

Rajendra Kumar and Another Vs. State of Uttaranchal

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Court : Uttaranchal

Decided On : Nov-22-2012

Judge : The Honourable Chief Justice Mr. Barin Ghosh & U.C. Dhyani

Appeal No. : Criminal Appeal Nos. 93 of 2005 & 92 of 2005

Appellant : Rajendra Kumar and Another

Respondent : State of Uttaranchal

Judgement :

U.C. Dhyani, J.

1. One Ashok Kumar addressed a complaint to Station Officer, Police Station Gadarpur, District Udham Singh Nagar, on 27.06.1999, enumerating the facts therein that on the selfsame day, i.e., 27.06.1999, when the informant was harvesting his field, situated in Shyamnagar and the tractor was being driven by Bikau Miyan, then informants brother Rajendra Kumar (appellant) armed with licensed rifle came along with his father Hemraj (appellant) on the field. A dispute was going on between them (informant and appellants) regarding the partition of agricultural land. Accused-appellants started abusing informant Ashok Kumar. Hemraj exhorted Rajendra to kill the informant. Rajendra Kumar fired twice upon the informant with his licensed rifle with the intention to kill him (Ashok Kumar). One bullet hit the right arm of driver Bikau Miyan and the other bullet hit the mudguard of tractor. Ashok Kumar escaped unhurt. Many a people working in the

field came. Accused-appellants went away after threatening them with dire consequences. The incident took place at 6:30 p.m. Driver/injured was taken to hospital. The incident was reported to PS Gadarpur on the self-same day, at 7:30 p.m., in relation to the offences punishable under Sections 307/506 IPC. On the basis of said First Information Report, investigation began. Investigating Officer SI Mahipal Singh Tomar (PW 6) took the statements of the informant and the injured. I.O. inspected the place of occurrence and prepared site plan (Ext. Ka-8). PW 6 effected the arrest of Hemraj and recorded the statements of eyewitnesses. PW 9 ASI Ganga Sahai Satsangi was the Investigating Officer of the case, which was registered against Rajendra Kumar in relation to the offence punishable under Sections 25/27 Arms Act. PW 9 prepared site plan (Ext. Ka-11) and sought the permission (Ext. Ka-12) of the District Magistrate to prosecute Rajendra Kumar. Rifle was given in the supurdagi of Rajendra Kumar as per courts order. When the investigation was completed, two charge-sheets were submitted, one against both the accused-appellants for the offences punishable under Sections 307/506 IPC and the other against accused-appellant Rajendra Kumar in relation to the offence punishable under Sections 25/27 Arms Act. When prosecution opened its case before the trial court, charges for the offences punishable under Sections 307/506 (II) IPC, as also under Sections 25/27 Arms Act, were framed against the accused-appellant Rajendra Kumar. Charges for the offences punishable under Section 307 IPC read with Section 34 IPC and Section 506 (II) IPC were framed against accused-appellant Hemraj. Both the accused pleaded not guilty to the charges framed against them and claimed trial. Nine prosecution witnesses, viz., PW 1 Ashok Kumar, PW 2 Bikau Miyan, PW 3 HC Ashok Kumar, PW 4 Dr. J.C.Mondal, PW 5 Dr. P.C.Saxena, PW 6 SI (retd.) Mahipal Singh Tomar, PW 7 Dr. D.K.Gupta, PW 8 Surendra Kumar and PW 9 ASI Ganga Sahai Satsangi were examined on behalf of the prosecution. Incriminating evidence was put to the accused-appellants under Section 313 Cr.P.C., in which they said that they were falsely implicated in the case because of enmity. Four witnesses, namely, DW 1 Pharmacist D.K.Joshi, DW 2 Const. Jagat Singh, DW 3 Dr. Jagdish Mondal, Medical Officer and DW 4 Dr. D. K. Vajpayee, Superintendent of Community Health Centre, Nawabganj, Bareilly, were examined in defence. After considering the evidence on record, learned trial court convicted both the accused-appellants

in relation to the charges levelled against them and sentenced them appropriately. Aggrieved against the said judgment and order, present criminal appeals were preferred, which are being discussed and disposed of by this common judgment.

