

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL APPEAL No. 174 of 2004

Sunil Rathi
S/o Sri Naresh Rathi,
R/o Village Tikri, Police Station Doghat,
District Bagpat (U.P.)

..... Appellant/Accused

Versus

State of Uttaranchal

..... Respondent

July 31, 2009

**Mr. Lokendra Dobhal, Advocate for the appellant.
Mr. M.A. Khan, Brief Holder for the State/respondent.**

HON'BLE DHARAM VEER, J.

This appeal, preferred by the appellant u/s 374(2) of the Code of Criminal Procedure, 1973 (*hereinafter referred to as Cr.P.C.*), is directed against the judgment and order dated 29.5.2004 passed by the Additional Sessions Judge/4th Fast Tract Court, Haridwar in Sessions Trial No. 319 of 2002, *State v. Sunil Rathi*, whereby the appellant/accused Sunil Rathi has been convicted and sentenced to undergo R.I. for two years for the offence punishable under Section 25 of The Arms Act, 1959 (for short, the Act). However, the appellant/accused and the co-accused Manoj @ Billu have been acquitted of the charges levelled against him under Sections 307, 420 and 468 of Indian Penal Code, 1860 (*for short, I.P.C.*) in Sessions Trial No. 318/2002, *State v. Sunil Rathi & Anr.* and Sessions Trial No. 318A/2002, *State v. Manoj @ Billu*.

2. In brief, the prosecution case is that on 3.9.2001 at about 1 pm, the Superintendent of Police (City), Dhoom Singh Tomar (PW1) had received an information from the mukhbir that hardened criminal Satendra Barwala and his 3-4 aides were staying in the house of Karpal Singh in gali no. 3, Mohalla Shivpuri, Kankhal and that they

were having modern automatic arms and hand grenades and they had planned to commit some serious crime in Haridwar city. Having received this information from the mukhbir, PW1 Dhoom Singh Tomar, S.P. (City) had immediately called the Additional S.P. (Rural), Sri Ajay Rautela; Circle Officer (Sadar), Sri Mohan Singh Rawat; Inspector In-charge, P.S. Jwalapur, Sri Kuldeep Singh Aswal; S.O., Khankhal, Sri R.K. Chamoli (PW3); S.O., Shyampur, Sri Mandhala Samrat and S.O.G. In-charge, S.I. R.B. Chamola (PW5) on telephone and mobile and asked them to reach at Mayapur office with the maximum police force. When the aforesaid officers reached there with the police force, they were told about the information received by the mukhbir.

3. Looking to the gravity of the information, four police parties were formed. First police party was headed by S.P. (City), Sri Dhoom Singh Tomar (PW1) himself, second police party was headed by the Additional S.P. (Rural), Sri Ajay Rautela, third police party was formed under the leadership of Circle Officer (Sadar), Sri Mohan Singh Rawat and the fourth police party was formed under the leadership of Inspector In-charge, P.S. Jwalapur, Sri Kuldeep Singh Aswal. He instructed that the second police party shall be behind the house of Karampal, third party shall be in the eastern side of that house, fourth party shall be in the western side of the house and the first party shall be in front of the main door of the house i.e. on the southern side. Thereafter all the police parties left for the place of occurrence through their respective vehicles. In the way, they tried to procure public witnesses but nobody agreed after hearing the name of Satendra Barwala. About 50 steps previous to the house of Karampal Singh, the mukhbir indicated towards the said building. The police party surrounded the house of

Karampal Singh and took the position as per the plan. The main door was knocked. After sometime an old person opened the door, then two young persons were seen in the courtyard of that house. One of them asked his companion to fire on the police personnel. On this, the second person fired on the police personnel with intention to kill them but they escaped by a very narrow margin. Then both of them armed with pistols and some other weapons, which were in the shape of the ball, ran away through the main door threatening the police party to run off otherwise they would be blown off by bombs. The first person who was armed with the pistol tried to start the Maruti Zen No. DL4CL-7644 which was parked in the gali and the second person who was having some ball shaped weapon tried to start the Hero Honda motorbike no. DL7SL-9931 which was parked outside the gali in order to flee from the spot. But both of them were captured with the aid of other police parties at 2.30 pm on that day i.e. on 3.9.2001. The person who was sitting on the Hero Honda motorbike told his name as Manoj @ Billu and one live hand grenade was recovered from his possession. The second person who was sitting in the Maruti Zen told his name as Sunil Rathi i.e. the appellant/accused and from his possession one semiautomatic english made 9 mm pistol along with eight live cartridges and one khokha were recovered.

4. Both accused persons were taken into custody and recovered weapons were sealed and recovery memo Ex. Ka-1 was prepared on the spot. On the basis of this fard, an FIR was lodged in the police station Kankhal by PW1 Dhoom Singh Tomar on 3.9.2001 at 7 pm. On the basis of the FIR, chick FIR Ex. Ka-4 was prepared by Constable Asha Ram and case crime no. 89/2001 under Sections 307, 420/468/411 IPC and 41/102 CrPC; case crime no.

