

Shahid Ali

v.

The State of Uttar Pradesh

(Criminal Appeal No. 1479 of 2024)

11 March 2024

[Vikram Nath and Satish Chandra Sharma,* JJ.]

Issue for Consideration

In a celebratory firing during a marriage ceremony, the Appellant shot the deceased resulting in his demise. Whether the Appellant could be held guilty of the offence under Section 304 Part I or Part II of the IPC as against Section 302 IPC.

Headnotes

Penal Code, 1860 – s. 302, 304 Part I, 304 Part II – Arms Act, 1959 – s.25, s.27 – Deceased shot with country-made pistol – Succumbed to death after bullet hit the deceased on his neck – FIR registered under s.302 along with s.25, 27 Arms Act - All Eyewitnesses turned hostile – Trial Court based on evidence arrived at the conclusion that Appellant guilty of the offence alleged under the FIR – High Court affirmed the judgment passed by the Trial Court – Held, sentence under s.302 set aside and Appellant convicted for offence under s.304 Part II IPC – Sentence under s.25 & 27 Arms Act sustained.

Held: The Appellant shot the deceased at a marriage ceremony resulting in injury on his neck leading to his demise on the spot - FIR came to be registered under s. 302 IPC - The Appellant confessed to his guilt in his statement under s.161 CrPC - Another FIR registered under s.25 & 27 of the Arms Act, 1959 - PW1, father of the deceased, supported the case of prosecution – All the eyewitnesses turned hostile and the Trial Court based on the evidence arrived at the conclusion that the Appellant was guilty of S.302 IPC – The High Court upheld the judgment of the Trial Court convicting the Appellant under s.302 IPC – Question to be determined whether the Appellant's act of engaging in celebratory firing during a marriage ceremony could be construed to be an act so imminently dangerous to cause death or such bodily injury likely to cause death – Prevalent act of celebratory firing condemned – Totality of circumstances to be considered – No previous

* Author

Digital Supreme Court Reports

enmity – No intention attributed to the Appellant to cause death – Appellant not guilty of offence under s. 302 in the facts of the case – Appellant guilty of culpable homicide with the meaning of s. 299 IPC punishable under s.304 Part II IPC – Conviction under s.302 set aside, conviction under s. 25 & 27 Arms Act sustained [Paras 12-18]

List of Acts

Penal Code, 1860; Arms Act, 1959

List of Keywords

Celebratory firing; Hostile witnesses; No previous enmity; No intention.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1479 of 2024

From the Judgment and Order dated 04.04.2019 of the High Court of Judicature at Allahabad in CRLA No.1462 of 2018

Appearances for Parties

Sanjay Kumar Dubey, Shuchi Singh, Rakesh Kumar Tewari, Mr./ Ms. Krishna Kant Dubey, Vivek Kumar Pandey, Ujjawal Kr. Dubey, Aman, Advs. for the Appellant.

Ardhendumauli Kumar Prasad, Sr. A.A.G., Vishnu Shankar Jain, Ayush Mishra, Advs. for the Respondent.

Judgment / Order of the Supreme Court**Judgment**

Satish Chandra Sharma, J.

1. Leave granted.
2. The present appeal is arising out of a judgment of conviction and order dated 23.02.2018, passed by Sessions Judge, Firozabad in S.T. No. 290 of 2016 titled '*State of U.P. v. Shahid Ali*' whereunder, the Appellant was convicted and sentenced to undergo (i) rigorous imprisonment for life with a fine of Rs. 10,000/- under Section 302 IPC and in default of payment of fine, to undergo six months

Shahid Ali v. The State of Uttar Pradesh

rigorous imprisonment; and (ii) 5 years rigorous imprisonment under Sections 25/ 27 of the Arms Act, 1959 (the “**Arms Act**”) with fine of Rs. 5,000/- and in default of payment of fine, to undergo rigorous imprisonment for three months.

3. The judgment of conviction and sentence was unsuccessfully assailed by the appellant before the High Court of Judicature at Allahabad (the “**High Court**”) *vide* Criminal Appeal No. 1462 of 2018, titled ‘*Shahid Ali v. State of U.P.*’ which came to be dismissed by the High Court *vide* an order dated 04.04.2019 (the “**Impugned Order**”).
4. On 03.12.2021, this Court issued notice limited to the question of nature of offence, that is, as to whether the Appellant could be held guilty of the offence under Section 304 Part I or Part II of the IPC as against Section 302 IPC.
5. The facts of the case reveal that an FIR was lodged by PW1 - Gulab Ali i.e., the *chowkidar* of village Katena Sikeriya, District Firozabad, at Police Station Jasrana, by stating that on 17.03.2016, the marriage ceremony of the daughter of Nizamuddin was being celebrated. Pertinently (i) Ishfaq Ali (the “**Deceased**”); (ii) other co-accused person i.e., Shahid Ali; and (iii) other relatives were also invited to the said marriage. It was further stated in the FIR that on 17.03.2016 at about 3:30PM i.e., amidst the marriage ceremony, the Appellant shot at Ishfaq Ali which resulted in an injury on his neck and ultimately led to his demise on the spot itself. In the FIR, previous enmity between the Deceased and the accused came to be revealed. Furthermore, it was stated that a large number of person(s) saw the alleged incident as there were many people at the marriage ceremony. Accordingly, an FIR came to be registered as Crime Case No. 108 of 2016 under Section 302 IPC at PS Jasrana, District Firozabad. The said FIR has been proved as Ex. Ka-13. Thereafter an entry regarding FIR was made in the G.D. Rapat No. 34 Ex. Ka-4 on 17.03.2016 at 1705 hrs. Thereafter, PW 10 i.e., Lokendra Pal Singh, Station House Officer at Police Station Jasrana, investigated the matter, conducted inquest on the dead body of the Deceased and prepared an inquest report (Ex. Ka-7). The site plan (Ex.Ka-5) was also prepared. The dead body of the Deceased was brought to the hospital and a post-mortem was carried out by a Medical Officer i.e., Dr. Nitin Jaggi, on 18.03.2016. The statement of accused who was arrested was recorded in jail by the investigating officer and accused confessed to his guilt in

