



IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1654 OF 2013

PAWAN KUMAR

Appellant

VERSUS

STATE OF UTTARAKHAND

Respondent

O R D E R

This appeal challenges the judgment and order dated 17.07.2012 passed by the High Court of Uttarakhand at Nainital in Criminal Appeal No.24 of 2007.

In Sessions Trial No.138 of 2000 on the file of the Additional District & Sessions Judge, First Fast Track Court, Haldwani, District Nainital, the appellant was tried for having committed the offence punishable under Section 304 of the Indian Penal Code, 1860 ("IPC" for short). According to the prosecution, in an incident which occurred at about 8.30 a.m. on 09.03.2000, the appellant assaulted one Prem Kumar who suffered two injuries which have been described in the record as under:

- "i. An incised wound measuring 8 cm x 11 cm. Scalp deep with fresh bleeding on postero lateral part right side of head 8 cm above the right ear obliquely placed. Sharp, clear cut margin.
- ii. An incised wound 3 cm x 15 cm x abdominal cavity present on left side of abdomen 4 cm away from the umbilicus. This wound present obliquely margins sharp edged with fresh bleeding."

According to the record, the victim was given medical attention and was shifted to Indraprastha Apollo Hospital, New Delhi on 12.03.2000 where he expired on 21.03.2000. Death Summary issued by said Hospital stated as under:

"He was referred to Apollo hospital on 12.3.2000. At the time of admission he was in a state of septicemia. He was on antibiotics, O₂ inhalation inotropic agents. His anastmosis leaked and peritonitis developed for which he was operated on 15.3.2000. He developed multi organ system failure. His condition deteriorated and he died on 21.3.2000, despite of all resuscitative measures."

Relying on the evidence on record including the eye-witnesses account through prosecution witnesses no.4 and 5, the Trial Court by its judgment and order dated 18.01.2007 found the appellant guilty of the offence punishable under Section 304 IPC and sentenced him to undergo rigorous imprisonment for life.

The High Court having affirmed the view taken by the Trial Court by dismissing criminal appeal vide its judgment and order which is presently under challenge, the appellant is in appeal before us.

While issuing notice in the instant matter, by order dated 07.01.2013, notice was confined to the nature of offence. Special leave to appeal was granted on 04.10.2013.

Heard Ms. Manisha Bhandari, learned Advocate for the appellant and Dr. Rajiv Nanda, learned Advocate for the respondent-State.

Out of two injuries suffered by the victim, second injury finally proved to be fatal. However, the fact remains that the victim survived for more than 11 days and as the Death Summary discloses, his condition deteriorated after 15.03.2000.

The appellant was also charged for having committed the offence punishable under Section 304 of the IPC and not under Section 302 of the IPC.

Considering the totality of the circumstances on record, in our view, the conviction of the appellant ought to be under Section 304 Part-I IPC and the appropriate punishment to be imposed upon the appellant ought to be rigorous imprisonment for 10 years. Ordered accordingly.

If the appellant has completed actual sentence of more than 10 years, he be released forthwith, unless his custody is required in connection with any other offence.

With these observations, the appeal stands allowed.

.....J.
(UDAY UMESH LALIT)

.....J.
(S. RAVINDRA BHAT)

New Delhi,
September 24, 2021