SUPREME COURT OF INDIA

State of Uttarakhand

Vs.

Jairnail Singh

Crl.A.No…..of 2017

(R.K.Agrawal and Abhay Manohar Sapre,JJ.,)

13.11.2017

JUDGMENT

Abhay Manohar Sapre,J.,

SLP(Crl.)No.1651 of 2015

1. Leave granted.

2. This appeal is filed by the State against the final judgment and order dated 22.05.2014 passed by the High Court of Uttarakhand at Nainital in Criminal Appeal No.33 of 2005 whereby the High Court allowed the appeal filed by the respondent(accused) herein and set aside the order of conviction and sentence dated 01.03.2005 passed by the Trial Court in Session Trial Nos.319 & 320 of 2000 by which the respondent(accused) was convicted under Section 307 of the Indian Penal Code, 1860 Ills (hereinafter referred to as "IPC") and Section 25(1-A) of the Arms Act, 1959 and sentenced him to undergo rigorous imprisonment for ten years and a fine of Rs.5000/- under Section 307 of IPC, in default of payment of fine, to further undergo imprisonment for three months and to undergo rigorous imprisonment for five years and a fine of Rs.1000/- under Section 25(1-A) of the Arms Act, in default of payment of fine, to further undergo imprisonment for one month. Both the sentences were directed to run concurrently.

3. The prosecution case is that on 12.12.1999 at 17.45 hrs., the First Information Report (FIR) was lodged by Asgar Ali, son of Allah Diya, resident of Mohalla Naudhauna, Kasba and Police Station Sherkot, District Bijnore in Police Station Nanakmatta, Dist. Udham Singh Nagar, Uttarakhand. As per the contents of the FIR lodged by Asgar Ali-the Complainant, on 08.12.1999, he along with his brother Akbar Ali and 10-12 other persons were doing the trading of sale purchase of paddy of Village Devipura. On 12.12.1999, at around 11.00 hrs., when Akbar Ali (injured victim) was weighing paddy of Jairnail Singh(accused) in his village at Devipura, at that time, Jairnail Singh came and made an allegation on Akbar Ali that more paddy has been weighed while it had been shown less.

Akbar Ali denied the allegation. Therefore, Jairnail Singh started abusing Akbar Ali and when Akbar Ali objected, the quarrel erupted and Jairnail Singh took out a 12 bore country made pistol from his right pocket of his pant and fired on the temple of Akbar Ali, due to which Akbar Ali fell down at the spot. Asgar Ali(complainant) and other companions of Akbar Ali tried to grab Jairnail Singh but he succeeded to escape from the spot with the pistol in south direction. The Complainant and his companions took the injured Akbar Ali to the Government Hospital, Nanamatta on his tractor trolley where no doctor was available. Therefore, they went to Government Hospital, Khatima where doctor referred the injured to the Government Hospital, Pilibhit where the injured was examined.

4. During the investigation, the Investigating Officer on 13.12.1999 at about 12.30 p.m. arrested Jairnail Singh from Nanak Sagar Dam and recovered the pistol, which was without license. After completion of the investigation, the Investigating Officer filed the charge-sheet under Section 307 IPC and Section 25 of the Arms Act against Jairnail Singh (accused).

5. The Judicial Magistrate, Khatima, Dist. Udham Singh Nagar, committed the case for trial to the Session Court. After committal of the case to the Session Court, Udham Singh Nagar, Rudrapur, the Sessions Judge, framed charges against the accused-Jairnail Singh under Section 307 IPC and Section 25 of the Arms Act in Session Trial Case No.320 of 2000 for the offence punishable under Section 307 IPC and Session Trial Case No.319 of 2000 for the offence punishable under Section 25 of the Arms Act. The accused denied the charges.

6. The Trial Court conducted the trial in both the cases together. By judgment dated 01.03.2005, the Trial Court convicted the accused for the offences punishable under Section 307 of IPC and Section 25 of the Arms Act and sentenced him to undergo rigorous imprisonment for ten years for the charge under Section 307 IPC and a fine of Rs.5000/-, in default of payment of fine, to further undergo imprisonment for three months and also to undergo rigorous imprisonment for five years under Section 25(1-A) of the Arms Act and a fine of Rs.1000/-, in default of payment of fine, to further undergo imprisonment for one month. Both the sentences were directed to run concurrently.

7. Aggrieved by the judgment of the Trial Court, the respondent(accused) filed an appeal being Criminal Appeal No.33 of 2005 before the High Court. The High Court, by impugned judgment, allowed the appeal and set aside the order of conviction and sentence of the respondent-accused passed by the Trial Court in Session Trial Nos.319 and 320 of 2000.

8. Felt aggrieved, the State has filed this appeal by way of special leave before this Court.

9. Heard Mr. Rajiv Nanda, learned counsel for the appellant (State) and Mr. Adarsh Upadhyay, learned counsel for the respondent (accused).

10. Learned counsel for the appellant (State) while assailing the legality and correctness of the impugned judgment contended that the High Court was not right in reversing the well reasoned judgment of the Session Court, which rightly held the respondent-accused guilty of

commission of offences punishable under Section 307 IPC and Section 25(1-A) of the Arms Act and accordingly had rightly convicted him for the said offences.