2. PW 1 Ashok Kumar said that on 27.06.1999, at 6:30 p.m., when he was harvesting his field through the tractor, which was being driven by PW 2 Bikau Miyan, and PW 1 was sitting on the right mudguard of the tractor, his father Hemraj (appellant) and younger brother Rajendra Kumar (appellant) came on the field situated in Shyamnagar. Rajendra Kumar was carrying rifle. The appellants started abusing the informant and also asked him to vacate the field. When he did not oblige them by leaving the field, the appellant Hemraj instructed appellant Rajendra Kumar to kill PW 1 and PW 2. Appellant Rajendra Kumar fired upon PW 1 Ashok Kumar, but he escaped unhurt. The fire struck the driver of the tractor (Bikau Miyan) in his forearm. The second fire hit the mudguard of the tractor in which PW 1 was sitting. The incident was seen by him (PW1 Ashok Kumar) and PW 8 Surendra Kumar. Accused-appellants fled away. Injured Bikau Miyan was taken to PS Gadarpur, where the report was lodged. PW 1 identified his signatures on the complaint (Ext. Ka-1). He also said that the injured was taken to Government Hospital, Rudrapur where he was given treatment. PW 1 also said that a dispute of land was going on between him, on the one hand and his father and brother, on the other hand.

3. PW 2 Bikau Miyan was the injured, who said that, on 27.06.1996, at 6:30 p.m., when he was ploughing the field of Ashok Kumar with tractor and PW 1 Ashok Kumar was sitting on the (mudguard of the) tractor, appellants Rajendra Kumar and Hemraj came on the field. Appellant Rajendra Kumar was carrying licensed rifle in his hand. Both of them started abusing them. Appellant Hemraj, who was father of PW 1 Ashok Kumar, instructed appellant Rajendra Kumar to kill PW 1 and PW 2. Appellant Rajendra Kumar fired upon PW 1 Ashok Kumar with the intention to kill him, but he escaped unhurt and the bullet hit PW 2s forearm. PW 2 sustained injury in his forearm. The second fire hit the mudguard of the tractor, where PW 1 was sitting. PW 2 was taken to Government Hospital, Gadarpur, whereupon the Medical Officer referred him to Rurdrapur. He was also given treatment in Bareilly.

4. PW 8 Surendra Kumar was an eyewitness, who said that, on 27.06.1999, at 6:30 p.m., when he was going with his uncle on the field, he saw that PW 1 Ashok Kumar was harvesting the field through tractor, which was being driven by Bikau Miyan. Appellants Hemraj and Rajendra Kumar came on the field. Appellant Rajendra Kumar was carrying rifle. Both the appellants asked PW 1 and PW 2 to stop harvesting the field. On the exhortation of appellant Hemraj, appellant Rajendra Kumar fired upon PW 1 and PW 2. First fire hit the forearm of Bikau Miyan and the second fire hit the mudguard of the tractor. Thereafter, PW 2 Bikau Miyan was taken to hospital by PW 1 Ashok Kumar.

5. PW 3 Head Constable Ashok Kumar Sharma proved chik FIR (Ext. Ka-2) and copy of G.D. (Ext. Ka-3). PW 3 also proved chik FIR relating to Section 25 Arms Act (Ext. Ka-4) and entry in G.D. (Ext. Ka-5). PW 4 Dr. J.C.Mondal proved the injury report (Ext. Ka-6) of Bikau Miyan, who sustained firearm injury. PW 5 Dr. P.C. Saxena of District Hospital, Bareilly, proved the (other) injury report (Ext. Ka-7) of injured Bikau Miyan. PW 6 SI (retd.) Mahipal Singh Tomar proved site plan (Ext. Ka-8) and charge-sheet (Ext. Ka-9). PW 7 Dr. D.K.Gupta proved the medical certificate (Ext. Ka-10) of injured Bikau Miyan. PW 9 ASI Ganga Sahai Satsangi proved site plan (Ext. Ka-11) and charge-sheet (Ext. Ka-13) relating to offence punishable under Sections 25/27 Arms Act. PW 9 ASI Ganga Sahai Satsangi also obtained sanction (Ext. Ka-12) of District Magistrate to prosecute accused Rajendra Kumar.

