
(2011) 04 UK CK 0034

In the Uttarakhand High Court

Case No : Criminal Appeal No. 1713 of 2001 (Old No. 1573 of 2000)

Nitin Singhal

APPELLANT

Vs

State of U.P. (now State of Uttarakhand)

RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 313, 374

Penal Code, 1860 (IPC) — Section 302, 34, 394, 411

Uttar Pradesh Reorganisation Act, 2000 — Section 35

Citation : (2011) 04 UK CK 0034

Hon'ble Judges : Servesch Kumar Gupta, J; Prafulla C. Pant, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Prafulla C. Pant, J.—This appeal, preferred u/s 374 of the Code of Criminal Procedure, 1973 (for short Code of Criminal Procedure), is directed against the judgment and order dated 27.06.2000/28.06.2000, passed by Addl. Sessions Judge (UMC), Dehradun, in Sessions Trial No. 77 of 1997, whereby accused/Appellant Nitin has been convicted u/s 302 read with Section 34, 394 and 411 of the Indian Penal Code, 1860 (for short I.P.C.). He has been sentenced to imprisonment for life and directed to pay fine of Rs. 1,00,000/- u/s 302/34 of I.P.C., rigorous imprisonment for a period of five years and directed to pay fine of Rs. 10,000/- u/s 394 of I.P.C. He has been further sentenced to rigorous imprisonment for a period of two years u/s 411 of I.P.C.

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

3. Prosecution story, in brief, is that on 10.11.1996, Arun Agarwal (deceased) was coming from his P.C.O. in his Maruti car registration No. CH01 H/7565. At about 01:00 P.M., when he reached near Himani Gas Service on Laxmi road, within the limits of police station Dalanwala, two persons stopped his car, fired at him, and looted cash valued Rs. 10,000/- and three gold rings. P.W. 1 Girish Bakshi lodged first information report (Ext. A-1) at police station Dalanwala,

within fifteen minutes of the incident, against two unknown persons. Police also rushed to the spot and took the injured Arun Agarwal in their vehicle to Doon Hospital. However, he (Arun Agarwal) succumbed to the injuries within half an hour of the incident. At 01:45 P.M., the police took dead body of the deceased in their possession and started preparing inquest report (Ext. A-2) in Doon Hospital. The police got prepared other necessary papers and sent the dead body for postmortem examination through Constable Sardari Lal (P.W. 10) in sealed condition. P.W. 5 Dr. S.C. Singhal, on the very day (10.11.1996), at about 06:30 P.M., conducted postmortem examination on the dead body of Arun Agarwal, and recorded two ante mortem injuries. The said Medical Officer opined that deceased had died of shock and haemorrhage caused by ante mortem gun shot injury. The investigation of the case was taken up by P.W. 13 Sub Inspector Raj veer Singh. Immediately after the incident, the police party made an attempt to chase the two accused, who were said to have fled with the looted car. Prosecution case is that at Lacchiwala, the two left the car and ran towards the jungle. When the injured Arun Agarwal was being taken by the police towards Doon Hospital, P.W. 4 Inspector V.K. Sharma recorded dying declaration of the deceased, in which he (deceased) allegedly disclosed names of one Rahul Sharma @ Rajnesh @ Charu, and that of present Appellant Nitin, as the persons who fired shots at him. During investigation accused/Appellant Nitin was arrested, and he was put on Test Identification Parade, where he was identified correctly. Also, during investigation, two of the three gold rings said to have been looted, were recovered on pointing out of the accused Nitin on 11.12.1996, and recovery memo (Ext. A-7) was prepared. Said rings were identified by P.W. 8 Neena Agarwal, widow of the deceased, in the Test Identification of said property. On completion of investigation, charge sheet (Ext. A-10) was filed against accused/Appellant Nitin, and the absconding accused Rahul Sharma @ Rajnesh @ Charu, in respect of offences punishable u/s 302, 394 and 411 of I.P.C.

