

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Criminal Jail Appeal No.28 of 2016

Balai Mandal

..... Appellant

Vs.

State of Uttarakhand

.....Respondent

Presence:

Mr. D.C.S. Rawat, learned Amicus Curiae for the appellant.

Mr. Pankaj Joshi, learned AGA for the State.

Coram: Hon'ble Ravindra Maithani, J.
Hon'ble Siddhartha Sah, J.

Hon'ble Ravindra Maithani, J. (Oral)

Instant appeal is preferred against the judgment and order dated 28.04.2016, passed in Sessions Trial Nos. 160 and 161 of 2013, State Vs. Balai Mandal, by the court of Sessions Judge, Rudrapur, District Udham Singh Nagar. By it, the appellant has been convicted under Section 302 of IPC and Section 25 of the Arms Act, 1959 ("the Arms Act") and sentenced to undergo life imprisonment under Section 302 of IPC with a fine of ₹ 10,000/-. In default of payment of fine, to undergo, simple imprisonment for a further period of two years and further sentenced to undergo three years rigorous imprisonment under Section 25 of the Arms Act with a fine of ₹ 5,000/-. In default of payment of fine, to undergo, simple imprisonment for a further period of six months.

2. Facts necessary to appreciate the controversy, briefly stated, are as follows. According to the prosecution, on 27.02.2013, the appellant was having a fight with his wife, Jyotsana. Deceased was neighbour to the appellant, therefore, deceased Smt. Suchitra along with her husband PW1, Haridas Vishwas, the informant tried

to intervene and pacify the parties, but the appellant stopped them to intervene and threaten them to life. Thereafter PW1, Haridas Vishwas and his wife, the deceased returned to their house. On the same day at about 9:30 pm, deceased was sitting in the in-laws house of the appellant, when the appellant approached her while abusing and shot her dead. The appellant ran away. The dead body was still in the hospital, when FIR was lodged. PW1, Haridas Vishwas lodged police report immediately after the incident at 11.55 pm at Police Station Kichha, District Udham Singh Nagar. Based on which, Chick FIR Exhibit A-11 was recorded as a Case Crime No.62 of 2013, under Section 302 IPC, at Police Station the extract of General Diary in case Exhibit A-12. The appellant was apprehended on 28.02.20213 and at his instance a country made pistol was also recovered of which a recovery memo Exhibit A-2 was prepared and based on this recovery Case Crime No. 65 of 2013 under Section 25 Arms Act was also lodged against the appellant. The Chick FIR is Exhibit A-4, and extract of General Diary Entry is Exhibit A-5. The inquest of deceased Suchitra Vishwas was conducted on 28.02.2013. Her post-mortem was conducted on 28.02.2013 at 4:00 pm. Post-mortem report is Exhibit A-3. The doctor had noted anti-mortem firearm injury in the post-mortem report, which reads as follows:-

“Wound of Entry –lacerated wound measuring 2.5×1.5 cm, situated over **suprasternal notch**, just above right clavicle and medial to the medial end of margins are inverted, irregular. Blackening, tattooing, and scorching present around the wound of entry. Trachea is lacerated. Pleura (left lung) is lacerated. Upper lobe of left lung is lacerated. Great vessels of the heart lacerated (i.e. aorta), about 3.0 liters of blood is present in thoracic cavity.

Wound of Exit – Lacerated wound measuring 0.5×0.5 cm, situated over tip of medial border of the scapula. Margins are everted. On exploration mentioned over scapula lacerated with fracture of tip of medial border of left scapula. Fracture fragment make another wound measuring 0.5×0.25 cm, situated 2.0 cm near and above the wound of exit.”

3. As per the doctor conducting post-mortem, the cause of death is shot and hemorrhage due to anti-mortem firearm injury. In fact, the firearm injury, as detailed in the post-mortem report, records that the margins were inverted, irregular. Blackening, tattooing, and scorching were present around the wound of entry. It suggests the fire from a very close range. The investigating Officer conducted investigation; prepared site plan Exhibit A-13.

