
(2011) 03 UK CK 0057
In the Uttarakhand High Court
Case No : Criminal Appeal No. 09 of 2000

Vipin Kumar

APPELLANT

Vs

State of Uttaranchal (now State of Uttarakhand)

RESPONDENT

Date of Decision : 28-03-2011

Acts Referred:

Arms Act, 1959 — Section 25, 4

Criminal Procedure Code, 1973 (CrPC) — Section 207, 313, 374

Penal Code, 1860 (IPC) — Section 120B, 302, 34

Citation : (2012) CriLJ 141 : (2011) 1 NCC 798 : (2012) 1 UC 106

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—Both these appeals, preferred u/s 374 of the Code of Criminal Procedure, 1973 (for short Code of Criminal Procedure), are directed against the judgment and order dated 30.11.2000, passed by Addl. Sessions Judge First, Dehradun, in Sessions Trial No. 61 of 1995, and Sessions Trial No. 195 of 1995. By said impugned order, the trial court has convicted accused / Appellants Niranjana Mishra and Vipin Kumar u/s 302 read with Section 34, and u/s 120-B of the Indian Penal Code, 1860 (for short I.P.C.), and directed each one of them to undergo imprisonment for life and further directed to pay fine of ` 5,000/-. Accused / Appellant Vipin Kumar has been further convicted u/s 25/4 of Arms Act, 1959, and sentenced to rigorous imprisonment for a period of three months.

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

3) Prosecution story, in brief, is that P.W. 2 Manjula Mishra (informant) got married to accused / Appellant Niranjana Mishra on 2nd of October 1987. After sometime their relations soured, and they were in litigation. On 3rd of November 1994, it was a day of "DIWALI" (festival of lamps), when P.W. 2 Manjula Mishra was at her parental house in Mani Ram Marg, Rishikesh. At about 08:30 P.M.,

accused / Appellant Vipin Kumar S/o Rajendra Prasad, who is resident of 31, Mani Ram Marg, Rishikesh, came, and called Somi alias Nitin (deceased), brother of P.W. 2 Manjula Mishra. She asked Nitin not to go with Vipin, but he went with him promising that he would be coming back soon. When he did not return for quite sometime, P.W. 2 Manjula Mishra along with P.W. 1 Soni came out of their house, in search of their brother Nitin. When they reached at Tilak Road, near the gate of Municipal Board, at about 09:40 P.M., they saw accused / Appellant Niranjana Mishra exhorting Vipin Kumar to kill Nitin, on which Vipin inflicted knife blows on the chest of Nitin, who fell down on the spot. Accused / Appellants ran away from the place of incident. The two eyewitnesses (P.W. 2 Manjula Mishra and P.W. 1 Soni) along with P.W. 3 Ram Pal took injured Nitin to the nearby Government Hospital, where his condition was told to be precarious, and the two eyewitnesses were advised that the injured be taken to Dehradun immediately for further treatment. P.W. 14 Dr. K.N. Lakhera, who examined the injured Nitin at the Government Hospital, Rishikesh, prepared the injury report (Ext. A -21), at the time of referring the patient for surgery in the higher center. But, by the time P.W. 2 Manjula Mishra could arrange an Ambulance, Nitin succumbed to the injuries in the hospital at Rishikesh. Thereafter, P.W. 2 Manjula Mishra lodged first information report (Ext. A -1) at police station Rishikesh, on the very day (03.11.1994), at 10:30 P.M. (i.e. within an hour of the incident). On the basis of said report, Crime No. 541 of 1994, was registered against accused / Appellants Niranjana Mishra and Vipin Kumar, relating to offence punishable u/s 302 of I.P.C. A check report (Ext. A -13), and necessary entry in the General Diary (copy Ext. A -14) was prepared by P.W. 10 Head Constable Kunwar Singh at the police station Rishikesh. Investigation was taken up by P.W. 13 In-charge Inspector Narendra Pal Singh. On the next day (04.11.1994), at about 07:00 A.M., inquest report (Ext. A -2) was prepared by P.W. 8 Sub Inspector Shiv Charan Singh Rawat, after taking the dead body in his possession from the Government Hospital, Rishikesh. He also got prepared police form No. 13 (Ext. A -5), sketch of the dead body (Ext. A -6), letter to the In-charge Medical Officer requesting for postmortem examination, and sample seal (Ext. A -8). The dead body was taken in sealed condition by P.W. 4 Constable Surat Singh for postmortem examination. P.W. 5 Dr. Rakesh Shamsheri conducted postmortem examination on dead body of Nitin on 04.11.1994. He observed two stab wounds as ante mortem injuries on the body of the deceased in the autopsy report (Ext. A -3) prepared by him. The said Medical Officer (P.W. 5 Dr. Rakesh Shamsheri) opined in the autopsy report that deceased had died of shock and haemorrhage due to ante mortem injuries. Meanwhile, the Investigating Officer interrogated the witnesses, and arrest of accused Vipin Kumar was made on 04.11.1994, and on his pointing out, recovery of knife used in the crime was made, in respect of which a recovery memo (Ext. A -4) was prepared, which was signed by the witnesses and the accused Vipin Kumar. Since, the length of the blade of the knife was beyond the prescribed limit, and the accused / Appellant Vipin Kumar had no license to possess said weapon, a separate first information report was lodged, relating to offence punishable u/s 25/4 of Arms Act, which was registered

