to the present respondent is concerned, all the three eye-witnesses are consistent which is also corroborated by PW-3. The learned AAG therefore submits that the present appeal deserves to be allowed and the impugned judgment and order passed by the Division Bench of the High Court should be quashed and set aside.

10. Smt. S. Janani, learned Senior Counsel appearing for the respondent, on the contrary, submits that all the three eye-witnesses have given totally inconsistent versions. She submits that in view of the inconsistencies in their testimonies, the Division Bench of the High Court has rightly allowed the appeal. It is submitted that the view taken by the learned Division Bench of the High Court is a possible view and, therefore, no interference is warranted in the present appeal.

11. With the assistance of learned counsel for the parties, we have perused the material placed on record.

12. By now, the position of law with regard to the interference by this Court in a finding of acquittal is very well crystallized.

13. Unless the view taken by the High Court is found to be

totally perverse or impossible, it will not be permissible for this Court to interfere with the same. Equally, if two views are possible and one of the views is taken by the High Court merely because the other view appears to be a possible view, the same cannot be a ground to interfere with the finding of acquittal.

14. The perusal of the testimony of PW-1 (Ganeshi Lal) would reveal that he along with his wife and daughter were sitting in the courtyard at the time of the incident. He states that he heard the voice of deceased (Hira Lal Verma), who was screaming for help. When he went there, he saw that the accused was inflicting blows with a big sickle on the deceased. He states that all the three members raised alarm and rushed to the place of occurrence. In the meantime, the respondent-accused had already left the place along with the bloodstained stickle.

15. No doubt that the testimonies of these witnesses have gone unshaken in the cross-examination, however, it is to be noted that PW-1 was aged around 76 years at the time of deposition and so he would be around 75 years when the incident had occurred. In his testimony, he states that the

house of deceased-Hira Lal Verma is situated only at a distance of 20 to 22 steps away. However, when we examine the testimony of PW-2, who is the daughter of PW-1, it would reveal that the distance between the house of the witnesses and house of the deceased is around 80 meters which would make it around 160 steps. According to PW-2, immediately after hearing the cry of the deceased, all three of them rushed to the place of occurrence. However, in the meantime, the accused had managed to flee away towards the road along with bloodstained stickle. In her cross-examination, it is categorically admitted by PW-2 that when she reached the courtyard of the deceased, the accused was not present there. Insofar as the alleged motive of demand of money is concerned, she specifically stated that the accused never made any demand from the deceased either in her presence or in the presence of her parents.

16. The next eye- witness is PW-4 (Hira Devi), wife of PW-1.

In her testimony, she states that after hearing the cries of '*bachao bachao*', all three of them rushed to the house of deceased-Hira Lal Verma. According to her, she reached the house of deceased-Hira Lal Verma first followed by her

daughter and her husband. She admitted in her cross-examination that her eye-sight is weak and she could see an object at a distance of 10 to 12 steps only. She also acknowledged that it was she who reached first in the courtyard of deceased-Hira Lal Verma followed by her daughter. Subsequently the other persons along with her husband came on the spot.

17. Insofar as PW-3 (Shankar Lal Verma) is concerned, he admittedly has not seen the incident and has been told by PW-1 (Ganeshi Lal) about the same.

18. No doubt that all the three alleged witnesses are rustic villagers and, therefore, their testimonies will have to be taken with a pinch of salt.

19. If we examine the testimonies of PW-1, PW-2 and PW-4, it can be seen that according to PW-2, she was the one who has reached the spot first, and according to PW-4, it is she who has reached the spot first thereafter followed by her daughter (PW-2). Thereafter, after sometime, PW-1 arrived at the scene along with other neighbours. It can further be seen that according to PW-1, it is only PW-1 who has witnessed the incident, whereas according to other witnesses i.e. PW-2 and PW-4, the accused had already left the place by the time

PW-1 and others reached the spot. In this background, it is difficult to believe that PW-1 (Ganeshi Lal) has actually witnessed the incident.

20. It is trite law that in a criminal case, if there is any doubt, the benefit of doubt has to be given to the accused person.

21. In that view of the matter, we find that the learned Division Bench of the High Court could have granted the benefit of doubt to the appellant on the basis of the inconsistencies in the testimonies of all the three alleged eye-witnesses.

22. No perversity or impossibility could be noticed in the approach adopted by the learned Division Bench of the High Court, warranting an interference in the appeal.

23. The appeal is therefore dismissed.

24. Pending application(s), if any, stand(s) disposed of.

.....**J.**
(B.R. GAVAI)

.....**J.**
(K. VINOD CHANDRAN)

NEW DELHI;
FEBRUARY 06, 2025.