
(2011) 06 UK CK 0099
In the Uttarakhand High Court
Case No : Criminal Appeal No. 1781 of 2001

Wasim	Vs	APPELLANT
State of Uttaranachal (Uttarakhand)		RESPONDENT

Date of Decision : 29-06-2011

Acts Referred:

Arms Act, 1959 — Section 25
Criminal Procedure Code, 1973 (CrPC) — Section 207, 313, 374
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2011) 06 UK CK 0099

Hon'ble Judges : Sudhanshu Dhulia, J; Prafulla C. Pant, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—This appeal, preferred u/s 374 of Code of Criminal Procedure 1973 (for short Code of Criminal Procedure .), is directed against the judgment & order dated 23.08.2001 passed by Additional Sessions Judge/First Fast Track Court, Haldwani, District Nainital in sessions trial No. 304 of 1996, whereby the said court has convicted accused/Appellant Wasim, u/s 302 of the Indian Penal Code 1860, (for short, IPC) and sentenced him to imprisonment for life.

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

3. Prosecution story, in brief, is that on 10.01.1996, at about 11.30 AM in Mohalla Ganj within limits of Police Station, Kashipur (earlier part of District Nainital, but now the part of District Udham Singh Nagar) Ramesh Kumar (deceased) was going along with his wife Anandi Devi (PW1) and children, when accused/Appellants Wasim and his associate Shamim (since died during trial) came there and dragged Ramesh Kumar towards nearby Mosque. When the two accused were quarreling with the deceased, PW2 Jeet Singh, who was on a Motor Cycle, also reached there. In the day light incident, the two accused fired shots from country made pistols and left Ramesh Kumar near the staircase of the mosque. Ramesh Kumar died on the spot. Immediately after the incident, PW1

Anandi Devi (wife of Ramesh Kumar) rushed to the Police Station, Kashipur and after getting scribed First Information Report (Ext. A1) through PW6 Mukesh Kumar Mehrotra gave at the Police Station at about 12.10 hours (Noon) i.e. within 40 minutes of the incident. On the basis of said report, Crime No. 52 of 1996 was registered against accused/Appellants Wasim and his associate Shamim relating to offence punishable u/s 302 IPC. The investigation was taken up by PW4 Sub Inspector Om Veer Singh. The Investigating Officer reached to the spot, took dead body of Ramesh Kumar in his possession, prepared Inquest Report (Ext. A3), Police Form No. 13 (Ext. A4), sketch of dead body Ext. A5), Sample Seal (Ext. A6) and Letter to Chief Medical Officer (Ext. A7) requesting him for post mortem examination. The post mortem examination was conducted by PW3 Dr. P.N. Tandon on the very day 10.01.1996 at about 4.15 P.M. He recorded three ante mortem injuries and opined in the Autopsy Report (Ext. 2) that deceased had died of Shock and Haemorrhage from gun shot injury No. 2 recorded as ante mortem injury. The Investigating Officer interrogated the witnesses, arrested the accused and after completion of investigation submitted charge-sheet (Ext. A12) showing criminal history of both the accused Shamim and Wasim, for their trial in respect of offense punishable u/s 302 IPC.

4. The Additional Chief Judicial Magistrate, Kashipur, after giving necessary copies to the accused as required u/s 207 Code of Criminal Procedure ., committed the case to the court of sessions for trial. The Additional Sessions Judge, Nainital on 28.11.1996, after hearing the parties, framed charge of offense punishable u/s 302 read with Section 34 IPC against both the accused Shamim and Wasim who pleaded not guilty and claimed to be tried. However, during the trial, accused Shamim died and his case stood abated. Prosecution got examined PW1 Anandi Devi (informant and eye-witness), PW 2 Jeet Singh (another eye-witness), PW3 Dr. P.N. Tandon (who conducted Post Mortem Examination), PW 4 Inspector Om Veer Singh (who started investigation), PW5 Head Constable, Jagdish Chand Tiwari (who prepared check report of the First Information Report and made entry in the general Diary), PW6 Mukesh Kumar Mehrotra, who scribed the First Information Report, and PW7 In-charge Inspector, Radha Krishna Sharma, who completed investigation, and submitted the charge-sheet against the accused.

5. Oral and documentary evidence was put to the accused u/s 313 Code of Criminal Procedure ., in reply to which, accused Wasim pleaded that he has been falsely implicated. No evidence in defense was adduced. The trial court, after hearing the parties, found accused Wasim guilty of charge of offence punishable u/s 302 IPC. After hearing on sentence, the convict was sentenced imprisonment for life. Aggrieved by the said judgment and order dated 23.08.2001 passed by the Additional Sessions Judge/ First Fast Track Court, Haldwani, this appeal has been preferred by the convict.

6. Before further discussion, we think it just and proper to mention the ante mortem injuries recorded by PW3 Dr. P. N. Tandon, who conducted post mortem

examination on dead body of Rajesh Kumar on 10.1.1996. The ante mortem injuries are being reproduced below from the Autopsy Report (Ext. A2):

(i) Lacerated wound 6cm X 1cm X bone deep on the right side of forehead just above the eyebrow.

