PURAN SINGH

v.

STATE OF UTTARANCHAL

(Crl. A. No. 437 of 2006)

JANUARY 10, 2008

[C.K. THAKKER AND D.K. JAIN, JJ.]

Penal Code, 1860 – s.302 – Homicidal Death – Due to fire-arm injury – Recovery of gun and empty cartridge – Held: As per Ballistic Expert's opinion, cartridge recovered not fired from gun allegedly used by accused – Therefore, accused entitled to benefit of doubt – High Court not justified in setting aside acquittal recorded by Trial Court.

Constitution of India, 1950 – Art. 136 – New plea in Supreme Court for the first time Normally not permitted. However, in the facts of the case, new plea is considered since sufficient material is already on record in support of such plea.

According to the prosecution, appellant caused the homicidal death of his brother by firing gunshots at him. Appellant allegedly had animosity with deceased in view of a property dispute. Trial Court acquitted appellant by giving him benefit of doubt. High Court set aside the order of acquittal and convicted accused-appellant under s.302 IPC.

The conviction of appellant is challenged before this Court on the ground that the bullet which caused injury to the deceased was not fired from the gun recovered from appellant.

Allowing the appeal, the Court

HELD: 1.1 According to the prosecution, the weapon used by accused-appellant for commission of crime i.e. causing death of deceased was recovered along with two empty cartridges. PW8, Patwari stated in his substantive

A evidence, that he went to the house of the accused and arrested him. He further stated that the accused gave him his licensed gun of single barrel twelve Bore (Ex.1) and two Cartridges (Ext.6&7) which were sealed separately. [Paras 18, 21] [499-A, F]

B 1.2. The Report of Forensic Science Laboratory states that the Laboratory received a letter from Chief Judicial Magistrate along with two 12 bore K.F. Special emptied cartridges marked as E.C.1 & 2 and one piece of gun 12 bore single barrel No.1319. It was then stated that C the examiner fired five shots from the gun which were marked as T.C. 1 to T.C. 5. T.C.1, T.C.2 and T.C.5 misfired and rest fired successfully. Regarding E.C.1 and E.C.2, it was stated that there had been signs of firing pin. But on E.C.2, the signs were not specific. Cap of E.C.1 had sign D of breach and E.C.2 had minor sign of breach. As per Ballistic Expert's opinion, cartridge E.C.1 was not fired from the single barrel 12 bore No. 1319 said to have been used by the accused. Therefore, appellant is entitled to benefit of doubt. [Paras 22, 23] [499-G, H; 500-A, E]

E 2. As regards the point raised by the accused-appellant that the bullet in question was not fired from his gun, it was neither raised before the Sessions Court (Trial Court) nor before the High Court (Appellate Court). Though new plea is not permitted to be raised in this Court F for the first time in an appeal under Article 136 of the Constitution, it has been considered since sufficient material is already on record in support of such plea. [Paras 14, 15] [497-D, E]

G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 437 of 2006.

From the final Judgment and Order dated 25.10.2005 of the High Court of Uttaranchal at Nainital in G.A. No. 1006/2001.

H Pawan Kumar Bahl, R.S. Rautala and Sudha Gupta for

the Appellant. A

Rachana Srivastava and Noorullah for the Respondent.

The Judgment of the Court was delivered by

C.K. THAKKER, J. 1. The present appeal is filed by the appellant-accused against the order of conviction and sentence recorded by the High Court of Uttaranchal on October 25, 2005 in Government Appeal No. 1006 of 2001. By the said order, the High Court set aside the order of acquittal recorded by Sessions Judge, Chamoli on February 6, 1981 in Sessions Trial No. 15 of 1979, convicted the accused for an offence punishable under Section 302, Indian Penal Code (IPC) and ordered him to undergo imprisonment for life. B C

