
(2011) 03 UK CK 0062

In the Uttarakhand High Court

Case No : Criminal Appeal No. 906 of 2001 and Old No. 578 of 2000

Gul Hasan

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 24-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 313, 374
Penal Code, 1860 (IPC) — Section 302, 34, 506

Citation : (2011) 1 NCC 773 : (2011) 3 UC 2354 : (2011) 1 UD 265

Hon'ble Judges : V.K. Bist, J; Prafulla C. Pant, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V.K. Bist, J.—These appeals, preferred u/s 374 of the Code of Criminal Procedure, 1973 (for short Cr.P.C.), are directed against a common judgment and order dated 26th February, 2000 passed by Addl. Sessions Judge, Kashipur in Sessions Trial No. 154 of 1999 State v. Gul Hasan and Anr. whereby Appellants Gul Hasan and Sher Ali are convicted u/s 302 read with Section 34, and Section 506 of the Indian Penal Code, 1860 (for short I.P.C.). Each one of the Appellants has been sentenced by the trial court to imprisonment for life u/s 302/34 I.P.C. and rigorous imprisonment for a period of two years for the offence punishable u/s 506 I.P.C. It was directed that both the sentences will run concurrently.

2. Since in both these appeals there involve common set of facts, therefore, for the sake of convenience, both these appeals have been consolidated and are being decided by a common judgment. Criminal Appeal No. 906 of 2001 shall be the leading appeal.

3. Heard learned Counsel for the parties and perused the Lower Court's Record.

4. Prosecution story, in brief, is that on 01.02.1999 at about 2:10 p.m. when Idrish Ahmad (PW-1, scribe of first information report), his brother Shamim Dhobi (deceased) Rashid and Aabid (PW-2), while returning to their homes from

the market, were coming through Ratan cinema road and reached inside (Choonna-Patthar) Lime Stone lane, in the route, within the limits of Police Station Kashipur, District Udham Singh Nagar. The accused/Appellants Gul Hasan and Sher Ali, both armed with firearms (TAMANCHAS), met them and forcefully stopped them. They caught hold of Shamim (deceased) and took him at some distance and after saying to Shamim that "he gestures himself BADMASH (villain), let he be finished that day", shot at Shamim with the country made pistols. Idrish Ahmad and others tried to rescue Shamim, but the accused/Appellants, pointing pistols, stopped them in doing so and after threatening to kill them, ran away from the site towards Ratan Talkies. Shamim, in an injured condition, was taken to hospital in a rickshaw, where he died. Leaving the dead body at hospital, Idrish Ahmad reached at Kotwali Kashipur to lodge the First Information Report (Ext. A-1). On the basis of First Information Report, Check Report (Ext. A-11) was prepared by the police and a crime No. 70 of 1999 was registered relating to offence punishable u/s 302 I.P.C. An entry was made in the General Diary. Investigation of the case was entrusted to SSI Brij Mohan Yadav, who, on pointing out by the witnesses, prepared site plan (Ext. A-3). The inquest report (Ext.A-4) of the dead body of the deceased Shamim was prepared. The dead body of the deceased, in a sealed condition, alongwith, Police Form No. 13 (Ext.A-5), the sketch of dead body (Ext.A-6), letter to Medical Superintendent, L.D. Bhatt Govt. Hospital, Kashipur for conducting post mortem (Ext.A-7), sample seal (Ext. A-8) and Police Form No. 33 (Ext. A-9), was sent for post mortem examination. Dr. Y.S. Rawat (P.W.3) conducted post mortem examination on the dead body of Shamim on 02.02.1999 and prepared autopsy report (Ext. A-2). He recorded one ante-mortem injury on the person of the deceased in his report. The Medical Officer opined that the deceased had died of shock due to ante-mortem injuries. The Investigating Officer also interrogated the witnesses and recorded their statements. On completion of investigation, Charge sheet (Ext.A-10) was filed by the Investigating Officer against the accused/ Appellants Gul Hasan and Sher Ali for their trial in respect of offences punishable u/s 302 and 506 I.P.C.

5. The Magistrate, on receipt of the charge sheet, after giving necessary copies to the accused, as required u/s 207 of Cr.P.C., committed the case to the Court of Sessions for trial. On 12.08.1999, learned Addl. Sessions Judge, Kashipur, after hearing the parties, framed charge of offences punishable u/s 302 and 506 I.P.C. against the aforesaid two accused Gul Hasan and Sher Ali, who pleaded not guilty and claimed to be tried.

