

(2012) 08 UK CK 0003

In the Uttarakhand High Court

Case No : Government Appeal No. 476 of 2007 with Criminal Revision No. 246 of 2005

State of Uttarakhand

APPELLANT

Vs

Gurvinder Singh @ Dalvinder Singh and Others
 Sada Singh Vs State of Uttarakhand and Others

RESPONDENT

Date of Decision : 30-08-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2012) 2 NCC 835 : (2013) 2 UC 1257

Hon'ble Judges : Barin Ghosh, C.J.; Umesh Chandra Dhyani, J

Bench : Division Bench

Advocate : A.S. Gill, Government with Mr. Hari Om Bhakuni, Brief Holder in Government Appeal No. 476 of 2007 and Mr. S.K. Mandal in Criminal Revision No. 246 of 2005, for the Appellant; A.S. Gill, Government Advocate with Mr. Hari Om Bhakuni, Brief Holder, for the Respondent No. 1 in Criminal Revision No. 246 of 2005 and Mr. J.S. Virk with Mr. B.S. Parihar, Advocates for Government Appeal No. 476 of 2007 and the Respondent Nos. 2 to 4 in Criminal Revision No. 246 of 2005, for the Respondent

Final Decision : Dismissed

Judgement

Umesh Chandra Dhyani, J.—Present Government Appeal was preferred by State of Uttarakhand against the Judgment and Order dated 22.11.2005, passed by learned Additional Sessions Judge/FTC, Kashipur, District Udham Singh agar in Sessions Trial No. 195 of 2002, Sessions Trial No. 307 of 2003 and Sessions Trial No. 54 of 2004, whereby accused/respondents Gurvinder Singh @ Dalvinder Singh, Jaswant Singh @ Jassa and Gurdeep Singh @ Deepa were acquitted of charges of offences punishable u/s 302/ 34 IPC. Criminal Revision No. 246 of 2005 was filed by the revisionist Sada Singh against the self-same judgment and order. Since the subject matter of Criminal Revision as well as the Government Appeal is the same, therefore, they are being decided by a common judgment and order.

2. The contention of learned Government Advocate, as also the learned counsel for the revisionist, was that the judgment and order passed by learned Additional Sessions Judge/FTC, Kashipur, District Udham Singh Nagar was illegal and contrary to the facts and material evidence available on record. Learned trial court has wrongly disbelieved the prosecution evidence and wrongly acquitted accused/respondents. The findings recorded by the trial court were wholly based on conjectures and surmises. Learned G.A., as well as learned counsel for the revisionist, therefore, prayed that the Government Appeal as well as Criminal Revision be allowed and the impugned order of acquittal" of the accused / respondents may be set aside. A prayer was also made to convict and sentence the respondents according to law.

3. In the instant case, criminal law was set into motion at the instance of PW 2 Sada Singh, son of Sardar Pyara Singh, resident of Village Kartarpur, P.S. Bilaspur, District - Rampur. He wrote a complaint to PS Kotwali, Rudrapur on 30.11.2001 at 1:45 p.m. alleging that Gurdeep Singh alias Deepa and his companions Jaswant Singh alias Jassa, Avtar Singh and Gurvinder Singh alias Dalvinder Singh fired upon Harvant Singh with gun, rifle and country-made pistols. Harvant Singh died on the spot. Informant's nephew Jagbir Singh, Raghubir Singh and Nishan Singh witnessed the occurrence. Incident took place on 30.11.2001 at 12:00 noon. Victim and his son Jagbir Singh were coming back to their residence on motorcycle after paying obeisance at Gurdwara, Rudrapur. When they reached between Teejpani and Kartarpur, accused persons were standing near a maruti car. They stopped victim and all of the accused fired upon him, no sooner he stopped his motorcycle.

4. Prosecution led the evidence through PW 2 Sada Singh, who narrated the prosecution story, as told to him by his nephew PW 1 Jagbir Singh. PW 2- Sada Singh proved his complaint (Ext. Ka-1). The motive to commit murder was attributed to enmity on account of an earlier killing, in which victim Harvant Singh was doing pairavi of his brother-in-law, who was accused in that case. Respondent Gurdeep Singh alias Deepa harboured grudge against him. PW 2 did not see the incident.

5. PW 1 Jagbir Singh, in his examination. In chief, supported the prosecution story. He said that when his father (victim) saw the respondents, he instructed PW 1 to run away in order to save his life. PW 1 ran in a peanut field. When he reached near an electric pole, he heard the sound of fire. He turned around and saw that respondents have surrounded victim. Thereafter, PW 1 proceeded towards his residence. He saw that respondents fired upon his father with the weapons, which they were carrying. Victim fell down. PW 1 narrated the incident to PW 2 Sada Singh.

