

(2011) 04 UK CK 0048

Uttarakhand High Court

Case No: Criminal Appeal No. 1768 of 2001 and Government Appeal No. 167 of 2002

Sheru and Rayees @ Pappa

APPELLANT

Vs

State of Uttaranchal (now State
of Uttarakhand)
 State of
Uttaranchal (Uttarakhand) Vs
Suleman, Mahendra, Manoj @
Bittu

RESPONDENT

Date of Decision: April 28, 2011

Acts Referred:

- Arms Act, 1959 - Section 25
- Criminal Procedure Code, 1973 (CrPC) - Section 207, 313
- Penal Code, 1860 (IPC) - Section 120B, 302, 34

Hon'ble Judges: Servesch Kumar Gupta, J; Prafulla C. Pant, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Prafulla C. Pant, J.

All these three appeals, are directed against the judgment and order dated 21.07.2001, passed by Sessions Judge, Hardwar, in Session Trial No. 361 of 1998, where by said court has convicted accused/Appellants Sheru, Rayees @ Pappa and Gopal Shankar Gaur u/s 302 read with Section 34 of Indian Penal Code, 1860 (for short I.P.C), and each one of them has been sentenced to imprisonment for life. By the same judgment accused/Respondents Suleman, Mahendra and Manoj @ Bittu have been acquitted from the charge of offence punishable u/s 302 read with Section 120B I.P.C.

2. Heard learned Counsel for the parties and perused the lower court record.

3. Prosecution story, in brief, is that on 03.05.1998, at about 7.30 a.m, Anupam Kumar (deceased) was sitting on the counter of his shop, in Jhabreda when three

persons came on a motorcycle, and two of them got down and fired shots from the country made pistols at Anupam Kumar, who died on the spot. The third one kept the motorcycle start, and after the incident all the three ran away in the same motorcycle. First Information Report (Ex-A2) was given by PW4 Susheel Kumar Sharma within half an hour of the incident at about 8.00 a.m at Police Station Jhabreda , where on the basis of said report Crime No. 46 of 1998 was registered relating to offence punishable u/s 302 I.P.C against the three unknown persons. Investigation was taken up by PW9 Sub Inspector Rajveer Singh. The Police immediately went at the spot took dead body of deceased in its possession, and prepared inquest report (Ex-A6) at 9. a.m. Also, police form No. 13 (Ex A-17), sketch of the dead body (Ex-A18), letter of the Chief Medical Officer (Ex-A19), and sample seal (Ex A 20) were prepared and dead body was sent for post mortem examination in sealed condition. PW3 Dr. K.C. Pant, conducted post mortem examination the dead body of Anupam Kumar at about 3.00 p.m and recorded six ante mortem injuries, and prepared autopsy report (Ex A1). He opined that deceased had died due to shock and hemorrhage, as a result of ante mortem injuries. On interrogation of eye witnesses names of the three miscreants came to the light, and it was disclosed by the eye witnesses that accused/Appellant Gopal Shankar Gaur was driving the motorcycle of the make Yezdi bearing Registration No. UGY 262, and accused/Appellants Sheru, and Rayees @ Pappa were the persons who got down from the said motorcycle, and fired shots from the country made pistols at Anupam Kumar. Recovery of the two weapons used in the crime was made on pointing out of the two accused namely Sheru and Rayees @ Pappa on 23.05.1998, and recovery memo (Ex A14) prepared by the police in the presence of the accused, and got signed by them. Before that metallic pieces were already recovered from the place of incident by the Investigating Officer on 03.05.1998. The fire arms recovered and the metallic pieces were sent for examination to the Forensic Laboratory. Meanwhile relating to possession of unlicensed fire arm and two live Cartridges two separate Crime Nos. 54 of 1998(against the accused Rayees @ Pappa) and 53 of 1998 (against Sheru) were registered in respect of offence punishable u/s 25 Arms Act, 1959, which were investigated by PW14 Station Officer Suneel Kumar Singh. After interrogating the witnesses and on completion of investigation, charge sheet (Ex A-26)was filed against six accused namely Gopal Shankar Gaur, Suleman, Mahendra, Manoj, Sheru and Rayees @ Pappa for their trial in respect of offences punishable u/s 302/120B I.P.C., with the findings that accused/Appellants Suleman, Mahendra and Manoj @ Bittu (acquitted by the trial court) had conspired in the commission of crime with the other accused (convicted by the trial court). Charge sheet (Ex A 24) and charge sheet (Ex A 25) were filed against accused Rayees @ Pappa and accused Sheru for their trial in respect of offence punishable u/s 25 Arms Act, 1959.

