
(2011) 05 UK CK 0064

In the Uttarakhand High Court

Case No : Criminal Appeal No's. 125 and 126 of 2003

Sanjay @ Sanjesh and Ram Prasad

APPELLANT

Vs

State of Uttaranchal

RESPONDENT

Date of Decision : 13-05-2011

Acts Referred:

Arms Act, 1959 — Section 25

Criminal Procedure Code, 1973 (CrPC) — Section 207

Penal Code, 1860 (IPC) — Section 120B, 201, 302, 307, 34

Citation : (2011) 05 UK CK 0064

Hon'ble Judges : Sudhanshu Dhulia, J; Prafulla C. Pant, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—Both these appeals are connected to each other and as such heard together, and being disposed of by this common judgment.

2. Criminal Appeal No. 125 of 2003 is directed against judgment and order dated 5.4.2003 passed by Additional Sessions Judge/Fast Track Court III, Dehradun in Sessions Trial No. 245 of 2001, whereby the said Court has convicted accused-Appellant Sanjay @ Sanjesh under Sections 302 and 307 IPC. By the same judgment accused Appellant Ram Prasad has been convicted under Sections 302, 307 read with 34 and u/s 120B IPC. Accused-Appellant Sanjay @ Sanjesh has been sentenced to imprisonment for life u/s 302 IPC for committing murder of Surjit. He has been further sentenced for attempting to commit murder of Nand Kishore and also for attempting to commit murder of Kishan Singh, and for each count, he was directed to undergo rigorous imprisonment for a period of seven years. Accused-Appellant Ram Prasad has been sentenced to rigorous imprisonment for a period of seven years u/s 307/34 IPC for making attempt to murder of Nand Kishore. He has been further sentenced for making conspiracy to commit the murder of Surjeet and for making conspiracy to make attempt to commit the murder of Kishan, to rigorous imprisonment for a period of seven

years on each count.

3. Criminal Appeal No. 126 of 2003 is directed against the judgment and order dated 5.4.2003 passed by Additional Sessions Judge/Fast Track Court III Dehradun in Sessions Trial No. 13 of 2001 whereby accused Appellant Sanjay @ Sanjesh has been convicted u/s 25 of Arms Act, 1959 and sentenced to rigorous imprisonment for a period of 2 and 1/2 years for possessing the country made pistols without licence used in the aforesaid crime, in which Surjit was murdered and attempt was made to commit murder of Nand Kishore and Kishan Singh.

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

5. Prosecution story in brief is that accused Appellant Sanjay @ Sanjesh is the son of accused Appellant Ram Prasad. Surjit (deceased), P.W. 1 Nand Kishore and P.W. 2 Kishan Singh are real brothers of accused Appellant Ram Prasad. They all are residents of Village Barotiwala, P.S. Vikas Nagar, District Dehradun. Surjit Singh used to run a shop in Village Laxmipur Tiraha, Dehradun. On 24.7.2000 at about 6.30 P.M., one Smt. Bali was making a water way for outlet of the rainy water in her Courtyard. Accused Appellant Sanjay @ Sanjesh came there and asked her not to construct the drain. Smt. Bali did not stop to work. Accused Appellant Sanjay @ Sanjesh was about to assault her, when P.W.1 and some other persons attempted to pacify Sanjesh. Meanwhile, Ram Prasad also came there and expressed his annoyance. Both son and father went inside their house, and after some time, they came out and this time Sanjesh was armed with a country made pistols. Sanjesh on the alleged instigation of Ram Prasad fired shots at Nand Kishore but the same did not hit him. Thereafter, accused Appellant Sanjesh went to the shop of Surjit and at about 7.30 P.M., he fired shot at him, who got injured. He was taken to the hospital but before reaching there, he (Surjit Singh) succumbed to the injuries. Sanjesh still was not cool. After firing shot at Surjit, he went to the house of his another uncle Kishan Singh (P.W. 2) and fired shot at him, and as such, Kishan Singh also suffered firearm injuries. P.W. 1 Nand Kishore, after getting scribed First Information Report (Exhibit A1) through Bhagmal (P.W. 9), gave it at Police Station Vikas Nagar at 8.45 P.M. on the same day (24.7.2000). On the basis of the said report, Check Report (Exhibit A7) was prepared at the Police Station and necessary entry was made in the General Diary. The investigation was taken up by P.W. 15 Sub Inspector B.D. Patiya, who went to the spot along with necessary Force, took the dead body of Surjit in his possession and got prepared Inquest Report (Exhibit A18). The Police further got prepared other necessary papers and got sent the dead body of Surjit in a sealed condition for post mortem examination. Dr. Rakesh Goyal (P.W. 11) conducted the post mortem examination on the dead-body of Surjit on 25.7.2000 and prepared Autopsy Report (Exhibit A4). He recorded two firearm wounds suffered by the deceased as ante-mortem injuries, and opined that the deceased had died of shock due to firearm injuries suffered by him. Meanwhile P.W. 2 Kishan Singh was medically examined by P.W. 10 Dr. Rajesh Verma on 24.7.2000 at 10.00 P.M., who prepared the Injury Report/Health Report (Exhibit

