
(2013) 07 UK CK 0039
In the Uttarakhand High Court
Case No : Criminal Appeal No. 251 of 2010

Rakesh

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 15-07-2013

Acts Referred:

Citation : (2014) CriLJ 287

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : Shashi Kant Shandilya, for the Appellant; S.S. Adhikari, Brief Holder, for the Respondent

Final Decision : Dismissed

Judgement

Alok Singh, J.—Both these appeals are inter-connected, therefore, they are being taken up for final hearing together. Present appeals are directed against the judgment and order dated 31.07.2010 passed by Additional Sessions Judge/1st F.T.C., Haridwar in Sessions Trial No. 200 of 2008.

2. Brief facts of the present case, inter alia, are that on 17.12.2007, Sub Inspector Pradeep Pant along with constable Mohan Rawat was on patrolling duty; meanwhile, they received secret information to the effect that a group of dacoits armed with fire arm, were sitting under the Prem Nagar Ashram bridge and were planning to commit dacoity, therefore, police should take action; meanwhile, In-charge of S.O.G. Aishwarya Pal along with police party and driver Manoj Kumar met S.I. Pradeep Pant at Ranipur Mor; police jeep was parked at Madhuban Hotel; police party proceeded further on foot towards the Prem Nagar Ashram bridge; having reached near the Prem Nagar Ashram bridge, police informer was sent back; police party could hear that appellants were discussing with each other that now it was the appropriate time when all the people might have gone to sleep, therefore, they would commit dacoity in new Haridwar Colony; having heard, police party formed the opinion that dacoits were planning to commit dacoity, therefore, if they were not arrested immediately, they would

definitely commit dacoity; at about 11:00 p.m. at night all the appellants were apprehended; from the possession of Raju Mandal, one country made pistol of 12 bore, one live cartridge, H.M.T. wrist watch, one white metalled chain and sim card were recovered; from Jalil S/o Abdul Sattar, one country made pistol of 12 bore, one live cartridge of 12 bore and a mobile Nokia phone were recovered; from appellant Jahid S/o Abdul Sattar, one cordless phone of beetle was recovered; from Sakur S/o Sumita, one knife was recovered; from the possession of Somnath alias Santu one iron rod, wrist watch and yellow metalled chain were recovered; from the possession of Rakesh, one yellow metalled ring, climax watch and metalled chain were recovered; on being asked Raju Mandal disclosed to the police that watch recovered from his possession was looted by him five months ago from Shivalik Nagar; Jalil disclosed that mobile phone recovered from his possession was looted by them about seven months ago from Shivalik Nagar; Jahid disclosed that cordless phone recovered from his possession was looted by them from Kankhal; Sakur disclosed that watch recovered from him was looted from Shivalik Nagar about five months ago; Rakesh disclosed that ring recovered from his possession was looted by them from Shivalik Nagar five months ago. Sakur, Jahid and Jalil could not produce any visa passport or document to enter within the territory of India from Bangladesh. Appellants were informed that they have committed offences punishable under Sections 399, 402 I.P.C. and 25 Arms Act and 4/25 Arms Act; appellant Sakoor, Jahid and Jalal also informed that they have committed offence punishable u/s 14 of the Foreigners Act; all the appellants were formally arrested; no independent witness could be traced; recovered items were kept in different seal covers; memo of search and seizure and arrest was prepared; accused with recovered items were brought to the police station; thereafter, constable Vinod Chauhan registered Chick F.I.R. Investigation was handed over to S.H.O. Rajendra Singh.

3. Having investigated the matter, charge-sheet was submitted against the appellants for the offences punishable under Sections 399, 402, I.P.C. and against appellant Raju Mandal, charge-sheet for the offence punishable u/s 25 of the Arms Act was also submitted.

4. To prove the prosecution case, PW1 Constable Rajpal Singh, PW2 S.I. Aishwarya Pal, PW3 Constable Vinod, PW4 S.H.O. Rajendra Singh were examined. Thereafter, statements of appellants were also recorded u/s 313 of the Cr.P.C.

5. Learned Trial Court, having perused the entire material made available on record, found the appellants guilty for the offences punishable under Sections 399 and 402, I.P.C.; appellant Raju Mandal was also held guilty for the offence punishable u/s 25 of the Arms Act.

6. Appellants were sentenced for the period they have already undergone during the trial and were further directed to pay fine of Rs. 5,000/- each and in default of payment of fine to undergo additional imprisonment of one month. Appellant

Raju Mandal was also held guilty for the offence punishable u/s 25 of the Arms Act and was sentenced to undergo R.I. for a period of six months and to pay fine of Rs. 200/- and in default of payment of fine, to undergo one month additional imprisonment.

7. I have heard Mr. Shashi Kant Shandilya, learned counsel for the appellants and Mr. S.S. Adhikari, learned Brief Holder for the State and have carefully perused the record.

8. PW3 constable Vinod Chauhan has duly proved the Chick F.I.R. case Crime No. 578 of 2007 as well as 583 of 2007. PW4 Rajendra Singh, Investigating Officer, stated that on 18.12.2007, investigation was handed over to him under the order of Superintendent of Police City. Thereafter, he recorded statements of the accused as well as the witnesses. He further stated that learned District Magistrate was pleased to grant permission for the prosecution u/s 25 of the Arms Act of the appellant Raju Mandal. PW2 Aishwarya Pal has specifically stated that when he along with police personnel reached near Prem Nagar Ashram bridge, they could see that all the appellants were present there under the bridge and were planning to commit dacoity. He has fully supported the prosecution story.

9. Mr. Shashi Kant Shandilya, learned counsel for the appellants submits that there were only police witnesses and no independent witness, therefore, prosecution version becomes highly doubtful.

10. In my considered opinion, non-availability of independent witness is not fatal in each and every case and statements of the police personnel should not be discarded in the absence of independent witness, if same are found to be trustworthy and police has furnished proper explanation for non-availability of independent witnesses.

11. It has come on record that when police party reached near Prem Nagar Ashram bridge, time was about 11:00 p.m. and police personnel could not find any independent witnesses. I find that explanation furnished by the police should not be ignored out rightly.

12. Appellant Raju Mandal has not preferred any independent appeal against his conviction and sentence u/s 25 of the Arms Act. Therefore, recovery and prosecution story stands proved.

13. Considering the criminal antecedents of the appellants and considering the statements of police officers, more particularly, since no enmity is pointed out against the police witnesses, I do not find any reason to take contrary view to the view taken by the trial court.

14. Therefore, both the appeals fail and are accordingly dismissed. Let copy of the judgment along with L.C.R. be sent back to the lower court for information.