

Court No. - 16

Case :- CRIMINAL APPEAL No. - 480 of 2008

Appellant :- Ram Manohar Singh @ Pappu Singh

Respondent :- The State Of U.P.

Counsel for Appellant :- Rishad Murtaza, Akhilesh Kumar Kalra, Rahul Kapoor, Shailendra Kumar Singh

Counsel for Respondent :- Govt. Advocate

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Saksham Chopra, Advocate holding brief of Shri Akhilesh Kumar Kalra, learned counsel for the appellant well as learned A.G.A. for the State and perused the record.

2. The instant criminal appeal under Section 374(2) Cr.P.C. has been preferred by the appellant- **Ram Manohar Singh @ Pappu Singh** against the judgment and order of the trial court dated 01.03.2008 passed by Additional Sessions Judge/Fast Track Court No.4, Gonda in Sessions Trial No. 401 of 2005 & 402 of 2005, arising out of Case Crime No. 395 of 2001, under Section 307 I.P.C. & Section 7 Criminal Law Amendment Act, arising out of Case Crime No. 396 of 2001, under Section 25 of the Arms Act, Police Station Kotwali Nagar District Gonda, whereby the appellant has been convicted for committing offence under Section 307 I.P.C. & Section 7 Criminal Law Amendment Act as also under Section 25 of the Arms Act and have been sentenced for a maximum imprisonment of five years' for committing offence under Section 307 I.P.C. with fine & under Section 7 Criminal Law Amendment Act for four months' as well as under Section 25 of the Arms Act for three years' rigorous imprisonment with fine and also with default clause.

3. The necessary facts required for disposal of the instant appeal appears to be that, on 12.09.2001 an F.I.R. has been lodged by the informant- Suresh Kumar Singh, S.H.O. of Police Station Chhapia, Gonda alleging

therein that on 12.09.2001 he was deputed with other police personnel's, mentioned in the F.I.R., to trace and arrest an accused person of Case Crime No. 373 of 2001 at Kunvar Talkies situated within the vicinity of Police Station Kotwali Nagar and at about 6:30 pm. a police informer informed him that absconder, namely, Ram Manohar Singh @ Pappu Singh (Appellant) is standing at Bahraich by-pass crossing with illegal weapon and he may be arrested. On such information provided by the police informer, the informant along with other police personnel arrived at the aforesaid Bahraich by-pass crossing and found the appellant, who was challenged by him, on which the appellant started firing on the police party from the pistol, which he was carrying, however, with the strategy adopted by the police personnel the appellant was arrested at about 6:50 pm. and told his name as ' Ram Manohar Singh @ Pappu Singh' and on his personal search a factory made pistol of 0.9 mm. was recovered from his possession with three live cartridges and two empty cartridges were also recovered from the place from where the appellant has fired on the police party.

4. It is further alleged in the F.I.R./recovery/arresting memo that by the alleged act of firing of the appellant the public peace and tranquility was disturbed and also that the appellant is a gang leader of a gang.

5. On the basis of the aforesaid recovery/arresting memo, an F.I.R. at Case Crime No. 395 of 2001, under Section 307 I.P.C. & Section 3(1) U.P. Gangster Act & and under Section 7 Criminal Law Amendment Act and another F.I.R. at Case Crime No. 396 of 2001, under Section 25 of the Arms Act were registered separately and substance of it was also mentioned in G.D. No.56 of date 12.09.2001.

6. After registration of the above-mentioned F.I.R.s the investigation started and as required by the law, the appellant was presented before the Magistrate for the purpose of obtaining remand and having regard to the material produced, the remand magistrate refused to remand the appellant under Section 3(1) of the U.P. Gangster Act.

7. The investigating officer during the course of investigation recorded the statement of the police personnels who were accompanying the informant as well as the informant and also prepared site plans and obtained necessary sanction for prosecution of the appellant under Section 25 of the Arms Act and filed separate charge-sheets under Section 307 I.P.C. & Section 7 Criminal Law Amendment Act as well as under Section 25 of the Arms Act.

8. The charges under Section 307 I.P.C. & Section 7 Criminal Law Amendment Act as well as under Section 25 of the Arms Act were framed against the appellant, to which, he denied and claimed trial.

9. During the course of trial, the prosecution has testified prosecution witness no.1/Suresh Kumar Singh (Inspector CBCID), P.W.-2/Constable Chhotey Lal, P.W.-3/Constable Ram Pravesh, P.W.-4/Constable Ramakant Saroj, P.W.-5/S.I. Santosh Kumar, P.W.-6/Constable Vindeshwari Prasad.