6. An extract of page no. 190 of emergency register commencing from the year 1996 to 1999, was brought on record to show that injured Bikau Miyan s/o Abbas Miyan was examined by the Medical Officer of Primary Health Centre, Gadarpur on 27.06.1999 at 5:45 p.m. (Ext Kha-1). The same indicated that injured Bikau Miyan was brought by Mohan Lal CP 495 of PS Rudrapur in PHC Gadarpur on 27.06.1999 at 5:45 p.m. A look at the chik FIR (Ext. Ka-2) revealed that the occurrence was alleged to have taken place on 27.06.1999 at 6:30 p.m., the report whereof at PS Gadarpur was lodged on the selfsame day at 7:40 p.m. In this way, Ext. Kha-1 and Ext. Ka-2 are at loggerheads with each other in the context of the time of the alleged incident vis--vis the injuries sustained by the injured. If the incident took place at 6:30 p.m. on 27.06.1999, how can the Constable of PS

Rudrapur bring the injured to PHC Gadarpur on the selfsame day at 5:45 p.m? This fact indicates that the injured received injury on 27.06.1999 at 5:45 p.m. somewhere and designedly, in order to implicate the appellants, lodged the first information report against them on account of enmity, which was registered as case crime no. 440 of 1999 for the offences punishable under Sections 307/506 IPC. There was possibility that the injured might have sustained injuries, but how can those injuries be inflicted by the appellants on 27.06.1999 at 6:30 p.m. when the Medical Officer examined the injured and found those injuries on the person of Bikau Miyan on the selfsame day at 5:45 p.m? This fact alone was sufficient to demolish the entire prosecution case.

7. The Medical Officers, namely, PW 4/DW 3 Dr. J.C.Mondal, PW 5 Dr. P.C.Saxena, PW 7 Dr. D.K.Gupta, DW 1 D.K.Joshi, Pharmacist/ Dr. A.K.Rastogi and DW 4 D.K.Vajpayee examined the victim from time to time. None of these Medical Officers reported as to when the injured received such gunshot injury. The prosecution was unable to establish as to when the injured sustained those injuries and through whom (those injuries were sustained)? This was the biggest incurable lacuna (flaw) in the prosecution story. Though none of the witnesses, eyewitness or peripheral, could provide oxygen (life) to the otherwise dying prosecution story, yet this Court is duty bound to discuss other evidence also, which was brought on record by the prosecution as well as the defence.

8. Dr. J.C.Mondal, Medical Officer of PHC Gadarpur wrote on 06.07.1999:

One firearm injury

due to profuse bleeding, patient could not be managed here and no injury noted here, then in same time referred to JLN District Hospital, Rudrapur.

It is to be noted here that the injured met Dr. Mondal on 27.06.1999 and the above noted certificate (Ext. Ka-6) was given by him on 06.07.1999 without offering any satisfactory explanation.

9. PW 4 Dr. Mondal admitted in his cross-examination that he did not examine the injuries sustained by injured, although, he was competent to examine those

injuries. It is ironical that the injured came to him with the bandage, which was not obtained either from a chemist shop or a hospital, but was a piece of cloth, wrapped around the wound. It was a fiction of imagination on the part of PW 4 to have opined that the injury was a firearm injury. The same had no basis.

10. Dr. A.K. Rastogi of JLN Hospital, Rudrapur wrote the following on the register maintained in the Hospital:

Surgeon attended the call and referred the patient to District Hospital, Bareilly. The injuries cannot be noted because profuse bleeding is occurring in the affected part. Surgeon advised that removing of bandage will leave severe haemorrhage and immediate transfusion cannot be arranged. So he (surgeon) referred the patient to Bareilly District Hospital. (Ext. Kha-1)

11. PW 5 Dr. P.C. Saxena, Emergency Medical Officer of District Hospital, Bareilly examined the injured on 28.06.1999 at 12:35 a.m. and he found the following injuries on his person:

- i. Fire arm wound of injury 1 cm x 0.5 cm on right upper arm 7 cm below right axilla. Margin inverted, no blackening.
- ii. Fire arm wound of exit 6 cm x 4 cm. Margin everted, bleeding on outer aspect right upper arm 6 cm below right shoulder. Swelling on right upper arm.