A7), in which fracture in the Tibia and abrasion on the right thumb of the injured were recorded. Accused Appellant Sanjesh was arrested on 25.7.2000. Thereafter investigation was taken over on 26.7.2000 by P.W. 17 Sub Inspector Arjun Singh. The investigation was later further transferred to Sub Inspector Virendra Singh (P.W. 18). During investigation, on 25.7.2000, Sub Inspector Arjun Singh, on pointing out of accused Sanjesh, recovered two country made pistols from a sugarcane field regarding which a separate crime number was registered as the accused did not possess licence to keep the firearms and the said case was investigated separately by Sub Inspector Satya Pal Sharma. In both the cases charge-sheets were filed by the investigating officers.

6. On receipt of the charge-sheets, the Magistrate, after giving necessary copies to the accused as required u/s 207 Code of Criminal Procedure., committed the cases to the Court of Sessions for trial. On 10.4.2001, after hearing the parties, the trial Court framed separate charge of offences punishable under Sections 302, 307, 201 IPC against accused Sanjesh, who pleaded not guilty and claimed to be tried. Charge of offences punishable u/s 120B IPC was framed against both the accused Sanjesh and Ram Prasad to which both of them pleaded not guilty, and claimed to be tried. On the very day (10.2.2001), a charge relating to offence punishable u/s 25 Arms Act, 1959 was framed by the trial Court against accused Sanjay @ Sanjesh to which also he pleaded not guilty, and claimed to be tried. The Session Trial No. 245 of 2001 arose out of the Crime No. 102 of 2000 i.e. murder of Surjit and attempt to commit murder of Nand Kishore and Kishan Singh, while Session Trial No. 13 of 2001 relates to offences punishable u/s 25 of the Arms Act, 1959 arising out of Crime No. 125 of 2000. In both the cases, evidence was recorded by the trial Court separately. In Session Trial No. 245 of 2001, P.W. 1 Nand Kishore (informant and eye-witness), P.W. 2 Kishan Singh (injured eye-witness), P.W. 3 Jaiveer Singh (eye-witness), P.W. 4 Sita Ram (eye-witness), P.W. 5 Raju (eye-witness), P.W. 6 Hukum Singh, P.W. 7 Constable Jaiveer Singh, P.W. 8 Arvind Kumar (son of the deceased eye-witness), P.W. 9 Bhagmal (scribe of FIR and eyewitness), P.W. 10 Dr. Rajesh Verma who recorded injuries on the person of Kishan Singh, (P.W. 11) Dr. Rakesh Goel who conducted postmortem examination on the dead body of Surjit, P.W. 12 Ramashrya, Assistant Director, Forensic Laboratory, Agra, P.W. 13 Constable Suresh Pal, P.W. 14 Constable Soban Singh, P.W. 15 Sub Inspector B.D. Patiya who started investigation, P.W. 16 Constable Mahiman Kumar, P.W. 17 Sub Inspector Arjun Singh who took over investigation from Sub Inspector B.D. Patiya, and P.W. 18 Sub Inspector Virendra Singh, who concluded the investigation and submitted the Chargesheet (Exhibit A27) relating to offence punishable under Sections 302, 307, 120B IPC against the two accused Appellants (present Appellants).