10. Apart from the above-mentioned oral evidence, the prosecution has also relied on documentary evidence e.g. arresting/recovery-memo, Exhibit-ka-1, Chik F.I.R., Exhibit-ka-2, G.D. Qayami, Exhibit-ka-3 and Site Plan, Exhibit-ka-3. Charge sheets filed under Sections 307 I.P.C. & Section 7 Criminal Law Amendment Act as well as under Section 25 of the Arms Act, sanction for prosecution of the appellant under Section 25 of the Arms Act as well as some other material exhibits like pistol, live and empty cartridges.

11. After the conclusion of the evidence of the prosecution, the statement of the appellant/accused was recorded under Section 313 Cr.P.C., wherein he denied the evidence produced by the prosecution and claimed that he has been arrested from Bahraich by the police and thereafter he was taken to Gonda at the instance of the local Member of Parliament and he has not committed any offence. The appellant/accused in support of his defence has also produced D.W.-1/Jai Shanker Singh, D.W.-2/Pradeep Kumar Singh and D.W.-3/Mainuddin.

12. The appellant has also produced in documentary evidence, application sent to the Director General of Police, Uttar Pradesh, on 12/13.09.2001 as well as FAX sent to the D.G.P., Uttar Pradesh, Lucknow and also moved an application to summon the concerned clerk of the office of the D.G.P., Uttar Pradesh, Lucknow in order to prove the fax sent by his wife with regard to the fact that appellant has been illegally taken from Bahraich by the police of Gonda and a fake case of police encounter has been cooked against him. However, an information was sent by the D.G.P. office that the fax receipt register of the year 2001 has been destroyed.

13. The trial court tried both the cases against the appellant/accused together while the case under Section 307 I.P.C. was made the leading case and by passing the impugned judgment and order order has convicted and sentenced the appellant, as stated in the second paragraph of this judgment.

14. Shri Saksham Chopra, learned counsel appearing for the appellant while drawing the attention of this Court towards the impugned judgment passed by the trial court, vehemently submits that the trial court has committed manifest illegality in appreciating the evidence available on record and has not considered the major embellishments, dents and material contradictions, which has emerged in the testimony of the prosecution witnesses and while it was evident that the prosecution has failed to prove its case beyond reasonable doubt has convicted the appellant for the offence which has never been committed by him.

15. It is further submitted that the trial court has adopted a unique approach by saying that a pistol of particular bore may not be planted by the police and acting on such assumption/presumption has proceeded to convict the appellant, which is not permissible in law as the requirement of the law that an accused could only be convicted when the evidence of the prosecution witnesses is touching the parameters of proof beyond reasonable doubt.

16. It is further submitted that it was a case where none of the police witness was injured and the manner in which the arrest of the appellant has been shown, could not be believed by any prudent person, as the appellant is shown to have been arrested from one of the busiest place of the locality and it was admitted to the prosecution witnesses that the independent public witnesses were present, however, no effort has been made by the police party to secure independent public witnesses and, thus, arrest as well as the recovery and the other allegations are not proof beyond reasonable doubt by the prosecution.

17. It is next submitted that the defence witnesses produced by the appellant before the trial court as well as the documentary evidence was sufficient to establish that the appellant has been arrested from Bahraich by the police of Gonda and this fact has not been mentioned anywhere in the police papers prepared by the police and also the fact that fax and application by registered post have been sent to the D.G.P. of Uttar Pradesh by the wife of the appellant has not been properly appreciated by the trial court. It is vehemently submitted that the trial court in order to reject the defence of the appellant and the evidence of the defence witnesses has analyzed and appreciated the evidence of the defence witnesses as if they are prosecution witnesses, while the only requirement of an accused is to prove its defence on the parameters of the preponderance of probabilities and the defence is not required to be proved beyond reasonable doubt and this aspect of the matter has not been considered by the trial court. Thus, despite the case of the prosecution was not proved beyond reasonable doubt, the trial court has proceeded to convict the appellant on the basis of insufficient evidence and, therefore, the Judgment and order passed by the trial court may not sustain the scrutiny of law and is liable to be set-aside/quashed.

