
(2012) 06 UK CK 0044

In the Uttarakhand High Court

Case No : Criminal Appeal No. 122 of 2007 and Government Appeal No. 248 of 2007

Mannu

APPELLANT

Vs

State of Uttarakhand
 State of Uttarakhand Vs Ram
Pal and Others

RESPONDENT

Date of Decision : 15-06-2012

Acts Referred:

Arms Act, 1959 — Section 25
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2012) 2 NCC 652 : (2013) 1 UC 783

Hon'ble Judges : Barin Ghosh, C.J.; Umesh Chandra Dhyani, J

Bench : Division Bench

Advocate : Piyush Garg in Criminal Appeal No. 122 of 2007 and Mr. Amit Bhatt, Addl. Government in Government Appeal No. 248 of 2007, for the Appellant; Amit Bhatt, Addl. Government Advocate in Criminal Appeal No. 122 of 2007 and Mr. Rajendra Singh, Advocate in Government Appeal No. 248 of 2007, for the Respondent

Final Decision : Dismissed

Judgement

U.C. Dhyani, J.—An FIR was lodged with Police Outpost, Gowardhanpur, P.S. Manglore, District Haridwar on 05.01.2003 (Ext.Ka-7) at the instance of Harnand s/o Dalpath, Village Chandrapuri Khurd, Haridwar as regards offences punishable u/s 302 / 34 IPC. The said FIR implicated Rampal s/o Kala, Daleep s/o Seeta, Brijendra s/o Chatru and Mannu s/o Kala. An FIR was also instituted against Mannu s/o Kalu in relation to the offences punishable u/s 25 Arms Act on 24.01.2003. The prosecution allegations as contained in FIR were that on 05.01.2003 while the informant Harnand s/o Dalpath, his sons Vedpal and Laxmi Chand, Jabhra s/o Nathey were present at their home, Daleep s/o Seeta and Brijendra s/o Chatru came to their house and asked Laxmi Chand that they will settle the dispute of land going on between him (Laxmi Chand) and Mannu/Rampal. He informed that the villagers were about to come for panchayat.

Believing them to be true, Laxmi Chand followed them. Informant Harnand and his another son Vedpal along with Jhabar Singh also followed them. As soon as they reached the house of Mannu and Rampal, Daleep and Brijendra told Mannu to settle the dispute of Laxmi Chand. Accused persons caught hold of Laxmi Chand. Mannu took out a country made pistol and fired upon Laxmi Chand at his back. Informant and others tried to save Laxmi Chand but the assailants fled away. The incident took place at 1:00 p.m. The FIR was lodged on the same day at 2:20 p.m. The distance between the place of occurrence and police outpost was 12 Kms and hence there appeared to be no delay in lodging FIR (Ext.Ka-11).

2. After investigation of the case, charge sheet was submitted against accused persons for the offence punishable u/s 302 IPC read with Section 34 IPC. When the trial began, charge for the said offence punishable u/s 302 IPC was framed against the accused persons who pleaded not guilty and claimed trial. Accused Mannu was charged for the offence punishable u/s 25 Arms Act also. Prosecution examined as many as eleven witnesses. Statement of accused persons u/s 313 Cr.P.C. were taken. No witness was examined in defense. After hearing the parties learned trial court pronounced judgment on 26.03.2007. Accused persons Rampal, Daleep and Atru were exonerated of the charge framed against them by learned trial court. Accused / appellant Mannu was convicted of the offence punishable u/s 302 IPC and Section 25 Arms Act. He was awarded imprisonment for life and was also sentenced to pay a fine of Rs. 5000/- as regards offence punishable u/s 302 IPC. He was awarded two years rigorous imprisonment and a fine of "500/- in relation to the offence punishable u/s 25 Arms Act. Feeling aggrieved against the order of conviction and sentence, Mannu preferred this Appeal. Feeling aggrieved against the order of acquittal of Rampal, Daleep and Atru, State filed Government Appeal. Both the Criminal Appeal and Government Appeal are being decided together by this common judgment and order for the sake of brevity and convenience.