2. Shortly stated the prosecution case was that one Pushu had two sons— (i) Bhawan Singh and (ii) Bhag Chand. Bhawan Singh had no issue and he died leaving behind him his widow Smt. Rukmani Devi. Bhag Chand also died leaving behind him four sons; (i) Shivraj Singh, (ii) Indra Singh, (iii) Rajpal Singh (deceased) and (iv) Puran Singh (accused). All the four brothers (sons of Bhag Chand) were residing in a jungle at a distance of about two kilometers from village Akhori, Patwari Circle Barab, Tehsil Ukhimath, District Chamoli. There were frequent quarrels between accused Puran Singh on the one hand and other three brothers on the other hand in connection with the property owned and possessed by Rukmani Devi. According to the prosecution, Rukmani Devi had gifted her property by a registered gift-deed to accused Puran Singh depriving other three brothers from her share. On August 3, 1979 at about 4 p.m., PW5—Smt. Ramdei, daughter of PW4—Shivraj Singh who had come to her parental house at village Akhori was grinding paddy with her deaf and dumb mother Smt. Swanri Devi near her house. At that time, accused Puran Singh came towards the cattle shed of Shivraj Singh and started beating she-buffalo of Shivraj Singh. Smt. Ramdei and her mother raised an objection. Accused got enraged and caught the wife of Shivraj Singh by her hair in order to beat her. Shivraj Singh happened to reach there and D E F G H

A cautioned the accused. The accused went inside the room, brought his licensed gun and fired a shot towards Shivraj Singh who luckily escaped unhurt. On hearing the noise, other two brothers of Shivraj Singh, PW2—Indra Singh and Rajpal Singh (deceased), came out to inquire as to what had happened. The B accused started showing his anger towards them also. Both of them, therefore, decided to retreat from there. They were, however, chased by the accused who was carrying his gun. PW2—Indra Singh asked Rajpal Singh (deceased) to run fast so that they may be saved. Rajpal Singh, unfortunately, turned C his face backward to see as to how far away was the accused from him. The accused fired and the gun shot hit Rajpal Singh on his face and head. Rajpal Singh fell down on the ground. In the meanwhile, PW3—Smt. Bardei, wife of Indra Singh and PW6—Bimala, minor daughter of Rajpal Singh along with other D children and family members reached near the place of incident. They could thus see the incident. Indra Singh was threatened by the accused and he went inside his house and got himself saved. Rajpal Singh became unconscious and remained as such till he was declared dead.

E 3. Initially, a case was registered against the appellant-accused in the First Information Report (FIR) for an offence punishable under Section 307, IPC as also for an offence punishable under Sections 25 and 27 of the Arms Act, 1959. After the death of Rajpal Singh, however, the charge was framed F for committing an offence punishable under Section 302, IPC. The case was committed to the Court of Sessions, Chamoli. A plea of the accused was recorded wherein he denied to have committed any offence, and claimed to be tried.

4. In order to establish the case against the accused, the G prosecution examined eight witnesses. Out of them four witnesses were eye-witnesses, viz., PW2—Indra Singh, PW3-Smt. Bardei, PW5—Smt. Ramdei and PW6—Kumari Bimala. It also examined PW1—Pratap Singh- Pradhan of the village, PW7—Dr. D.C. Awasthi and PW8—Mitra Nand-Patwari.

H

5. So far as death of the deceased Rajpal Singh is concerned, there is no dispute that he died homicidal death and it was due to firearm injuries sustained by him. PW7—Dr.Awasthi, who performed postmortem, found the following injuries on the body of the deceased;

(1) Fire arm injury 1½ cm in diameter circular in shape with inverted margins on right side of scalp parietal region, 5 cm above the top of right ear and 10 cm from the outer corner of the right eye with tattooing (impregnated black carbon particles) over an area of 12 cm X 10 cm over the right side of face, forehead and around the wound. It was wound of entry.

(2) Fire arm lacerated injury oval shaped 2½ cm X 1 cm with irregular everted margins 2 cm behind injury No.1. Clotted blood was present around it. It was wound of exit.

(3) Fire arm lacerated wound 1 cm X ½ cm irregular in shape, 2 cm below and behind injury No.2. It was wound of exit.

(4) Fire arm lacerated wound 1 cm X ¾ cm irregular in shape, 2 cm behind injury No.2. It was wound of exit.

6. It was, therefore, clearly proved by the prosecution that the death of deceased Rajpal Singh was homicidal in nature and it was because of the gun injuries sustained by him.

