

(2011) 03 UK CK 0044

In the Uttarakhand High Court

Case No : Criminal Appeal No. 330 of 2003

Shiv Ram alias Shiv Raj Ram and Naresh Ram

APPELLANT

Vs

State of Uttarakahnd

RESPONDENT

Date of Decision : 25-03-2011

Acts Referred:

Arms Act, 1959 — Section 25

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313, 374

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

Citation : (2011) 2 NCC 294 : (2011) 2 UC 848

Hon'ble Judges : V.K. Bist, J; Prafulla C. Pant, J

Bench : Division Bench

Judgement

Prafulla C. Pant, J.—This appeal preferred u/s 374 of Code of Criminal Procedure, 1973 (for short Cr.P.C.) is directed against the judgment and order dated 08.09.2003 passed by Sessions Judge, Champawat in Sessions Trial No. 24 of 2002, whereby said court has convicted the accused/Appellants Shiv Ram @ Shiv Raj Ram and Naresh Ram u/s 302/34 and u/s 307/34 of Indian Penal Code, 1860 (for short I.P.C.) and sentenced each one of them to imprisonment for life u/s 302/34 I.P.C. and rigorous imprisonment for a period of seven years and directed to pay fine of Rs. 10,000/- u/s 307/34 I.P.C. Accused/Appellant Naresh Ram has been further convicted u/s 25 of Arms Act and sentenced rigorous imprisonment for a period of three years.

2. Heard learned Counsel for the parties and perused the lower court record.

3. Prosecution story in brief is that on 17.07.2002 at about 02:00 pm. P.W.1 Jaman Ram (informant) was coming back to his house from Tallichuda. When he reached near Chuda bend, accused/Appellants Shiv Ram and Naresh Ram, both sons of Lal Ram, residents of Maunkanda stopped him and threatened to kill him. On this Jaman Ram (P.W.1) ran towards Maunkanda and the two accused/Appellants chased him. When the two accused/Appellants reached in the courtyard of Prahlad Ram (P.W.2), they quarreled with him and accused/

Appellant Shiv Ram fired a shot from a country made pistol at him. Prahlad Ram got injured. Another accused Naresh Ram shot fire from another country made pistol at Govindi Devi (deceased), wife of Prahlad who was standing on the staircase of her house. She died on the spot. Injured Prahlad Ram was taken to Primary Health Centre Paati from where he was referred by P.W.3 Dr. Ashok Kumar to higher centre for medical treatment. Meanwhile, P.W.1 Jaman Ram, got scribed report (Ext A-1) through P.W.6 Prakash Ram and gave it to the Patwari of the area (In Uttarakhand hills under U.P. Government Notification No. 494/VIII-418 dated 7th March, 1916) certain Revenue Officials are given police powers. On the basis of said report, P.W.8 Sankar Lal Verma, Patwari of Patti Chaudakot registered Crime No. 01 of 2002 relating to offence punishable u/s 302 and 307 I.P.C. against the two accused Shiv Ram and Naresh Ram, and prepared check report (Ext.A-7) and started investigation. On 17.07.2002 at about 04:00 pm he proceeded to village Maunkanda and after taking dead body of Govindi Devi in his possession prepared inquest report at 04:30 pm. He further got prepared the other necessary papers before taking the dead body for post mortem examination. P.W.2 Prahlad Ram was taken to District Hospital, Pithoragarh where P.W.4 Dr. B.S. Yadav recorded the injuries on his person on 17.07.2002 at about 10:00 pm and prepared injury report (Ext.A-3). Thereafter P.W.5 Dr. H.S. Kharayat conducted surgery on the person of injured Prahlad Ram. P.W.7 Dr. Prayag Dutt Pangariya conducted post mortem examination on 18.07.2002 on the dead body of Govindi Devi and prepared autopsy report (Ext. A-6). The Investigating Officer after interrogating the witness and inspecting the spot submitted charge sheet (Ext.A-17). During investigation, he arrested the two accused and recovered a country made pistol on pointing out of accused Naresh Ram and got registered a separate crime number which was separately investigated and a separate charge sheet appears to have been filed against the said accused.

