
(2014) 11 AHC CK 0085
In the Allahabad High Court
Case No : Crl. A. No. 4181 of 2014

Omveer Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-11-2014

Acts Referred:

Arms Act, 1959 — Section 25, 27
Criminal Procedure Code, 1973 (CrPC) — Section 161, 372
Penal Code, 1860 (IPC) — Section 120B, 302, 34

Citation : (2014) 3 ACR 3514 : (2015) 2 ALJ 222 : (2015) 88 ALLCC 183

Hon'ble Judges : Vijay Lakshmi, J; Rakesh Tiwari, J

Bench : Division Bench

Advocate : Anoop Trivedi, Advocates for the Appellant

Judgement

Vijay Lakshmi, J.—Challenging the legality and correctness of the judgment and order dated 6.8.2014 passed by learned Additional Sessions Judge, court No. 6, Meerut in four consolidated session trials S.T. No. 371 of 2011, State v. Anil Kumar and others, S.T. No. 372 of 2011, State v. Anil Kumar, S.T. No. 845 of 2011, State v. Krishna Pal and S.T. No. 1182 of 2012, State v. Parvender and others, whereby acquitting all the accused persons from the charges levelled against them, the complainant Omveer Singh has preferred this criminal appeal under Section 372, Cr.P.C.

2. Heard learned counsel for the appellant and learned A.G.A. on the point of admission and perused the impugned judgment.

3. The prosecution story, in brief, is that on 22.6.2010 at about 9.30 a.m. when the complainant/appellant Omveer Singh was returning to his home, he heard the sound of firing coming from the street. He rushed towards the street and saw 3 unknown miscreants, killing his son Sandeep, by indiscriminate firing in front of the house of Dr. Walliyan. After the occurrence, all the miscreants ran away from the spot on two motor-bikes. Due to shock of fearful sight, the complainant could not notice the numbers of motorcycles. On reaching home he was informed that

Sonu alias Sandeep son of Gopal Singh had asked his son by a phone call to come out of his house.

4. On the basis of this written report scribed by Krishnapal Singh, a criminal case was registered at Case Crime No. 365 of 2010 under Sections 302/34, I.P.C., P.S., Kankarkherha, district Meerut against three unknown persons. During investigation this fact came to light that Monika, wife of deceased Sandeep, had illicit relation with an accused Anil alias Fauji and both of them had hatched a criminal conspiracy with accused Rohtash to eliminate Sandeep. For this purpose they had engaged contract killers Parvinder alias Sonu alias Langara and Arvind for Rs. 1,25,000. In pursuance of such criminal conspiracy Sandeep was killed on 22.6.2010 at 9.30 a.m. On 9.10.2010 Anil and Monika were arrested and a country made pistol of 315 bore was recovered from accused Anil who confessed his guilt before the police. Charge-sheet was submitted in court against all the accused-respondents. The case being exclusively triable by the court of sessions, it was committed to the sessions court where charges under Sections 302 read with 120B and 302 read with 34, I.P.C. and Sections 25/27 Arms Act were framed. All the accused-respondents denied from the charges and claimed their trial.

5. The prosecution in order to prove its case produced a number of documentary evidence and 4 witnesses of fact in the trial court. The informant Omveer Singh, father of the deceased Sandeep, was produced as P.W. 1, P.W. 2 is Niranjn Singh who is said to have seen the accused persons while they were running away from the spot after the occurrence, P.W. 3 Anita, is the mother of the deceased and P.W. 4 Ved Singh is the witness of extra judicial confession made by accused Arvind, Krishna Pal Singh and Kuldeep but this witness has turned hostile and he has not supported the prosecution case. The remaining witnesses are the formal witnesses.

6. The impugned judgment reflects that the learned trial court has discussed in detail the statements of all the witnesses of facts and has expressed its clear view that it is a case of circumstantial evidence because two eye-witnesses P.W. 1 Omveer Singh and P.W. 2 Niranjn Singh both have admitted the fact that they could not identify the accused persons while they were running from the spot after the occurrence. The learned trial court has expressed its view that in case of circumstantial evidence, motive is an important link but there is no evidence on record relating to the motive as alleged by the prosecution, i.e., extra marital affairs of the deceased's wife Monika with one Anil alias Fauji. With regard to charge under Sections 25/27 Arms Act the learned trial court has observed that the country made pistol alleged to be recovered from the possession of Anil alias Fauji alongwith two live cartridges and 5 empty cartridges recovered from the place of occurrence were sent to the Forensic Science Laboratory which is Ext. Ka. 26 on the record which clearly shows that the empty cartridges recovered from the place of occurrence were not of the country made pistol recovered from Anil alias Fauji. P.W. 4 Ved Singh, who is the brother of P.W. 1 Omveer Singh and