6. PW 4 Ishan Singh was going to his residence in a Jeep along with his cousin Raghubir Singh (not produced), when he saw victim and his son going on a motorcycle. He claimed to have seen the incident.

7. When the postmortem on the dead body of deceased was conducted, PW 3 Doctor S.C.S. Koranga found gunshot wound of entry on the neck of victim, gunshot wound of exit on the same part of body and gunshot wound of entry on abdomen, where blackening was present. A contusion was also found. Victim died due to haemorrhage and shock as a result of ante-mortem gunshot injury, according to postmortem report (Ext. Ka-2).

8. Learned trial court did not believe the prosecution story. Various reasons were assigned by learned Additional Sessions" Judge for not accepting the prosecution evidence. For instance, victim did not try to run away from the spot when he found accused persons (four in number) there, who were inimical to him and were about to surround him. Instead of stopping the motorcycle, the victim could have diverted his motorcycle and tried to flee away in order to save him from the clutches of respondents. The place of incident was a main road. Fields were there in the vicinity of such main road. It was also surprising that on being asked by the victim, his son fled" away and heard the noise of fire on reaching near an electric pole. Victim sustained three injuries, out of which two were firearm injuries. If all the four accused fired upon the victim with the arms, which they were carrying, there should have been at least four firearm wounds in the body of victim. This was major contradiction in the prosecution story. According to PW 1, respondents Jaswant Singh and Gurvinder Singh fired upon the victim and victim fell on the ground. Thereafter, Gurdeep Singh also fired upon the victim. If this version of PW 1 in the cross-examination be believed, even then there should have been three gunshot wounds, although PW 1 said in examination-in-chief that all the four accused fired upon the victim. PW 1 introduced the name of Swaran Singh in his cross-examination, which name did not find place in FIR or examination-in-chief. He also said that he did not give any statement u/s 161 Cr.P.C. and tendered written statement to C.B., C.I.D. It appears that the said written statement was prepared after legal advice and was an afterthought.

9. Further, it was the statement that PW 1 fled towards peanut field. Site plan (Ext. Ka-3) showed wheat fields towards both sides of Shukla Rice Mill, and not peanut fields. PW 5 Kishan Singh Hyanki, Investigating Officer also did not say that any peanut field was there. Investigating Officer also did not show electric pole in the site plan, where PW 1 allegedly reached and heard the noise of fire.

10. It was also surprising that when the assailants were killing the victim, PW 1 ran away, but he was not chased by them. It was also unnatural that PW 1 continued to see the assault on his father from electric pole, but he could not see the registration number of maruti car, in which respondents came on the spot. He could however, see the arms, which were being carried by the accused persons. There is yet another unnatural conduct on the part of PW 1. Instead of going to his uncle to inform him about the incident, he should have first gone to see the condition of his father. His presence on the place of incident appears doubtful.

11. PW 4 Nishan Singh appears to be chance witness. Prosecution did not rely on

any other witness. According to PW 4, Avtar Singh fired in the air, whereas PW 1 said that all the four assailants fired upon the victim. Had PW 4 Nishan Singh and Raghubir Singh been coming behind the victim (along with PW 1) in the jeep, PW 1 must have seen PW 4 Nishan Singh and Raghubir Singh and cried for help. If PW 4 and Raghubir Singh were really present on the place of incident, it appears unnatural that the respondents spared them, The respondents neither exhorted them nor fired upon them, Why the respondents would have permitted such people to witness the incident and create evidence against them? Statement of PW 4 u/s 161 Cr.P.C. was not taken by the Investigating Officer. Presence of PW 1 and PW 4 on the place of occurrence appears doubtful. There were material contradictions in their oral testimony. There was material variance in the testimony of eyewitnesses vis-a-vis medical evidence. There was material difference between ocular evidence and site plan also. Evidence of PW 1 & PW 4 was not acceptable and learned trial court committed no mistake in not relying upon the testimony of said witnesses.

12. The Investigating Officer did nothing, but simply followed the FIR. No attempt was made by him to find out the guns. No attempt was made to find out the bullet shells or pellets. No attempt was made to send such bullets for ballistic expert's report. There were several infirmities in the prosecution story and learned trial court did not rely upon the same, for no unjust reason. We have no reason to differ from findings arrived at by learned trial court.

13. There is no scope of interference in the Judgment rendered by learned trial court. Government Appeal, as well as Criminal Revision filed against the impugned order do not succeed and are liable to be dismissed. Government Appeal, as well as Criminal Revision filed against the impugned order are therefore, dismissed.