4. The Magistrate on receipt of the charge sheets appears to have been committed the cases to the court of Sessions for the trial. Sessions Trial No. 24 of 2002 has arisen out of the charge sheet filed by Investigating Officer in respect of offences punishable u/s 302/34 and 307 I.P.C. in sessions trial No. 25 of 2002, appears to have been arisen relating to offence punishable u/s 25 of Arms Act registered against accused Naresh Ram. On 27.01.2003 after hearing the parties, Sessions Judge, Champawat framed charge of offence punishable u/s 302 read with Section 34 I.P.C. against Shiv Ram and Naresh Ram and accused Shiv Ram @ Shiv Raj Ram was further charged in respect of offence punishable u/s 307 I.P.C. to which both of them pleaded not guilty and claimed to be tried. On this prosecution got examined P.W.1 Jaman Ram, (informant) and eye witness, P.W.2 Prahlad Ram (injured eye witness), P.W.3 Dr. Ashok Kumar (who gave first aid to the injured Prahlad Ram), P.W.4 Dr. B.S. Yadav (who recorded injuries on the person of Prahlad Ram), P.W.5 H.S. Kharayat (who conducted surgery on the person of Prahlad Ram), P.W.6 Prakash Ram (scribe of the first information report and witness of inquest report), P.W.7 Dr. Prayag Dutt (who conducted post

mortem examination on dead body of Govindi Devi) and P.W.8 Shankar Lal Verma (Investigating Officer). Oral and documentary evidence was put to the accused u/s 313 Cr.PC in reply to which they alleged evidence adduced against them as false. They pleaded that they had been falsely implicated due to enmity. However, no evidence in defence was adduced. The trial court after hearing the parties found both the accused/Appellants guilty of charge of offence punishable u/s 302/34 and one punishable u/s 307/34 I.P.C. Accused/Appellant Naresh Ram was further held guilty of charge of offence punishable u/s 25 of Arms Act. After hearing on sentence, the trial court sentenced each one of the convicts to imprisonment for life u/s 302/34 I.P.C. and rigorous imprisonment for a period of seven years and directed to pay fine of Rs. 10,000/- u/s 307/34 I.P.C. Convict Naresh Ram was sentenced further rigorous imprisonment for a period of three years u/s 25 of Arms Act. Aggrieved by the said impugned judgment and order dated 08.09.2003 passed by Sessions Judge, Champawat in Sessions Trial No. 24 of 2002 and Sessions Trial No. 25 of 2002, this appeal is preferred by the convicts.

5. Before further discussion we think it just and proper to mention the ante-mortem injuries recorded by P.W.7 Dr. Prayag Dutt after post mortem examination on the dead body of Govindi Devi. The ante-mortem injuries are being reproduced as mentioned in the autopsy report (Ext.A-6):

- i. Abraded contusion right side of forehead 2.5cm x 1.5cm
- ii. Abraded contusion right side of top of shoulder 2.5 cm x 1.3 cm
- iii. Penetrating injury in left side of groin 3.5 cm x 2.5 cm with blackening of margins 11.5 cm deep 6 cm from the tip of iliac crest below margins inverted.
- iv. Penetrating injury on left side 1.5 cm x 1. cm and 1.5 cm x 2 cm above injury No. 3.
- v. Multiple superficial gunshot injury between groin and thigh region.

The medical officer (P.W.7) Dr. Prayag Dutt has opined in the autopsy report (Ext.A-6) that the deceased (Govindi Devi) had died of ante-mortem firearm injury which caused hemorrhage and shock. P.W.7 Dr. Prayag Dutt in the autopsy report further mentioned that at the time of post mortem examination he removed ten pellets. From the medical evidence on record as discussed above, it is clear that Govindi Devi has died homicidal death on 17.07.2002.

