

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 19 of 2004

Gurumukh Singh @ KakeAppellant

Versus

State of Uttaranchal

.... Respondents

*Mr. B.S. Parihar, Advocate for the appellant.
Mr. Nandan Arya, Dy.A.G., for the State/respondent.*

With

Criminal Appeal No. 20 of 2004

Gurumukh Singh @ KakeAppellant

Versus

State of Uttaranchal

.... Respondents

*Mr. B.S. Parihar, Advocate for the appellant.
Mr. Nandan Arya, Dy.A.G., for the State/respondent.*

Judgment Reserved - 18.10.2016

Date of Judgment- 28.10.2016

Hon'ble Rajiv Sharma,J.

Since, the common questions of law and facts are involved in both the appeals, the same are taken up together for adjudication by a common judgment.

These appeals are instituted against the common judgment and order dated 06.01.2004 passed by learned Additional Session Judge/ III F.T.C., U.S. Nagar (Rudrapur) in Sessions Trial No.373 of 2002, Crime No. 380 of 2002, "*State vs. Sonu & Gurumukh Singh*", under Section 307 of the I.P.C. and Section 25 of the Arms Act, whereby the accused-appellant Gurumukh Singh was convicted and sentenced to undergo rigorous imprisonment for two years and 6 months under Section 307 IPC and pay fine of rupees one thousand and to undergo simple imprisonment for three months in default of

payment of fine and also to undergo rigorous imprisonment for one year under Section 25 of Arms Act. The above sentences were directed to run concurrently.

The case of the prosecution, in a nutshell, is that the police party on 30.07.2002 went for investigation of Crime Nos.366 of 2002 and 367 of 2002. The police party had gone to the village of the accused for their search, but the accused were not found there. They got specific information that the accused were standing on bridge with the looted motorcycle. The police party chased the accused. The police party overtook the motorcycle of the accused. Thereafter, one of the accused fired at police party. The accused were apprehended at 05:30 a.m. The accused disclosed their identity. A motorcycle, without any registration number, was recovered from the possession of co-accused Sonu. One country made pistol of 315 bore, along with empty cartridge and two live cartridges, were recovered from the possession of the accused-appellant Gurumukh Singh by the police party.

A country made pistol along with one empty cartridge and also two live cartridges were sent to the Forensic Science Laboratory (FSL) at Agra. The matter was investigated and the Challan was put up after completing all the codal formalities.

Charges were framed against both the accused under Section 307 IPC read with Section 34 IPC. A separate charge was also framed against the accused-appellant Gurumukh Singh under Section 25 of the Arms Act.

Prosecution, in support of its case, has examined as many as three witnesses.

Statements of the accused were recorded u/s 313 Cr.P.C. They denied the case of the prosecution and claimed to be tried.

Learned Additional Sessions Judge/ IIIrd FTC, U.S. Nagar, vide the impugned judgment has sentenced the accused-appellant, as noted hereinabove. By the same judgment, co-accused Sonu was acquitted by the trial Court. Hence, the present appeals.

Learned counsel for the appellant has vehemently argued that the prosecution has failed to prove its case against the accused-appellant beyond reasonable doubt.

On the other hand, learned State counsel has supported that judgment dated 06.01.2004, rendered by the trial Court and argued that no interference is warranted in the judgment impugned.

It would be pertinent to mention at this stage that the Sessions Trial No.373 of 2002 and Sessions Trial No.374 of 2002 were tried together and adjudicated by a common judgment.

PW1 D.C. Dhaundiya, SHO, P.S. Bazpur, testified that on 30.07.2002 at 3:35 a.m. he along with the police party had gone in search of the accused. The police party came to know that the accused was standing on the bridge with the stolen motorcycle at Jharkhandi bend. Consequently, the police party was informed that accused had gone towards Bazpur riding on separate motorcycles. The police party chased the accused and surrounded

them. One of the accused fired at the police party with the intension to kill them. The accused were finally arrested at 5:30 a.m. and they disclosed their identity.

PW2 Shyam Narayan Mishra, S.I. has corroborated the statement of PW1 and supported the version made in the FIR. According to him also, the police party, while chasing the accused, tried to apprehend them. One of the accused fired from the country made pistol. None of the personnel of the police party got injured and they escaped un-hurt.

The country made pistol with one empty cartridge and two live cartridges, was recovered from the accused-appellant, the same were sent to FSL, Agra. The report of expert of said laboratory was duly proved on record by the prosecution. According to the report of expert, the country made pistol, from which the cartridge was fired and was seized, were found to be the same.

PW3 namely B.D. Saraswat, S.I., has investigated the matter and prepared the site plan. He took necessary permission from the District Magistrate to prosecute the accused under Section 25 of Arms Act. The country made pistol was sent to FSL. He proved the report of the FSL dated 27.03.2003.

It is true that the prosecution has only relied upon the statements of official witnesses but there is no law that the statements of the official witnesses cannot be relied upon. The Court has to see whether the statement of official witnesses inspire confidence or not. Since, the instant case has happened at an isolated and desolated place. Thus, the independent

witnesses could not be associated. There was no occasion for the police to falsely implicate the accused leaving the real culprits.

What is to be seen under Section 307 IPC is the intention and knowledge of the accused to cause death of the person, while the nature of injuries is not of much importance.

No ground is made out for any interference with the well-reasoned judgment and order dated 06.01.2004, passed by Additional Sessions Judge/ IIIrd FTC, U.S. Nagar.

Accordingly, both the appeals are hereby dismissed.

The accused-appellant is on bail. His bail bonds are hereby cancelled. Let, he be taken into custody in order to serve out the sentence awarded to him.

Let LCR along with the certified copy of this order be sent to the trial Court.

Date: 28.10.2016
NISHANT

(Rajiv Sharma, J.)