7. In Sessions Trial No. 13 of 2001 P.W. 1 Kripal Singh, P.W. 2 Ramashrya Pandey, P.W. 3 Sub Inspector Arjun Singh, P.W. 4 Rajendra Kumar, P.W. 5 Constable Roshan Lal, P.W. 6 Sub Inspector Satya Pal Sharma were got examined. In both the cases, after hearing the parties, trial Court found accused Appellant Sanjay @ Sanjesh guilty of charge of offences punishable under

Sections 302 and 307 IPC (on two counts) and u/s 25 Arms Act. Accused Appellant Ram Prasad was found guilty of charge of offence punishable u/s 307/34 read with 120B IPC. After hearing of sentence, accused Appellant Sanjay @ Sanjesh was sentenced to imprisonment for life u/s 302 IPC, rigorous imprisonment for a period of seven years u/s 307 IPC for attempting to commit murder of Nand Kishore, and further rigorous imprisonment for a period of seven years u/s 307 IPC for attempting to commit murder of Kishan Singh. But he was acquitted of charge of offence punishable u/s 201 IPC. Sanjesh was further convicted on charge of offence punishable and sentenced to rigorous imprisonment for a period of 2 and 1/2 years u/s 25 Arms Act, 1959. Accused Appellant (Ram Prasad) sentenced to rigorous imprisonment for a period of seven years u/s 307/34 IPC for attempting to commit murder of Nand Kishore. He was further sentenced to rigorous imprisonment for a period of seven years for attempting to commit murder of Kishan Singh and imprisonment for life u/s 120B IPC (read with 302 IPC). Aggrieved by the judgments and orders dated 5.4.2003 passed by a Additional Sessions Judge/Fast Track Court, III Dehradun in session trial No. 13 of 2001 these appeals are filed by the convicts.

8. Before further discussion, we think it just and proper to mention ante-mortem injuries recorded by P.W. 11 Rakesh Goel who conducted post mortem examination on the dead body of Surjit. The same are being reproduced below from Exhibit A4 (Autopsy Report).

(i) Fire arm wound 1 cm x 0.5 cm oval shape, margins inverted scorching present on the middle of front of neck 5cm above sub sternal notch, on dissection the back of neck is going from sub cutaneous tissue and penetrating ultestal muscle and apex of lung over lying pleura and going enter costal muscle of apex of axilla and bullet is lodged in sub cutaneous tissue of right axilla.

(ii) Fire arm wound 1 cm x 0.5 cm oval in shape. Margins inverted scorching present on left axilla, on dissection. Subertonous tissue and inner costal muscle on left pleura and lower tube of left lung and heart whole wall left lung middle penchalin wound present and bullet lodged in right plural cavity and one liter blood present in therocis cavity.

The Medical Officer (P.W. 11) Dr. Rakesh Goel observed in the Autopsy Report that deceased (Surjit) died of shock due to fire arm injuries suffered by him. He stated in his examination that the deceased could have died on 24.7.2000 between 7.30 to 8.30 p.m. From the Medical evidence on record, in our opinion, it is established that Surjit died homicidal death after he suffered the firearm injuries, as mentioned above. Now we have to examine whether accused Appellants Sanjay @ Sanjesh and his father Ram Prasad conspired to kill him and committed his murder. We have to further examine whether accused Appellant Sanjay @ Sanjesh attempted to commit murder of Nand Kishore (P.W. 1) and Kishan Singh (P.W. 2), and whether Ram Prasad has conspired with him. We have also to see whether accused Appellant Sanjay @ Sanjesh was found in possession of illicit firearm for which he was convicted.

