
(2013) 03 UK CK 0016

In the Uttarakhand High Court

Case No : Government Appeal No. 12 of 2008

State of Uttarakhand

APPELLANT

Vs

Vijay Sahu and Others

RESPONDENT

Date of Decision : 07-03-2013

Acts Referred:

Citation : (2013) 1 NCC 615

Hon'ble Judges : Barin Ghosh, C.J;Alok Singh, J

Bench : Division Bench

Advocate : Amit Bhatt, for the Appellant; Lalit Sharma, Advocate for Respdt. Nos. 1 to 7 and Mr. Vipul Sharma, Advocate, for the Respondent

Judgement

Alok Singh, J.—At the outset, it is pertinent to mention here that since respondent No. 3 Rajesh Rawat had already died, so appeal against him has already abated vide order dated 25.02.2008. This is a State appeal against the judgment and order dated 31.03.2001 passed by 2 Additional Sessions Judge, Nainital whereby he was pleased to acquit the respondents herein.

2. Brief facts of the present case inter alia are that on 11.03.1999 PW1 Ramesh Singh Chilwal was admitted for treatment in the Male Ward of Sobhan Singh Jeena Base Hospital, Haldwani under the police custody. Head Constable 62 AP Latafat Ali and Constable 280 AP Manoj Kumar were on security duty of PW1 Ramesh Singh Chilwal, who was lying on bed No. 129 and his friend PW2 Jagdish Sharma was also sitting near his bed. Constable Manoj Kumar (PW4) was sitting on a stool placed between bed No. 123 and 129 while Head Constable Latafat Ali was sitting on bed No. 124. At about 11 p.m., respondents No. 1 to 6 and 8 along with one Prakash Pandey entered into the male ward armed with different firearms. Soon after entering into the male ward, one of the accused, all of a sudden pointed out a pistol on the head of Police Constable Manoj Kumar (PW4) and caught hold of him while another assailant snatched his rifle. Assuming that Mohd. Afroz (another patient), who was lying on bed No. 123 as Ramesh Singh Chilwal, assailants fired several rounds at him and when Head Constable Latafat

Ali tried to retaliate, they also shot him and immediately thereafter, they fled from the spot. Constable Manoj Kumar (PW4), Ramesh Singh Chilwal (PW1), Jagdish Sharma (PW2) have seen all the assailants firing indiscriminately on Head Constable Latafat Ali and patient Mohd. Afroz. Head Constable Latafat Ali and Mohd. Afroz, later on, succumbed to their gun shot injuries. Constable Manoj Kumar got registered the FIR narrating the entire incident. During investigation, it was found that conspiracy to kill PW 1 Ramesh Singh Chilwal was hatched in the house of respondent No. 7 Jogendra Singh Rautela.

3. In the test identification parade held on 23.04.1999, in the presence of Magistrate First Class, PW4 Constable Manoj Kumar was able to identify respondent Nos. 1, 2, 3, 4, 6 and Prakash Pandey. After investigation, Investigating Officer submitted a charge-sheet against all the accused persons for the offences punishable u/s 147, 148, 149, 396, 302, 307, 120-B, 412 IPC. Accused Prakash Pandey was declared as absconder, so his trial was separated from the accused persons/respondents.

4. Learned trial court has framed charges against respondent Nos. 1 to 6 and 8 for the offences punishable u/s 147, 148, 307/149, 302/149 IPC while against respondent No. 7 charge was framed u/s 120-B IPC.

5. During postmortem, on the body of Head Constable Latafat Ali, four gun shot injuries were found while seven gun shot injuries were found on the body of Mohd. Afroz.

6. In order to prove the prosecution story, PW1 Ramesh Singh Chilwal, PW2 Jagdish Sharma and PW4 Constable Manoj Kumar were examined as eyewitnesses while PW3 Ram Singh Chilwal was examined to prove that he has heard that conspiracy being hatched to kill PW1 Ramesh Singh Chilwal by accused in the house of respondent No. 7. PW6 Rajesh Bhartiya and PW7 Narendra Kumar Sharma were the Investigating Officers of the matter.

