
(2011) 05 UK CK 0069

In the Uttarakhand High Court

Case No : Criminal Appeal No. 1843 of 2001

Aas Mohammad @ Aashu

APPELLANT

Vs

State of Uttaranchal (now State of Uttarakhand)

RESPONDENT

Date of Decision : 10-05-2011

Acts Referred:

Arms Act, 1959 — Section 25, 27
Criminal Procedure Code, 1973 (CrPC) — Section 374
Explosive Substances Act, 1908 — Section 2, 4, 5, 7
Penal Code, 1860 (IPC) — Section 307

Citation : (2011) 05 UK CK 0069

Hon'ble Judges : Sudhanshu Dhulia, J; Prafulla C. Pant, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Prafulla C. Pant, J.—This appeal, preferred u/s 374 of Code of Criminal Procedure, 1973, (for short CrPC), is directed against the judgment and order dated 06.10.2001/09.10.2001, passed by Additional Sessions Judge/Special Judge (CBI)/Anti Corruption, Dehradun, in Sessions Trial No. 83 of 1994, Sessions Trial No. 84 of 1994, Sessions Trial No. 85 of 1994, and Sessions Trial No. 173 of 1998, whereby said Court has convicted the accused/Appellant Aas Mohammad @ Aashu u/s 307 Indian Penal Code, 1860, (for short I.P.C.), u/s 25 and 27 Arms Act 1959, and u/s 4/5 Explosive Substances Act 1908. The accused/Appellant Aas Mohammad @ Aashu has been sentenced by the trial Court to rigorous imprisonment for a period of five years and directed to pay fine of Rs. 2000/-, u/s 307 I.P.C., rigorous imprisonment for a period of three years and directed to pay fine of Rs. 1000/-, u/s 25 Arms Act 1959, rigorous imprisonment for a period of four years and directed to pay fine of Rs. 1,500/-, u/s 27 of said Act, and imprisonment for life and directed to pay fine Rs. 10,000/-, u/s 4/5 of Explosive Substances Act, 1908.

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

3. Prosecution story, in brief, is that on 15.04.1993, P.W. 1 Rajendra Singh Dhama, Station House Officer, Police Station Raiwala along with Station House Officer Ranjeet Singh Rana, of Police Station Doiwala and other police personnel, under instructions from Circle Officer Rishikesh, started combing operation in search of terrorists within the limits of Raiwala. When they reached in the jungle of Village Chhidarwala, they left their vehicle bearing registration No. UAW658 and UPO79967 and divided the force into smaller groups. At about 5.30 a.m. they saw a person coming towards them, who on seeing the police personal got alert and started going back towards the jungle. The police party asked the person to stop and surrender, but he fired a shot at the police party. According to prosecution case police also resorted to the firing. However, there was no injury on either side. When the person was encircled by the police personnel, he surrendered at 5.45 a.m. On his personnel search the police personnel recovered a revolver .38 bore with six chambers, bearing No. 319044 with four live cartridges. On being inquired the person apprehended disclosed his name as Aas Mohammad @ Aashu(accused/Appellant) resident of Village Sikroda police station Bhagwanpur, District Hardwar. He could not show the license to possess the revolver and the cartridges. He was arrested and recovery memo (Ex A1) was prepared. On interrogation the accused/Appellant Aas Mohammad @ Aashu disclosed that he had contacts with two terrorists namely Paramjeet Singh @ Pamma and Baljor (both killed in Punjab before the incident in question). The accused/Appellant further disclosed that he can get the recovery made of more arms and ammunition. On this he guided the police on 16.04.1993, to the bank of river Jakhan on the side of Kansro Motor Marg, and after digging earth gave a plastic container containing gun powder weighing 150 grams, a rifle 1303 bore bearing No. 90392 M, two SBBL guns regarding which memorandum (Ex A3) was prepared by the police. Separate crimes were registered against the accused/Appellant Aas Mohammad @ Aashu in connection with offence punishable u/s 307 I.P.C. 25/27 Arms Act and one relating to 4/5 Explosive Substances Act. The investigation was conducted by Sub Inspector Amar Singh (since deceased). Necessary sanctions were obtained from the District Magistrates, and the Charge Sheets were filed against the accused/Appellant, Aas Mohammad @ Aashu.

4. The Judicial Magistrate, on receipt of the charge sheets, after giving necessary copies to the accused, appears to have committed the cases to the Court of Sessions for trial. Sessions Trial No. 83 of 1994 arose out of the crime No. registered in respect of offence punishable u/s 307 I.P.C. Sessions Trial No. 84 of 1994 arose out of crime relating to 25 Arms Act, Sessions Trial No. 85 of 1994 arose out of crime relating to 27 Arms Act and Sessions Trial No. 173 of 1998 from the crime registered relating to offence punishable u/s 4/5 Explosive Substances Act, 1908.

5. On 31.05.1995 Additional Sessions Judge/Special Judge, Anti Corruption Dehradun, after hearing the parties, framed charge of offence punishable u/s 307 I.P.C. against accused Aas Mohammad @ Aashu who pleaded not guilty and claimed to be tried. From the record received from the trial Court we fail to find

charge framed by the trial Court against the accused/Appellant Aas Mohammad @ Aashu in respect of other offences. The impugned judgment passed by the trial Court shows that since all the offences related to same incident and transaction as such they were clubbed together and Sessions Trial No. 83 of 1994 was made leading case in which the evidence was recorded.