9. P.W. 1 Nand Kishore (informant), eye-witness, has stated that on 24.7.2000 at about 6.30 Smt. Bali was repairing a drain for outlet of the rainy water. He further stated that accused Sanjay came there and was about to assault her. On this, according to this witness, he (P.W. 1) and Bhagmal Guleria (P.W. 9) intervened and stopped Sanjay. Meanwhile Ram Prasad also came there and took Sanjay with him. Thereafter the two (son and father) came out and accused Sanjay @ Sanjesh was armed with pistols. Accused Ram Prasad exhorted Sanjesh to commit murder on Nand Kishore on which Sanjesh fired shot at Nand Kishore but the same did not hit him. Thereafter, the two accused Appellants went to the shop of Surjit Singh at Laxmipur Tiraha at 7.25 P.M. and Sanjay fired shot at him. The said incident was witnessed by Raju (P.W. 5) and one Mohan Singh. According to the witness, injured Surjit was taken in a three-wheeler (Vikram) to the hospital but he succumbed to the injuries before reaching there. The witness has further stated that he got scribed report (Exhibit A11) from Bhagmal Guleria (P.W. 9) and gave it at the police station.

10. The incident narrated by P.W. 1 Nand Kishore is further corroborated by P.W. 2 Kishan Singh who is an injured eye-witness in the same sequence. This witness has stated that on 24.7.2000 at about 7.30 p.m. he was in his house when accused Sanjesh fired shot at him due to which he suffered fire arm injuries. Statement of this witness (P.W. 2) is corroborated by statement of P.W. 10 Dr. Rajesh Verma who has proved Injury Memorandum/Health Record (Exhibit A3) prepared by him on 24.7.2000 in Herbertpur Christian Hospital. In the said report fracture is observed on the right leg. Injury on the left thumb also mentioned in the report. P.W. 10 Dr. Rajesh Verma has stated that injuries could have been caused by the fire arm weapon on the person of Kishan Singh.

11. Prosecution story as against accused Appellant Sanjay gets further corroboration from other eyewitnesses, namely, P.W. 3 Jaiveer Singh, P.W. 4 Sita Ram, P.W. 5 Raju, P.W. 6 Hukum Singh and P.W. 8 Arvind Kumar. Incident of 24.7.2000 at 7.30 p.m. is said to have been witnessed by eye-witnesses in the petromax light in the sweet shop, where the incident of commission of murder of surjit had occurred. The incident of attempt to commit murder of Kishan Singh was witnessed by him (P.W. 2) as there was light in his house. Evidence of the eyewitnesses is natural and supported by medical evidence and recovery of the firearm, which is proved by Investigating Officer P.W. 15 B.D. Patiya, and other eyewitness of recovery examined in session trial No. 13 of 2001, namely, Raju Singh Constable.

12. Having reassessed evidence on record, we agree with the trial Court that the prosecution have successfully proved charge of offence punishable u/s 302 IPC relating to commission of murder of Surjit, offence punishable u/s 307 IPC relating to attempt to commit murder of Kishan Singh, offence punishable u/s 307 IPC relating to offence attempting to commit murder of Nand Kishore, and offence punishable u/s 25 Arms Act 1959 as against accused Appellant Sanjay. As far as the role of accused Appellant Ram Prasad (father of Sanjay) is

concerned, we agree with learned Counsel for the Appellant that his false implication in the case due to enmity, cannot be ruled out. He (Ram Prasad) was not armed with any weapon. It appears unnatural that he followed his son at all the three places in the sequence in which accused Appellant Sanjay fired shot at his uncles, namely, Nand Kihore, Surjit and Kishan Singh. We further agree with the learned Counsel for the Appellant that there is no evidence of conspiracy between accused Appellant Sanjay and his father Ram Prasad. We do not find evidence suggesting common intention on the part of accused Appellant Ram Prasad in attempting to commit murder of Nand Kishore and Kishan Singh by accused Sanjay @ Sanjesh.

13. For the reasons as discussed above, we are of the view that appeals of Appellant Sanjay are liable to be dismissed but that of accused Appellant Ram Prasad deserves to be allowed. Accordingly, the appeals of accused Appellant Sanjay are dismissed. Conviction and sentence recorded by the trial Court as against Sanjay in both the cases stand affirmed. Appeal of accused Appellant Ram Prasad is allowed. His conviction and sentence recorded by the trial Court in respect of offence punishable under Sections 307/34 and 120B IPC is set aside. He (Ram Prasad) is on bail. He need not surrender. Accused Appellant Sanjay, whose conviction and sentence is affirmed, is in jail. Let a copy of this judgment be sent to the Superintendent of the jail concerned.

14. Let lower Court record be sent back.