3. PW1 Vedpal said before the trial court that on 05.01.2003 at 1:00 p.m. when he along with his brother Laxmi Chand and his father Harnand were present at their residence, Daleep and Atru came to them and called Laxmi Chand. He said that there was a dispute of land between Laxmi Chand and Mannu, let the same be decided in panchayat. Laxmi Chand accompanied Daleep and Atru. Mannu and Rampal met them on their way to panchayat. PW1 Vedpal, Jhabar Singh (his cousin) and his father Harnand followed them to some distance. When Daleep, Atru and Laxmi Chand reached near the residence of Mannu, then Mannu showed country made pistol to Laxmi Chand. Laxmi Chand started running back. Appellant Mannu fired upon Laxmi Chand, which hit him on his back. All the four accused (Atru, Daleep, Mannu and Rampal) fled away from the spot after firing. When PW1 Vedpal, Jhabar Singh and his father Harnand reached on the spot, they found that Laxmi Chand was dead. They brought his dead body to Haridwar. Before that Harnand lodged complaint with police outpost.

4. In his cross-examination, PW1 Vedpal admitted at page no. 8 of the statement

that Mannu fired upon the on seeing Mannu. victim from a place which was near to his house. Laxmi Chand did not flee away on seeing Mannu. Mannu was wrapped in (bed) sheet. It is to be noted here that in his examination-in-chief, PW1 Vedpal said that Mannu fired upon the victim when he started running back. Mannu fired on the back of victim Laxmi Chand but in cross-examination he said otherwise that Laxmi Chand did not run

5. PW1 Vedpal at page no. 7 of his cross-examination said that he was at his residence till the murder took place. Jhabar alias Jhabar Singh was also at his residence. He did not go to forest. His (Vedpal's) father was also in his house. Although this witness said that he saw the incident from 20-25 paces but it appears according to his own admission that he did not see Mannu firing upon Laxmi Chand and went to the spot only when the fire was over.

6. PW2 Jhabar Singh, who was the cousin of victim said that when he was sitting in his house, Atru and Daleep came to the residence of Harnand and said that the dispute between Rampal and Mannu will be settled in the village panchayat. Laxmi Chand said that the matter was settled many a times but Rampal and Mannu did not abide by it. PW2 Jhabar Singh, PW3 Harnand and PW1 Vedpal followed Daleep, Atru and Laxmi Chand. No sooner they reached near the house of Mannu, he (Mannu) showed country made pistol to Laxmi Chand. No sooner Laxmi Chand returned on seeing the country made pistol, Mannu fired on his back.

7. According to this witness (PW2 Jhabar Singh), Mannu was wrapped in the cloth sheet. PW2 Jhabar Singh said that Laxmi Chand as well as Mannu (both) were having cloth sheet. But such cloth sheet said to have been wrapped around the body of victim did not find mention in the inquest report. It was mentioned in FIR that while three accused persons caught hold of victim, Mannu fired upon victim with his country made pistol. PW2 Jhabar Singh said that the moment the victim turned back, assailant fired upon him. PW2 Jhabar Singh did not say that any co-accused caught hold of victim. It appears that the story was developed that way after looking at the fact that the injured sustained injury on his back. PW2 Jhabar Singh also told that Laxmi Chand said before breathing his last that Mannu fired upon him. The said statement is nothing but hearsay evidence.

8. In the cross-examination PW2 Jhabar Singh said that Chhatar Pal, village pradhan reached after five minutes of murder of Laxmi Chand. Chhatar Pal belonged to Vedpal's caste and village pradhan was their relative. This witness was not aware of the fact whether there was any dispute of land between Mannu and Laxmi Chand. In other words, he was not aware of the mens rea of the crime. He (PW2 Jhabar Singh) also admitted that no panchayat was convened before the date of incident. Informant Harnand and victim Laxmi Chand did not convene any panchayat. PW2 Jhabar Singh admitted that there was a dispute of demarcation of land between Laxmi Chand (victim), Rampal and Mannu (accused). He was not aware whether any litigation regarding the same was pending or not. Daleep and Atru did not belong to his village. Atru's village was

situated at a distance of 50-55 Kms from the village of this witness. Daleer's village was situated at a distance of 20-22 Kms. In a nutshell panchayat did not sort out the dispute between Laxmi Chand, Rampal and Mannu. The moot-question is-could the dispute of demarcation of land be sorted out by panchayat? If not, why such panchayat was to be convened?

9. When this witness reached on the spot he saw that the blood was oozing out from the back of Laxmi Chand. This eyewitness was the cousin of victim. He reached on the spot only after he heard hue & cry.

