

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
CRIMINAL APPEAL NO.1770 OF 2001

Tara Singh Appellant

Versus

State of Uttaranchal Respondents

Mr. J.S. Virk, Advocate for the appellant
Mr. Nandan Arya, AGA for State/respondent

Date of Judgment : 28.2.2011

JUDGMENT

Hon'ble Barin Ghosh, C.J.

Hon'ble V.K. Bist, J.

BARIN GHOSH, C.J. (Oral)

The appellant was accused of two offences punishable under the Indian Penal Code, 1860 and the Arms Act, 1959. It was alleged that the appellant through an unlicensed gun fired upon the victim and the said firing caused the death. For having had murdered the victim and for possessing the unlicensed gun, used for the murder, charge was framed, upon acceptance of the report filed by the police. Appellant, having denied the charge, trial commenced. At the trial, two alleged eyewitnesses, who were respectively the wife and the brother of the victim, stated in their evidence that in their presence, appellant, on being asked by another person, fired upon the victim, who was sleeping in the month of July, 1998 on the open courtyard with lights on. Post-mortem was carried out on the dead body and the doctor, who conducted the post-mortem, deposed. According to his deposition, cause of death was firing of a firearm, through which 12 bore bullet was fired and the said bullet struck inside the body of the victim. Apart from the bullet, which was extracted from the body of the victim, another bullet was found at the place of occurrence. Those bullets and a firearm were tendered in evidence. The ballistic expert proved that the bullet, which was struck inside the body of victim and which caused the death, was fired from the firearm, which was tendered in evidence. By purporting to place reliance upon a seizure list, prosecution purported to establish that the firearm, which was tendered in evidence, was seized from the appellant.

2. The Sessions Judge did not accept seizure of the said firearm from appellant. Accordingly, the charge that appellant was in possession of an unlicensed gun, was rejected by Sessions Judge and the appellant was exonerated of the said charge. Prosecution preferred an appeal against that portion of the judgment and order of the Sessions Judge, by which the case of the prosecution to the effect that the said firearm was seized from appellant, was not accepted by the Sessions Judge and in consequence thereof, the appellant stood exonerated of the charge framed against him of possessing an unlicensed firearm, which charge, if proved, is punishable under the Arms Act. This appeal appears to have had been preferred five years after the judgment was rendered by the Sessions Judge, without an application for condonation of delay in preferring the appeal. A Division Bench of this Court, noticing the said state of affairs, dismissed the appeal on the ground that appeal is not maintainable. This order was passed by the Division Bench on 24.7.2007.

3. When on the last occasion, these facts were highlighted by learned counsel for appellant and it was submitted that in such circumstances, it is established on evidence that appellant had nothing to do with the murder weapon, the appellant cannot be held guilty of having had committed the murder, learned counsel appearing on behalf of prosecution wanted an adjournment for the purpose of making himself ready in the matter, but unfortunately did not bother to appear today in court, instead asked somebody else to appear.

4. Learned counsel for the prosecution, who is now appearing, is emphasizing on the evidence given by the alleged eyewitness, which according to him, could not be shaken in cross examination.

5. In law, oral evidence should be accepted to the extent the same is acceptable. It is true that the alleged eyewitnesses claimed to have witnessed through their eyes, commitment of crime, whether they did so or not, is a question which the Court may or may not accept.

6. As aforesaid, the prosecution has proved through the doctor, who conducted post-mortem, that the bullet, which remained embedded in the body of the victim, caused his death. The prosecution has proved through

ballistic expert that the firearm tendered in evidence, was used to fire the bullet, which stood embedded in the body of the victim. The prosecution purported to prove that the said firearm was recovered by police from the appellant. If this part had been proved, the chain of events would have stood completed, with or without the oral evidence of the alleged eyewitnesses. However, this chain broke. The effort on the part of the prosecution to associate the appellant with the firearm tendered in evidence failed. However, on the records, it is evident that the same firearm was used to fire the bullet which was the cause of the death of the victim. There is also positive evidence by the wife and the brother of the victim that it was the appellant, who fired that bullet from that gun. As against that, there is finding by the Sessions Judge himself that the appellant cannot be associated with the firearm tendered in evidence. The question is, in such circumstances, can a court of law accept the evidence of the wife and the brother of the victim to the effect that they have seen the appellant firing upon the victim? Answer is 'certainly no', inasmuch as, in no way the chain of circumstances can be completed without associating the appellant with the subject firearm and at the same time without ignoring the evidence of the ballistic expert.

7. That being the situation, the appeal is allowed and the judgment under appeal is set aside. The appellant is exonerated of the charge of murder, giving him benefit of doubt.

(V.K. Bist, J.)
28.2.2011

(Barin Ghosh, C.J.)
28.2.2011