7. Learned trial court, after examining the entire evidence and material placed before him, was pleased to acquit the accused persons/respondents. Feeling aggrieved, State has filed the present appeal.

8. We have heard Mr. Amit Bhatt, learned Additional Government Advocate for the State/appellant and Mr. Lalit Sharma, Advocate for respondents No. 1 to 6 and 8 as well as Mr. Vipul Sharma, Advocate for respondent No. 7 and have carefully perused the record.

9. We are conscious about the position of law that in an appeal against acquittal, if two views are possible and trial court has recorded acquittal, interference by the High Court should be restricted. However, in case, High Court finds the view taken by the trial court was not based on the evidence and it would defeat ends of justice, if the order is not set aside, then High Court, after re-appreciating the evidence and material available on the record, must come forward to set aside the judgment of acquittal and to convict the accused (see Beere Gowda Vs. State

of Karnataka, and Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi),

10. PW1 Ramesh Singh Chilwal has stated, in so many words, that he was taken from Sub Jail, Haldwani to Base Hospital, Haldwani under the police custody for treatment of jaundice and on the date of incident, he was lying on bed No. 129 in the male ward of Base Hospital while Constable Manoj Kumar (PW4) was sitting on a stool placed between bed No. 123 and 129 whereas Head Constable Latafat Ali was sitting on bed No. 124. He has further stated that bed Nos. 123 and 124 were on another row in front of bed No. 129. He had identified accused Sukhbeer, Vijay Sahu, Shekhar Chandra, Rajesh Rawat, Prem Kumar and Sher Ram in the court and has stated that these accused had killed the patient Mohd. Afroz, who was lying on bed No. 123 by firing at him, thinking that he (PW1) was lying on bed No. 123. He has further stated that these accused persons had also fired at Head Constable Latafat Ali and killed him too. He has narrated the entire incident, in clear words, that accused No. 1 to 6 and 8 along with Prakash Pandey armed with firearms entered into the male ward of the Hospital at about 11.00 p.m. in the night of 11.03.1999 and after pointing out pistol at the head of Constable Manoj Kumar (PW4), they caught hold of him and snatched his rifle and started firing at Mohd. Afroz, who was lying on bed No. 123 and when Head Constable Latafat Ali started loading his rifle, they also fired at him several rounds.

11. PW2 Jagdish Sharma, who was also present in the male ward of the Hospital to look after PW1 Ramesh Singh Chilwal on the date of incident, has in so many words, demonstrated what had actually happened on that day in the hospital. Police Constable Manoj Kumar (PW4) has also in so many words demonstrated the event, which took place in the night of 11.03.1999 and has stated that accused persons present in the court except respondent No. 7 herein had fired indiscriminately on Mohd. Afroz as well as on Head Constable Latafat Ali. Having carefully perused the statement of PW1, PW2 and PW4, we are satisfied that they have fully corroborated the prosecution story. Moreover, PW4 Constable Manoj Kumar, in identification parade held on 23.04.1999, has identified respondents No. 1, 2, 3, 4, 6 and Prakash Pandey.

12. It is vehemently argued by learned counsel for the respondents that PW4 Constable Manoj Kumar has seen the accused persons in police station Haldwani when accused persons were brought therein by Kaladungi police, therefore, identification parade loses its importance.

13. We have carefully perused the statement of PW4 Constable Manoj Kumar. In his statement, he has only stated that when accused persons were brought to police station Haldwani by Kaladungi police, he had seen them, however, no question was put to him, in the cross examination, as to whether he had seen the accused persons before the identification parade or after identification parade, therefore, in our firm opinion, respondents cannot be permitted to state that in fact, PW4 Constable Manoj Kumar has seen the accused respondents in Haldwani police station before the identification parade. Even otherwise, PW1,

PW2 and PW4, who are the eyewitnesses of the incident, have identified all the accused persons in the courtroom and have stated in clear words that in fact, respondents No. 1 to 6 and 8 along with Prakash Pandey had actually fired at Mohd. Afroz and Head Constable Latafat Ali.