as Crime No. 543 of 1994, against him (Vipin Kumar). Said crime was separately investigated by P.W. 9 Sub Inspector Vijay Singh. On completion of investigation, P.W. 13 In-charge Inspector Narendra Pal Singh filed charge sheet (Ext. A -20) against accused / Appellants Niranjana Mishra, Vipin Kumar and one Navneet @ Neetu, for their trial in respect of offences punishable u/s 302/34 and 120-B of I.P.C. P.W. 9 Sub Inspector Vijay Singh filed charge sheet (Ext. A -12) against accused / Appellant Vipin Kumar for his trial in respect of offence punishable u/s 25/4 of Arms Act.

4) The Magistrate concerned, on receipt of both charge sheets, after giving necessary copies to the accused as required u/s 207 of Code of Criminal Procedure, committed both the cases to the court of Sessions for trial. Sessions Trial No. 61 of 1995 arose out of Crime No. 541 of 1994, and Sessions Trial No. 195 of 1995, relates to Crime No. 543 of 1994. Learned Addl. Sessions Judge, Dehradun, on 06.06.1995, after hearing the parties, framed charge of offence punishable u/s 302 read with Section 34 of I.P.C., and one punishable u/s 120-B of I.P.C., against the three accused, namely Niranjana Mishra, Vipin Kumar and Navneet @ Neetu. Thereafter, on 22.08.1995, a separate charge was framed against accused / Appellant Vipin Kumar in respect of offence punishable u/s 25/4 of Arms Act. All the accused pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1 Ms. Soni (an eyewitness), P.W. 2 Smt. Manjula (informant and eyewitness), P.W. 3 Ram Pal (a chance eyewitness), P.W. 4 Constable Surat Singh (who took dead body in sealed condition for postmortem examination); P.W. 5 Dr. Rakesh Shamsheeri (who conducted the postmortem examination); P.W. 6 Sub Inspector Syed Munnawar Hussain (witness of recovery of knife on pointing out of accused Vipin); P.W. 7 Constable Mohan Singh (witness of taking blood stained soil and simple soil from the place of incident); P.W. 8 Sub Inspector Shiv Charan Singh Rawat (who prepared the inquest report); P.W. 9 Sub Inspector Vijay Singh (who investigated the crime relating to 25 / 4 Arms Act); P.W. 10 Head Constable Kunwar Singh (who registered the crime numbers on the basis of the FI Rs and prepared check reports and made necessary entries in the General Diary); P.W. 11 Jogendra Arora (declared hostile); P.W. 12 Anil Kakkar; P.W. 13 In-charge Inspector Narendra Pal Singh (who investigated the main crime relating to murder); and P.W. 14 Dr. K.N. Lakhera (who medically examined the deceased before his death in Govt. Hospital, Rishikesh). The oral and documentary evidence was put to the accused / Appellants and the third accused Navneet @ Neetu u/s 313 of Code of Criminal Procedure, in reply to which they alleged that the evidence led against them was false, and they have been falsely implicated in the crime. However, no evidence in defence was adduced. The trial court, after hearing the parties, found that the charge as against accused Navneet @ Neetu is not proved on the record. Accordingly, he was acquitted of the charge. However, the trial court found that the prosecution has successfully proved charge of offences punishable u/s 302 read with Section 34 and 120-B of I.P.C. against the accused / Appellants Niranjana Mishra and Vipin Kumar. It further found accused / Appellant Vipin