6. P.W.3 Dr. Ashok Kumar has stated that on 17.07.2002 Prahlad Ram (P.W.2) was brought to Primary Health Centre Paati in an injured condition that was given first aid and referred for treatment to higher centre. P.W.4 Dr. B.S. Yadav of District Hospital, Pithoragarh has stated that Prahlad Ram (P.W.2) was medically examined at 10:00 pm (on 17.07.2002) and following injuries were found on his person which are mentioned in the injury report (Ext A-3):

- i. Left hand of the injured was found badly lacerated and fresh blood oozing from

the wound. The left indese finger completely lost

ii. Multiple abrasions of variable size (0.5 x 1.0 cm) over the upper part of the left side of chest and left side of the neck, left side of the face and left side of the forehead with foreign body (pellets) inside the abrasions.

The aforesaid medical officer P.W.4 Dr. B.S. Yadav has stated that he advised X-Ray in respect of injury No. 1 and 2. P.W.5 Dr. H.S. Kharayat stated that Prahlad Ram (P.W.2) was treated in District Hospital, Pithoragarh and under went surgery. He has further proved the X-Ray report (Ext.A-5) prepared by his colleague Dr. V.C. Tripathi. As such, from the statements of P.W.3 Dr. Ashok Kumar, P.W.4 Dr. B.S. Yadav and P.W.5 Dr. H.S. Kharayat, it is established that Prahlad Ram (P.W.2) did suffer firearm injury on 17.07.2002.

7. Now we have to examine whether accused/Appellants Shiv Ram @ Shiv Raj Ram and Naresh Ram with common intension committed murder of Govindi Devi and attempted to commit murder of Prahlad Ram as suggested by prosecution. P.W.2 Prahlad Ram has stated that on 17.07.2002 he was sitting over his CHABUTRA when at about 02:00 pm accused/Appellants Shiv Ram and Naresh Ram each one armed with country made pistol came there. The witness further states that accused/Appellant Shiv Ram fired a shot from a country made pistol which hit on his left hand and the chest. He has explained that he raised left hand to save from injury. The witness further states that accused Naresh Ram fired shot at Govindi Devi (wife of Prahlad Ram) who died on the spot.

8. P.W.1 Jaman Ram, eye witness has supported the prosecution case and corroborated the testimony of injured eye witness P.W.2 Prahlad Ram. This witness (P.W.1) has stated that in the last Holi his uncle Jeet Ram had poured water on Pushpa, wife of Shiv Ram, on which he gave a threat to kill Jeet Ram. The witness further states that he tried to pacify the matter, but failed. Accused Shiv Ram harbored enmity against him. Due to that reason on 17.07.2002 when he (P.W.1) was coming on foot from Tallichauda to his house, at about 02:00 pm accused/Appellants Shiv Ram and Naresh Ram stopped him and threatened to kill him. On this the witness (P.W.1) ran and hid behind a water tank near his house. Meanwhile, accused/Appellants saw Prahlad Ram sitting on his CHABUTRA and started hurling abuses at him. The witness further states that Prahlad Ram and his wife Govindi Devi were related to him. P.W.1 Jaman Ram further states that he saw the accused Shiv Ram firing shot at Prahlad Ram where after accused/Appellant Naresh Ram fired shot at Govindi Devi (wife of Prahlad Ram) who died on the spot. The witness further states that he took injured Prahlad Ram to Primary Health Centre Paati. The witness further narrates that he got scribed first information report (Ext.A-1) and gave it to the Patwari.

