

Mohd Umar Vs State Of Uttarakhand

Court: Uttarakhand High Court

Date of Decision: Oct. 17, 2019

Acts Referred: Indian Penal Code, 1860 â€” Section 399, 401, 402

Arms Act, 1959 â€” Section 4, 25

Code Of Criminal Procedure, 1973 â€” Section 313

Hon'ble Judges: R.C. Khulbe, J

Bench: Single Bench

Advocate: Shashi Kant Shandilya, A.K. Sah, Sachin Panwar

Final Decision: Partly Allowed

Judgement

R.C. Khulbe, J

1. Since both the appeals have been filed by the appellant for challenging the impugned judgment and order dated 18.02.2010 passed by the court

below, hence both are taken up together and decided by this common judgment.

2. Criminal Appeal No. 56 of 2010 is directed against judgment and order dated 18.02.2010 passed by the Additional Session Judge, Roorkee, District

Haridwar in S.T. No. 10 of 2009 whereby appellant was found guilty for the offence punishable under Section 401 IPC and was sentenced to undergo

three years rigorous imprisonment and to pay fine of Rs.10,000/-.

3. Criminal Appeal No. 55 of 2010 is directed against judgment and order dated 18.02.2010 passed by the Additional Session Judge, Roorkee, District

Haridwar in S.T. No. 11 of 2009 whereby appellant was found guilty for the offence punishable under Section 25/4 of Arms Act and was sentenced

to undergo six months rigorous imprisonment and to pay fine of Rs.1,000/-.

4. Brief facts of the present case, inter alia, are that on 26.8.2008, one informer passed secret information to the Police Station- Gangnagar that some

persons were sitting under the bridge of Gangnagar for doing theft, at about 12.45 the police party was going to Mahaveer Enclave towards

Gangnagar Railway Bridge, on the search of the police party three persons were present there and two persons were running from the spot, on the

search of them knives were recovered from their possession.

5. On the basis of the above report, the case was registered against the accused. The Investigating Officer, during investigation, prepared the site map

after inspecting the place of occurrence and after completion of investigation; he accordingly submitted separate charge-sheet against the accused

under Section 399 & 402 IPC and 25/4 of Arms Act.

6. The trial Court, accordingly, framed the charges against the appellant-accused under Section 401 IPC and Section 25/4 of Arms Act, to which he

pleaded not guilty and claimed trial.

7. To prove the prosecution story, PW-1 S.I. Dinesh Kumar, PW-2 Inspector Dinesh Singh Kandari, PW-3 Prabhari Nirikshak Balbir Singh Negi,

PW-4 Constable Ramlal were examined as prosecution witnesses. Thereafter, the statement of appellant-accused was recorded under Section 313 of

Cr.P.C.

8. The trial court, having perused the entire material made available on record, vide judgment and order under appeal, convicted and sentenced the

appellant, as mentioned hereinabove. Feeling aggrieved, appellant has preferred present appeals.

9. Heard learned Counsel for the respective parties and perused the entire material available on the record.

10. Mr. Sashi Kant Shandilya, learned Counsel appearing for the appellant fairly submits that the conviction of the appellant, as recorded by the Court

below under Section 401 IPC and Section 25/4 Arms Act are perfectly justified as per the evidence recorded before the trial court and he also does

not want lay any challenge on the same; he only confined his prayer to the extent that the sentence awarded to the appellant by the trial court, under

Section 401 IPC for 3 years may be reduced one year, there is no criminal history against him.

11. After considering the entire facts and circumstances of the case, this Court, is of the view that,

1 year rigorous imprisonment for the offence committed under Section 401 IPC and Section 25/4 Arms Act is sufficient to serve the purpose in the

present case.

12. In view of the above, the present appeals are partly allowed. The conviction part of the appellant under Section 401 IPC and Section 25/4 Arms

Act are left intact. However, as far the sentence part is concerned, it is directed that the appellant- Mohd. Umar is sentenced to 1 year's rigorous

imprisonment instead of 3 years' rigorous imprisonment, as awarded by the Court below. However, the fine imposed by the court below is intact.

13. A copy of this judgment and order along with the LCR be sent to the Court below for compliance.