
(2010) 11 AHC CK 0355

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 55660 of 2010 In Re: Criminal Appeal No. 1526 of 2010

Shambhu Dayal and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 16-11-2010

Acts Referred:

Arms Act, 1959 — Section 25(1B)(A)
Criminal Procedure Code, 1973 (CrPC) — Section 174, 389
Penal Code, 1860 (IPC) — Section 148, 149, 302

Citation : (2010) 11 AHC CK 0355

Hon'ble Judges : Rajesh Chandra, J; Abdul Mateen, J

Bench : Division Bench

Judgement

1. Appellants Shambhu Dayal, Drag Pal and Siya Ram (Appellants in Criminal Appeal No. 1526 of 2010) and Appellant Mewa Ram have been convicted by Additional Sessions Judge/Fast Track Court No. 7, Hardoi in Sessions Trial No. 203 of 2006 under Sections 148, 302/149 IPC and in Sessions Trial No. 204 of 2006 u/s 25(1-B)(A) of the Arms Act and have been sentenced to the maximum term of life imprisonment with fine.

2. Since both the appeals arise out of the same incident, as such, we propose to dispose of the applications u/s 389 Code of Criminal Procedure for bail by this common order.

3. Heard Sri Salil Mohan, learned Counsel for the Appellants and learned Additional Government Advocate on the prayer for bail in pending appeal. We have also gone through the judgment of the learned trial Court, the prosecution evidence and the post mortem report of deceased Vishram Prasad.

4. An First Information Report was lodged by complainant Prakash Chandra on 10.09.2005 with respect to the incident which occurred between the night of 8/9th September 2005 at about 01.00 am with the allegation that accused-Appellants, Shambhu Dayal Drag Pal, Mewa Ram and Jogendra caught hold of

deceased Vishram Prasad (elder brother of complainant Prakash Chandra) and accused-Appellant Siya Ram fired upon him. On hearing the noise of the gunfire, the witnesses who were sleeping nearby, awoke and saw the accused-Appellants making good their escape. Deceased Vishram Prasad was taken to the District Hospital from where he was referred to K.G.M.C where he succumbed to the gun shot injuries.

5. Sri Salil Mohan, learned Counsel for the accused-Appellants vehemently argued that had the prosecution set up an eyewitness case, in such an event, there was no occasion for complainant Prakash Chandra to have witnessed the incident as has been narrated in the First Information Report, inasmuch as, in his statement recorded during trial he had deposed that they (the witnesses) had awoken after hearing the noise of the gunshot. He strenuously submitted that if the evidence of the complainant is taken to be true, there was no occasion for him to have witnessed the incident as narrated by him in the First Information Report that four persons had caught hold of the deceased and accused-Appellant Siya Ram had fired upon him from point blank range. He further submitted that on 17.09.2005, a 315 bore gun is alleged to have been recovered from the possession of accused-Appellant Siya Ram with a used cartridge inside its barrel. He submitted that in fact when the post mortem report was available and it was noticed that pellets were found by the doctor conducting the post mortem under the gunshot injury, the prosecution story was altered. It has further been submitted that in the inquest, it has been mentioned that the deceased was fired upon by unknown persons.

6. So far as mention of the fact in the inquest that the deceased was fired upon by unknown persons is concerned, learned Additional Government Advocate submitted that Section 174 Code of Criminal Procedure does not make it mandatory to mention the names of the assailants and thus, even if it is mentioned in the First Information Report that the deceased was fired upon by unknown persons, the Appellants cannot take any advantage of it. This submission of the learned Additional Government Advocate has to be viewed taking into consideration that right from its inception, the prosecution story is to the effect that four persons had caught hold the deceased and he was shot at by accused-Appellant Siya Ram, which is belied from the statements of the eyewitnesses itself who deposed that they awoke after hearing the noise of the gunshot.

7. Sri Salil Mohan further submitted that the Appellants were on bail during the trial and they did not misuse the liberty of bail granted to them and there is no likelihood of the appeal being heard and finally disposed of in near future.

8. Taking into consideration the over all aspect of the matter, we are of the view that the Appellants are entitled to be enlarged on bail.

9. Let Appellants Shambhu Dayal, Drag Pal, Siya Ram and Mewa Ram, convicts of above mentioned Sessions Trials be released on bail on each of them

furnishing a personal bond and two sureties each in the like amount to the satisfaction of the learned Chief Judicial Magistrate Hardoi.

10. Realization of half of the fine shall remain stayed during pendency of the appeal and the remaining half fine shall be paid by the Appellants within one month from the date of their release on bail.

11. Learned Chief Judicial Magistrate, Hardoi shall transmit to this Court photo copies of the bail and surety bonds furnished by the Appellants to be preserved on the record of the appeal.