
(2010) 08 UK CK 0140

In the Uttarakhand High Court

Case No : Government Appeal No. 182 of 2001 and Old Number Government Appeal No. 3002 of 1998

State of Uttar Pradesh

APPELLANT

Vs

Kartar Singh and Jeet Singh

RESPONDENT

Date of Decision : 25-08-2010

Acts Referred:

Arms Act, 1959 — Section 25
Criminal Procedure Code, 1973 (CrPC) — Section 207, 313, 378(3)
Penal Code, 1860 (IPC) — Section 302, 307, 34
Uttar Pradesh Reorganisation Act, 2000 — Section 35

Citation : (2011) 1 NCC 302 : (2010) 3 UC 1510

Hon'ble Judges : Prafulla C. Pant, J; Nirmal Yadav, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal, preferred u/s 378(3) of Code of Criminal Procedure, 1973 is directed against the judgment and order dated 02.07.1998 passed by learned Additional Sessions Judge/ Special Judge (CBI), Nainital in Sessions Trial No. 406 of 1994 and Sessions Trial No. 407 of 1994 whereby the said court acquitted the respondents Kartar Singh and Jeet Singh of the charge of offence punishable u/s 302 read with Section 34 of IPC. Respondent No. 1 Kartar Singh has been further acquitted of the charge of offence punishable u/s 25 of Arms Act, 1959.

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

3. The prosecution story, in brief, is that accused respondent No. 1 Kartar Singh said to have asked Balkar Singh (deceased) to vote and support him in an election, but deceased Balkar Singh did not oblige him. On 21.02.1994, it was a day of marriage of daughter of Hukum Singh (PW3). Balkar Singh, who was son-in-law of PW3 Hukum Singh, had also gone to attend the marriage of his sister-in-law. However, accused respondent No. 2 Jeet Singh came to village Dyodi, where the marriage was being solemnized and took Balkar Singh (deceased) with

him. After about 15-20 minutes, sound of firing a shot was heard on which Kuldeep Singh (PW4), Kulwant Singh (PW5) and others, rushed towards the place of incident and found Balkar Singh lying in an injured condition with fire arm injury on his back. They enquired from Balkar Singh as to who had fired the shot at him, on which Balkar Singh (deceased) disclosed that accused respondent No. 1 Kartar Singh fired shot at him. The prosecution case is that the aforesaid two persons along with Pala Singh (PW1) took Balkar Singh (deceased) in tractor trolley to hospital where he succumbed to injuries. PW1 Pala Singh got scribed the report of the incident through Mangal Singh (PW2) and lodged the first information report (exhibit A-1) at police station Nanakmatta, District Udham Singh Nagar (earlier, police station Nanakmatta was part of District Nainital). On the basis of said report, police registered crime No. 42 of 1994 relating to offence punishable u/s 307 IPC against accused respondents Kartar Singh and Jeet Singh, which was later on converted into one punishable u/s 302 IPC. PW6 Sub Inspector Rishipal Singh started the investigation. Dead body of deceased Balkar Singh was taken into possession by the police on 22.02.1994 at 07.00 a.m. and inquest report (exhibit A-5) got prepared. Simultaneously, sketch of the dead body (exhibit A-6), police form 13 (exhibit A-7), sample of seal (exhibit A-8) and letter to Chief Medical Superintendent (exhibit A-9) were prepared. Dead body was sent in a sealed condition for postmortem examination. PW7 Dr. S.C.S. Koranga conducted postmortem on 22.02.1994 at about 01.30 p.m. and prepared autopsy (exhibit A-13). He recorded two ante mortem injuries on the body of Balkar Singh (deceased) and opined that deceased had died due to shock and haemorrhage on account of ante mortem injuries. After interrogating the witnesses and completion of the investigation, the Investigating Officer submitted chargesheet (exhibit A-21) against both the accused Kartar Singh and Jeet Singh for their trial in respect of offence punishable u/s 302 read with 34 IPC. During the investigation, the Investigating Officer said to have recovered a fire-arm (country made pistol) from the possession of respondent No. 1 Kartar Singh and registered separate crime No. 44 of 1994 against him, which was also investigated, and chargesheet was filed against Kartar Singh, in that case, after obtaining necessary sanction (exhibit A-20) from the District Magistrate.