Kumar guilty of charge of offence punishable u/s 25/4 of Arms Act. After hearing the parties on sentence, each one of the convicts was sentenced to imprisonment for life, and directed to pay fine of ` 5,000/- u/s 302 read with Section 34 of I.P.C. No separate sentence was awarded u/s 120-B of I.P.C. As to the offence punishable u/s 25/4 of Arms Act, accused / Appellant Vipin Kumar was further sentenced to rigorous imprisonment for a period of three months. Aggrieved by said judgment and order dated 30.11.2000, passed by Addl. Sessions Judge First, Dehradun, in Sessions Trials No. 61 of 1995 and 195 of 1995, these two appeals are preferred by the two convicts.

5) Before further discussion, we think it just and proper to mention here the ante mortem injuries recorded by P.W. 5 Dr. Rakesh Shamsheri, after postmortem examination on the dead body of Nitin Pant S/o Anand Prakash on 04.11.1994, at 04:15 P.M. The ante mortem injuries mentioned in the autopsy report (Ext. A -3) are being reproduced below:

i) Incised punctured wound 2 cm X 1 cm X cavity deep on the left side of chest above 11 cm away from left nipple at 3 O'clock position on 5 / 6th intercostal vertical space. Margins sharp.

ii) Incised wound 1 cm X 2 cm X skin deep on the right side of chest about 2 cm below the right nipple. Margins sharp.

On internal examination, the Medical Officer (P.W. 5 Dr. Rakesh Shamsheri) found that the left lung was lacerated and filled with blood. Pericardium was found punctured. Heart was also found punctured. Pleura was also found punctured. Dr. Rakesh Shamsheri (P.W. 5) opined that the deceased died of shock and haemorrhage due to ante mortem injuries. From the medical evidence discussed above, it is established on the record that Nitin has died a homicidal death on 03.11.1994. Now, we have to examine whether, the accused / Appellants Niranjana Mishra and Vipin Kumar committed murder of Nitin, as suggested by prosecution, or not. We have to further examine whether the accused / Appellant Vipin Kumar was found in possession of knife (with the blade beyond the limit prescribed) without any license, or not.

6) P.W. 2 Manjula Mishra (sister of the deceased) has stated on oath that Nitin was her brother, who used to live with her in her father's house. It is further stated by her that accused / Appellant Niranjana Mishra was her husband with whom she was in litigation. She further states that on 3rd of November 1994, it was a day of "DIWALI". P.W. 2 Smt. Manjula further states that at about 08:30 P.M., accused / Appellant Vipin Kumar came to her house and called her brother Nitin. She further states that she asked Nitin not to go with Vipin, but he went with him. When by 09:30 P.M., Nitin did not return, according to this witness (P.W. 2), she along with her sister Soni (P.W. 1) went towards Tilak Road in search of Nitin. She further states that she saw Niranjana Mishra and Vipin grappling with Nitin. She further states that there was light of a petromax at the place of incident, which was on a cart of THELIWALA. P.W. 2 Manjula Mishra

further told that Niranjana Mishra asked Vipin to kill Nitin, and Vipin inflicted knife blow on the left side of chest of her brother. According to this witness, after the incident the two accused ran away. The witness further narrates that she immediately took her injured brother to Government Hospital, Rishikesh, from where she was advised to take the injured to Dehradun immediately. P.W. 2 Manjula Mishra further told that she went to get arranged an Ambulance, but by the time she arranged it her brother had died in the hospital at Rishikesh. Lastly, P.W. 2 Manjula Mishra has proved the report (Ext. A -1) lodged by her at the police station Rishikesh. She also stated her brother Nitin was also known as Somi.

7) The statement of P.W. 2 Manjula Mishra is supported by P.W. 1 Soni, who also claims to be sister of the deceased. However, she admits in the cross-examination that her real father's name was Jagat Singh, and her mother was Maya Devi, but after her father died during her childhood, she was living in the house of Anand Prakash (father of the deceased) as his daughter. In her cross-examination she further discloses that when Vipin came to call Nitin in her house, he (Vipin Kumar) was all alone. She has further told that Vipin Kumar is also resident of Mani Ram Marg. P.W. 1 Soni, who is a minor girl, has stated that Niranjana Mishra never used to come in her house (in the house of Anand Prakash).