19. Learned A.G.A. on the other hand submits that the appellant has been arrested by the police on the basis of prior information received by the police party from a police informer and he has also fired on the police party and the pistol which has been recovered from the possession

of the appellant, may not be deemed to have been planted as the factory made pistol of 9 mm. is a costly pistol and, therefore, the defence of the appellant that the same is planted by the police could not be accepted.

20. It is further submitted that evidence of the police personnel may not be appreciated by applying different standard and it was proved before the court that despite efforts made by the police party the independent witnesses were not ready to depose against the appellant and, therefore, no illegality or to say any irregularity has been committed by the trial court in convicting and sentencing the appellant.

21. Having heard counsel for the parties and having perused the record, it is transpired that the case of the prosecution is that, on relevant day on the basis of an information received from the police informer the appellant was apprehended and on being searched, a pistol of 9 mm. with some live and empty cartridges have been recovered and before his arrest the appellant fired gun shots towards the police party in order to kill them, however, no police personnel was injured in such firing.

22. At the outset, this Court records that there cannot be different parameters for appreciating the evidence of different witnesses. The evidence of a witness is to be appreciated and accepted on the basis of his/her inherent weaknesses and performance during cross-examination and if even after cross-examination the evidence of a particular witness, in the opinion of the Court is reliable and may be accepted it doesn't make any difference if the witness before the Court is a police personnel or a person from public, therefore, solely on the basis that all the witnesses in this case are police personnels, their testimony could not be rejected. However, the same is to be appreciated with caution, in the background of the facts and circumstances of the case as well as the performance of the witnesses during cross-examination.

23. Hon'ble Supreme Court in *Vadivelu Thevar V/s state of Madras; AIR 1957 SC 614* held as under:-

“The contention that in a murder case, the Court should insist upon plurality of witnesses, is much broadly stated.”

“The Indian Legislature has not insisted on laying down any such exceptions to the general Rule recognized in Section 134 quoted above. The Section has enshrines the well recognized maxim that "Evidence has to be weighed and not counted." Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon.

“ Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution.”

“Generally speaking oral testimony in this context may be classified into three categories, namely (1) wholly reliable (2) wholly unreliable (3) neither wholly reliable nor wholly unreliable. In the first category of proof, the Court should have no difficulty in coming to its conclusion either way- it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the Court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The Court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render

oral testimony open to suspicion, it becomes its duty to act upon such testimony.”

24. Hon'ble Supreme Court in ***Bharwada Bhoginbhai Hirjibhai v State of Gujarat as reported in AIR 1983, 753, MANU/SC/0090/1983*** while appreciating evidence of witnesses in the background of minor discrepancies laid down following principles:-

“(1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

(2) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

(3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.

(4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

(5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guesswork on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

(6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

(7) A witness, though wholly truthful, is liable to be overawed by the Court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him - perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.”

Thus, the evidence of the prosecution witnesses of fact is required to be appreciated in the background of the above-mentioned settled principle of law.

25. The first submission, which has been placed with considerable force by learned counsel for the appellant is the non-availability of the independent public witnesses. This Court has gone through the evidence of all the witnesses of fact and have found that it is admitted to the prosecution witnesses that having regard to the time at which the appellant was arrested, the independent public witnesses were available and it also appears to be an admitted situation that the police party neither in their statement nor in the F.I.R. lodged by him has mentioned the name of any independent person who was requested by the police party to be a witness of the arrest and recovery. Therefore, the contention of the police party that there were independent witnesses and they were requested to be the witness of recovery and arrest and could not be believed as it is.

26. The next scenario, which is highlighted by learned counsel for the appellant is that, the appellant is shown to be arrested from Gonda while in fact he was arrested from Bahraich and in this regard FAX, application by registered post was sent by his wife to the D.G.P. of Uttar Pradesh and during the course of trial three defence witnesses were produced by the appellant in order to prove that he was arrested from

Bahraich and not from Gonda and in this regard, he, moved an application before the trial court to summon the clerk deputed at the office of the D.G.P. of Uttar Pradesh in order to prove that the FAX sent by his wife was duly received at the office of the D.G.P. of Uttar Pradesh. However, it is also evident that the said register wherein the FAX are received by the office of the D.G.P. of Uttar Pradesh are entered, could not be produced before the Court and it is shown that the same has been destroyed.

27. Perusal of the evidence of the three defence witnesses would reveal that all these witnesses in one voice have stated that the police party has arrested the appellant from district Bahraich. This Court do not find any dents or to say any embellishments and major contradictions in their testimony and their testimony is also corroborated by the registry receipts and FAX receipts produced by the defence before the trial court and non-production of the Register of FAX receipt by the DGP office during trial on the pretext that the same has been destructed raises a presumption that its production had gone against prosecution.

