
(2014) 11 AHC CK 0029

In the Allahabad High Court

Case No : Criminal Appeal No. 6436 of 2011 and Govt. Appeal No. 283 of 2012

Kalyan Singh

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 19-11-2014

Acts Referred:

Arms Act, 1959 — Section 25

Penal Code, 1860 (IPC) — Section 120-B, 149, 302, 307

Citation : (2015) 1 ACR 374 : (2015) 88 ALLCC 170

Hon'ble Judges : Rakesh Tiwari, J;Dinesh Gupta, J

Bench : Division Bench

Advocate : R.K. Mishra, G.K. Mishra and Rajendra Kumar Tripathi, Advocates for the Appellant

Judgement

Rakesh Tiwari, J.—Heard Sri R.K. Mishra, appearing for the appellant, learned A.G.A. for the State, and perused the record. This criminal appeal along with connected Government appeal challenge the judgment and order dated 29.9.2011 passed by the Additional District and Sessions Judge, Court No. 8, Aligarh in S.T. No. 856 of 2006 : State v. Manoj and others, under section 307/302/120-B, IPC, Case Crime No. 6 of 2006 connected with S.T. No. 857 of 2006 : State v. Manoj, under section 25 Arms Act, case Crime No. 13 of 2006 and State v. Ajeet Singh under sections 302/120-B, IPC case Crime No. 06 of 2006, registered at Police Station-Chandaus, District-Aligarh, whereby all the accused persons have been acquitted. Since both the appeals are filed against the same judgment and the facts are same, they are being decided by this common judgment.

2. Learned Counsel for the appellant in leading Criminal Appeal No. 6436 of 2011 has assailed the impugned judgment on the grounds that the order of acquittal passed by the Court below is contrary to the evidence adduced before the Court; that the Court below has wrongly interpreted the statement of P.W.-1 and P.W.-2 ignoring material evidence on record; that the finding recorded by the Court

below is perverse, baseless and against the record of the case; that from perusal of statements of P.W.1 and P.W. 2 given in the Court below, the offence under sections 307/302/120-B, IPC and 25 Arms Act are made out, but the Court below has illegally acquitted the accused persons which is not sustainable in eye of law.

3. The matrix of the prosecution in brief is that a written report was submitted by the complainant-Kalyan Singh son of Jaipal Singh, R/O Village-Umri, P.S.-Chandaus, District-Aligarh stating therein that on 30.1.2006 at about 7.00 P.M. his brother Ajit Singh was coming from Chandaus to his house on a motorcycle. Accused persons Manoj, Lala son of Surendra, Rakesh son of Mahendra and Surendra son of Makhan Singh of Village Umri were standing at the shop of one Vikas. Seeing the brother of complainant Ajit Singh (since deceased), accused persons started abusing him and when he objected they exhorted Manoj to shoot him. On this, Manoj fired upon Ajit Singh by a 12 bore country made pistol. Thereafter, all the accused persons ran away threatening that if any person would lodge a report or give evidence, he will also face the same consequences. The said incident was witnessed by Dharmpal son of Jai Singh, Bhole son of Gajraj Singh, Yogendra son of Jhabbu Singh. Subsequently, injured Ajit was taken to the hospital for treatment by Sarvir Singh son of Niranjana Singh, Yogendra Singh son of Jhabbu Singh, Dharmpal Singh son of Jai Singh and Bhole Singh son of Gajraj Singh.

4. Injured Ajit breathed his last during treatment in Medical College. Post-mortem examination on the cadaver of Ajit was conducted by P.W.3-Dr. V.P. Gupta on 31.1.2006 at 4 P.M. and the following ante-mortem injuries were found on his body:

"1. Wound of entry 5 cm x 3 cm in middle stomach in xiphoid process.

2. Stitched wound 27 cm x 7 cm on stomach just below injury No. 1."

5. In the opinion of the doctor, cause of death was shock and haemorrhage as a result of fire arm injury.

6. After completion of investigation, charge-sheet was submitted against all the accused-respondents.

7. After committal of the case to the Court of Sessions for the offence, charge was framed. All the accused persons pleaded not guilty and claimed trial.