6. Prosecution got examined P.W. 1 R.S. Dhama the then Station House Officer, Raiwala, P.W. 2 Sub Inspector R.S. Rana the then Station House Officer Doiwala, P.W. 3 Head Constable Satpal Singh (who prepared the check report and registered the crime at the police station), P.W. 4 Haider Abbas (a clerk who proved the signatures of District Magistrates who granted sanctions for prosecution under Arms Act and Explosive Substances Act), and P.W. 5 Ramesh Kumar Rawat (a retired forensic expert of forensic Laboratory Agra). Oral and documentary evidence was put to the accused in reply to which, he alleged that the evidence against him was false. He further pleaded that no recovery was made from him. He has further pleaded that he demanded his dues towards the wheat flour purchased by the police from him, due to which he has been implicated in these cases. In defence he got examined D.W. 1 Subedar Major retired Niranjana Singh who had stated that father of accused/Appellant used to run a flour mill and the accused/Appellant Aas Mohammad @ Aashu had gone to police for recovery of out standing dues relating to sale of the wheat flour.

7. Admittedly, it is a case of no injury. As such, there is no corroboration of the statement of P.W. 1 R.S. Dhama and P.W. 2 R.S. Rana by medical reports that the accused/Appellant Aas Mohammad @ Aashu fired shot at them with intention to commit murder of a policeman. There is no public witness either of attempt to commit murder or of recovery of arms and explosive substance who has supported the prosecution story. In the circumstances, we have to examine the truthfulness of the statements of these two witnesses of fact relating to offences of attempting to commit murder and the recovery said to have been made by the police from the person of accused/Appellant Aas Mohammad @ Aashu and the one said to have been made on his pointing out. Though the recovery of a rifle and SBBL gun and that of gun powder is said to have been made on the next day i.e. 16.04.1993, but once again there is no public witness of said recovery. We do not find any explanation from the side of the prosecution as to why they could not procure any public witness in the said subsequent recovery. Had there been recovery of large quantity of Arms and ammunition, regarding which it could not have been said that the same are planted, even without there been any public witness, we would have preferred to accept the testimony of the two policemen.

8. We have carefully gone through not only the statements of the eyewitnesses but also the other evidence on record. Though P.W. 4 Haider Abbas, a clerk in the collectorate has proved the sanctions Ex A-13, Ex A-14 and Ex A-15 given by the District Magistrates for prosecution of the accused/Appellant Aas Mohammad @ Aashu under Arms Act, and u/s 4/5 of Explosive Substances Act, but on going through the Ex A-15, we find that the District Magistrate his sanction (order

dated 29.07.1994), does not disclose what explosive Substance was recovered from the accused/Appellant Aas Mohammad @ Aashu and what was the quantity of Explosive Substance. He has simply mentioned the order dated 20th of August 1977, issued by the Government of India delegating the power to sanction under 7 of Explosive Substances Act and that the accused/Appellant Aas Mohammad @ Aashu fired shot at police and recovery of rifle and live cartridges were made from him. The definition of the "Explosive Substances" is given in Section 2 of Explosive Substances Act, 1908. The District Magistrate should have mentioned the explosive substance said to have been found from the possession of the accused on the basis of which it can be said that the sanction was required under said Act.

9. There is one more glaring error in the impugned order passed by the trial Court. The Explosive Substances Act, 1908, as it existed prior to amendment made in it vide Act No. 54 of 2001, there was no punishment extending to imprisonment for life provided in the Act. The incident in question before us relates to the year 1993. But the trial Court in its wisdom has sentenced the accused/Appellant Aas Mohammad @ Aashu to imprisonment for life u/s 4/5 of Explosive Substances Act, 1908, which can not be sustained.

10. For the reasons as discussed above, we are of the view, that not only the prosecution has failed to prove charge of offence punishable u/s 307 I.P.C., u/s 25 Arms Act, u/s 27 Arms Act and u/s 4/5 of Explosive Substances Act, 1908, beyond reasonable doubt, against the accused/Appellant Aas Mohammad @ Aashu, but also the trial Court has committed error of law in awarding the sentence of imprisonment for life u/s 4/5 of Explosive Substances Act, 1908, (as it existed prior to amendment in the year 2001).

11. Therefore, this appeal is allowed. Impugned judgment and order dated 06.10.2001/ 09.10.2001, passed by Additional Sessions Judge/Special Judge(CBI)/ Anti Corruption, Dehradun, in Sessions Trial No. 83 of 1994, Sessions Trial No. 84 of 1994, Sessions Trial No. 85 of 1994, and Sessions Trial No. 173 of 1998, is hereby set aside. The accused/Appellant Aas Mohammad @ Aashu is acquitted from the charge of offence punishable u/s 307 I.P.C., 25 Arms Act, 1959, Section 27 Arms Act, 1959 and Section 4/5 of Explosive Substances Act, 1908. He is on bail. He need not surrender. Lower Court record be sent back.