4. It is further the prosecution case that on 28.02.2013, when the Investigating Officer inspected the place of incident, he recovered a bullet, of which recovery memo Exhibit A-14 was prepared. The Investigating Officer also recovered plain and blood-stained soil from the place of incident, and prepared its recovery memo Exhibit A-15, both these articles were deposited in the Police Station by General Diary Entry No. 26 of 945, extract of which is, Exhibit A-16. Since, according to the prosecution, a country-made pistol was also recovered from the appellant, investigation was separately conducted for offence under Section 25 of the Arms Act. A site plan of which was also prepared. According to the prosecution, the recovered articles were sent for forensic examination, the reports received, which are on record. With regard to soil, it is Exhibit A-22, and with regard to firearm weapon, it is Exhibit A-20. After investigation separate charge sheets were submitted against the appellant for offence under Section 302, and 25 Arms Act. Based on charge sheet under Section 302 IPC,

proceedings of Sessions Trial No. 160 of 2013, State Vs. Balai Mandal was instituted in the Court of Sessions Judge, Udham Singh Nagar and based on charge sheet under Section 25 Arms Act proceedings of Sessions Trial No. 161 of 2013, State Vs. Balai Mandal were instituted against the appellant. In both the Session Trials, charges under Section 302 IPC and 25 Arms Act were respectively framed against the appellant on 14.08.2013. To which, he denied and claimed trial. On 30.08.2013, an order was passed that the Session Trial nos. 160 of 2013 and 161 of 2013 shall jointly be conducted. That order was passed in the record of Session Trial No. 161 of 2013.

5. In order to prove its case, the prosecution examined ten witnesses, namely, PW1, Haridas Vishwas, PW2, Kavita Rai, PW3, Dr. P.C. Pant, PW4, Sunil Vishwas, PW5, Sudhanshu, PW6, Head Constable Rajeev Kumar, PW7, S.I. Kuldeep Singh, PW8, Constable Madho Singh, PW9, S.I. Mohd. Akram and PW10, S.I. Ambiram Arya.

6. After prosecution evidence, the appellant was examined under Section 313 of the Code of Criminal Procedure, 1973 ("the Code"). According to him, the witnesses have falsely deposed against him, due to enmity.

7. After hearing the parties, by the impugned judgment and order, the appellant has been convicted and sentenced, as stated hereinbefore. Aggrieved, the appellant has preferred the instant appeal.

8. Heard learned counsel for the parties and perused the record.

9. Learned counsel for the appellant submits that prosecution has failed to prove its case beyond reasonable doubt and the court below has wrongly convicted and sentenced the appellant. He would also raise the following points in his submission:-

- (i) In the inquest of the deceased, the name of the accused has not been revealed.
- (ii) PW1, Haridas Vishwas is not reliable, because according to him, he was sitting in the courtyard from where the incident could not have been witnessed by him.
- (iii) The recovery of country made pistol at the instance of the appellant is also not reliable, because there are divergent statement with regard to the presence of PW1, Haridas Vishwas and PW5, Sudhanshu, at the place of allegedly recovery, because it is argued that, according to these two witnesses, they had accompanied police party at the place of incident, whereas according to police witness and Exhibit A2, the recovery memo, during recovery, the independent witnesses did reach at the place of recovery.
- (iv) The Forensic Science Laboratory report cannot be read into evidence, because prosecution has not even suggested that how the bullets that were allegedly recovered from the place of incident where safely kept in the police Malkhana and transported to the Forensic Science Laboratory report. Therefore, it is argued that without ensuring the sanctity of

collection, transportation and chain of the articles sent for forensic examination, a Forensic Science Laboratory report may not be read into evidence.

10. On the other hand, learned State Counsel submits that it is a case of direct evidence, PW1, Haridas Vishwas and PW2, Smt. Kavita Rai are quite natural witnesses, the incident took place in the house of PW2, Smt. Kavita Rai. They have witnessed the incident. PW4, Sunil Vishwas and PW5, Sudhanshu also reached at the place of incident soon after the incident. There is recovery at the instance of the appellant of a country made pistol, which is confirmed by the Forensic Science Laboratory report.