8) P.W. 3 Ram Pal has also supported the evidence adduced by P.W. 2 Manjula and P.W. 1 Soni that accused / Appellant Vipin inflicted knife blow on the person of Nitin. He has also supported the prosecution story as to the role of Niranjana Mishra.

9) Knife injuries suffered by Nitin on 03.11.1994, at about 09:30 P.M. are further corroborated by the statement of P.W. 14 Dr. K.N. Lakhera of Government Hospital, Rishikesh, who prepared the injury report (Ext. A -21) after the injured was brought to the hospital, soon after the incident. It has also come on the record in the statement of the witnesses that Government Hospital, Rishikesh, was at a short distance from the place of incident.

10) P.W. 6 Sub Inspector Syed Munnawar Hussain has stated on oath that he was accompanying the Investigating Officer when the police received information that accused / Appellant Vipin is moving near U.P. Roadways Bus Stand, Rishikesh. The witness further states that in his presence accused / Appellant Vipin Kumar was arrested, and on his pointing out on 04.11.1994, at 10:30 A.M., the knife used in the crime was recovered, and memorandum (Ext. A -4) was prepared. The perusal of the recovery memorandum (Ext. A -4) shows that it is signed by the police personnel and accused Vipin Kumar. The report dated 01.02.1995, received from Forensic Science Laboratory, Agra, shows that said knife which was sealed, and sent for chemical analysis contained bloodstains, but due to the disintegration further classification could not be made.

11) Having gone through the oral testimony of the three eyewitnesses and

medical evidence on record, and the evidence relating to recovery of knife and the Chemical Examiner's report, we are convinced that prosecution has successfully proved charge of offence punishable u/s 302 of I.P.C. against accused / Appellant Vipin Kumar, and also the one punishable u/s 25/4 of Arms Act. To that extent, we concur with the finding recorded by the trial court.

12) However, as far as the accused / Appellant Niranjan Mishra is concerned, we do not find the evidence of the three eyewitnesses as reliable beyond reasonable doubt. The evidence of the three eyewitnesses as against accused / Appellant Vipin Kumar is not only corroborated from the recovery of the knife used by Vipin Kumar in commission of crime, but also from the fact that he called Nitin (deceased) from his house, at 08:30 P.M. i.e. an hour before inflicting knife blow. These corroborative pieces of evidence cannot be read as against accused / Appellant Niranjan Mishra. There is no evidence of conspiracy between Vipin Kumar and Niranjan Mishra on the record. Apart from this, it has come on the record that accused / Appellant Niranjan Mishra was admittedly in litigation with his wife P.W. 2 Manjula Mishra, who named him in the first information report. Due to said enmity addition of his name by giving him exhortation role to implicate him falsely to settle the score, cannot be ruled out. From the perusal of statements of the two accused recorded u/s 313 of Code of Criminal Procedure it appears that one accused was not known to another. It is the duty of the court to separate chaff from the grain.

13) For the reasons as discussed above, we are of the view that Criminal Appeal No. 09 of 2000, filed by accused / Appellant Vipin Kumar is liable to be dismissed, but the one filed by accused / Appellant Niranjan Mishra i.e. Criminal Appeal No. 11 of 2000, deserves to be allowed giving him benefit of reasonable doubt. Accordingly, Criminal Appeal No. 09 of 2000 is dismissed. Conviction and sentence recorded by the trial court as against accused / Appellant Vipin Kumar in respect of offences punishable u/s 302 read with Section 34 of I.P.C., and u/s 25/4 of Arms Act, are hereby affirmed. He (Vipin Kumar) is on bail. His bail is cancelled. He shall surrender before the court concerned to serve out the remaining part of his sentence. Criminal Appeal No. 11 of 2000 is allowed. Conviction and sentence recorded by the trial court as against Appellant Niranjan Mishra, is hereby set aside. He is on bail. He need not surrender. His bail bonds and cancelled and sureties stand discharged. Lower court record be sent back.