the uncle of the deceased has turned hostile. The learned trial court has also considered the fact that there is no public witness of the recovery of the country made pistol from Anil. The statement of P.W. 3 Anita, the mother of the deceased, was found unreliable by the court below on the ground that her testimony is in total contradictions with her earlier statement recorded under Section 161, Cr.P.C. and her statement recorded in the court and there is no mention of the facts stated by her in court in the F.I.R.

7. On the aforesaid grounds, the learned trial court came to the conclusion that the prosecution has failed to prove its case beyond reasonable doubt and accordingly, acquitted the accused persons.

8. Sri Anoop Trivedi, appearing for the appellant/complainant, has vehemently argued that out of 4 witnesses of facts, 3 witnesses have categorically supported the prosecution case and there is no material contradictions in their statements. He has next contended that it does not make any difference if the facts stated by P.W. 3 Anita, mother of the deceased, have not been mentioned in the F.I.R. because the F.I.R. is not an encyclopedia. Moreso, in the state of shock due to the death of his son, the informant was not in a position to mention every minute details in the F.I.R. Sri Trivedi has contended that there was strong motive with the accused persons for committing the murder of deceased as the deceased's wife Monika had illicit relation with Anil, one of accused persons, but the learned trial court has wrongly acquitted the accused persons on the ground that the prosecution has failed to prove the motive alleged by it.

9. After hearing rival contentions from both sides and after a careful scrutiny of the facts of the case in hand, it is clear that the case in hand is based on circumstantial evidence. The F.I.R. has been lodged against unknown persons meaning thereby the informant was ignorant of the names of miscreants at the time of lodging of the F.I.R., although P.W. 1 has alleged that he had seen the occurrence and the miscreants while they were running on two motorcycles after killing his son but during his cross-examination he has admitted the fact that neither he could identify the accused persons at that time nor he could see the numbers of their motorcycles. P.W. 2 Niranjana Singh has only stated that he had seen 3 persons running away from the place of occurrence on two motorcycles but admittedly he also had not recognised them. Although P.W. 3 Anita has stated that Anil had shot the first fire but she has not stated a single word about the place from where she had seen the appellant Anil firing first shot on his son. Dr. Wallian, in front of whose house the occurrence had taken place, could have been the best witness but he has not been produced by the prosecution. The deceased was a property dealer and the possibility of his inimical relations with several persons due to property disputes cannot be ruled out. P.W. 3 Anita had admitted the fact that her son Sandeep had performed love marriage with Monika. She was against such love marriage and was angry with Monika. Hence, the possibility of false implication of Monika also cannot be ruled out. By the statement of P.W. 3 Anita, it is apparently clear that she has admitted that the

facts stated by her in court during her testimony have not been recorded by the Investigating Officer under Section 161, Cr.P.C.

10. It is a case of circumstantial evidence and the law relating to circumstantial evidence is well-settled that the chain of circumstances should be complete and all the circumstances should point out only towards the guilt of the accused and towards no other hypothesis.

11. So far as the present case is concerned, the chain of circumstances appears to be broken from so many places. Although it is alleged that due to extra marital affairs between Monika and Anil, the deceased was murdered with the help of contractual killers but there is no evidence on record in proof of these facts. Under these circumstances, learned lower court has rightly acquitted the accused persons. Learned counsel for the appellant has not been able to show any infirmity or illegality in the impugned judgment. Moreso, in a catena of judgments the Hon"ble Supreme Court has laid down the law that even if where two views are reasonably possible from the very same evidence, appellate court should not reverse the judgment of acquittal by trial court viz. C. Antony Vs. K.G. Raghavan Nair, ; Chandrappa and Others Vs. State of Karnataka, ; K. Prakashan Vs. P.K. Surenderan, ; and T. Subramanian Vs. State of Tamil Nadu, .

12. After giving our thoughtful consideration to the arguments advanced by learned counsel for the appellant and after careful scrutiny of the impugned judgment, we are of the firm view that the appeal is liable to be dismissed and is hereby dismissed accordingly.