7. The trial Court considered the evidence of eye-witnesses and observed that except minor contradictions, there was no inherent improbability in their evidence. He, however, observed that from the evidence of Investigating Officer and the entries made in the Check Register that FIR and the relevant G.D. entries of the registration of the case, were made at a subsequent stage on some other date and not on August 3, 1979. There was thus 'every occasion for consultation and afterthought.' The trial Court also observed that the accused stated that Rajpal Singh (deceased) was injured by a shot fired

A from the gun carried by a co-villager (Bachan Singh) when the deceased had gone for hunting with his brother Indra Singh and Bachan Singh (co-villager). According to the trial Court, it might or might not be so but in view of suspicious circumstances, it could not be said that the prosecution had succeeded in B establishing the guilt of the accused 'to the hilt and beyond all reasonable doubts.' In that view of the matter, according to the trial Court, the accused was entitled to benefit of doubt. Accordingly, the trial Court acquitted the accused.

8. Being aggrieved by the order of acquittal recorded by C the Sessions Court, the State preferred an appeal under Section 378 of the Code of Criminal Procedure, 1973. It was contended by the State that once the evidence of prosecution witnesses was believed by the Court and it observed that there was no reason to disbelieve the said evidence, the Court ought to have D convicted the accused. It was urged that when the trial Court did not find material contradiction or inherent improbability in the prosecution evidence, the Court was wholly wrong in acquitting the accused.

9. The High Court reappreciated the evidence of E witnesses and held that the order of acquittal recorded by the trial Court was wholly unsustainable and totally unwarranted. Accordingly, the High Court set aside the order of acquittal and convicted the accused- appellant herein for an offence punishable under Section 302, IPC and ordered him to undergo F rigorous imprisonment for life as observed earlier.

10. The accused has challenged the order of conviction and sentence recorded by the High Court by filing the present appeal. On April 10, 2006, appeal was admitted and notice was G issued on prayer for bail. On November 24, 2006, when the matter was called out, the Court fixed final hearing of the appeal and observed that in view of that order, it was not necessary to deal with bail application. Appeal is accordingly placed before us for final hearing.

H 11. We have heard learned counsel for the parties.

12. The learned counsel for the appellant raised several contentions. In our opinion, however, it is not necessary to deal with all the contentions in view of the fact that the appeal deserves to be allowed on a short ground. A

13. The learned counsel for the appellant urged that from the opinion of the Ballistic Expert, it was clear that the bullet which caused the injury to the deceased was not fired from the gun said to have been used by the appellant, recovered from him and was examined by the Forensic Science Laboratory. If it is so, the prosecution was not successful in bringing home the guilt of the accused and in establishing that it was the gun of the accused which had caused firearm injury to deceased Rajpal Singh which resulted in his death. B C

14. The learned counsel for the State, on the other hand, submitted that the point raised by the learned counsel for the accused in this Court was neither raised before the Sessions Court (Trial Court) nor before the High Court (Appellate Court). No such point, hence, can be permitted to be raised in this Court for the first time in an appeal under Article 136 of the Constitution. D

15. We would have indeed considered the submission of the learned Government Advocate but for the fact that there is sufficient evidence on record to show that what is sought to be contended by the learned counsel for the accused in this Court has substance and sufficient material is already on record in support of such plea. E F

16. We have been taken by the learned counsel for the parties to the record of the case. Exhibit *Ka*.3 is the Arrest Panchnama dated August 4, 1979 when the accused was apprehended at about 8 a.m. in the morning. In the memo of arrest as also in seizure memo, it was stated that 'no article was recovered from the body of the accused and nothing was seized by the police'. The accused had nothing except wearing clothes. In Daily Diary by Patwari Circle, Barab, Tehsil Okhimath dated August 4, 1979, it was mentioned that the Patwari started to the place of occurrence from village Senagadmari at about G H

A 5.30 a.m. on August 4, 1979. At the place of occurrence, he found injured Rajpal Singh in the custody of villagers. The injured was breathing but was unconscious. The patwari tried to inquire about the incident from Rajpal Singh but the latter could not speak. Though treatment was given to the injured, he died. B Inquest panchnama was thereafter prepared in presence of persons who were there. The FIR was registered under Section 307, IPC on the basis of the report dated August 3, 1979 by Partap Singh, Pradhan, but Rajpal Singh died and the case was registered under Section 302, IPC. It was stated that "as C the death of the injured Rajpal Singh was caused due to intentional gun shot by accused Puran Singh S/o Bhag Chand, therefore, the accused Puran Singh is taken into custody and the weapon used in murder *i.e.* gun 1319/V-1970, Licence No. 697/Mly-74 and two empty cartridge Bore-12 recovered from D the accused and sealed it at the spot in presence of witnesses".

