

Usman Vs. State of Uttaranchal

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Court : Uttaranchal

Decided On : Dec-05-2012

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

Appeal No. : Criminal Appeal Nos. 197 & 196 of 2005

Appellant : Usman

Respondent : State of Uttaranchal

Judgement :

U.C. Dhyani, J.

1. One Smt. Nasreen w/o late Mushtaque wrote a complaint to SO, Police Station Jaspur, District Udham Singh Nagar on 02.01.2002 regarding the killing of her daughter Afsana. According to the informant, the accused-appellant Usman s/o Abdul Sattar, who used to manufacture the bodies of trucks near Afzalgarh Road, used to come near the informants house quite often. Informant was a widow. She had a daughter named Afsana. Usman used to tease and flirt with her daughter. A complaint was made to the family members of Usman in this respect. On 01.01.2002, when Afsana went to cut cattle grass and did not return by the evening, informant-mother made a search for her daughter. Informants neighbours PW 2 Ram Kishore and PW 3 Shakeel Ahmad told her in the morning of 02.01.2002 that when Afsana was cutting cattle grass on 01.01.2002 at 5:00 p.m., accused Usman followed her. On having made frantic search, the informant found

the dead body of her daughter Afsana in the field situated near the house of Ram Kishore. She was fired on her left temple. On the basis of said complaint, a chik FIR was lodged on 02.01.2002 at 7:30 a.m. in PS Jaspur, which was registered as case crime no. 4 of 2002 under Section 302 IPC. There appeared to be no delay in lodging the first information report.

2. Investigation began on the basis of such report. PW 8 SI Suresh Chandra Joshi took over the investigation of the case on 02.01.2002. He recorded the statement of the informant PW 1 Smt. Nasreen. He prepared the inquest report (Ext. Ka-2), took simple earth and blood stained earth, a memo (Ext. Ka-6) whereof was prepared. PW 8 also inspected the place of occurrence and prepared site plan (Ext. Ka-8). He effected the arrest of the accused, who was brought to the Police Station on 02.01.2002. Accused was medically examined on his request. Accused also confessed his guilt, an entry whereof was made in G.D. (Ext. Ka-9). PW 8 also visited the place of occurrence and got the country-made pistol recovered on the disclosure and pointing of the accused, a recovery memo (Ext. Ka-10) whereof was prepared. PW 8 also proved the site plan (Ext. Ka-11). PW 8 recorded the statements of three witnesses on 06.01.2002 and statements of two other witnesses on 11.01.2002. The country made pistol and the cartridge etc. were sent to the Forensic Science Laboratory, Agra. PW 8 also said that the report (Ext. Ka-12) given by FSL, Agra was on the file. After completing the investigation, charge-sheet (Ext. Ka-13) for the offence punishable under Section 302 IPC was submitted against the accused-appellant. A separate charge-sheet (Ext. Ka-18) for the offence punishable under Section 25 Arms Act was also filed.

3. When the trial began and the prosecution opened its case, separate charges for the offences punishable under Section 302 IPC and Section 25 Arms Act were framed against the accused-appellant Usman, to which he pleaded not guilty and claimed trial. As many as 10 witnesses were examined on behalf of the prosecution. They were - PW 1 Smt. Nasreen, PW 2 Ram Kishore, PW 3 Shakeel Ahmad, PW 4 Constable Jadgish Prasad, PW 5 Khalil Ahmad, PW 6 Bundu Hasan, PW 7 Dr. S.S.Pangti, PW 8 SI Suresh Chandra Joshi, PW 9 ASI Bachi Singh Bisht and PW 10 Dr. Mukesh Gupta (formerly Medical Officer, PHC Jaspur). Incriminating evidence was put to the accused under Section 313 Cr.P.C., in which

he said that he was falsely implicated in the case. He did not explain anything in his statement under Section 313 Cr.P.C., despite having been given an opportunity for the same. No evidence was given in defence. After considering the evidence on record, learned trial court convicted accused Usman for the offence punishable under Section 302 IPC and also for the offence punishable under Section 25 Arms Act. He was awarded rigorous imprisonment for life and also a fine of Rs. 10,000/- in relation to the offence punishable under Section 302 IPC. He was awarded a years rigorous imprisonment and a fine of Rs. 5,000/- in relation to the offence punishable under Section 25 Arms Act. Aggrieved against the orders of conviction and sentence, present criminal appeals were preferred.

4. When the postmortem on the dead body of the deceased was conducted by the Medical Officer PW 7 Dr. J.S. Pangti, he found the following ante-mortem injuries on victims dead body:

Lacerated wound brain deep over left side of head temporal region. Wound inverted 2 c.m. x 1 c.m. in size. On further exploration, found temporal bone fractured. Brain membranes torn. A bullet found on right side of temporal lobe of brain.

PW 7 Dr. J. S. Pangti proved the postmortem report (Ext. Ka-7) and opined that the cause of death of victim was coma as a result of bullet injury over brain. Such injury was caused half a day back. The victim was about 18 years old.