6. The prosecution, in order to prove its case, got examined P.W.1 Idrish Ahmad (informant and an eye witness), P.W. 2 Aabid Hussain (eye witness), P.W.3 Dr. Y.S. Rawat, who conducted post mortem examination, and P.W. 4 Sub Inspector D.P. Singh (Investigating Officer). The oral and documentary evidence was put to the accused u/s 313 Cr.P.C., in reply to which, they alleged the same to be false and stated that one day before the incident, they had filed case against the deceased, therefore, Idrish has lodged an false case against them. In defence

D.W.1 Digambar Dutt was got examined. After hearing the learned Counsel for the parties, the Trial Court found both accused/Appellants Gul Hasan and Sher Ali guilty of offence punishable u/s 506 and 302 read with Section 34 I.P.C. and after hearing on sentence, each one of them was sentenced to imprisonment for life u/s 302/34 I.P.C. and rigorous imprisonment for a period of two years u/s 506 I.P.C.

7. Being aggrieved by the impugned judgment and order dated 26.02.2000 passed by the Addl. Sessions Judge, Kashipur, the accused/Appellants have preferred the aforesaid appeals before this Court.

8. Before further discussion, we think it just and proper to mention the ante-mortem injuries recorded by P.W.3 Dr. Y.S. Rawat, who conducted post mortem examination on 02.02.1999 and recorded following ante-mortem injury on the body of Shamim Dhobi:

1. Multiple firearm wounds of entries in area of forehead, face, neck and upper part of chest in area of 16cm. x 12cm. Blood from mouth coming out.

9. According to the Medical Officer (P.W.3) Dr. Y.S. Rawat, some pellets were taken out of his forehead, pleura had wear and tear, trachea was badly punctured and blood was present in it, both lungs were shrunk and blood about 300 ml. was present in the pleura, heart chambers were empty, 250 gr. semi digested food was present in the abdomen, there was gastric juice and digested food found in small intestines, large intestines were full of faecal matter with gases. He opined that the deceased had died of shock due to ante-mortem injuries. According to the Doctor, the death of the deceased could have been caused on 01.02.1999 at about 2:10 p.m. From the medical evidence, as discussed above, it is established on record that Shamim died of shock due to ante-mortem injuries.

10. P.W.1-Idrish Ahmad, brother of the deceased who got lodged First Information Report (Ext.A-1) has categorically stated that on 01.02.1999, he, alongwith, his brother Shamim Dhobi, Rashid and Aabid were returning to their homes from Chaiti Market and were coming through Ratan cinema road. On the fateful day at about 2:10 p.m. when they reached at Chauraha, inside Choona Patthar lane, the accused/Appellants Gul Hasan and Sher Ali, both armed with fire arms (TAMANCHAS), met them and they forcefully stopped them and caught hold of his brother Shamim. The accused/Appellants took his brother towards East and said to Shamim that "you gesture yourself BADMASH (villain), let we finish you today". This witness has further stated that in order to rescue him, when his brother tried to flee, both the accused/ Appellants shot fire at him, with the country made pistols in their hands, which hurt his body at his forehead, face, chest and neck. This witness tried to rescue Shamim, but the accused/Appellants pointing pistols at him, stopped him in doing so and threatened him to kill, thereafter they ran away from the site. Shamim fell down due to firearm injuries. He was taken, in an injured condition, to hospital, in a rickshaw, where

he died. This witness was cross-examined by the defence counsel, at length, but nothing has come out in his evidence, which may create any doubt. The evidence of this witness, on each and every aspect, is reliable, believable and trustworthy.

11. Statement of P.W.1-Idrish Ahmad is fully corroborated by the evidence of P.W.2-Aabid Hussain, who is another eyewitness of the incident. This witness is an independent eyewitness. This witness has stated that the accused/Appellants, namely, Sher Ali and Gul Hasan, who are present in the Court, are known to him. This witness has stated that the incident happened about 10 months before (testimony of this witness was recorded on 22.12.1999). On that day at about 2:10 p.m. he, alongwith, Shamim (deceased), Rashid and Idriah was returning from Ratan cinema road. The accused/Appellants met them at Chauraha, near Choona-Patthar lane. At that time, both the accused were armed with pistols in their hands. They caught hold of Shamim and took him at a side. This witness also went behind them but the accused persons told him to go away otherwise he too will be killed, therefore, this witness, his brother Rashid and Idriah stayed there. The accused/Appellants told Shamim that "you gesture yourself BADMASH (villain), let we finish you today". When Shamim tried to get rid of them, both the accused shot at Shamim with the firearms in their hands due to which Shamim fell down. Both the accused fled away pointing TAMANCHAS on them. This witness has further stated that he, Idriah and Rashid took the injured, in a rickshaw, to the hospital, where the Doctor declared the injured brought dead. Thereafter, Idriah went to the Police Station to lodge a report. Leaving Rashid at hospital, this witness rushed to inform the relatives of Shamim about the incident. This witness was also cross examined, at length, by the defence counsel but there is nothing in his cross-examination which shakes the testimony given by the witness in his examination-in-chief. Names of both these witnesses are mentioned in the First Information Report (Ext. A-1), which appears to have been lodged promptly within one hour of the incident.

