
(2009) 04 UK CK 0002
In the Uttarakhand High Court

Hari Shyam (since deceased), Radhey Shyam, Ram Jagat and Ram Asrey APPELLANT

Vs

The State RESPONDENT

Date of Decision : 13-04-2009

Acts Referred:

Arms Act, 1959 — Section 25, 4
Criminal Procedure Code, 1973 (CrPC) — Section 207, 313, 374
Penal Code, 1860 (IPC) — Section 304

Citation : (2009) NCC 340

Hon'ble Judges : Prafulla C. Pant, J;Brahma Singh Verma, J

Bench : Division Bench

Judgement

Prafulla C. Pant, J.—This appeal, preferred u/s 374 of the Code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C.), is directed against the judgment and order dated 27.07.1995, passed by learned III Addl. Sessions Judge, Nainital, in Sessions trial No. 217 of 1989 and 218 of 1989. The appellants Hari Shyam, Radhey Shyam, Ram Jagat and Ram Asrey were convicted 2 u/s 304 of the Indian Penal Code, 1860 (hereinafter referred as I.P.C.), and each one of them is sentenced to imprisonment for life. Appellant Radhey Shyam is further convicted u/s 4/25 of the Arms Act, 1959, and sentenced to undergo rigorous imprisonment for a period of three months.

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

3. Prosecution story, in brief, is that Murat Prasad (deceased), resident of village Meharban Nagar, used to work in Sugar Mill at Majhola. A couple of days before the incident there had been theft of paddy of one Sardar Munna Singh of Village Sunpaher. In connection with said theft on 01.12.1988, police came to the house of accused / appellant Hari Shyam. The appellant Hari Shyam and his brothers (Radhey Shyam, Ram Jagat and Ram Asrey) suspected that Hari Shyam was named by Murat Prasad in that theft. This annoyed the appellants. On 02.12.1988, Murat Prasad after completing his night shift in the sugar mill,

Majhola, returned to his house, at 08:00 A.M. After having breakfast he was lying on a cot, in the sun. At about 09:00 A.M., accused / appellants Hari Shyam, Radhey Shyam, Ram Jagat and Ram Ashrey, all sons of Surat Prasad, armed with LATHIS, DANDA and BALLAM came to the house of the deceased and started giving blows on the person of Murat Prasad. The incident was witnessed by P.W. 1 complainant Inderman; P.W. 2 Ram Gopal and P.W. 3 Sita Ram. They challenged the accused, on which the accused / appellants left Murat Prasad in an injured condition. When the witnesses went near the cot, they found that Murat Prasad had succumbed to the injuries received by him. A first information report (Ext. A -1) was lodged by P.W. 1 Inderman on the very day i.e. 02.12.1988, at about 02:00 P.M. On the basis of said report the police prepared check report (Ext. A -15) wherein crime No. 439 of 1988 was registered against four accused (appellants) namely Hari Shyam, Radhey Shyam, Ram Jagat and Ram Asrey, relating to offence punishable u/s 304 of I.P.C. The police reached at the spot at 04:00 P.M. and took the dead body of the deceased in their possession. An inquest report (Ext. A -3) was prepared by the police. P.W. 5 Sub Inspector Vishram Singh, who investigated the crime, prepared the sketch of the dead body (Ext. A -4); police form No. 13 (Ext. A -5); letter to the Chief Medical Officer (Ext. A -7) requesting for postmortem examination of the dead body; and sample seal (Ext. A -8). The dead body was sent in sealed condition for postmortem examination. Next day, on 03.12.1988, at 02:30 P.M., P.W. 7 Dr. J.K. Sharma conducted the postmortem examination on the body of the deceased and prepared the autopsy report (Ext A -18). He found as many as 11 ante mortem injuries and opined that shock and haemorrhage due to ante mortem injuries was the cause of the death of the deceased (Murat Prasad). On that very day i.e. 03.12.1988, accused / appellant Radhey Shyam was arrested and a knife with blade length of prohibited limit, was found possessed by the said accused, as such, a separate first information report was lodged on that day against accused Radhey Shyam in connection with crime No. 440 of 1988 of the Arms Act, 1959. That crime was investigated by P.W. 6 Sub Inspector Netra Pal Singh. After completing investigations in both the cases, charge sheets were filed. Charge sheet (Ext. A -13) was filed by P.W. 5 Sub Inspector Vishram Singh against the accused / appellant Hari Shyam, Radhey Shyam, Ram Jagat and Ram Asrey for their trial in respect of offence punishable u/s 304 of I.P.C., while charge sheet (Ext. A -17) was filed by P.W. 6 Sub Inspector Natra Pal Singh against accused / appellant Radhey Shyam for his trial in respect of offence punishable u/s 4/25 of the Arms Act.