11. The Court wanted to know from the learned State Counsel as to how it could be established that the bullet that was sent for forensic examination was the same bullet, which was allegedly recovered on 28.02.2013 from the place of incident, of which recovery memo Exhibit A14 was prepared. Learned State Counsel would submit that there is no such link evidence. He submits that the Forensic Science Laboratory report found the seal intact. The question is not the intactness of the seal of the court. The question is as to which bullet was produced before the court. Was it the same bullet, which was allegedly recovered from the place of incident?

12. Before the arguments are appreciated, it may be seen as to what the witnesses have stated. PW1, Haridas Vishwas is the informant, who is husband of the deceased. He has reiterated the version of the FIR. According to him, on 27.02.2013, the appellant was having a quarrel with his wife at about 8:30 in the evening. Hearing the noise, he and his wife, deceased Suchitra Vishwas, both

went to pacify the appellant. But the appellant stopped them to intervene, saying that it is his family dispute and if this witness intervenes, he would kill him. Thereafter, this witness along with the deceased returned to their home. According to PW1, Haridas Vishwas, appellant is his neighbour. He had never any quarrel with the appellant. The in-laws house of the appellant was also in the same vicinity. Thereafter, this witness along with deceased went to the in-laws house of the appellant. When deceased was talking to PW2, Kavita Rai, the sister-in-law of the appellant, at about 9.30 pm, the appellant came holding a country made pistol in his hand and while abusing deceased Smt. Suchitra Vishwas, fired shot at her. Many persons assembled, but the appellant ran away. Deceased was taken to hospital, she was declared as brought dead. This witness has proved report Exhibit A1. According to him, the police has, thereafter, prepared inquest and arrested the appellant on 28.02.2013 and from his possession, a country made pistol was recovered. He has proved the recovery memo Exhibit A2. According to this witness, the site plan was also prepared at his instance.

13. PW2, Smt. Kavita Rai is the witness in whose house the deceased was sitting when she was shot dead by the appellant. In fact, she is relative of the appellant. She has corroborated the statement of PW1, Haridas Vishwas in quite detail. According to her, when deceased was sitting with her, the appellant came holding a gun and shot the deceased dead. PW4, Sunil Vishwas and PW5, Sudhanshu came at the place of incident soon after the fire shot. They tried to catch the appellant, but he managed to escape. They have stated about it. In fact, PW4, Sunil Vishwas has also stated that the inquest of deceased was done in his presence. PW5, Sudhanshu has also stated about what he saw on that date. According to him, on the next date, early hours, police has recovered

a bullet from the place of incident and had prepared its recovery memo. He is also witness of recovery of the country made pistol at the instance of the appellant on 28.02.2013. He has stated about it.

14. PW3, Dr. P. C. Pant had conducted post-mortem of the deceased. The injuries, which have been noted in the post-mortem report, have already been detailed herein above. This witness has proved post-mortem report Exhibit A3.

15. PW6, Head Constable Rajeev Kumar is a formal witness, who has lodged the FIR regarding Section 25 of the Arms Act against the appellant.

16. PW7, S.I. Kuldeep Singh had prepared inquest Exhibit A6 and other police documents. He is also a witness of recovery of country made pistol. He has stated about it.

17. PW8, Constable Madho Singh had lodged Chick FIR for offence under Section 302 IPC. He has also stated about extract of General Diary.

18. PW9, S.I. Mohd. Akram is the Investigating Officer for the offence under Section 302 IPC. According to him, he had prepared site plan Exhibit A13 and had also recovered a bullet from the place of incident. He has proved, it is a recovery memo Exhibit A14. He also took into custody the plain and blood stained soil, of which recovery memo is Exhibit A15. This witness is also a witness of recovery of country made pistol from the appellant on 28.02.2013. He has also proved the signature on recovery memo Exhibit A2. This witness has also proved various other documents and articles. Particularly according to him, on 01.04.2013, the related articles were sent for forensic examination including country made pistol

along with the cartridge case, the recovered bullet etc. But, the Dehradun Forensic Science Laboratory report could not examine it, thereafter, it was sent to Chandigarh of which report is Exhibit A20. This witness has proved and also stated about another Forensic Science Laboratory report Exhibit A22, which is with regard to the plain and blood stained soil. This witness has also proved charge sheet under Section 302 IPC Exhibit A21.