12. The Medical Officer advised urgent x-ray. The duration was fresh. According to Ext. Ka-7, the injury was caused by firearm. In the cross-examination, PW 5 said that he cannot explain the bore of firearm by which said injury was inflicted. He said that he cannot say whether such injury can be inflicted by firearm of 315 bore or 312 bore. The Medical Officer did not find any bullet from the wound of the injured. The question of taking out bullet from the wound did never arise. He could not explain many other important things in his cross-examination. According to prosecution story, the appellant Rajendra Kumar used his gun twice. He fired and missed Ashok Kumar. One of the fires struck the upper arm of Bikau Miyan and the other fire struck the mudguard of the tractor. It is to be noted here that neither any bullet was found on the place of occurrence (field) nor any bullet was found

embedded in the wound of the injured. The question of sending the bullet to the ballistic expert or the forensic science laboratory, therefore, did never arise. No effort was made to connect the use of firearm with the bullet(s), which allegedly struck Bikau Miyans forearm or hit mudguard of the tractor and fell somewhere on the ground. The prosecution story thus suffered a major setback on this count also.

13. PW 7 Dr. D. K. Gupta of Devendra Hospital, Bareilly, said that the injured had come to him, after he was discharged by the District Hospital, Bareilly. PW 7 gave a certificate (Ext. Ka-7) to the injured, which was of no use and did not carry any weight. What for the injured went to a private plastic and general surgeon after he was discharged by Government Hospital is beyond ones comprehension. The same does not appeal to reason.

14. DW4 Dr. D.K.Vajpayee, Superintendent of Community Health Centre, Nawabganj, Bareilly conducted x-ray of Bikau Miyan s/o Abbas Miyan, on 28.06.1999, at 2:00 a.m. According to DW 4, he did not find any fracture in the forearm of the injured. According to him, he did not find any other abnormality in the forearm of the injured either. DW 4 also said that neither did he find any bullet embedded in the forearm of the injured, nor found the particles of the same. Thus the report (Ext. Kha-2) given by DW4 Dr. D.K.Vajpayee, Superintendent of CHC proved to be the last nail in the coffin of prosecution story.

15. PW 6 SI Mahipal Singh Tomar said, in his cross-examination, that he did not find any field on the place of occurrence, in as much as, the same was ploughed. PW 6 went to PHC Gadarpur but did not obtain the cloth, which was wrapped around the wound of the injured. The blood stained clothes of the injured were not taken by PW 6. It was doubtful whether any blood drop really fell on PW 2s wearing apparels. PW 6 did not go to Bareilly, where Bikau Miyan was examined by PW 5. PW 6 did not take the tractor, the mudguard of which tractor was hit, in his custody.

16. The replies to the volley of questions, which were asked to PW 8 in the cross-examination, indicated that he was a chance witness. His presence on the scene of occurrence appeared doubtful. The evidence tendered by PW 1 and PW 2 also

did not inspire confidence. Why should the Court believe the statement of PW 2 that he was driving tractor when he did not have valid driving license? Why the Court will believe the statement of such people? The fact that the appellant Rajendra Kumar used his licensed gun to fire upon Ashok Kumar but missed the same, was introduced in the prosecution story, only to make it a case punishable under Section 307 IPC, because otherwise, the fire inflicted upon PW 2 Bikau Miyan, in the ordinary course, was not sufficient to make home the guilt punishable under Section 307 IPC.

17. There appears to be no need to multiply the deficiencies in the evidence tendered by the prosecution, and compound its miseries. Prosecution has utterly failed to prove its story.

18. During the course of arguments, learned counsel for the appellant Hemraj submitted [in Criminal Appeal No. 92 of 2005] that Hemraj has died. We requested learned counsel to file an affidavit to this effect and told learned counsel that, in the event such an affidavit is filed, the cognizance of the death of Hemraj will be taken. When the judgment was under preparation, learned counsel submitted a Criminal Misc. Application No. 1289 of 2012, enclosing an affidavit of Rajendra Kumar s/o Hemraj (appellant) to this effect that the appellant Hemraj died on 26.11.2005. The copy of the death certificate dated 09.10.2012 was also enclosed with the affidavit. Accordingly, we hold that since the appellant Hemraj has died, therefore, the Criminal Appeal instituted on his behalf stands abated.

19. Criminal Appeal preferred by the appellant Rajendra Kumar is allowed. The

JUDGMENT / ORDER

dated 24.05.2005 passed by learned trial court, is accordingly set aside. The conviction recorded in respect thereof and sentence thus awarded to him are also set aside. The appellant Rajendra Kumar is on bail. His bail bonds are cancelled and the sureties are discharged. He need not surrender.

20. Let a copy of the Judgment be sent to the Court below. Lower Court record be also sent back.

