
(2012) 04 UK CK 0075
In the Uttarakhand High Court
Case No : Criminal Appeal No. 195 of 2006

Raju	Vs	APPELLANT
State of Uttaranchal		RESPONDENT

Date of Decision : 13-04-2012

Acts Referred:

Arms Act, 1959 — Section 25
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2012) 04 UK CK 0075

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

Bench : Division Bench

Advocate : Jagjit Singh Virk, for the Appellant; Prabhakar Joshi, Brief Holder for the State, for the Respondent

Final Decision : Allowed

Judgement

Barin Ghosh, C.J.—In relation to an incident, Raju, appellant in CRLA No. 195 of 2006 (hereinafter referred to as A1) and, Saling Ram, appellant in CRLA No. 200 of 2006 (hereinafter referred to as A2) have been convicted by a common judgment. While A1 has engaged Mr. Jagjit Singh Virk as counsel to press the appeal, A2 has engaged Mr. Kailash Joshi, Mr. R.B. Agarwal and Mr. M.K. Agarwal as counsel to argue the appeal. Counsel engaged by A2 are not present in court. Counsel engaged by A1 has made elaborate submissions pertaining to the entirety of the subject matter of complaint in the two appeals. After having had heard learned counsel for A1, we felt that it is not necessary for the counsel for A2 to re-argue the matter on behalf of A2. We, accordingly, decided to dispose of both the appeals by this judgment and order.

2. It appears that on 10th October 2003, at 08:45 P.M., a first information report was recorded on the basis of the oral submissions made by the wife of the deceased, who deposed in course of trial as P.W.1. In the first information report it was alleged that at around 06:00 P.M. of the selfsame date, A1 and A2, armed respectively with a firearm (Katta, a country made pistol) and a Paatal (a sharp

edged weapon), came to the house of the deceased, when the deceased and P.W.1 were present. A1 and A2 were made to return. Then it transpired that A1 and A2 are hiding near a canal situate close to the house of the deceased. P.W.3 came to the house of the deceased and, the deceased and P.W.3 went to the canal to look for A1 and A2, when A1 fired upon the deceased and, A2 used the Paatal on the deceased, where upon A1 was apprehended by P.W.2 and P.W.3, but A2 fled. On this report, investigation was made, where upon a charge sheet was filed. Accepting the charge sheet, charge was framed against A1 in respect of offences punishable u/s 302 of the Indian Penal Code and Section 25 of the Arms Act. A1 has been exonerated of the charge punishable u/s 25 of the Arms Act, by the judgment under appeal, in view of absence of permission of the Magistrate. The charge against A2 was commission of such offence, which is punishable u/s 302 of the Indian Penal Code. A1 and A2, having denied the charge thus framed, to prove the allegations on the basis whereof the charges were framed, prosecution relied principally on the evidence of P.W.1, P.W.2 and P.W.3 as well as recovery memo of a country made pistol and the report of the Ballistic Expert. In course of trial inquest report as well as the postmortem report were proved. No arrest memo of A1 was produced before the court below. Whereas P.W.1 is the wife of the deceased, P.W.2 and P.W.3 are brothers and, reside in the vicinity of the house of the deceased. P.W.1 stated what was stated in the first information report. P.W.3 also supported the said first information report. P.W.2 stated that, hearing the noise, he came out from his house and saw two people are running away. He caught hold of one of them and, he was A1. P.W.2 stated that P.W.1 came to the spot about half an hour later. It is not clear, whether, the spot meant by P.W.2 was the place of incident or the place of occurrence. P.W.3 stated in his evidence that, he and P.W.2 caught hold of A1 about 10 -15 paces away from the place of occurrence. The medical report proved by the doctor suggested that the deceased died of a bullet injury and, that he did not sustain any other injury, which can be caused by a sharp edged weapon like that of a Paatal. The recovery memo suggests that, at the pointing of A1, a country made pistol with a used shell inside, was recovered from a spot situate near the place of incident. P.W.3 stated that after A1 was apprehended other villagers gathered, where upon P.W.3 along with P.W.1 and P.W.2 went to the police station for the purpose of lodging the first information report. He stated that, subsequently, he came to learn that A1 has been produced before the police station by the villagers. No witness stated before the court below that he took A1 from the spot and handed him over to the police station. In the first information report it was alleged that the reason for A1 committing murder of the victim was a suspicion that the wife of A1, Puja, died due to black magic practiced by the deceased and, on top of that, A1 suspected that Puja had some illicit relationship with the deceased. No attempt was made by the prosecution to establish facts constituting a reasonable belief that A1 was under such suspicion. The country made pistol thus recovered, along with an empty shell found inside the said country made pistol, were sent for the opinion of the Ballistic Expert. The Ballistic Expert opined that the bullet being the part of that empty shell was

fired from the said country made pistol. Bullet which caused the death, according to the postmortem report, was embedded in the body of the deceased. The same was produced as material exhibit -5, which was a 315 bore bullet. This bullet was not sent to the Ballistic Expert for obtaining an opinion whether the same was fired from the recovered gun. In the circumstances, apart from oral testimony of P.W.1, P.W.2 and P.W.3, there is nothing on record from where one can come to a definite conclusion that it was A1, who fired upon the deceased and, as a result thereof, the deceased died.

3. As aforesaid, no attempt was made to establish the alleged motive of A1 to commit murder of the deceased. Though a country made pistol was shown to have been recovered at the pointing of A1, but no attempt was made to establish that the said country made pistol was used to fire material exhibit -5, which caused the death of the deceased. If A1 was apprehended by P.W.2 and P.W.3 about 10 to 15 paces away from the place of occurrence, then the question of P.W.1 coming to that spot half an hour after A1 was apprehended, did not arise. If P.W.3 alone apprehended A1, there was no reason for P.W.1 and P.W.2 to hold out that it was a joint effort of P.W.2 and P.W.3, which resulted in apprehension of A1. If the A1 was apprehended while committing or immediately after commission of the offence, A1 should have been produced before the police at the time of recording of the first information report, inasmuch as, the people who allegedly apprehended A1 were very much present along with the person at whose instance the first information report was alleged at the police station, at the time of lodgement of the first information report. As aforesaid, it was alleged that the villagers later brought A1 to the police station, therefore, after A1 was apprehended, he was given in custody of other villagers and, thereupon the other villagers handed over A1 to the police station. To prove this aspect of the matter, prosecution did not make any effort. In the circumstances, appellant No. 1 is entitled to the benefit of doubt; whereas appellant No. 2 is entitled to be exonerated, inasmuch as, he was allegedly having a Paatal, but there is no evidence of user of Paatal on the deceased. It must be kept in mind that A2 was not charged for having committed a crime, which is punishable u/s 302 read with Section 34 of I.P.C.

4. We, accordingly, allow the appeals, set aside the judgment and sentences under appeals and exonerate A1 of the crime alleged, giving him benefit of doubt and, exonerate A2 holding that the evidence, looked out from any angle, did not show a finger towards him for commission of the alleged offence. A2 is on bail. He need not surrender; whereas A1 is in jail and, accordingly, he is directed to be set free forthwith. Let a copy of this judgment be sent back to the court below with the lower court records, with a direction upon the court below to immediately take steps to obtain release of A1 for setting him free.