19. PW10, S. S. Ambiram Arya is an Investigating Officer for the offence under Section 25 of Arms Act. He has stated about it and proved the charge sheet Exhibit A25.

20. It is a very unfortunate case, but a case of direct evidence. Appellant and PW1, Haridas Vishwas both were neighbour. According to PW1, Haridas Vishwas on 27.02.2013 late in the evening at about 8:30, the appellant had a quarrel with his wife. As a goodwill gesture, this witness along with deceased Suchitra went to the house of the appellant so that they could be pacified and the dispute may be settled, but the appellant threatened them to life warning not to intervene in his family matters. One part of the story has ends here.

21. Unfortunately it so happened that the deceased and PW1, Haridas Vishwas, thereafter, visited the appellant's in-laws house, who were also their neighbour. PW2, Kavita Rai is the family member in the in-laws house of the appellant. When deceased was talking to PW2, Kavita Rai, the appellant came abusing her and shot her dead. Both PW1, Haridas Vishwas and PW2, Kavita Rai have stated about it. Their statement is direct and natural. PW4, Sunil Vishwas and PW5, Sudhanshu both reached at the spot soon

after the incident. They tried to catch the appellant, but he managed to escape. The statement of all these four witnesses is quite natural.

22. An argument has been raised that the presence of PW1, Haridas Vishwas is doubtful because according to him he was sitting in the courtyard when the deceased was sitting inside the room, which was not visible from the courtyard when the appellant shot her dead. It is true that according to PW1, Haridas Vishwas, he was sitting in the courtyard when the deceased was shot dead. Deceased was sitting inside the room. The site plan Exhibit A13 is on record. It shows the position of the witnesses and according to it, the PW1, Haridas Vishwas was also sitting inside the room, but for deceased and PW2, Kavita Rai, the positioning at the time of incident corroborates as per the statement of the witnesses. PW2, Kavita Rai had also stated that PW1, Haridas Vishwas was sitting in the courtyard when the deceased was sitting at the door of their house. Similar is the statement of PW4, Sunil Vishwas. Merely because PW1, Haridas Vishwas was sitting in the courtyard as stated by him and PW2, Kavita Rai, the prosecution case does not become doubtful. It is established that PW1, Haridas Vishwas was present in the house of PW2, Kavita Rai when the appellant shot deceased dead. PW2, Kavita Rai's statement is quite natural and fully reliable statement. In fact, it falls in that category of statement which doesn't warrant any corroboration. She is a relative of appellant.

23. An argument has been raised that in the inquest the name of appellant is not shown. It is true that in the inquest report, the name of appellant is not shown. But fact remains that the FIR in the instant case was lodged on 27.02.2013 at 11:55 pm. Merely because name of the appellant or case crime number is not recorded in the

inquest report, it does not doubt the prosecution case. It appears that the inquest report started preparing on 27.02.2013 and it concluded on 28.02.2013.

24. An argument has also been raised though not with much force as to what happened after the incident. It is argued that according to PW1, Haridas Vishwas and PW2, Kavita Rai, the appellant ran away from the place of incident after killing the deceased. Whereas it is argued that as per PW4, Sunil Vishwas and PW5, Sudhanshu, they tried to catch the appellant, but he managed to escape. In fact, there is no discrepancy. The statements are quite natural and corroborated to each other.

25. Learned counsel for the appellant would submit that the statement of witnesses with regard to recovery of country made pistol at the instance of the appellant is much doubtful. He would refer to the statement of PW1, Haridas Vishwas where in Page 4, second paragraph, he tells that he accompanied the police party in a vehicle from Police Station Kichha to the recovery spot of the pistol. Similarly, statement of PW5, Sudhanshu has also been referred when it says that on 28.02.2013, he along with other witnesses joined the police party and visited the place of recovery of the country made pistol. In contradiction to it, reference has been made to Exhibit A2, the recovery memo of the country made pistol which records that at the time of recovery the witnesses also appeared. It does not doubt the prosecution case as such with regard to recovery. At the most, it could doubt the presence of PW1, Haridas Vishwas and PW5, Sudhanshu at the spot at the time of recovery. But otherwise also there are witnesses. PW7, S. I. Kuldeep Singh has stated about the recovery. PW9, S.I. Mohd. Akram is

another witness, who has stated that how the recovery of country made pistol was made at the instance of appellant.

