

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Government Appeal No. 171 of 2006

State of Uttaranchal Appellant
versus
Alam Respondent

Mr. Amit Bhatt, Dy. Advocate General assisted by Mr. V.P. Bahuguna,
Brief Holder for the State / Appellant.
None for the Respondent.

JUDGMENT

Coram : **Hon'ble Barin Ghosh, C. J.**
Hon'ble U.C. Dhyani, J.

U.C. Dhyani, J. (Oral)

Present Government Appeal was preferred by the State of Uttaranchal against the judgment and order dated 14.10.2005, passed by learned Sessions Judge, Haridwar in Sessions Trial No. 09 of 1999, whereby accused / respondent Alam was acquitted of the charges of offences punishable under Sections 364, 302 and 201 of IPC giving him benefit of doubt.

2) The contention of learned Deputy Advocate General was that whereas accused Pyara was convicted by learned court below, co-accused Alam (present respondent) was acquitted of the charges levelled against him. Learned court below has failed to take note of the fact that accused-respondent Alam was the brother-in-law of accused Pyara and the respondent Alam also participated in the

commission of crime. It was also contended that learned court below has wrongly disbelieved the prosecution evidence and wrongly acquitted accused-respondent Alam. It was prayed that the present Government Appeal be allowed and impugned order of acquittal of accused-respondent be set aside.

3) A missing report (Ext. Ka-1) was lodged by Gulzar to Inspector, Police Station Kotwali, Roorkee on 09.10.1998 informing that his son Gulfam, aged 12 years, was missing since 12 noon of 03.10.1998. A frantic search for the missing child was made, but to no avail. After lodgement of said missing report, informant Gulzar lodged a first information report (Ext. Ka-2) on 24.10.1998, alleging that his son Gulfam was missing since 03.10.1998 and despite best efforts, the child could not be traced. It was also alleged in the first information report that on the selfsame day (i.e. 24.10.1998) in the morning, Taufeeq, Waseem and Shaukeen told the informant that on 03.10.1998, at about 12 noon, when they were playing in the field, Pyara s/o Asgar came there and asked them to call Gulfam. Gulfam came to his house, changed his clothes and went with Pyara. In the meantime, fellow villagers Yasin, Hamid and Noor Hasan told informant that they saw the victim in the company of Pyara and his brother-in-law Alam (respondent) on 03.10.1998 at 06:00 P.M. in the jungle. Informant Gulzar apprehended that his son Gulfam was killed by Pyara and respondent Alam.

4) Criminal law was set into motion on the basis of said first information report. After investigation of the case, a charge sheet (Ext. Ka-7) against accused Pyara and respondent Alam was filed in respect of the offences punishable under Sections 364, 302 and 201 of IPC. When the prosecution opened its case before learned Sessions Judge, Haridwar, charges in relation to offences punishable under Sections 364, 302 / 34 and 201 / 34 of IPC were framed against both the accused, who pleaded not guilty and claimed trial. Witnesses namely, PW1 Gulzar, PW2 Taufeeq, PW3 Waseem, PW4 Hamid, PW5 Dr. R.K. Pandey, PW6 Nafeesa, PW7 S.I. Hari Prakash Vats and PW8 S.I. Nautan Das were examined on behalf of the prosecution. Incriminating evidence was put to the accused persons under Section 313 of Cr.P.C., in reply to which they said that they were falsely implicated in the case. DW1 Ahmad Hasan was examined in defence. After hearing both the sides, learned trial court found accused Pyara (non-respondent) guilty of the offences punishable under Sections 364, 302 and 201 of IPC and sentenced him appropriately. Co-accused Alam (respondent) was acquitted of the charges framed against him giving him benefit of doubt. Aggrieved against the acquittal of respondent Alam, State preferred present Government Appeal.