28. It is also to be recalled that no police personnel has sustained any injury in the incident, while the case of the prosecution is that at least two gun shots were fired by the appellant towards them. In this regard, the defence of the appellant that no expert or to say any 'Armour' which may prove that gun shots have been fired from the pistol allegedly recovered from the possession of the appellant, has been testified before the trial court and in absence of any such expert it could not be believed that gun shots have been fired from the pistol which is shown to have been recovered from the possession of the appellant, could not be believed.

29. This Court is of the considered view that the manner in which this important argument/defence advanced by the appellant/accused person has been dealt with by the trial court may not be appreciated by this Court. It was obligatory on the part of the prosecution to prove beyond

reasonable doubt that the pistol, which has been recovered from the possession of the appellant was in fact used for firing on the police party and also that the 'Pistol' was capable of firing but the trial court appears to have committed an illegality in appreciating this aspect of the matter.

30. Another aspect of the matter appears to be against prosecution is that the manner in which the sanction for prosecution of the appellant under Section 25 of the Arms Act has been obtained may also not withstand the test of law as the pistol itself was required to be produced before the District Magistrate for obtaining sanction and in this regard there has to be a specific evidence that the pistol in fact was produced before the District Magistrate and the district magistrate after examining the same has given the sanction for prosecution of the appellant and the said facts in the considered opinion of this Court has not been established, as required. Therefore, it could not be believed that the sanction given by the district magistrate concerned was given after witnessing and checking the pistol in question.

31. Another important point, which is emerging in favour of the appellant is the non-examination of the investigating officer on the pretext that during the course of trial has died and in this background the defence of the appellant appears to be that, by the non-examination of the investigating officer he has been prejudiced in highlighting the contradictions in the statement of the prosecution witnesses who are all police witnesses in the manner provided under Section 145 of the Indian Evidence Act. The evidence of P.W.-5/Santosh Kumar Singh was also highlighted in order to show that the evidence of this witness is not at all reliable.

32. Perusal of the record would also reveal that there are many contradictions emerging in the evidence of prosecution witnesses of fact which may be termed as major and the same throws a cloud of suspicion over the story of the police that the appellant has been arrested from a crossing at Gonda and also that he had fired gun shots towards the police

party. The absence of any injury on the person of any police personnel or non-showing of any place in the site plan where the bullets allegedly fired by the appellant might have hit, would itself be sufficient to doubt the whole prosecution story.

33. In nutshell, in the considered opinion of this Court, it was the duty of the trial court to have assessed and appreciated the evidence of the prosecution witnesses, in the background of the settled principles of law in order to assess the quality of evidence of the prosecution witnesses, which appears to have not been adhered to by the trial court and in the considered opinion of this Court, the prosecution has miserably failed to prove its case beyond reasonable doubt and having regard to the character of the evidence produced before the trial court, the trial court appears to have committed an illegality in convicting the appellant and, thus, the impugned judgment and order passed by the trial court may not sustain and is liable to be set-aside.

34. In result, the appeal filed by the appellant- **Ram Manohar Singh @ Pappu Singh** is, hereby, **allowed** and the impugned judgment and order of the trial court dated 01.03.2008 passed by Additional Sessions Judge/ Fast Track Court No.4, Gonda, whereby the appellant has been convicted for committing offence under Section 307 I.P.C. & Section 7 Criminal Law Amendment Act as also under Section 25 of the Arms Act and have been sentenced for a maximum imprisonment of five years' for committing offence under Section 307 I.P.C. with fine & under Section 7 Criminal Law Amendment Act for four months' as well as under Section 25 of the Arms Act for three years' rigorous imprisonment with fine is, hereby, **quashed/set-aside**.

35. The appellant appears to be on bail, his sureties are discharged. He need not to surrender in this case unless his detention is required with regard to any other criminal case.

36. Having regard to the provisions contained under Section 437-A of the Cr.P.C., the appellant shall file his personal bond with two sureties of

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Rs. 50,000/- before the trial court for the purpose of securing his presence before the Hon'ble Supreme Court if any S.L.P. or to say any criminal appeal is filed against this judgment.

37. A copy of this order be immediately sent to the trial court through the Sessions Judge concerned for information.

Order Date: 09.05.2024

Praveen/-