12. It has been argued on behalf of the Appellants that presence of the eyewitnesses is fictitious, as there are major contradictions in the ocular version of so-called witnesses. Learned Counsel for the Appellants argued that presence of the eyewitnesses, at the place of occurrence, is improbable and the incident in question could not have happened, as has been projected by the prosecution. Neither it is mentioned in the FIR that informant had gone market to purchase clothes, nor I.O. had inquired about the purpose of visiting the market. It has been further argued that the Doctor, who conducted autopsy, found 250 gr. semi digested food in the stomach of the deceased, whereas the witnesses have stated that the deceased took no food. But we find that as per FIR, the incident had taken place at 2:10 p.m., by that time, it cannot be said that the deceased had not taken any food. Further, ocular evidence of the witnesses cannot be discarded, on account of natural minor contradictions in the statements of the witnesses.

13. Learned Counsel appearing for the Appellants have further submitted that

there appears no motive of the accused/Appellants in killing Shamim. But it has come out in the evidence of P.W.-1 Idrish Ahmad that the accused had a grudge with the deceased. The accused/ Appellants could not show as to what was the reason to implicate them falsely, leaving the real culprits. It has further been argued that the I.O. did not take samples of bloodstained or plain earth, which also creates doubt in the prosecution story. We do not appreciate the manner of conducting investigation in the instant case. But we hold that merely for the lapses on the part of I.O., testimony of eyewitnesses cannot be overlooked.

14. The learned Counsel for the Appellants also argued that the place of occurrence is said to have taken place at Chauraha. Both the eyewitnesses have categorically stated that at the time when the incident has taken place, the market was open and people were going to and fro, however, no public witness of the place of occurrence was produced by the prosecution. We are of the view that, in the case in hand, the eyewitnesses produced by the prosecution are sufficient to prove the incident. No particular number of witnesses is required to establish the case. Conviction can be based on the testimony of a single witness, if same is trustworthy. Further, corroboration of the ocular evidence may be necessary when the witness is only partially reliable. If the evidence is unblemished and beyond all reasonable doubt, and the Court is satisfied that the witness was speaking the truth then on his evidence alone, conviction can be maintained.

15. Lastly, the learned Counsel for the Appellants drew our attention towards the cross-examination of PW-3 Dr. Y.S. Rawat, put by the defence, and it is submitted that the Doctor has stated that the distance of firearm could have been 30 cm. to 45 cm. and not 7" to 8". Whereas, P.W.1 Idrish Ahmad states that distance between the assailants and the deceased was 5 to 7 steps and P.W.2 Aabid Hussain states that it was 7 to 8 steps. In this respect, it is argued that if the medical evidence is taken to be true there should have been some blackening or tattooing present in and around the wounds, which is not found in the present case and in view of this fact, the testimony of eyewitnesses should to be disbelieved. But we are of the view that in the light of the ocular evidence, which is natural, the argument advanced by the learned Counsel for the Appellants, in this regard, appears to be without any force. Doctor's statement, that distance of firearm was 30 cm. to 45 cm. and not 7" to 8", has to be disbelieved in view of absence of blackening or tattooing in or around the wounds. The manner, in which the incident has taken place, clearly shows that at the time of the incident, both the accused have country made pistols in their hands from which the accused/ Appellants shot at Shamim, resulting his death.

16. Having gone through the statement of the witnesses, examined on behalf of the prosecution and that of the witness examined on behalf of the defence, we concur that the finding recorded by the trial court that prosecution has successfully proved charge of offences punishable u/s 506, 302/34 I.P.C. against the accused/Appellants Gul Hasan and Sher Ali.

17. For the reasons, as discussed above, we do not find force in these appeals, which, in our opinion, are liable to be dismissed. Accordingly, both the appeals are dismissed. The conviction and sentence recorded by the trial court against two accused, namely, Gul Hasan and Sher Ali sons of Lalla @ Mahmudul Hasan, in respect of offences punishable u/s 302 read with Section 34 and 506 I.P.C., is hereby affirmed. The accused/ Appellants are on bail; their bail-bonds are hereby cancelled.

18. Let a copy of this judgment, alongwith the record of the Court below, be sent back to the Trial Court to make accused/Appellants to serve out the sentence awarded to them.

19. Let a certified copy of this judgment be placed in the connected appeal.