4. The Magistrate, on receipt of both the charge sheets, after giving necessary copies to the accused, as required u/s 207 of Cr.P.C., appears to have committed the cases to the court of Sessions, for trial. Learned Addl. Sessions Judge, Nainital, to whom the cases were transferred, after hearing the parties, framed charge of offence punishable u/s 4/25 of the Arms Act against accused / appellant Radhey Shyam, and charge of offence punishable u/s 304 of I.P.C. against the accused / appellants Hari Shyam, Radhey Shyam, Ram Jagat and

Ram Asrey. In response to the charges framed against them all the accused pleaded not guilty and claimed to be tried. On this, the prosecution got examined P.W. 1 Inderman (complainant and son of the deceased); P.W. 2 Ram Gopal (eyewitness); P.W. 3 Sita Ram (declared hostile); P.W. 4 Digra Singh @ Munna Singh; P.W. 5 Sub Inspector Vishram Singh (Investigating Officer who investigated the case relating to offence punishable u/s 304 of I.P.C.); P.W. 6 Sub Inspector Netra Pal Singh (Investigating Officer who investigated the case relating to offence punishable u/s 4/25 of the Arms Act) and P.W. 7 Dr. J.K. Sharma (who conducted postmortem examination on the dead body of the deceased). The oral and documentary evidence was put to the accused u/s 313 of Cr.P.C., in reply to which they alleged the same to be false. The accused in reply to the questions asked u/s 313 of Cr.P.C., alleged that they have been falsely implicated due to enmity in the crime. However, no evidence in defence was adduced on behalf of the accused. The trial court, after hearing the parties, found all the four accused guilty of charge of offence punishable u/s 304 of I.P.C. Accused / appellant Radhey Shyam was further found guilty u/s 4/25 of the Arms Act, 1959. The accused / appellants were heard on sentence, and the trial court sentenced each of the convicts to imprisonment for life u/s 304 of I.P.C. Accused / convict Radhey Shyam was further sentenced to rigorous imprisonment for period of three months u/s 4/25 of the Arms Act, 1959. Aggrieved by said judgment and order dated 27.07.1995, passed by III Addl. Sessions Judge, Nainital, this appeal was preferred by the convicts before the Allahabad High Court on 21.08.1995, where it was admitted on 22.08.1995. The appeal is received by this Court u/s 35 of the U.P. Re-organization Act, 2000 (Central Act No. 29 of 2000) for its disposal.

5. Before further discussion, we think it just and proper to mention here the ante mortem injuries found by P.W. 7 Dr. J.K. Sharma, at the time of postmortem examination on the dead body of Murat Prasad, which are mentioned in the autopsy report (Ext. A -18). The same are being reproduced below:

- i) Lacerated wound 3 cm X 2 cm on the back of the skull, oblique .
- ii) Multiple contusions all over the back of the chest left side, underneath tissues lacerated, 5th, 6th, 7th and 8th ribs were found fractured .
- iii) Multiple contusions all over the back of right chest underlying tissues damaged.
- iv) Multiple contusions all over the back of right upper and lower arm, underneath humerus lower half radius and ulna upper half multiply fractured.
- v) Multiple contusions all over the back of the left upper arm extending down to the upper half of the left lower arm, compound fracture of lower third of humerus present, bone pieces seeping out from the wound 0.5 cm X 0.5 cm at back of right elbow outer side.
- vi) Multiple contusions with abrasion all over the back of the left hand,

underneath ulna corpals of index, middle and ring fingers fractured.

vii) Multiple contusions all over the left hip joint extending down to back of whole thigh, underneath head of left femur and pelvic bone fractured.

viii) Multiple contusions with abrasion all over the back of left leg.

ix) Punctured wound 1 cm X 0.3 cm X bone deep on the middle of front of left leg, oblique.

x) Multiple contusions with abrasion all over the back of the right hand.

xi) Multiple abrasions in an area 6 cm X 4 cm on the middle of front of right leg.

