
(2010) 07 UK CK 0097
In the Uttarakhand High Court

State of U.P. (Now State of Uttarakhand)	APPELLANT
Vs	
Anil Kumar alias Ballu, Sunil Kumar alias Bau and Rakesh Kumar	RESPONDENT

Date of Decision : 05-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 313, 378
Penal Code, 1860 (IPC) — Section 307, 34
Uttar Pradesh Reorganisation Act, 2000 — Section 35

Citation : (2010) 2 UC 1177

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—This appeal, preferred u/s 378 of the Code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C.) is directed against the judgment and order dated 04.02.1995, passed by First Addl. Sessions Judge, Dehradun, in Sessions trial No. 18 of 1992, whereby said court has acquitted the respondents Anil Kumar, Sunil Kumar and Rakesh from the charge of offence punishable u/s 307/34 of Indian Penal Code, 1860 (hereinafter referred as I.P.C.).

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

3. Prosecution story, in brief, is that P.W. 2 Raghubir Singh runs a workshop at Rajpur Road, Dehradun. Nearby his workshop, Bhagwan Das, father of accused/respondents Anil and Sunil, runs a shop of upholstery. It is alleged that Bhagwan Das had encroached upon some land of the Irrigation Department adjoining to the workshop of P.W.2 Raghubir Singh (injured), due to which there was enmity between the two. On 29.09.1990, at about 06:00 P.M., P.W.2 Raghubir Singh after closing his shop, was going on a scooter to his house. As soon as he reached near the shop of Band Box Drycleaners, accused / respondents Anil, Sunil and Rakesh along with another person stopped him and assaulted him with knives and a country made pistol. In the incident P.W.2 Raghubir Singh suffered

injuries of knives. On raising alarm by the injured, witnesses Ratan, Anil @ Pappu and Rajendra Singh @ Kukki (P.W.3) reached at the spot. On this, accused / respondents ran away from the place of incident. Advil Anthony @ Tillu (D.W.2), who used to work in the workshop of Raghubir Singh came there and took the injured on a scooter to his house, from where P.W.1 Smt. Manjusa (wife of the injured) took the injured to Doon Hospital where P.W.4 Dr. Gurpal Singh examined injuries on the person of Raghubir Singh, and prepared injury report (Ext. A -2). P.W.1 Manjusa, thereafter, got lodged first information report (Ext. A -1) which was registered as Crime No. 506 of 1990, at police station Kotwali Dehradun, against the accused / respondents Ballu, Bau, Rakesh and a fourth unknown person. After investigation, police submitted charge sheet (Ext. A -10) against the three accused / respondents Anil Kumar @ Ballu, Sunil Kumar @ Bau and Rakesh Kumar @ Pappu.

4. The Magistrate, on receipt of the charge sheet, after giving necessary copies to the accused, as required u/s 207 of Cr.P.C., appears to have committed the case to the court of Sessions, for trial. Learned Addl. Sessions Judge to whom the case was transferred for trial, on 24.03.1992, after hearing the parties, framed charge of offence punishable u/s 307 read with Section 34 of I.P.C. against the three accused, namely Anil Kumar, Sunil Kumar and Rakesh Kumar. All the three pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W.1 Manjusa (complainant); P.W.2 Raghubir Singh (injured); P.W.3 Rajendra Singh (brother-in-law of the injured); P.W.4 Dr. Gurpal Singh); P.W.5 Sr. Sub Inspector Mukundi Lal and P.W.6 Anuj Kumar Tyagi (both Investigating Officers). The oral and documentary evidence was put to the accused / respondents u/s 313 of Cr.P.C., in reply to which they alleged the same to be false. They further pleaded that due to enmity they have falsely been implicated. In defence D.W.1 (Prem Kumar and D.W.2 Advil Anthony @ Tillu were examined. After hearing the parties, the trial court found that the prosecution has failed to prove charge beyond reasonable doubt as against accused / respondents. Accordingly, the three are acquitted of the charge vide impugned order dated 04.02.1995, passed by First Addl. Sessions Judge, Dehradun, in Sessions Trial No. 18 of 1992, aggrieved by which the State preferred an appeal before the Allahabad High Court on 24.05.1995. The leave was granted, and the appeal was admitted by the Allahabad High Court on 15.10.1995. The appeal is received by this Court u/s 35 of the U.P. Reorganization Act, 2000, (Central Act No. 29 of 2000), for its disposal.

5. Learned Counsel for the appellant / State argued that the trial court has committed error of law in not believing in the statement of P.W.2 Raghubir Singh, who suffered as many as 12 injuries (all incised wound), as is apparent from the injury report (Ext. A - 2) proved by Dr. Gurpal Singh (P.W.4). I have examined the trial court record. It is true that from the statement of P.W.4 Dr. Gurpal Singh it is clear that on the person of Raghubir Singh (P.W.2) as many as 12 incised wounds were found to have been caused. But, the question before this Court is as to who attempted to commit murder of the injured (Raghubir Singh). P.W.2

Raghubir Singh has stated that accused / respondents Anil and Sunil, sons of Bhagwan Das, along with accused / respondent Rakesh assaulted him with knives and pistol. However, this statement of the injured appears to be inconsistent with what has been stated by him before the Tehsildar / Magistrate, who recorded his statement in the hospital on 30th of September 1990, at 11:45 A.M., in the presence of the Medical Officer. Copy of said statement made by the injured soon after the incident is Ext. A -11, is on the record. It has been stated by him in his statement before the Tehsildar / Magistrate on aforesaid date and time that he was attacked by four boys, one of them was having a knife and the three were having rods. The third one was accused / respondent Rakesh, who was armed with pistol. Admittedly, there is no injury of firearm on the person of the injured. He further told the Tehsildar / Magistrate in the hospital that the four boys ran away after assaulting him, and thereafter on his raising alarm Tillu reached at the spot, who took him to his house, from where he was taken to the hospital.

6. The above mentioned statement made before the Magistrate clearly shows that the injured has named none of the persons as eyewitnesses, except himself. In the circumstances, the trial court has rightly found presence of P.W.3 Rajendra Singh, who is real brother-in-law of the injured, as doubtful. P.W.3 Rajendra Singh has stated that the place of incident was not the one as narrated by the injured, but near the "Pan shop" of Dhingra. He has also stated that he was present there at the time of incident, but he denied having knowledge of the identity of the person who fired shot at Raghubir Singh (injured). P.W.2 Raghubir has nowhere stated before the trial court that the occurrence took place at two places. He has only stated that the incident took place near Band Box Dry cleaner's shop, at Rajpur Road. As such, the trial court has rightly disbelieved the presence of P.W.3 Rajendra Singh at the place of incident.

7. In the above circumstances, it cannot be said that the charge of offence punishable u/s 307 read with Section 34 of I.P.C. is proved against the accused / respondents, beyond reasonable doubt. Having considered submissions of learned Counsel for the parties and after going through the papers on record, since two views were possible in the present case, and one view of the two views is accepted by the trial court, this Court in its appellate jurisdiction is not inclined to reverse the view taken by the trial court.

8. Therefore, the appeal is liable to be dismissed. The same is dismissed. Lower court record be sent back.