8. The learned Sessions Judge after trial and appreciation of evidence on record vide its judgment and order dated 29.09.2011 acquitted the accused appellants, Manoj, Lala, Rakesh and Surendra of the charges under section 302/149 IPC, Mahendra Singh, Bablu and Ajit Singh of the charges under section 302/120-B, IPC and Manoj was also acquitted from the charge under section 25 of Arms Act. Aggrieved by the said judgment, complainant Kalyan Singh (appellant in the present criminal appeal) and the State of U.P. have filed present appeals.

9. The contention of learned Counsel for the appellant is that the order of

acquittal passed by the Court below is contrary to the evidence adduced before the Court; that the Court below has wrongly interpreted the statement of P.W.-1 and P.W.-2 ignoring material evidence on record; that the finding recorded by the Court below is perverse, baseless and against the record of the case; that from perusal of statements of P.W.1 and P.W. 2 given in the Court below, the offence under sections 307/302/120-B, IPC and 25 Arms Act are made out, but the Court below has illegally acquitted the accused persons which is not sustainable in eye of law.

10. We have considered the arguments advanced by learned Counsel for the parties.

11. From perusal of record, it appears that the incident is of 30.1.2006 which took place at about 7.00 P.M. The case had proceeded on the basis of the first information report Ext. Ka-12. From perusal of FIR, it is apparent that there is no mention of any source of light near the place of occurrence. This is also supported by the statement of Dharam Pal Singh -P.W. 2 who in his cross-examination has not stated any thing about there being any source of light. Therefore, story of prosecution that there was a gas lantern burning at the place of occurrence is not supported by evidence on record as stated above. Hence the Court has rightly disbelieved about the source of light at the place of incident. We may note here that even in the site-plan no source of light has been shown. This also raises doubt about there being any source of light in which incident could have been witnessed.

12. As regards motive is concerned, no strong motive is disclosed from perusal of the FIR. There is a only passing reference of abusing. In the cross-examination, complainant-Kalyan Singh-P.W. 1 has stated that he had good relation with the accused persons. We are fully concurred with the finding of the Trial Court that mere abusing between two members of the family who have good relations to each other, is not a strong motive for committing murder. Moreover, accused Mahendra, Bablu and Ajit who are alleged to have encouraged for murder of Ajit (since deceased) had neither been named in the FIR, nor the complainant-P.W. 1 had said anything against them in his statement. From perusal of record, it also appears that house of Dharam Pal Singh-P.W. 2 has not been shown in the site plan who is said to be living nearby the place of occurrence, whereas houses of other persons except him have not been shown, therefore, it cannot be said, that house of Daram Pal Singh situate near the place of occurrence and is presence at that place was natural. In our considered opinion, the Court below has given cogent reason for disbelieving the! statements of P.W. 1 and P.W. 2 in view of contradiction statements as well as in view of law laid down by the Apex Court in the case of Hasan Murtaza v State of Haryana 2002 (44) ACC 506.

13. In so far as recovery of 12 bore country made pistol from the possession of accused Manoj is concerned, there is no evidence on record that whether it was in working condition or not? This finding of the Trial Court finds support from the statement of I.O. -P.W.5 who in his statement has stated that he cannot say as

to whether said country made pistol was in working condition or not?

14. We find from perusal of the judgment impugned in these appeals that there is no illegality or infirmity in arriving at the conclusion by acquitting the accused Manoj, Lala, Rakesh and Surendra of the charges under section 302/149 IPC, accused Mahendra Singh, Bablu and Ajit Singh of the charges under section 302/120-B, IPC and accused Manoj under section 25 also.

15. For the reasons stated above and in view of the facts and circumstances of the case, we affirm the view taken by the Court below in the impugned judgment and order. Accordingly, acquittal of accused persons by the Court below is upheld. In result, the appeals stand dismissed. Let a copy of this order be certified to the concerned Chief Judicial Magistrate for immediate compliance.