The Medical Officer after completing the postmortem examination opined that the deceased had died on account on shock and haemorrhage due to ante mortem injuries. The statement of P.W. 7 Dr. J.K. Sharma read with autopsy report (Ext. A -18) clearly establishes that Murat Prasad had died homicidal death on 02.12.1988.

6. Now, this Court has to see whether it is proved on record that the accused / appellants have caused the homicidal death of Murat Prasad, or not?

7. P.W. 1 complainant Inderman is son of the deceased. He has stated on oath that on 02.12.1988, at about 09:00 A.M., accused Radhey Shyam, armed with BALLAM (a Lathi with pointed sharpened end), and rest of the accused (Hari Shyam, Ram Jagat and Ram Asrey) armed with LATHIES (long thick wooden sticks) came where Murat Prasad was lying on a cot, after having breakfast. The four accused started giving blows on the person of Murat Prasad. P.W. 1 Inderman has further stated that the incident was witnessed by Ram Gopal (P.W. 2) and Sita Ram (P.W. 3). He further states that later on other villagers also reached there. P.W. 1 Inderman has stated that after return from his duty from Majhola sugar mill in the morning, at about 08.00 A.M., and after bath and having breakfast his father was taking rest on a cot. The witness has further stated that the accused were challenged by the witnesses on which they ran away. P.W. 1 Inderman further told that his father (Murat Prasad) suffered injuries and he succumbed to the same. He has proved the first information report (Ext. A -1) lodged by him on the same day with police station Khatima. As to the motive for commission of murder, P.W. 1 Inderman has stated that there had been theft of paddy of one Sardar Munna Singh (P.W. 4) and when police came on 01.12.1988 to enquire into that matter in the village, the accused suspected that accused Hari Shyam has been named by Murat Prasad (deceased), and for that reason they got annoyed and committed the crime (All the four accused are brothers).

8. Statement of the complainant P.W. 1 Inderman is fully corroborated by the statement of P.W. 2 Ram Gopal, an eyewitness, who has stated that on 2nd of December 1988, at about 09:00 A.M., he heard noise and went to the spot and found that the accused / appellant Radhey Shyam, armed with BALLAM;

accused / appellants Hari Shyam, Ram Jagat and Ram Asrey, armed with LATHIES, were beating Murat Prasad. This witness has stated that his house is at a distance of 100 steps from the place of incident. In the cross-examination this witness has further stated that, though, he did not saw the accused giving blows but he saw them running from the scene of occurrence.

9. P.W. 3 Sita Ram has proved that in his presence the police took the blood stained soil and simple soil from the place of incident and prepared memorandum (Ext. A -2). He has further proved that inquest report (Ext. A -3) was prepared by the police in his presence. However, as to the witnessing of the incident he has stated that he did not see the occurrence. Therefore, this witness was got declared hostile by the prosecution.

10. P.W. 4 Digra Singh @ Munna Singh has stated that one month before the death of Murat Prasad, there had been theft of his paddy bags from a tractor trolley, of which he lodged a report with police outpost Majhola. The witness has further stated that when the police came to the village Meharban Nagar, the accused / appellants suspected that accused Hari Shyam had been named by their uncle Murat Prasad (deceased) and on getting annoyed they killed Murat Prasad. As such, this witness has corroborated the fact relating to motive for commission of crime as stated by P.W. 1 Inderman.

11. The statement of P.W. 1 Inderman not only gets corroboration from the statement of independent eyewitness P.W. 2 Ram Gopal and P.W. 4 Digra Singh @ Munna Singh but also from the ante mortem injuries quoted above, found by P.W. 7 Dr. J.K. Sharma, at the time of postmortem examination. The testimony of the complainant P.W. 1 Inderman and P.W. 2 Ram Gopal is natural and trustworthy, corroborated by the medical evidence. It is pertinent to mention here that the incident of commission of culpable homicide of Murat Prasad is a day light incident.

12. Having re-assessed the evidence on record, we concur with the trial court that the prosecution has successfully proved charge of offence punishable u/s 304 of I.P.C. against accused / appellants Hari Shyam, Radhey Shyam, Ram Jagat and Ram Asrey.

13. As to the recovery of knife with prohibited length blade, the evidence adduced by P.W. 5 Sub Inspector Vishram Singh at the time of the arrest of Radhey Shyam, cannot be disbelieved. He has not only proved the recovery of the knife, but also first information report lodged by him in this connection, and other papers on record. However, we are of the view that the trial relating to offence punishable u/s 4/25 of the Arms Act was needlessly consolidated with the trial in connection with the offence punishable u/s 304 of I.P.C., as both were independent offences. However, since no prejudice is caused to the accused / appellants by consolidation of the trial, we do not think it necessary to interfere with the impugned judgment and order, on that count.