11. It was his submission that the three eye witnesses (PWs-1, 2 and 3), whose testimony was believed by the Sessions Judge for recording conviction of the respondent, should not have been reversed by the High Court in the appeal filed by the respondent-accused. According to learned counsel, such findings should have been affirmed by the High Court as the same was based on proper appreciation of the evidence of the three witnesses.

12. Learned counsel further submitted that the discrepancies, if any, which were made basis by the High Court for acquitting the respondent (accused) were technical in nature and did not materially affect the prosecution case. Such discrepancies, according to learned counsel, should have been ignored being wholly insignificant in the light of the law laid down in *Dhanaj Singh @ Shera & Ors. vs. State of Punjab*[1],.

13. Learned counsel then took us through the evidence of the prosecution witnesses and argued that their ocular evidence deserve acceptance for convicting the respondent under Section 307 IPC and Section 25(1-A) of the Arms Act.

14. In reply, learned counsel for the respondent (accused) supported the impugned judgment and contended that no case for any interference in the impugned judgment is made out as the same is based on proper appreciation of evidence.

15. It was also his submission that the infirmities noticed by the High Court in prosecution case for reversing the judgment of the Session Court cannot be faulted with and being material in nature deserve to be upheld by this Court as was rightly done by the High Court.

16. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in the appeal.

17. In other words, in our view, the reasoning and the conclusion of the High Court in acquitting the respondent of the charges under Section 307 IPC and Section 25(1-A) appears to be just and proper as set out below and to which we concur and hence it does not call for any interference by this Court.

18. First, the parties involved in the case namely, the victim, his brother, who was one of the eye-witnesses with other two eye-witnesses and the accused were known to each other then why the Complainant-brother of victim in his application (Ex-P-A) made immediately after the incident to the Chief Medical Superintendent, Pilibhit did not mention the name of the accused and instead mentioned therein "some sardars".

19. Second, according to the prosecution, the weapon used in commission of offence was recovered from the pocket of the accused the next day, it looked improbable as to why would the accused keep the pistol all along in his pocket after the incident for such a long time and roam all over.

20. Third, the weapon (pistol) alleged to have been used in the commission of the offence was not sent for forensic examination with a view to find out as to whether it was capable of being used to open fire and, if so, whether the bullet/palate used could be fired from such gun. Similarly, other seized articles such as blood-stained shirt and soil were also not sent for forensic examination.

21. Fourth, weapon (Pistol) was not produced before the concerned Magistrate, as was admitted by the Investigating Officer.

22. Lastly, if, according to the prosecution case, the shot was hit from a very short distance as the accused and the victim were standing very near to each other, then as per the medical evidence of the Doctor (PW-6) a particular type of mark where the bullet was hit should have been there but no such mark was noticed on the body. No explanation was given for this. This also raised some doubt in the prosecution case.

23. In our considered opinion, the aforesaid infirmities were, therefore, rightly noticed and relied on by the High Court for reversing the judgment of the Session Court after appreciating the evidence, which the High Court was entitled to do in its appellate jurisdiction. We find no good ground to differ with the reasoning and the conclusion arrived at by the High Court.

24. In other words, it cannot be said that the aforementioned infirmities were either irrelevant or in any way insignificant or technical in nature as compared only to the ocular version of the witnesses. The prosecution, in our view, should have taken care of some of the infirmities noticed by the High Court and appropriate steps should have been taken before filing of the charge-sheet to overcome them. It was, however, not done. The benefit of such infirmities was, accordingly, rightly given to the respondent by the High Court.

25. In the light of the aforementioned infirmities noticed in the prosecution case which, in our opinion, were material, the decision cited by the learned counsel for the appellant (State) cannot be applied to the facts of the case at hand. It is distinguishable.

26. Since the State has challenged the order of acquittal in this appeal, unless we are able to notice any kind of illegality in the impugned judgment, we cannot interfere in such judgment. In other words, it is only when we find that the impugned judgment is based on no evidence or/and it contains no reasoning or when it is noticed that the reasoning given are wholly perverse, this Court may consider it proper in appropriate case to interfere and reverse the decision of the High Court.

27. But when the High Court while reversing the decision of the Session Court acquits the accused and assigns the reasons by appreciating the entire evidence in support of the acquittal, then this Court would not be inclined to interfere in the order of acquittal. In our view, it is necessary for the High Court while hearing the appeal arising out of the order of conviction to appreciate the entire evidence and then come to its conclusion to affirm or

reverse the order. In a case of later, which results in reversal, with which we are here concerned, it is necessary for the High Court to assign cogent reasons as to why it does not consider it proper to agree with the reasoning of the Sessions Judge by pointing out material contradiction in evidence and infirmities in the prosecution case. Case at hand is of this nature.

28. In view of foregoing discussion, we find no merit in the appeal. The appeal fails and is accordingly dismissed.

Judgment Referred.

[1]*(2004) 3 SCC 0654*