(ii) Lacerated wound 3cm X 2.5cm on the right cheek underlying mandible, maxilla fractured in to pieces, margins inverted tooth fractured into pieces, on cutting a metallic bullet is recovered from the posterior part of the neck near vertebral column. It is a gunshot wound of entry.

(iii) Multiple tattooing marks present on neck region and on the face.

7. PW3 Dr. P.N. Tandon has opined that Ramesh Kumar died of shock and haemorrhage from the gun shot injury No. 2 recorded as ante mortem injury. This witness has further stated that this injury could have been caused on 10.1.1996 at about 11.30 AM by a firearm. From the medical evidence on record, it is established that Rajesh Kumar died homicidal death. This Court has to see whether accused Wasim with another co-accused Shamim (since died during trial), with common intention committed murder of Ramesh Kumar as suggested by prosecution, or not.

8. PW1 Anandi Devi is informant and eye-witness of the incident. She has stated that on 10.01.1996, she was going along with her husband Ramesh Kumar towards a shop. She further states that at about 11.30 AM near Choonpat Mosque crossing, they met with accused Wasim and his associate Shamim, who used foul language against her husband, and dragged him towards the mosque. The witness states that she shouted for help. She further states that witness Jeet Singh (PW2) and one Raju came there and saw the incident. PW1 Anandi Devi has specifically stated that fires were shot by the two accused at her husband, who fell down near the staircase of the mosque and died. The witness has proved the Information Report (Ext. A1), which she got scribed through Mukesh Kumar Mehrotra (PW 6), and gave at the Police Station.

9. The statement of PW1 Anandi Devi, gets fully corroborated from the statement of PW2 Jeet Singh. This witness has stated that on 10.01.1996, he along with one Raju, was on a Motor Cycle near Ratan Road, when he heard shouts, and turned towards Choonpat Mosque. The witness (PW2) states that Ramesh Kumar was scuffling with accused Wasim and Shamim. The witness further narrates that thereafter the two accused fired shots from the country made pistols, they were armed with. In the cross-examination, this witness has stated that when Anandi Devi went to Police Station to lodge First Information Report, he remained at the place of incident till the police reached there.

10. It is a case of day light incident, in which First Information Report is lodged promptly. Not only the Inquest Report was prepared, the post mortem examination was also done on the same day. There is little scope of implicating accused falsely in the case. The eye-witnesses are local. The presence of PW 1

Anandi Devi with her husband (Ramesh Kumar) is not unnatural. In the circumstances, we concur with the view taken by the trial court that prosecution has successfully proved the charge that the two accused, with common intention, committed murder of Ramesh Kumar. As such the conviction of Appellant Wasim u/s 302 I.P.C. does not require interference of this Court.

11. Shri Amit Kapri, Advocate/ Amicus Curiae, argued that the eye-witness have alleged that fires were shot from country made pistols but from the post mortem examination report and the statement of PW3 Dr. P.N. Tandon, it appears that metallic bullet was recovered from the injury which could not have been shot from country made pistol. We have scrutinized the oral and medical evidence carefully. PW1 Anandi Devi and PW2 Jeet Singh are laymen. They are not experts of the arms. A layman hardly knows the distinction between a country made pistol and a revolver. The statements of the two witnesses that the fires were shot from the country made pistols, do not shake the prosecution story.

12. It is also submitted on behalf of the Appellant that PW2 Jeet Singh is a chance eye-witness and his testimony should not be believed. We have gone through the statement given by the PW 2 Jeet Singh. He has been subjected to lengthy cross-examination. Nothing has come out in his cross-examination, which creates doubt as to the fact of his reaching at the spot on hearing shouts. He has specifically stated that he along with Raju was going on a Motor Cycle at Ratan Road. Within one hour of the incident, the Police prepared the Inquest Report, and Raju has signed the said Inquest Report (Ext. A3), which suggests that the two had reached at the spot, as stated by the witness. Learned Amicus Curiae contended that Raju was not got examined by the prosecution. However, we are of the view that it is not the quantity but the quality of the witnesses, which is material for a case. Two eye-witnesses namely, PW1 Anandi Devi and PW2 Jeet Singh were got examined by the prosecution, and merely for non examination of Raju, it cannot be said that prosecution story is not truthful.

13. As far as the recovery of country made pistol from accused Wasim, and charge in respect of Section 25 of Arms Act is concerned, the trial court has already acquitted the accused from said charge, as prosecution did not produce the recovery memo of the weapon nor any sanction from District Magistrate was obtained. Said crime was an independent one, which was registered as a separate Sessions Trial No. 401 of 1996.

14. 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. The Appellant Wasim is on bail. His bail is cancelled. Let lower court record be sent back to make Appellant Wasim serve out the sentence awarded against him by the trial court.