4. It appears that the Magistrate, on receipt of the charge sheets, after giving necessary copies to the accused, as required u/s 207 of Cr.P.C., committed the cases

to the court of Sessions for trial. Learned Sessions Judge on 22.01.1999, after hearing the parties, framed charge of offence punishable u/s 302 read with Section 34 I.P.C against the accused, Gopal Shankar Gaur. Similar charge sheet was framed against accused Sheru and Rayees @ Pappa. A separate charge sheet was framed against accused Suleman, Mahendra and Manoj @ Bittu, relating to offence punishable u/s 302/120B I.P.C. All the accused pleaded not guilty and claimed to be tried. On this prosecution got examined PW1 Prahalad Singh (eye witness) , PW2 Chander Pal Sharma (eye witness), PW3 Dr. K.C. Pant (who conducted post mortem examination) , PW4 Susheel Kumar Sharma (complainant and eye witness), PW5 Satya Pal (who gave evidence relating to conspiracy), PW6 Anuj Kumar Aggarwal (witness of same fact), PW7 Sharad Kumar, PW8 A.S.I Shyam Raj Singh (who prepared check report of F.I.R and made entry in the General Dairy), PW9 S.I. Rajveer Singh (who investigated the crime), PW10 Constable Inder Pal Singh (witness of inquest report), PW11 Constable Ramemal (who took the pistols recovered and metallic pieces in sealed condition to Forensic Laboratory), PW12 Jagpal Singh (witness of recovery of country made pistols from Sheru and Rayees @ Pappa), PW13 Head Constable Gauri Shankar (witness of the same fact) and PW14 Station Officer Suneel Kumar (who investigated the crime registered relating to offence punishable u/s 25 Arms Act, 1959) . Oral and documentary evidence was put to the accused u/s 313 Cr.P.C., in reply to which they alleged same to be false. In defence DW1 Niyaz Ahmad was got examined. After hearing the parties, the trial court found that the offence punishable u/s 302 read with Section 34 I.P.C., is proved beyond reasonable doubt against the three accused namely Gopal Shankar Gaur, Sheru and Rayees @ Pappa and they were convicted accordingly. However, no offence was said to have been found proved beyond reasonable doubt relating to offence of conspiracy in committing the murder against accused/Respondents Suleman, Mahendra and Manoj, who were acquitted of the charge of offence punishable u/s 302/120B I.P.C. As far as charge of offence punishable u/s 25 Arms Act, 1959, is concerned, the trial court believed the recovery but found that sanction required for prosecution under said section was not proved as such, and two accused namely Sheru and Rayees were acquitted from the charge of offence punishable u/s 25 Arms Act, 1959. After hearing on sentence, each one of the convicts namely Gopal Shankar Gaur, Sheru and Rayees @ Pappa were sentenced to imprisonment for life by the trial court. Aggrieved by said judgment and order dated 21.07.2001, passed by Sessions Judge, Hardwar in Session Trial No. 361 of 1998, the two convicts namely Sheru and Rayees @ Pappa have filed Criminal Appeal No. 1768 of 2001. Third convict Gopal Shankar Gaur have filed separate Criminal Appeal No. 1773 of 2001. State of Uttarakhand has also filed Government Appeal No. 167 of 2002, challenging the acquittal of Suleman, Mahendra and Manoj from the charge of offences punishable u/s 302/120B I.P.C.

5. Before further discussion, we think it just and proper to mention here the ante mortem injuries recorded by PW3 Dr. K.C. Pant on 03.05.1998, at 3.p.m at the time of post mortem examination on the dead body of Anupam Kumar. The six ante

mortem injuries observed in autopsy report (Ex A-1) prepared by said medical officer are being reproduced below:

1. Fire arm wound of entry 1.5 cm x 1.0 cm x muscle deep left side neck, 6 cm behind left ear with inverted margins directing left to right, communicated to injury No. 2.
2. Fire arm wound of exit 2 cm x 1.5 cm x bone deep, right side back of neck 5cm behind right ear, margins everted directing right to left, communicated to injury No. 1.
3. Multiple abrasion each measuring 2.0 cm x 1.0 cm in an area of 1.0 cm x 6.0 cm on the back of neck right side.
4. Fire arm wound of entry 6 cm x 4 cm x brain cavity deep with clotted blood just over area of eye with presence of blackning, burning tissue and tattoing. Right eye completely damaged and missing, margins of wound inverted.
5. Lacerated wound 0.5 cm x 0.5 cm x bone deep right side of forehead just above right eyebrow with clotted blood.
6. Lacerated wound 0.5 cm x 0.5 cm x bone deep, over eyebrow clotted blood. 1.0 cm away from injury No. 5

On internal examination the medical officer observed fracture in the scalp, damaged brain on the right side frontal side. PW3 Dr. K.C. Pant opined in the autopsy report (Ex A-1) that deceased (Anupam Kumar) had died of shock and hemorrhage as a result of ane mortem fire arm injuries. From the medical evidence on record, it is established that Anupam Kumar died homicidal death on 03.05.1998. Now, we have to see whether the prosecution has successfully proved that accused /Appellants Sheru , Rayees @ Pappa and Gopal Shankar Gaur, with common intention, committed murder of the deceased. We have also to examine whether, the trial court has erred in law in acquitting the accused/Respondents Suleman, Mahendra and Manoj from the charge of offences punishable u/s 302/120B I.P.C.