4. On receipt of the charge sheet, the Chief Judicial Magistrate, Dehradun, after giving necessary copies to the accused Nitin as required u/s 207 of Code of Criminal Procedure, committed his case to the Court of Sessions for trial. The case of accused Rahul Sharma @ Rajnesh @ Charu stood separated as he could not be arrested by the time case was committed. On 16.09.1997, after hearing the parties, the trial Court framed charge of offences punishable u/s 302 read with Section 34, Section 394 and Section 411 of I.P.C. against the accused (present Appellant) Nitin, to which he pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1 Girish Bakshi (complainant -declared hostile), P.W. 2 Sanjeev Thakur (declared hostile), P.W. 3 Munna (declared hostile), P.W. 4 Inspector V.K. Sharma (who is said to have recorded the dying declaration); P.W. 5 Dr. S.C. Singhal (who conducted the postmortem examination); P.W. 6 Sub Inspector Laxmi Chandra (who participated in the Test Identification Parade (T.I.P.)); P.W. 7 Dr. H.K. Sharma (who prepared medical report when Arun Agarwal was brought to Doon Hospital); P.W. 8 Neena Agarwal (widow of the deceased, who identified the rings); P.W. 9 Asstt. Sub Inspector

Mam Chandra Singh (witness of recovery of two rings), P.W. 10 Constable Sardari Lal (who took dead body in sealed condition for autopsy); P.W. 11 Constable Om Swaroop (who was Moharrir of the Magistrate who conducted Test Identification Parade); P.W. 12 Rajveer Singh (who was member of the police team which chased the culprits after the incident): P.W. 13 the then Sub Inspector Rajveer Singh (who investigated the crime), and P.W. 14 Sr. Sub Inspector Prem Pal Singh. The oral and documentary evidence was put to the accused u/s 313 of Code of Criminal Procedure, in reply to which he alleged that evidence adduced against him is false and he has been falsely implicated in the crime. In defence, D.W. 1 Anuj Jain was got examined (to show that T.I.P. lost the value) who stated that photograph of Nitin (present Appellant) was published in the newspaper on 30th of November 1996, after the incident. The trial Court, after hearing the parties, found that the prosecution has successfully proved charge of offences punishable u/s 302/34, 394 and 411 of I P C. against the accused Nitin, and convicted him accordingly, on 26.06.2000. On 28.06.2000, after hearing on sentence, the convict was sentenced to imprisonment for life and directed to pay fine of Rs. 1,00,000/- u/s 302/34 of I.P.C., rigorous imprisonment for a period of five years and directed to pay fine of Rs. 10,000/- u/s 394 of I.P.C., and rigorous imprisonment for a period of two years u/s 411 of I.P.C. Aggrieved by said judgment and order dated 26.06.2000/28.06.2000, passed by Addl. Sessions Judge (UMC), Dehradun, in Sessions Trial No. 77 of 1997, this appeal was filed by before the Allahabad High Court by the convict on 5th of July 2000, where the same was admitted on 6th of July 2000. 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 recorded by P.W. 5 Dr. S.C. Singhal in the autopsy report (Ext. A-4), after postmortem examination on the dead body of Arun Agarwal on 10.11.1996, at 06:30 P.M. Following are the ante mortem injuries found on the body of the deceased:

i) Stitched wound with three stitches, present left side of abdomen 5 cm lateral to umbilicus.

ii) one abraded contusion present on left side, 6 cm below the injury No. (i).

On internal examination a metallic bullet was found embedded in the spinal cord of the deceased. The bladder of urine was found ruptured. Abdominal cavity was found full of blood. The aforesaid Medical Officer opined that the deceased had died of shock and haemorrhage due to ante mortem gun shot injury.

6. P.W. 7 Dr. H.K. Sharma, who was posted in Doon Hospital has recorded the injury on the person of Arun Agarwal, at about 01:25 P.M., on 10.11.1996, in the injury report (Ext. A-5) prepared by him, when the deceased was brought to the hospital. He has simply mentioned in his report that the general condition of the deceased was very low, pulse and B.P. was not recordable. Patient was sweating

profusely. There was wound of entry of 3 cm X 2 cm elliptical in shape, 5.5 cm from the umbilicus at 3 O'clock position at the left side. Blackening and scorching of the margins were also present. Shapes inverted. Probing not done as Omentum was prolapsing out of wound and there was fresh bleeding from the wound. The injury recorded in Ext. A-5 corresponds to the ante mortem injury No. (i) mentioned in the autopsy report. From the medical evidence on record it is established on the record that Arun Agarwal has died homicidal death on 10.11.1996. Now, we have to examine whether the accused/Appellant Nitin, with common intention with co-accused Rahul Sharma @ Rajnesh @ Charu robbed the deceased and committed his murder, or not. We have also to examine whether the recovery of the two rings (looted property) was made from the accused Nitin, or not.