5. PW 1 Smt. Nasreen, in her examination-in-chief, said that she along with her daughter Afsana were living in Jaspur for the last 8-10 years. She did not support the prosecution story. When she was declared hostile, she was permitted to be cross-examined by learned ADGC (Criminal). She admitted that the dead body of her daughter was lying on 02.01.2002 in the sugarcane field behind the house of Ram Kishore. Afsana was shot on her temple. PW 1 Nasreen admitted that she got the complaint written by one Haji Mohd. Afaq and also admitted her thumb impressions on such complaint (Ext. Ka-1). It appeared that the helpless widow succumbed to the pressure of the accused-appellant and could not muster the courage to speak the truth before the trial court. We are unable to cloud our mind, in as much as, PW 1 admitted her thumb impressions on complaint (Ext.Ka-1),

which was written by Haji Mohd. Afaque on the dictation of PW 1.

6. PW 2 Ram Kishore saw that when Afsana went to cut the cattle grass on the fateful day, at 5:00 p.m., accused Usman followed her. PW 2 did not see Afsana thereafter. PW 2 disclosed the same to the mother of the victim and other people of locality on the next day, when the dead body of Afsana was found. PW2 Ram Kishore was one of the panches of the inquest report (Ext. Ka-2), besides being an eyewitness of having last seen victim in the company of the appellant.

7. PW 3 Shakeel Ahmad, like PW 2 Ram Kishore, was the witness of having last seen victim in the company of the appellant. On the fateful evening, PW 3 heard the voice of fires at around 7:30 p.m. The next day, when PW 1 Nasreen told PW 3 that Afsana has not returned, PW 3 told PW 1 that he (PW 3) saw the victim, who was being followed by accused-appellant. PW 3 was also a signatory to the inquest report (Ext. Ka-2).

8. PW 4 Constable Jadgish Prasad proved chik FIR (Ext. Ka-3) and copy of G.D. (Ext. Ka-4). He was a formal witness.

9. PW 5 Khalil Ahmad was the witness, before whom the accused-appellant made a confessional statement. We are not inclined to rely upon such extra judicial confession heavily, in as much as, such confession is a weak type of evidence. He (PW 5) said that appellant fired upon Afsana with pistol, which was concealed in a field. The police got a country made pistol along with cartridge recovered on the disclosure and pointing of the accused, a recovery memo (Ext. Ka-5) whereof was prepared, which was also signed by PW 5.

10. PW 6 Bundu Hasan was a signatory to Ext. Ka-6, which was the memo of taking of simple soil and blood stained soil by the police. He was also a signatory to the inquest report (Ext. Ka-2). Accused confessed his guilt before him. He was also a witness to the recovery of country made pistol and cartridge at the instance of the accused-appellant, a memo (Ext. Ka-5) whereof was prepared, which contained the signatures of PW 6 as well.

11. PW 9 ASI Bachhi Singh Bisht said that the accused Usman confessed his guilt before him and PW 6 Bundu Hasan. Usman also confessed that he also wanted to self-immolate, but he could not. An entry to this effect was made in the G.D. (Ext. Ka-9). PW 9 also witnessed recovery of country made pistol (Mat. Ext. -1) and cartridge (Mat. Ext. -2) at the instance of the accused, a recovery memo (Ext. Ka-5) whereof was prepared. PW 9 also proved chik FIR (Ext. Ka-14) and copy of the same in G.D. (Ext. Ka-15). PW 9 further proved the documents relating to the submission of the charge-sheet filed against the accused for the offence punishable under Section 25 Arms Act.

12. The accused-appellant was having some kind of infatuation with the victim. The victim did not give any credence to the appellant. It was one sided love story. The appellant tried to cajole the victim and persuaded the love story, but to no avail. On the fateful day, the victim was going for the purpose (to cut cattle grass). The appellant followed the victim. The victim was confined with the work (for which she had gone). Appellant also went there. The appellant had no intention to kill the victim in the beginning, but when he failed to persuade her, he killed the victim out of frustration. The appellant was seen close to the victim immediately before her death, as was evidenced by the prosecution witnesses. The appellant was thus found having last seen close to the victim. Further, the discovery of a country made pistol of 315 bore along with cartridge on the disclosure and pointing of the appellant proved to be the last nail in the coffin. Recovery memo (Ext. Ka-5) contained the signatures of the appellant. When the question was put to the accused-appellant under Section 313 Cr.P.C., he simply denied the fact. He did not deny his signatures on Ext. Ka-5. He did not say that his signatures were taken under compulsion. PW 5 Khalil Ahmad and PW 6 Bundu Hasan were the witnesses to the discovery of country made pistol on the disclosure and pointing of the appellant. Although the bloodstains on the blood soaked earth were found disintegrated by the Forensic Science Laboratory, Agra and the report of ballistic expert was not received, but the principal evidence which was brought on record, amply made it clear and demonstrated without shadow of doubt that the appellant and the appellant alone committed the murder of victim. Whatever the appellant did, was reflected in the judgment of the court below.

13. Prosecution has been able to prove its case against the appellant beyond reasonable doubt. There appears to be no reason to interfere with the judgment and order recorded by the court below. The appeals are liable to be dismissed and are accordingly dismissed.

14. The judgment and order passed by learned trial court is accordingly affirmed, as also the conviction and sentence awarded on 24.10.2005. Accused-appellant is in jail. Registry is directed to send the lower court record back to the trial court to make the convict-appellant serve out the remaining part of sentence awarded by court below and thus affirmed by this Court. Let a copy of this judgment be also sent to the Superintendent of Jail concerned where the accused-appellant is currently serving out his sentence.

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