26. Forensic Science Laboratory report has been challenged. There are two reasons to assail the Forensic Science Laboratory report with regard to the examination of the country made pistol, which was allegedly recovered from the appellant and the bullet that was allegedly recovered from the place of incident. One is that it has not been put as such under Section 313 of the Code to the appellant and second, it has not been established that the allegedly recovered bullet was sent for forensic examination. This Court has perused the examination of the appellant under Section 313 of the Code, which reveals that, in fact, the Forensic Science Laboratory report has not been placed to the appellant under Section 313 of the Code so as to give him an opportunity to explain this fact. It may have various consequences.

27. In the case of Narsingh Vs. State of Haryana reported in (2015) 01 SCC 496, the Hon'ble Supreme Court has discussed the law on this point and paragraph 30 concluded as follows:-

“30. Whenever a plea of omission to put a question to the accused on vital piece of evidence is raised in the appellate court, courses available to the appellate court can be briefly summarised as under:

30.1. Whenever a plea of non-compliance with Section 313 CrPC is raised, it is within the powers of the appellate court to examine and further examine the convict or the counsel appearing for the accused and the said answers shall be taken into consideration for deciding the matter. If the accused is unable to offer the appellate court any reasonable explanation of such circumstance, the court may assume that the accused has no acceptable explanation to offer.

30.2. In the facts and circumstances of the case, if the appellate court comes to the conclusion that no prejudice was caused or no failure of justice was occasioned, the appellate court will hear and decide the matter upon merits.

30.3. If the appellate court is of the opinion that non-compliance with the provisions of Section 313 CrPC has occasioned or is likely to have occasioned prejudice to the accused, the appellate court may direct retrial from the stage of recording the statements of the accused from the point where the irregularity occurred, that is, from the stage of questioning the accused under Section 313 CrPC and the trial Judge may be directed to examine the accused afresh and defence witness, if any, and dispose of the matter afresh.

30.4. The appellate court may decline to remit the matter to the trial court for retrial on account of long time already spent in the trial of the case and the period of sentence already undergone by the convict and in the facts and circumstances of the case, may decide the appeal on its own merits, keeping in view the prejudice caused to the accused.”

28. This Court has to consider now as to whether further examination of the appellant under Section 313 of the Code may be done in the case or not. Before that the Court proposes to examine the sanctity of collection and transportation of the article sent for forensic examination, particularly the country made pistol and bullet. The recovery of bullet from the place of incident was done on 28.02.2013, and it was lodged at the Police Station on 28.02.2013. But the question is whether the same bullet was forwarded for forensic examination? No evidence has been suggested for that.

29. In view of it, the custody of the articles allegedly recovered and forwarded for Forensic Science Laboratory report, has not been established by the police. Therefore, this Forensic Science Laboratory report may not be read into evidence for that reason alone. Accordingly, this Court does not see any reason for further examination of the appellant under Section 313 of the Code for placing the Forensic Science Laboratory report for his explanation.

30. In the instant case though Forensic Science Laboratory report with regard to the country made pistol may not be read into evidence, there are other immense evidence. The statements of PW1,

Haridas Vishwas, PW2, Kavita Rai, PW4, Sunil Vishwas and PW5, Sudhanshu are much natural, credible and reliable. As stated the incident took place in the house of PW2, Kavita Rai. She is a relative of the appellant also. She has witnessed the incident. At the cost of repetition it may be noted that, in fact, her evidence is so credible that it may be the sole basis for conviction of the appellant.

31. In view of the foregoing discussion, this Court is of the view that the prosecution, has been able to prove its case beyond reasonable doubt against the appellant. The court below has rightly convicted and sentenced the appellant by the impugned judgment and order, which calls for no interference. Accordingly, the appeal deserves to be dismissed.

32. Appeal is dismissed.

(Siddhartha Sah, J.)
25.03.2026

(Ravindra Maithani, J.)
25.03.2026

BS/Akash