

Court No. - 39

Case :- CRIMINAL APPEAL No. - 904 of 1984

Appellant :- Ashok

Respondent :- State of U.P.

Counsel for Appellant :- -----,Alok Ranjan Mishra

Counsel for Respondent :- Govt. Advocate

Hon'ble Siddhartha Varma,J.

Hon'ble Syed Qamar Hasan Rizvi,J.

1. By way of instant Criminal Appeal, challenge has been made to the legality and sustainability of the judgment and order dated 23.03.1984 passed by the learned Sessions Judge, Kanpur in Sessions Trial No. 134/M/1982, whereby the appellant, Ashok Kumar was convicted under Sections 302, 307 and 324 I.P.C and 25 Arms Act and sentenced to undergo rigorous imprisonment for life under section 302 I.P.C, ten years rigorous imprisonment under section 307 I.P.C, one year rigorous imprisonment under section 324 I.P.C and 6 month rigorous imprisonment under section 25 Arms Act. All the sentences were directed to run concurrently.

2. Factual chronology of the case, culminating into lodging of the First Information Report, is as follows : On 14.08.1981 at around 05:30 pm, the deceased Krishna was allegedly killed by a country-made pistol of the appellant Ashok Kumar. An FIR was lodged by Ram Shanker, father of the deceased, regarding the incident on the very same day at 7.00 p.m at Police Station Chhawani, District Kanpur. After the FIR, the investigation commenced.

3. It has been alleged in the F.I.R. that one day before the incident i.e. on 13-08-1981, the first informant's buffalo had entered into the fields of Ashok and had caused some damage. Thereafter there was some altercation between the informant's wife Smt. Ram Devi and Ashok's grand-mother Smt. Ramkali on 14.8.1981. At around 5.30 pm Ram Shanker, first informant, along with Krishna and Sheo Kumar was sitting on the cot where Ashok Kumar came carrying a country-made pistol accompanied by one Jagdish, who also had a gun, who exhorted Ashok to kill. Thereafter, Ashok, with an intention to kill, opened fire at the First Informant in which pellets hit him, Krishna and Shiv Kumar and Krishna died on the spot. Upon a hue and cry being raised, Ram Prasad and Bulaiki, neighbours of the informant, came who had seen the whole incident. It was further stated in the FIR that he with the help of Shiv Kumar, caught Ashok red hand. Smt. Munni, bua of the appellant and Smt. Ram Kali, grand-mother of the appellant, intervened to extricate Ashok had also received some minor injuries. During the grapple, the trigger guard of the pistol got distorted and Ashok was carried to the police station along with his gun with the help of Basant Lal, Dayaram and Shiv Kumar.

4. A cross FIR was also lodged by Gangaram Bali on 15-08-1981 at 9.15 a.m. stating that on 14.08.1981 at 4.30 p.m. Bali, Sheo Kumar, Ram Shanker, Basant Lal had come to the doors of the informant in an intoxicated state and had started abusing his family members. At that time

Ashok, his minor son aged about 16 and half years and Jagdish, his nephew aged about 17 years and the women of the home were there in the house and when they tried to stop them, Sheo Kumar and Ram Shanker fired with their country made pistol and other two with *lathis* had inflicted injuries on Ashok, Smt. Munni and Smt. Kali. The informant was at the house of his niece at Nawabganj and he got knowledge about the incident on the next day morning from his mother and sister. Thereafter, he went to the police station and got the FIR lodged.

5. The investigation, thereafter, commenced and panchyatnama etc. was prepared. Postmortem was also conducted and the police had recovered an empty cartridge which was connected to the rifle, that was used in the offence.

6. After conclusion of investigation, the Police submitted a charge-sheet and charges were framed against the appellant. Charges were read over and explained to the accused, who pleaded not guilty and claimed to be tried. Thereafter, the trial commenced.

7. From the side of the prosecution, as many as eight prosecution witnesses were produced. P.W.1, Ram Shanker, who is an eye witness, had informed the police about the incident by means of the first information report which was lodged on 14.08.1981 at 05:30 p.m. In the cross-examination he remained firm on what he had stated in his examination-in-chief.

8. P.W.2, Shiv Kumar, is the eye-witness who is the elder brother of the deceased.
9. P.W.3, Ram Prasad, the neighbour of first informant, is also the eye-witness of the incident.
10. P.W. 4, Dharm Kishor Srivastava, is the head constable who recovered the country made pistol.
11. P.W.5, Dr. D.S. Trivedi, who had examined Sheo Kumar, Ram Shanker, Ashok, Smt. Munni and Smt. Ramkali. He stated that the injury no. 1 of Sheo Kumar and injury no. 2 of Ram Shanker might have been inflicted by country made pistol. He has further affirmed that the injuries of these 5 person were inflicted around 5.30 pm.
12. P.W. 6, Om Prakash Mishra, is the A.S.I. of Police Station Chhavni, Kanpur Dehat and has investigated the matter.
13. P.W.7, Dr. N.K. Aggarwal, is the doctor who has conducted the postmortem.
14. Learned counsel for the appellant has argued that the sole eye-witness account of P.W.3 was not wholly reliable. Learned counsel for the appellant states if he had seen the incident why he did not lodge the FIR and thus he was only a chance witness and the possibility of his presence in the house of Rajendra Prasad Sharma was very remote and doubtful. Learned counsel for the appellant states that the sole eye-witness account was, therefore, not at all reliable. Learned counsel for the appellant has