90/2001 under Section 5 of the Explosives Act, 1884 and case crime no. 91/2001 under Section 25 of the Arms Act were registered against the appellant/accused Sunil Rathi and the co-accused Manoj @ Billu (acquitted by the trial court). Necessary entries were made in the GD. Carbon copy of GD is Ex. Ka-5.

5. Investigation of this case was entrusted to PW4 Baljeet Singh Bhakuni, Station Officer, P.S. Shyampur. During the course of investigation, the I.O. prepared the site plans of the place of occurrence Ex. Ka-2 in case crime no. 89/2001 under Sections 307/420/468/411 IPC & 41/102 CrPC and Ex. Ka-6 in case crime no. 91/2001 under Section 25 of the Act. Sanction Ex. Ka-8 to prosecute the appellant/accused under Section 25 of the Act was accorded by Sri H.C. Joshi, District Magistrate, Haridwar. During the course of investigation, the I.O. recorded the statements of the witnesses and after completing the investigation filed the chargesheet Ex. Ka-7 against the appellant/accused under Section 25 of the Act in Sessions Trial No. 319/2002. Separate chargesheet Ex. Ka-3 was filed against the appellant/accused under Sections 307/420/468/212/216 IPC.

6. Learned Chief Judicial Magistrate, Haridwar, after giving the necessary copies of the documents to the appellant/accused as prescribed under Section 207 Cr.P.C., committed these cases to the Court of Sessions. The cases were transferred to the Additional Sessions Judge/4th Fast Track Court, Haridwar for disposal according to law.

7. Learned Additional Sessions Judge/4th Fast Tract Court framed the charges on 25.10.2002 against the appellant/accused under Sections 307, 468 and 420 IPC.

The charge under Section 25 of the Act was also framed against the appellant/accused on the same day i.e. on 25.10.2002. The charges were read over and explained the appellant/accused, who pleaded not guilty and claimed to be tried.

8. To prove its case, the prosecution has examined PW1 Dhoom Singh Tomar, S.P. (City); PW2 S.I. J.P. Juyal; PW3 S.I. Ravindra Kumar Chamoli; PW4 S.I. Baljeet Singh Bhakuni, the I.O. of the case; PW5 S.I. R.B. Chamola and PW6 Constable Asha Ram.

9. Thereafter, statement of the appellant/accused was recorded under Section 313 of Cr.P.C. The oral and documentary evidence were put him in question form, who denied the allegations made against him and stated that they he has been falsely implicated in the case. However, in defence, he did not produce any documentary or oral evidence on record.

10. After hearing learned counsel for the parties and appreciating the evidence on record, the learned Additional Sessions Judge/4th Fast Track Court, Haridwar vide his judgment and order dated 29.5.2004 convicted and sentenced to the appellant/accused as discussed above. Against the aforesaid judgment and order dated 29.5.2004, the appellant/accused has preferred the present appeal.

11. I have heard learned Counsel for the parties and have carefully perused the entire material available on the record.

12. To prove its case, the prosecution has examined the PW1 Dhoom Singh Tomar, S.P. (City); PW2 S.I. J.P. Juyal:

PW3 S.I. Ravindra Kumar Chamoli and PW5 S.I. R.B. Chamola, who have reiterated the version of the recovery memo (Ex. Ka-1) and the chick FIR (Ex. Ka-4) in their deposition. All the aforesaid four witnesses were cross-examined at length by the defence counsel but nothing has come out in their deposition which may create any doubt in the prosecution story. These four witnesses are the witnesses of recovery of one semiautomatic english made 9 mm pistol, eight live cartridges and one khokha from the possession of the appellant/accused.

13. PW4 S.I. Baljeet Singh Bhakuni who has stated that on 3.9.2001, he was posted as Station Officer at P.S. Shyampur. On that day case crime no. 89/2001 under Sections 307/420/468/411 IPC & 41/102 CrPC against Sunil Rathi & Ors.; case crime no. 90/2001 under Section 5 of the Explosives Act, 1884 against Manoj @ Billu and case crime no. 91/2001 under Section 25 of the Act were registered in P.S. Kankhal, whose investigation was entrusted to him. During the course of investigation, he had recorded the statements of the witnesses and prepared the site plans of the place of occurrence Ex. Ka-2 in case crime no. 89/2001 under Sections 307/420/468/411 IPC & 41/102 CrPC and Ex. Ka-6 in case crime no. 91/2001 under Section 25 of the Act. Sanction Ex. Ka-8 to prosecute the appellant/accused under Section 25 of the Act was accorded by Sri H.C. Joshi, District Magistrate, Haridwar. After completing the investigation, he had filed the chargesheet Ex. Ka-7 against the appellant/accused under Section 25 of the Act in Sessions Trial No. 319/2002. Separate chargesheet Ex. Ka-3 was filed against the appellant/accused under Sections 307/420/468/212/216 IPC.