7. On behalf of the Appellant it is pleaded that during the pendency of this appeal the absconder co-accused Rahul Sharma @ Rajnesh @ Charu was arrested and put to trial in respect of offences punishable u/s 394/34 and 302/34 of I.P.C. It is pointed out that vide judgment and order dated 28.11.2005, said accused (Rahul Sharma @ Rajnesh @ Charu) was acquitted by the Sessions Judge, Dehradun, passed in Sessions Trial No. 23 of 2004. On this ground it is argued that in view of said acquittal now the conviction of the present accused/Appellant is liable to be set aside. Though, principle of falsus in uno falsus in omnibus is not applicable in India, and it is not necessary to acquit all the accused or convict all of them, but in the present case, there are only two accused, and the role of the present accused/Appellant is that he committed robbery and murder with common intention with co-accused Rahul Sharma @ Rajnesh @ Charu.

8. Mr. Rajendra Kotiyal, learned Counsel for the Appellant drew out attention to the copy of the extract of the General Diary (Ext. A-13), and pointed out that the version of the prosecution is that it was accused Rahul Sharma @ Rajnesh @ Charu who had enmity with Arun Agarwal (deceased) and it was he (Rahul Sharma @ Rajnesh @ Charu) who fired the shot, and role of the present accused/Appellant is that he was accompanying him. In this connection, it is contended that after the person (Charu) who is said to have fired shot has been acquitted by the trial Court vide its judgment and order dated 28.11.2005, passed in Sessions Trial No. 23 of 2004, by the Sessions Judge, Dehradun, the conviction of the present Appellant cannot be sustained, as his role in the crime is said to be in common intention with the accused (which stood acquitted). Learned Counsel for the State could not point out if any appeal against acquittal is pending, and as such, the acquittal of the main accused stands to have attained finality. In the above circumstances, we are of the view that the conviction of the present accused/Appellant so far as it relates to offences punishable u/s 302/34 and that of Section 394 of I.P.C. is concerned, cannot be sustained. The dying declaration relating to the robbery by the two accused has been disbelieved by the Sessions Judge, in Sessions Trial No. 23 of 2004, and after said judgment has attained finality, it is not desirable on the part of this Court to uphold the

conviction of the present accused/Appellant whose role is said to have been that of one who was accompanying the main accused Rahul Sharma @ Rajnesh @ Charu.

9. However, so far as the conviction of the present accused/Appellant Nitin u/s 411 of I.P.C. is concerned, we find no reason to disagree with the trial Court, as the recovery of the two rings (said to have been robbed) is sufficiently proved on the record. P.W. 14 Sr. Sub Inspector Prem Pal Singh, P.W. 13 Inspector Rajveer Singh and P.W. 9 Asstt. Sub Inspector Mam Chandra Singh have sufficiently proved the recovery of the two looted rings on pointing out of the accused on 11.12.1996, regarding which memorandum Ext. A-7 was prepared by the police. It has also been proved on the record that P.W. 8 Neena Agarwal, widow of the deceased, identified the two rings in the Test Identification of the property. The accused/Appellant Nitin is said to have remained in jail for about 20 months.

10. In the above circumstances, and for the reasons discussed above, this appeal is partly allowed. The conviction and sentence recorded by the trial Court against accused/Appellant Nitin is set aside so far as it relates to offences punishable u/s 302/34 and 394 of I.P.C. He is acquitted of said charge. However, his conviction is maintained u/s 411 of I.P.C. To that extent his appeal is dismissed. The sentence awarded to the accused/Appellant is modified on said charge i.e. u/s 411 of I.P.C., and the Appellant is sentenced u/s 411 of I.P.C. to rigorous imprisonment for a period of 20 months (which he has already undergone) during trial and during the period of this appeal, and fine of Rs. 10,000/-, in default of payment of which he shall undergo further imprisonment for a period of six months. The appeal accordingly stands disposed of. The lower Court record be sent back.