5) PW1 Gulzar (informant) proved the contents of his complaint. While proving the prosecution story, he narrated all the facts in his examination-in-chief, which facts were written by him in his complaint. He was not an

eyewitness to the incident. Evidence of PW2 Taufeeq, who was a child witness, aged 17 years, when he deposed before the court below on 02.04.2004, was directed against the non-respondent Pyara. No useful purpose will be served by discussing the evidence of PW2 Taufeeq, who said nothing about the participation of respondent Alam in the crime in question. Likewise, PW3 Waseem also did not say anything against the respondent Alam. In fact, PW2 and PW3 said that when Gulfam (victim) was playing, accused Pyara (non-respondent) came on the ground and enquired about Gulfam. Then PW3 Waseem went to call the victim. PW3 then narrated the conversation which took place between Pyara and the victim Gulfam. The only evidence tendered against respondent Alam was the evidence of PW4 Hamid, who said that he saw victim in the company of Pyara and Alam on 03.10.1998, at 06:00 P.M. PW6 Nafeesa, mother of the victim, who was away at her parental home when the incident took place, said that her real brother Pyara went from his house on bicycle on 03.10.1998 at 09:00 A.M. and returned at 10:00 P.M. on the selfsame day in her presence. She did not say anything against the respondent Alam except the fact that she came to know (from some source, which source was not evidenced) that her son Gulfam was killed by Pyara and Alam.

6) Having heard learned Deputy Advocate General for the State / appellant and after going through the papers on record, this Court is of the view that the evidence tendered against the respondent Alam was far from

convincing. The only evidence against accused-respondent Alam was the uncorroborated statement of PW4 Hamid. PW4 deposed that on 03.10.1998, at 06:00 P.M., when he was going to his residence alongwith Yasin and Lala (both not examined), he saw that Pyara and the other person (Alam) were going alongwith the victim on a bicycle towards the jungle. This witness disclosed this fact to Gulzar (informant and father of victim) after 20-21 days of the incident. When PW4 was cross-examined, he said that he told the Investigating Officer that he saw Pyara, Alam and Gulfam riding on a bicycle. The Investigating Officer did not record such statement of PW4. He (PW4) could not explain the reason, if his statement was not recorded by the Investigating Officer. PW4 admitted in his cross-examination that he did not disclose any other thing to the Investigating Officer. The evidence thus tendered by PW4 was not at all reliable. Firstly, he informed Gulzar that he saw his son with Pyara and Alam on bicycle only after 21 days; secondly, he informed the Investigating Officer about the same but the Investigating Officer did not record his statement due to the reasons best known to PW4 or I.O.; and thirdly, he (PW4), according to his own admission, did not speak to the Investigating Officer anything other than such a statement. These three factors did not inspire confidence in the statement of PW4.

7) There was only 'last seen evidence' of PW4 against accused-respondent Alam. Learned trial court did not believe prosecution evidence tendered against Alam, primarily on the ground that there was no direct evidence

against him and the 'last seen evidence' was not trustworthy. Alam was implicated in the crime only on the basis of circumstantial evidence. Only two pieces of evidences were directed against him, viz., the evidence of PW4 Hamid and Pyara's confessional statement given to PW8 S.I. Nautan Das. Learned trial court rightly observed that the confessional statement was made by accused Pyara and not by the respondent Alam. Whereas accused Pyara confessed his guilt and disclosed the name of Alam as his associate in the crime, present respondent Alam neither made a confessional statement, nor any incriminating article was recovered on his disclosure and pointing followed by his confessional statement. The evidence of PW4 Hamid was also not acceptable to learned court below. In pages 21 to 24 of his judgment, learned court below has given plausible reasons for not accepting the prosecution story as against accused-respondent Alam.

8) There is yet another aspect of the matter. Whereas the child was missing since 03.10.1998 and victim's mother came back to her matrimonial home on 07.10.1998, then why was the missing report lodged on 09.10.1998? Father of the victim must have told the mother of the victim that their son (victim) was missing. There is no explanation of the glaring omission committed by the informant. If missing report was to be filed, then why was the same not filed at the earliest? What for the father of the victim was waiting unnecessarily for two more days? It was also not clear as to who could be the beneficiary of such killing, and how? The 'last seen

evidence' directed against the respondent Alam was therefore, not believable.

9) We have no reason to differ from the findings arrived at by learned court below, so far as non-acceptance of prosecution story against respondent Alam was concerned. We are in agreement with the finding given by learned court below that the prosecution could not prove its case against the respondent Alam beyond reasonable doubt. Learned trial court did not rely upon the prosecution version, for no unjust reason.

10) In view of the facts and circumstances enumerated above, there is no scope of interference with the judgment and order rendered in favour of the respondent Alam by learned trial court. Government Appeal is liable to be dismissed and the same is accordingly, dismissed.

(U.C. Dhyani, J.)

(Barin Ghosh, C.J.)

Dt. October 31, 2012.

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