17. Seizure Memo was prepared on the same day which reads thus:

"Today on dated 4.8.79 in presence of (1) Shri Pratap Singh, Pradhan Village Panchayat Akhori, (2) Shri Bachan E Singh S/o Ram Singh, (3) Shri Bhopal Singh S/o Tilak Singh, Village Akhori, Circle-Barab in the case No.4/79 State through Pratap Singh, Pradhan, Gram Panchayat Akhori versus accused Puran Singh s/o Bhag Chand, village Akhori, U/Sec.302 IPC and 25/27 Arms Act, the F licensed gun of accused called and ammunition was also called. Then the accused Puran Singh handed over to police his single barrel gun, bullet 12 bore No.1319 V-1970, licence No.697/ML4/34-V, booklet, two empty cartridges on which KF-12 Special 12 is written made in G India by ORDINANCE FACTORIES and it was seized by police. Accused was asked to handover other ammunition. The availability of which accused denied. When the gun was open it was not loaded with cartridges. The above recovered article was put in separate sack/packet and H sealed. The memo was prepared in presence of witness

and their sign was taken". A

18. It is thus clear that even according to the prosecution, the weapon used by the accused for commission of crime *i.e.* causing death of deceased Rajpal Singh was recovered along with two empty cartridges. The *mudamal* gun as also empty cartridges were then sent to the Forensic Science Laboratory, Lucknow, which were examined by the Laboratory. B

19. The prosecution witnesses who were cited as eye-witnesses and examined on oath have also stated that the gun used for commission of offence was recovered and the injuries were caused to the deceased by the accused from the said gun. For instance, PW2-Indra Singh was shown gun (Ext.1) and it was observed by the trial Court that "on seeing the gun Ex.1 the witness told that this is that gun from which Puran Singh fired bullet". Similarly, PW4-Shivraj Singh stated that it was the same gun. In para 6, it is observed; "Witness was shown Ex.*Ka*-1. He said that from this gun Puran Singh fired". C D

20. So far as medical evidence is concerned, PW7-Dr. Awasthi had to say this:

> "In my opinion, the death was due to coma which was as a result of head injury caused by the discharge of some arm fire, which was sufficient in the ordinary course to cause death". E

21. PW8—Mitra Nand, Patwari stated in his substantive evidence, that he went to the house of the accused and arrested him. He further stated that the accused gave him his licensed gun of single barrel twelve Bore (Ex.1) and two Cartridges (Ext.6&7) which were sealed separately. F

22. The Report of Forensic Science Laboratory dated November 28, 1979 is also on record. It states that the Laboratory received a letter from Chief Judicial Magistrate, Chamoli (Gopeshwar) along with two 12 bore K.F. Special emptied cartridges marked as E.C.1 & 2 and one piece of gun 12 bore single barrel No.1319. It was then stated that the G H

A examiner fired five shots from the gun which were marked as T.C. 1 to T.C. 5. T.C.1, T.C.2 and T.C.5 misfired and rest fired successfully. Regarding E.C.1 and E.C.2, it was stated that there had been signs of firing pin. But on E.C.2, the signs were not specific. Cap of E.C.1 had sign of breach and E.C.2 had minor
B sign of breach. On the basis of the examination, a conclusion was given which is in the form of result which reads as under:

> *Result : (A) The cartridge in question E.C.1 was not fired from the single barrel 12 Boe No. 319 marked 1/79 gun.*
>
> C *(ii) The cartridge in question E.C.2 has no comparative feature with shot fired from gun No.1319 12 bore marked 1/79.*
>
> *(B) On the chemical examination of fouling matter from the gun the nitrate was found from the gun so it is*
> D *concluded that after last shot the gun was not cleaned but on 3/8/79 whether or not shot was fired from gun designative scientific opinion is not a possibility.*
>
> (*emphasis supplied*)

E 23. It is thus clear that as per Ballistic Expert's opinion, cartridge E.C.1 was not fired from the single barrel 12 bore No. 1319 said to have been used by the accused. In our opinion, therefore, the appellant accused is entitled to benefit of doubt.

F 24. For the foregoing reasons, the appeal deserves to be allowed and is accordingly allowed. The order of conviction and sentence recorded by the High Court is set aside and the appellant is given benefit of doubt and is ordered to be acquitted. Since the appellant is in jail, he is ordered to be released forthwith if his presence is not required in any other case.

G 25. The appeal is accordingly allowed.

B.B.B. Appeal allowed.