14. It has not been clarified by the defence what enmity Constable Manoj Kumar (PW4) had with accused persons, giving rise him an opportunity to falsely implicate accused respondents. Further, it cannot be said that since PW2 was a servant of PW1, so he would also depose incorrectly while appearing in the witness box to falsely implicate accused persons. Moreover, from the spot, 12 empty shells of cartridges were recovered while on the body of deceased persons total 11 bullet injuries were found, which also corroborates prosecution story.

15. We find force in the submission of Mr. Amit Bhatt, learned counsel for the State that accused/respondents No. 1 to 6 and 8 along with Prakash Pandey wanted to kill PW 1 Ramesh Singh Chilwal but mistakenly fired at Mohd. Afroz, who was lying on bed No. 123 thinking him as Ramesh Singh Chilwal because Constable Manoj was sitting on a stool placed between bed Nos. 123 and 129 while Head Constable Latafat Ali was sitting on bed No. 124 next to Afroz's bed.

16. From the evidence on record and particularly, the categorical statement of PWs 1, 2 and 4, we have absolutely no hesitation to hold that respondents No. 1 to 6 and 8 along with Prakash Pandey, (an absconder) after forming unlawful assembly armed with firearms entered into the male ward of Base Hospital, Haldwani in order to commit the murder of PW1 Ramesh Singh Chilwal on the fateful day but by mistakenly identifying Mohd. Afroz as Ramesh Singh Chilwal fired at him in order to commit his murder and also fired at Head Constable Latafat Ali to kill him. Therefore, offence punishable u/s 302 IPC coupled with Section 149 IPC is made out against respondents No. 1 to 6 and 8.

17. However, from the statement of PW3 Ram Singh Chilwal, it could not be proved that respondent No. 7 has hatched the conspiracy to kill Ramesh Singh Chilwal. PW3 Ram Singh Chilwal could not explain, beyond doubt, what was the occasion for him to visit the house of respondent No. 7 where the alleged conspiracy was hatched. His statement to the effect that he could hear the conspiracy while standing outside the room seems to be improbable. Therefore, in our opinion, prosecution could not prove that the conspiracy was hatched in the house of respondent No. 7 and respondent No. 7 has participated in the alleged conspiracy. Therefore, we do not find any fault with the findings recorded by the trial court acquitting respondent No. 7. In our considered opinion, since none of the accused has caused any injury or has fired at PW1 and PW4, therefore, offence punishable u/s 307 IPC does not stand proved. Further from the material available on record, we are satisfied that the offence punishable u/s 147 and 148 IPC is also not proved.

18. However, in the light our findings as recorded hereinabove, we find that learned trial court has ignored the categorical statements of PW1, PW2 and PW4

to the effect that respondents No. 1 to 6 and 8 along with Prakash Pandey, actually fired indiscriminately on Mohd. Afroz and Head Constable Latafat Ali, resulting in their death, therefore, judgment of trial court acquitting the respondent Nos. 1 to 6 and 8 is totally perverse and against the evidence available on record. Therefore, we have no hesitation to upset the judgment of the trial court acquitting the respondents No. 1 to 6 and 8.

19. Therefore, we allow the appeal, in part and hold that accused/respondents No. 1, 2, 4, 5, 6 and 8 are guilty for the offences punishable u/s 302/149 IPC. We accordingly, convict them for an offence punishable u/s 302/149 IPC and sentence them to serve life imprisonment along with a fine of Rs. 50,000/- on each of them to be paid by each of accused/respondents No. 1, 2, 4, 5, 6 and 8 failing which to serve additional six months rigorous imprisonment. However, appeal against respondent No. 7 stands dismissed. Ordered accordingly. Let respondents No. 1, 2, 4, 5, 6 and 8 be taken into custody forthwith in order to serve the sentence. Let a copy of this judgment be sent to the court below for compliance. Lower court record be sent back.