14. PW6 Constable Asha Ram has stated that on the basis of the FIR filed by PW1 Dhoom Singh Tomar, S.P. (City), he had prepared the chick FIR Ex. Ka-4. Necessary entries were made in the GD. Carbon copy of the GD is Ex. Ka-5.

15. After that, the statement of the appellant/accused was recorded under Section 313 of Cr.P.C. The oral and documentary evidence were put to him in question form, who denied the allegations made against him and stated that he has been falsely implicated in the case. However, in defence, he did not produce any documentary or oral evidence on record.

16. Learned Counsel for the appellant/accused argued that the prosecution has not proved the case against the appellant/accused under Section 25 of the Act beyond reasonable doubt. I do not find any substance in the argument of the learned Counsel for the appellant/accused as PW1 Dhoom Singh Tomar, S.P. (City) has stated in his deposition that on 3.9.2001 at 1 pm, the mukhbir had informed him that some hardened criminals including Satendra Barwala were staying in the house of Karpal Singh in gali no. 3, Mohalla Shivpuri, Kankhal and they were armed with automatic weapons and hand grenades and they would be committing some serious crime in Haridwar city. On this information, PW1 Dhoom Singh Tomar, S.P. (City) had immediately informed the other police officers, viz., Additional S.P. (Rural), Sri Ajay Rautela; Circle Officer (Sadar), Sri Mohan Singh Rawat; Inspector In-charge, P.S. Jwalapur, Sri Kuldeep Singh Aswal; S.O., Khankhal, Sri R.K. Chamoli (PW3); S.O., Shyampur, Sri Mandhala Samrat and S.O.G. In-charge, S.I. R.B. Chamola (PW5) on telephone and mobile and asked them to reach at his office with the police force.

17. When the aforesaid officers reached there with the police force, they were told about the information received by the mukhbir. Police personnel were divided into four groups. First police party was headed by S.P. (City), Dhoom Singh Tomar (PW1) himself, second police party was headed by the Additional S.P. (Rural), Ajay Rautela, third police party was formed under the leadership of Circle Officer (Sadar), Mohan Singh Rawat and the fourth police party was formed under the leadership of Inspector In-charge, P.S. Jwalapur, Kuldeep Singh Aswal. Thereafter they left for the place of occurrence. In the way, they tried to procure public witnesses but nobody agreed after hearing the name of Satendra Barwala. Police parties surrounded the house of Karampal Singh from all the four directions. When the police personnel knocked the main door, it was opened by an old person and two persons including the appellant/accused Sunil Rathi were seen sitting in the courtyard of that house. One of them asked his companion to fire on the police personnel. On this, the second person fired on the police personnel with intention to kill them but they escaped by a very narrow margin. Then both of them armed with pistols and some other weapons, which were in the shape of the ball, ran away through the main door threatening the police party to run off otherwise they would be blown by bombs. At 2.30 pm on that day i.e. on 3.9.2001, the first person, viz., Sunil Rathi, the appellant/accused was forcibly arrested from Maruti Zen No. DL4CL-7644 and the second person, viz., Manoj @ Billu was also forcibly arrested from the Hero Honda motorbike no. DL7SL-9931 while they were trying to escape from the spot. From the possession of the appellant/accused, one semiautomatic english made 9 mm pistol along with eight live cartridges and one khokha were recovered. Recovered weapons were sealed and

recovery memo Ex. Ka-1 was prepared on the spot. On the basis of this fard, an FIR was lodged in the police station Kankhal by PW1 Dhoom Singh Tomar on 3.9.2001 at 7 pm. Sanction Ex. Ka-8 was accorded by Sri H.C. Joshi, District Magistrate, Haridwar to prosecute the appellant/accused under Section 25 of the Act.

18. PW1 Dhoom Singh Tomar could not be shaken in his cross-examination. Furthermore, statement of this witness is corroborated by PW2 S.I. J.P. Juyal, PW3 S.I. Ravindra Kumar Chamoli and PW5 S.I. R.B. Chamola. Nothing has come on the record which may create any doubt in the prosecution story that one semiautomatic english made 9 mm pistol along with 8 live cartridges and one khokha were recovered from the possession of the appellant/accused. Thus, prosecution has successfully proved its case against the appellant/accused for the offence punishable under Section 25 of the Act.

19. Thus, for the reasons recorded above, the prosecution has proved the case against the appellant/accused beyond reasonable doubt and I do not find any merit in the appeal. Hence, the impugned judgment and order dated 29.5.2004 is correct and justified.

20. Accordingly, the appeal being devoid of merit is hereby dismissed. The judgment and order dated 29.5.2004 passed by the Additional Sessions Judge/4th Fast Track Court, Haridwar convicting the appellant/accused under Section 25 of the Arms Act and sentencing him to undergo R.I. for two years is upheld. Let the lower court record be sent back.

(Dharam Veer, J.)
31.7.2009