10. PW3 Harnand supported the prosecution version which was projected through his complaint. He said among other things, that Daleep and Rampal caught hold of Laxmi Chand and Mannu fired upon Laxmi Chand which hit him at his back. He reiterated what was mentioned in FIR. He proved his complaint (Ext.Ka-1) on the basis of which chik FIR (Ext.Ka-11) was registered. Atru called Laxmi Chand and accompanied him till such time he (Laxmi Chand) was killed by Mannu. Since Brijendra was Atru's son, therefore, Brijendra's name was wrongly mentioned in FIR. In fact Atru was present on the spot and Brijendra's name was mentioned under confusion. But such a discrepancy could not be explained in view of the statement of PW3 Harnand that Brijendra was a young man and Atru was old. Learned counsel for the accused appellant pointed out that the incident took place at 1:00 p.m., FIR was lodged at 2:20 p.m. and in the circumstances it could not be believed that the inquest might have been conducted at 2:20 p.m. On second thought learned counsel for the appellant corrected himself by saying that inquest was conducted at a later point of time.

11. Although PW1 Vedpal and PW2 Jhabar Singh stated that no panchayat took place on the fateful day, PW3 Harnand asserted that reconciliation took place that day and a few relatives attended the same. In other words, while PW1 Vedpal and PW2 Jhabar Singh said that no reconciliation took place on the fateful day, PW3 Harnand said that it did take place. The most important thing to be considered in this connection is that the reconciliation takes place only when there is a dispute. If there is no dispute, then what for the reconciliation will take place?

12. PW3 Harnand said that he was not aware as to what was written in his complaint. Chhatra Pal was the scribe and he did not know what was written in it, although he put up his thumb impression on the same. Learned counsel for the appellants referred to page no. 7 of the statement of PW3 Harnand wherein he said that people were seeing dead body of victim when he reached there. Learned counsel submitted that ultimately the truth has come out. Learned counsel argued that in such a situation father's testimony may be discarded. If father's evidence goes everybody's evidence will go, learned counsel pleaded.

13. PW4 Kalian was said to be independent witness but his name did not figure in FIR. His name figured only in PW3 Harnand's statement. He said in examination-in-chief that he heard sound of fire from his residence. When he reached on the

spot Vedpal, Harnand and many others reached there. Chhatar Pal (village pradhan) scribbled report. Atru, Daleep, Mannu and Rampal killed Laxmi Chand. They fled away no sooner PW4 Kalian reached there. Village Pradhan Chhatar Pal reached on the spot at 1:00 p.m. PW4 Kalian admitted in his cross-examination that Laxmi Chand was dead by the time he reached there. When he reached on the spot Harnand and Vedpal were weeping near the dead body. The deceased was related to him. PW4 Kalian also admitted that when he reached near the dead body, accused persons fled away from the scene.

14. PW5 Pramod Kumar was a witness of inquest. He identified his signatures on inquest report (Ext.Ka-2). In his cross-examination, PW5 Pramod Kumar admitted that the victim was wearing only white kurta pajama and a blue sweater. He did not put in anything else (over and above) kurta pajama and sweater. He did not mention anywhere that the cloth sheet was wrapped around the body of victim. This witness said that although the blood was oozing from the back of victim but there was blue colour mark in the front. It is to be noted here that no such mark was disclosed in the post mortem examination.

15. PW6 Janeshwar was the eyewitness who supported prosecution story. He heard a voice from Mannu's residence that the matter relating to Laxmi Chand be settled today. No one else uttered these words that someone in the house of Mannu said that the matter of Laxmi Chand be settled. Laxmi Chand tried to go back after hearing said words but Daleep and others stopped him from doing so. Mannu and Rampal also came to him in the meantime. Mannu took out revolver and fired upon Laxmi Chand. Laxmi Chand bid adieu by saying that Mannu fired upon him.

16. PW6 Janeshwar's name was not taken by others. His name did not find place in FIR either. So his testimony should be accepted with a pinch of salt. In the cross-examination, he said that only one pellet was fired. At page no. 5 of his cross-examination he admitted that when he reached on the place of occurrence, victim Laxmi Chand was already dead. So the testimony of this witness also did not help prosecution much.

17. PW7 Chhatar Pal also said that when he reached on the spot, dead body of Laxmi Chand was lying on ground (he was already dead). He scribbled complaint (Ext.Ka-1) as per dictation of PW3 Harnand. He was also a signatory to inquest report (Ext.Ka-2) and Memo (Ext.Ka-3) regarding taking of simple soil and blood stained soil.

18. PW8 Doctor Brijendra Kumar Singh conducted post mortem on the dead body of Laxmi Chand on 06.01.2003. he found following ante mortem injuries on the dead body of Laxmi Chand:

Firearm wound of entry 2 cm x 1.5 cm in size with margin inverted. Tattooing, blackening around the margin at the level of inferior angle of left scapula 2 cm lateral to mid line at back. Directing laterally and upward leading to fracture fourth rib posteriorly. Then lacerating lower left lung. Then fracturing second rib

in front side. The metallic bullet size 3 cm x 7 cm recovered just beneath the skin.