further stated that there were many other grounds, on the basis of which, it could be said that the appellant was innocent. He submits that appellant was never, in fact, caught red-handed by any one of the family members of the deceased. Only on the basis of suspicion, he has been implicated in the crime and he submits that suspicion could not take the place of proof. Only because he was a frequent visitor in the house of the deceased and her husband, he has been implicated. Another cause of his implication could be that he had at times made erotic advances towards the deceased.

16. Learned AGA in reply, however, has submitted that the sole eyewitness account was impregnable and that no two views could be taken. He submits that it is a case where a single shot was responsible for the murder and that an empty cartridge had been discovered from the spot. The recovery of the empty cartridge and its association with the rifle, which was used, also could not be doubted.

17. In the end, learned counsel for the appellant has stated that the appellant was a juvenile at the time when the incident had occurred. His juvenility, though, had not been pressed at the time of the trial, it was brought to the notice of the High Court and the matter was thereafter referred to the Juvenile Justice Board, which, on 09.2.2024 had ascertained the age of the appellant at the time of incident and it had found that he was 14 years 08 months 25 days on that date. The declaration of the appellant being juvenile was never contested by any of the parties. Learned counsel for the appellant has stated that as per the

judgment of the Hon'ble Supreme Court in **Abdul Razaq v. State of Uttar Pradesh, (2015) 15 SCC 637** as and when it is found that the appellant was a juvenile, the benefits which a juvenile would have got, had it been discovered at the time of trial that he was juvenile at the time of offence, would be given to him. Learned counsel for the appellant had stated that as per Section 15 of **Juvenile Justice (Care and Protection of Children) Act, 2000**, the juvenile could have been given the punishment and since he relied upon the Section 15 of the Act the same is reproduced as under:-

“15 . Order that may be passed regarding juvenile.-

(1) Where a Board is satisfied on inquiry that a juvenile has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the Board may, if it thinks so fit,-

(a) allow the juvenile to go home after advice or admonition following appropriate inquiry against and counselling to the parent or the guardian and the juvenile;

(b) direct the juvenile to participate in group counselling and similar activities;

(c) order the juvenile to perform community service;

(d) order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money;

(e) direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(f) direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(g) make an order directing the juvenile to be sent to a special home,-

(i) in the case of juvenile, over seventeen years but less than eighteen years of age for a period of not less than two years;

(ii) in case of any other juvenile for the period until he ceases to be a juvenile: Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.

(2) The Board shall obtain the social investigation report on juvenile either through a probation officer or a recognised voluntary organisation or otherwise, and shall take into consideration the findings of such report before passing an order.

(3) Where an order under clause (d), clause (e) or clause (f) of sub-section (1) is made, the Board may, if it is of opinion that in the interests of the juvenile and of the public, it is expedient so to do, in addition make an order that the juvenile in conflict with law shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the juvenile in conflict with law: Provided that if at any time afterwards it appears to the Board on receiving a report from the probation officer or otherwise, that the juvenile in conflict with law has not been of good behaviour during the period of supervision or that the fit institute on under whose care the juvenile was placed is no longer able or willing to ensure the good behaviour and well-being of the juvenile it may, after making such inquiry as it deems fit, order the juvenile in conflict with law to be sent to a special home.

(4) The Board shall while making a supervision order under sub-section(3), explain to the juvenile and the parent, guardian or other fit person or fit institution, as the case may be, under whose care the juvenile has been placed, the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to the juvenile, the parent, guardian or other fit person or fit institution, as the case may be, the sureties, if any, and the probation officer.”

18. Having heard learned counsel for the parties, we are of the view that the evidence which was brought on record was absolutely clinching and since no two views could be taken about the evidence which was brought forth by the P.W.1, 2 and 3, we are of the view that no interference is warranted in the instant criminal appeal.

19. The order of conviction, therefore, stands and is upheld.

20. However, since we find that the appellant was a juvenile at the time when the incident had occurred, we are of the view that at this stage, when the appellant is aged around 60 years, it would be appropriate that some fine be imposed upon him. Therefore, we modify the impugned order dated 23.3.1984 by imposing a fine of Rs. 1 lac (Rs. 1,00,000/-) on the appellant. This amount is to be deposited with the court of sessions and would be thereafter given to the children/heirs of the deceased. The amount aforesaid as is required to be paid by the appellant would be handed over to the heirs of the deceased within a period of three months of the deposit.

21. The appeal is, therefore, dismissed with the above observations. The conviction of the appellant stands upheld.

Order Date :- 19.02.2025

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(S.Q.H. Rizvi, J.)

(Siddhartha Varma, J.)