6. PW1 Prahlad Singh is an eyewitness of the incident he has stated that on 03.05.1998, at about 7.20 a.m., he was going from his " Dharamkanta" (Vehicle Weighing Balance) to his home when he heard sound of two fires from the shop of M/S Lalchand Rajneesh Kumar(the shop in which Anupam Kumar deceased was sitting on the counter). When he turned towards that side he saw one person sitting on the motorcycle keeping it started and two persons running from the side of the shop who were armed with country made pistols. They boarded on the motorcycle and all the three went towards East. The witness has further stated that the person who was driving the motorcycle was accused/Appellant Gopal Shankar Gaur, and the other two, who were armed with country made pistols were Sheru and Rayees @ Pappa. PW1 Prahlad Singh has further stated that the motorcycle was bearing Registration No. UGY 262, which was black in colour. The witness identified all the three above accused in the court. He also stated that after one and half hour of the

incident inquest report was prepared by the police in his presence.

7. PW2 Chander Pal Sharma is another eye witness, who has also narrated the prosecution story as narrated by PW1 Prahlad Singh. He has stated that at the time of the incident he was hardly 20-25 steps away from the shop of Anupam Kumar @ Buntty from where sound of two fires came. The witness further states when he turned towards that side he saw two accused coming out with country made pistols in their hands. They rode on the motorcycle which was waiting for them. The witness further states that he could identify the person who was driving the motorcycle as Gopal Shankar Gaur and rest two persons of Sheru and Rayees @ Pappa. Both these eye witnesses are residents of Jhabreda, where the incident has taken place. Their presence near the place of incident appears to be natural and their statements are trustworthy. They had no enmity with the accused/Appellants Gopal Shankar Gaur, Sheru and Rayees @ Pappa.

8. The third eye witness is PW4 Susheel Kumar Sharma who lodged the First Information Report (Ex A-1). This witness has also corroborated the prosecution story, as narrated by other two eye witnesses, namely PW1 Prahlad Singh and PW2 Chander Pal Sharma. However, this witness does not know names of the three persons who came of motorcycle and he could only narrate the incident without naming them. He has not named them, nor did he name in the First Information Report. After going through the statements of the three eye witnesses we agree with the trial court that prosecution has successfully proved charge of offence punishable u/s 302 read with Section 34 I.P.C. against them.

9. Shri S.K. Aggarwal, Senior Advocate, argued that Gopal Shankar Gaur had no common intention with the other two accused and he had no knowledge if they were with the country made pistols. We do not find substance in the argument for the reason that not only the accused Sheru and Rayees @ Pappa had come on the motorcycle which was being driven by accused Gopal Shankar Gaur, but after committing the crime they went on the same motorcycle which was kept ready by the accused Gopal Shankar Gaur. Facts and circumstances clearly establish that the three had common intention in committing murder of Anupam Kumar @ Buntty.

10. It is also argued on behalf of the Appellants that since the evidence relating to conspiracy on the part of accused/Respondents Suleman, Mahendra and Manoj was not believed by the trial court, as such, there is nothing on the record to show the motive on the part of the Appellants Gopal Shankar Gaur, Sheru and Rayees @ Pappa to commit the crime. Having gone through the evidence on record, we find that in the present case, it is not necessary for the prosecution to prove the motive of commission of crime as there are three eye witnesses who have given ocular testimony as to how the murder was committed by the three accused convicted by the trial court.

11. It is also submitted that on behalf of the Appellants that since the trial court has acquitted the accused Sheru and Rayees @ Pappa from the charge of offence punishable u/s 25 Arms Act, 1959, as such, the report of the Forensic Laboratory connecting the metallic pieces recovered from the spot with the weapon, can not be read with evidence against said accused. We have carefully scrutinized the evidence on record. We are of the view that had the recovery of weapon on pointing out of the accused, been doubted by the trial court, what is argued before us could have been accepted. But in the present case, the trial court has not disbelieved the testimony of the witnesses in whose presence recovery was made on pointing out of the accused, of the arms used in the crime. Infact, they have been acquitted only on the ground that the prosecution has not proved sanction required from District Magistrate, to prosecute the accused u/s 25 Arms Act, 1959. For that technical reason only the two were not convicted under said charge but that does not create doubt relating to recovery made on pointing out of the accused Sheru and Rayees, which is proved by PW12 Jagpal Singh and PW13 Guari Shankar.

12. On behalf of the State, it is argued that trial court has erred in law in acquitting accused Suleman, Mahendra and Manoj from the charge of offence of punishable u/s 302/120B I.P.C. We have reexamined the evidence adduced by PW5 Satyapal, PW6 Anuj Kumar Aggarwal and PW7 Sharad Kumar, and after going through it, he find that the theory of conspiracy on the part of said three accused is not proved beyond reasonable doubt by the prosecution, as such, we agree with the trial court that they deserve acquittal from the charge.

13. For the reasons as discussed above all the three appeals are liable to be dismissed. Accordingly, all the three appeals are hereby dismissed. The accused/Appellants Sheru, Rayees and Gopal Shankar Gaur are on bail. Their bail is cancelled. The lower court record be sent back to make the accused/Appellants serve out the sentence awarded to them by the trial court.