19. He also proved his report (Ext.Ka-4). According to doctor the cause of death of victim was shock and hemorrhage as a result of ante mortem injuries.

20. A country made pistol and cartridges was recovered on the disclosure and pointing of accused / appellant Mannu, according to PW9 Hukam Singh. PW9 Hukam Singh was son of informant Harnand. He was a related witness. Although no question was asked in the cross-examination of this witness, yet it will not be safe to convict accused/ appellant Mannu as regards offence punishable u/s 25 Arms Act on the strength of testimony of this related witness alone.

21. PW10 SI Jawahar Singh Rathor was the Investigation Officer of the case, who investigated this case. He submitted charge sheet against the accused persons and proved documents relating to investigation.

22. PW11 Constable Vipul Kumar was a formal witness who proved a few papers of prosecution.

23. As said earlier, statements of the prosecution were taken u/s 313 Cr.P.C. Glaring mistakes in the questions thus asked were highlighted by learned counsel for the accused / appellant. We agree that proper questions were not put to the accused to enable the accused / appellant as well as accused / respondents to explain circumstances appearing in the evidence against them.

24. Learned trial court did not deal with Ballistic Expert's Report. No specific paragraph was found dealing with such report except the result of Forensic Science Laboratory at page 17 of the judgment. It appears that the bullet found embedded in the body of victim was not fired from the pistol (allegedly of appellant Mannu). Learned counsel for the appellant (in Criminal Appeal No. 122 of 2007) submitted that if injury was on the back of victim, it means that he was hit upon while running away. But if bullet was going on in upward direction and there was blackening - it indicates that he was fired almost on the body from a close range. The assailant and victim were not on the same level. It appears that the assailant fired upon the victim from a place which was comparatively at a lesser height. It is pertinent to note here that if the accused persons caught hold of victim, injury would not have come at the back. If the accused persons uttered the words, "let us finish him off" and they caught hold of victim, the injury would have not come at the back, instead it would have come at the front. The oral evidence thus offered on behalf of prosecution is at variance vis-?-vis the seat of injury.

25. There is no mens rea on the part of accused to have killed the victim. The dispute as alleged must have a gravity. Could a dispute of demarcation of land be settled through panchayat? If not, why the panchayat was convened? If yes, there is no evidence on record to show that such a panchayat was convened. There is material contradiction in the testimony of prosecution witnesses whether such panchayat was convened or not. In a nutshell there is no strong motive on

the part of accused to have killed victim.

26. All the prosecution witnesses but for one were related witnesses. Although there was an independent witness but he came afterwards. He did not witness the crime. The evidence of related witnesses must be scrutinized with vengeance. Judging the evidence by this yardstick, we are of the opinion that the evidence thus offered does not inspire confidence primarily because there are clinching material contradictions on vital points.

27. Medical evidence did not corroborate the manner in which victim sustained bullet injury. If the victim was caught by accused persons and one of them fired upon victim, the seat of injury should have been on the front and not at the back. If the victim ran away after hearing the threatening words that the matter be settled today, then the seat of injury would be at the back. But the oral evidence led by prosecution is inconsistent on this point. A few of them said that he was fired upon when victim, started running away while the others said that no such words threatening the victim were used by assailants (and therefore there was no question of his running back). Further, there appeared to be no cogent explanation of lateral and upward direction of firearm wound of entry. It was not the case of prosecution that the assailant fired upon the victim from a place which was comparatively at a lesser height.

28. A case of interference is thus made out in the judgment and orders relating to conviction and sentence of accused / appellant Mannu in Criminal Appeal No. 122 of 2007.

29. Appeal preferred on behalf of appellant Mannu is therefore, allowed. The judgment / order dated 26.03.2007 passed by learned trial court is accordingly set aside so far as it relates to appellant Mannu. The conviction recorded in respect thereof and sentence thus awarded to him are also set aside. Appellant Mannu is in Jail. He be set at liberty forthwith, if not required to be detained in any other case. An information to this effect be sent to the Superintendent of Jail where the appellant is currently serving out the sentence.

30. So far as Government Appeal no. 248/2007 preferred by the State of Uttarakhand against the accused-respondents Ram Pal, Dalip and Atru is concerned there is hardly any scope of taking an alternative view than expressed by the learned court below. We accordingly dismiss the appeal. Let a copy of the Judgment be sent to the court concerned for compliance. Lower court record be also sent back.