9. Having gone through the statements of the eye witnesses, namely, P.W.1 Jaman Ram and P.W.2 Prahlad Ram (injured) read with medical evidence on record, we find that the testimony of the two eye witnesses is natural and trustworthy. Their presence in their village and in their houses cannot be

doubted. It is pertinent to mention here that the first information report is lodged without any unreasonable delay. The incident is a day light incident. In the circumstances, we agree with the trial court that the charge of offence punishable u/s 302 read with Section 34 I.P.C. and the one punishable u/s 307 read with Section 34 I.P.C. stands proved against each one of the Appellants, namely, Shiv Ram and Naresh Ram.

10. On behalf of the Appellants it is argued that no motive is shown by the prosecution for commission of murder of Govindi Devi. It is also submitted that the Appellants have no motive to commit murder of Govindi Devi and to attempt to commit murder of Prahlad Ram. We do not find much substance in the argument for the reason that where there is direct ocular trustworthy evidence on record of the natural witnesses, the motive is not required to be shown or proved.

11. Next submission made on behalf of the Appellants is that in one of the statements recorded u/s 161 of Cr.PC. by the Investigating Officer, Prahlad Ram (P.W.2) has stated that the fire which hit him got redirected towards Govindi Devi. In this connection it is contended that the statement made by P.W.2 Prahlad Ram before the trial court on oath is an improvement from what he has stated earlier to the Investigating Officer. We have scrutinized the evidence on record carefully and we find that P.W.2 Prahlad Ram has denied having made the statement to the Investigating Officer that the fire which hit him got redirected towards Govindi Devi. Even Investigating Officer, P.W.8 Shankar Lal Verma has stated that to remove the confusion, the witness was interrogated again during investigation. Nature of injuries suffered by Prahlad Ram and his wife does not indicate any indirect hitting of pellets on the person of deceased. In the present case country made pistol has been used from some distance and as many as ten pellets were recovered by P.W.7 Dr. Prayag Dutt at the time of post mortem examination from the body of Govindi Devi, as such, there is no question of getting redirected hit on the person of Govindi Devi.

12. Lastly it is argued by Mr. M.S. Pal, Senior Advocate on behalf of the Appellants that there is no evidence of prior meeting of minds between the two accused Shiv Ram and Naresh Ram and as such, one cannot be convicted for the act of another. We have considered the argument and read the evidence on record carefully. It is settled principle of law that prior meeting of mind need not necessarily be there before coming to the scene of occurrence but it can take place at the time of incident also. Both the accused had come with country made pistols in their hands. They had a quarrel as stated by the eye witness with Prahlad Ram where after one fired was shot at Prahlad Ram and another shot fired at his wife. In the facts and circumstances of this case, the common intension on the part of the Appellants can be gathered the manner, the crime is committed.

13. However, as far as, the conviction recorded u/s 25 of Arms Act against Naresh Ram is concerned, we are of the view that the trial court has committed a

grave error of law in convicting him on said charge. We did not find "charge" relating to offence punishable u/s 25 of Arms Act against accused Naresh Ram framed, nor any witness who investigated said crime, was got examined by the prosecution. Not only this, even the mandatory sanction required from the District Magistrate for prosecuting a person u/s 25 of Arms Act, is not on record, nor appears to have been proved. As such, the conviction and sentence recorded by the trial court against accused Naresh Ram in respect of recovery of country made pistol, is liable to be set aside. To that extent, the appeal deserves to be allowed but even if the recovery is disbelieved, the rest of the charge stand proved on the record from the evidence, as already discussed above.

14. Accordingly, the appeal of the accused/Appellants Shiv Ram @ Shiv Raj Ram and that of Naresh Ram is dismissed, so far it relates to their conviction and sentence on the charge of offence punishable u/s 302/34 and u/s 307/34 I.P.C. However, the appeal stands allowed, so far as it relates to the conviction and sentence of accused/Appellant Naresh Ram relating to offence punishable u/s 25 of Arms Act. He stands acquitted of said charge (relating to offence punishable u/s 25 of Arms Act). The Appellants are in jail. Let a copy of this judgment be sent to the Superintendent of the jail concerned. Lower Court record is sent back.