4. The Magistrate, on receipt of the chargesheets, after giving necessary copies to the accused as required u/s 207 of Cr.P.C., committed the case to the court of Sessions for trial. On 07.12.1995, learned Additional Sessions Judge, Nainital, after hearing the parties, framed charge of offence punishable u/s 302 IPC against accused Kartar Singh, and relating to offence punishable u/s 302 read with 34 IPC against accused Jeet Singh. Separate charge was framed against accused Kartar Singh in respect of offence punishable u/s 25 of Arms Act, 1959. Accused pleaded not guilty and claimed to be tried. On this, prosecution got examined PW1 Pala Singh, the complainant; PW2 Mangal Singh, scribe of the report; PW3 Hukum Singh, father-in-law of deceased; PW4 Kuldeep Singh, alleged eye witness; PW5 Kulwant Singh, alleged eye witness; PW6 Sub

Inspector Rishipal Singh, who investigated the crime relating to murder; PW7 Dr. S.C.S. Koranga, who conducted the postmortem examination; PW8 Jarnail Singh, witness of recovery of country made pistol; and PW9 Sub Inspector Vijay Kumar, who investigated the crime relating to recovery of country made pistol. The oral and documentary evidence was put to the accused u/s 313 of Cr.P.C., in reply to which they alleged the same to be false. However, no evidence in defence was adduced. The trial court after hearing the learned Counsel for the parties found that prosecution has failed to prove any of the charge framed against the accused and acquitted them. Hence, this appeal was filed by the State on 06.10.1998 before Allahabad High Court, from where it is received u/s 35 of the U.P. Reorganization Act 2000 (Central Act No. 29 of 2000) for its disposal. The leave was granted by this Court 09.03.2010 and appeal was admitted.

5. Before further discussion, we think it just and proper to mention the ante mortem injuries found on the person of deceased Balkar Singh which were recorded by PW7 Dr. S.C.S. Koranga on 22.02.1994 in autopsy report (exhibit A-13), the same are being reproduced below:

- i. Gun shot injury passing in area of 16 cm X 14 cm over back extending from T4 to T12 more on left side. Wound of entry present. Margins were inverted and irregular. Blackening was present. No wound of exit.
- ii. Contusion 3 cm. X 2 cm. present on left side chest 3 cm. below nipple. Red bluish in colour.

The aforesaid medical officer after conducting the postmortem examination, opined that deceased died due to shock and haemorrhage on account of ante mortem injuries. The evidence adduced by the medical officer proves that Balkar Singh (deceased) died a homicidal death. Now, this Court has to see whether accused respondent Jeet Singh and Kartar Singh have committed the murder of deceased as suggested by prosecution or not.

6. There are two witnesses said to have seen the commission of crime by the accused. PW4 Kuldeep Singh and PW5 Kulwant Singh in their examination-in-chiefs have stated that on 21.02.1994 they saw Jeet Singh taking Balkar Singh (deceased) with him, whereafter Kartar Singh fired shot at him (Balkar Singh) but in the cross examination both these witnesses admitted that they did not see Kartar Singh firing shot at Balkar Singh, as such the testimony of these two witnesses appears to be rightly disbelieved by the trial court that they saw the incident. PW1 Pala Singh has stated that Balkar Singh in the injured condition told him that he was shot by Kartar Singh. PW4 Kuldeep Singh and PW5 Kulwant Singh have also stated that when they asked Balkar Singh as to who had fired shot at him, the injured disclosed the name of Kartar Singh. The testimony of these two witnesses appears to be shaky and unnatural. If these two witnesses, PW4 Kuldeep Singh and PW5 Kulwant Singh witnessed Kartar Singh committing the murder of Balkar Singh, they had no reason to ask Balkar Singh as to who has caused injuries to him. The prosecution case is that the injured was taken to

the hospital where he succumbed to injuries but there is evidence on record to establish that deceased, alive or before his death, was admitted in any hospital.

7. Apart from this, it is stated that the motive of crime on the part of Kartar Singh was that he had asked for vote and support of Balkar Singh (deceased), who did not oblige him. However, it is nowhere on record as to when such support was sought and denied. Had Kartar Singh been a defeated candidate, it could have been said that he gone to the extent of killing Balkar Singh, who refused to oblige. In para 17, PW1 Pala Singh states that Kartar Singh won that election, as such, the trial court has rightly mentioned that the motive shown for commission of crime in the present case is also weak.

8. Though it is stated by PW1 Pala Singh that Balkar Singh before his death made a dying declaration to PW4 Kuldeep Singh and PW5 Kulwant Singh that Kartar Singh had fired shot at him, but since in the facts and circumstances of the case, as discussed above, two views were possible in the present case and the trial court has taken a view holding that prosecution has failed to prove charges beyond reasonable doubt against the accused, it is not desirable on the part of this Court to interfere with the findings recorded by the trial court, particularly when it is neither perverse nor against the evidence on record.

9. For the reasons as discussed above, we do not find any force in this appeal, which is liable to be dismissed. Accordingly, the appeal is dismissed. Lower court record be sent back.