14. On behalf of the accused / appellants Ram Jagat and Ram Asrey, Mr. Dinesh

Chauhan, learned Amicus Curiae submitted that the statement of P.W. 1 Inderman should not have been believed as P.W. 3 Sita Ram has not supported the prosecution story, and P.W. 2 Ram Gopal has admitted in his cross-examination that he did not see the incident. We have carefully gone through the statement of P.W. 2 Ram Gopal and found that he has clearly stated that, though, he did not saw the accused giving blows but he did see them running away from the place of incident. He also corroborated the fact that the accused were armed with LATHIES and BALLAM (long wooden rod with sharp edged pointed end). As such, it cannot be said that this witness has not seen the incident. The house of this witness was at a distance of 100 steps from the place of incident, and he has every opportunity to see the day light incident, as corroborated by him. As far as the statement of P.W. 3 Sita Ram is concerned, even if his statement is left out, from the remaining evidence the charge against the accused / appellants relating to offence punishable u/s 304 of I.P.C. is proved.

15. Mr. S.K. Mandal, learned Counsel for the accused / appellant Radhey Shyam has contended that the motive for commission of crime is not clearly proved by the prosecution. Having gone through the record of the case, we feel that the prosecution has shown the motive on the part of the accused for commission of crime. Even otherwise, in a case where the eyewitness account of the incident is there, it was not necessary for the prosecution to prove the motive. Learned counsel for the accused / appellant Radhey Shyam further argued that from the postmortem examination report (Ext. A -18) it appears that the incident has not occurred on the date and time suggested by the prosecution. We have re-examined the medical evidence and found that it is clearly mentioned in the autopsy report dated 03.12.1988, that the deceased had died about a day before. From the conditions mentioned in the autopsy report read with oral testimony of the Medical Officer, as to the passing of rigor mortis from the upper limb of the dead body, in our opinion, he (Medical Officer) has suggested that the incident had taken place on 02.12.1988, at about 09:00 A.M.

16. Lastly, it is argued on behalf of the accused / appellants that the deceased was uncle of the accused / appellants, and even if it is proved that they have given the blows with LATHIES and BALLAM, it cannot be said that they had intention to cause his death. Having gone through the evidence on record and after considering the statement of learned Counsel for the appellants and learned Additional Government Advocate for the State, we are of the view that though the trial court has rightly convicted the accused / appellants u/s 304 of I.P.C., but on the point on sentence they have been sentenced an extreme and maximum penalty of imprisonment for life u/s 304 of I.P.C. Considering the facts and circumstances of the case, we are of the view that sentencing each of the convicts to rigorous imprisonment for a period of ten years would meet the ends of justice. Accordingly, we are of the view that the appeal of accused / appellants Radhey Shyam, Ram Jagat and Ram Ashrey deserves to be allowed partly to the extent and the sentence awarded against them requires to be modified.

17. Accordingly, the appeal of accused / appellants Radhey Shyam, Ram Jagat and Ram Asrey are partly allowed. The impugned judgment and order dated 27.07.1995, passed by III Addl. Sessions Judge, Nainital, in Sessions Trial No. 217 of 1989 and 218 of 1989, is affirmed so far it relates to conviction of Radhey Shyam, Ram Jagat and Ram Asrey u/s 304 of I.P.C., and further conviction of Radhey Shyam u/s 4/25 of the Arms Act. The sentence awarded to Radhey Shyam u/s 4/25 of the Arms Act, is also affirmed. However, the sentence of imprisonment for life awarded to accused / appellants Radhey Shyam, Ram Jagat and Ram Asrey, is set aside. Instead, each one of the three is sentenced to rigorous imprisonment for a period of 10 years u/s 304 of I.P.C. The period already undergone by them during investigation, trial and appeal shall be set off against the sentence awarded by this Court. The sentence of three months rigorous imprisonment awarded by the trial court to accused / appellant Radhey Shyam u/s 4/25 of the Arms Act shall run concurrently. The appeal of accused / appellant Hari Shyam stands abated due to his death during the pendency of this appeal.

18. The Registry is directed to send back the lower court record for necessary action. Also, a copy of this judgment be sent to the Superintendent of jail concerned, where the accused / appellants are serving out the sentence.