Digital Supreme Court Reports

his statement recorded under Section 161 of Cr.P.C. Another FIR was also registered against the Appellant for an offence punishable under Section 25/27 of the Arms Act on 08.04.2016 which came to be registered as Case Crime No. 147 of 2016, at PS Jasrana. An investigation was carried out in pursuant to the FIR(s) and a charge-sheet was filed. The case was committed to the court of Sessions by the Magistrate and charges were framed for *inter alia* an offence punishable under Section 302 of the Indian Penal Code and for offences punishable under Section 25/27 of the Arms Act.

6. The prosecution in support of its case has examined 12 witnesses, namely, PW1 Gulab Ali, PW2 Idrish Ali, PW3 Nizamuddin, PW 4 Raju Ali, PW5 Mohd. Shakeel, PW6 Shamsher Ali, PW7 Chaman Babu, PW8 Dr. Nitin Jaggi, PW9 HCP Kshetrapal Singh, PW10 SO/IO Lokendrapal Singh, PW11 SI Yashpal Singh and PW 12 Constable Clerk, Bhupendra Singh.
7. The prosecution also placed on record documentary evidence viz., written report Ext.Ka-1, post-mortem report Ext.Ka-2, chik FIR Ext. Ka-3, copy of G.D. Ext.Ka-4, site-plan Ext.Ka-5, site-plan in regard to spot recovery of weapon Ext.Ka-6, inquest report Ext.Ka-7, challanash Ext.Ka-8, photonash Ext.Ka-9, letter to R.I. Ext.Ka-10, letter to CMO Ext.Ka-11, charge sheet Ext.Ka-12 u/s 302 IPC against accused the Appellant, recovery memo Ext.Ka-13, FIR Ext.Ka-13, site-plan Ext. Ka-14, sanction to prosecute from the D.M Ext.Ka-15, copy of G.D. Ext.Ka-16 and charge sheet Ext.Ka-17 u/s 25/27 Arms Act against accused the Appellant.
8. The evidence on record has been carefully examined by this Court. PW1 Gulab Ali who was the informant of the case has initially supported the prosecution case. He has categorically stated that the Deceased was shot at with the country made pistol and the bullet hit him on his neck and thereafter succumbed to his injuries on the spot. However, in his cross-examination, the same witness Gulab Ali stated that did not see the alleged incident with his own eyes and that he is unaware of any old enmity between the Deceased and the Appellant. He has further clarified in his cross-examination that he spoke about the enmity between the parties on the basis of hearsay evidence of the people who were present at marriage ceremony.
9. PW2 Idrish Ali i.e., son of the Deceased who was present at the spot initially supported the prosecution case in his examination-

Shahid Ali v. The State of Uttar Pradesh

in-chief, however, subsequently during his cross-examination he has stated that there was no enmity between the Deceased and the Appellant his father and his father Ishfaq Ali was shot dead by some person on 17.03.2016. PW2 also turned hostile during the trial. PW3 Nizamuddin whose daughter's marriage was being solemnized on 17.03.2016, also initially supported the prosecution case, however, in his cross-examination, he has stated that the Appellant was his *Bhanja* and that he did not see the Appellant firing the shot at Deceased. PW4 Raju Ali also categorically stated that there was no enmity between Appellant and the Deceased and he was also declared as a hostile witness by the prosecution. In his cross-examination, he has categorically stated that he has not given any statement incriminating the accused to the police. PW5 Mohd. Shakeel who was also allegedly present at the time of incident did not support the prosecution case and he was also declared hostile. PW6 Shamsher Ali also did not support the prosecution case and he has categorically stated that he has not given any statement under Section 161 Cr.P.C. implicating the accused. He was also declared hostile. PW7 Chaman Babu, another eye witness, was also declared hostile. PW 8 Dr. Nitin Jaggi who carried out the post-mortem stated before the Court that the Deceased died on account of gunshot wound and supported the prosecution case to the extent that he has carried out the post-mortem. He has supported his opinion that the Deceased died on account of haemorrhage as a result of ante-mortem gun shot injuries. PW9 Head Constable Kshetrapal Singh who was a formal witness supported the prosecution case and proved the First Information Report which was lodged on 17.03.2016. PW10 Station Officer Lokendra Pal Singh also supported the prosecution case. PW11 Sub Inspector Yashpal Singh who was present along with PW-10 during the police custody remand of the Appellant has deposed that recovery of firearm and cartridge was made at the instance of the Appellant and has supported the prosecution case. PW12 constable Bhupendra Singh who is also an eye witness of the recovery of the fire arm in question and the cartridge has also supported the prosecution case.

10. The evidence on record reveals that all the eyewitnesses have turned hostile and the Trial Court on the basis of the evidence has arrived at the conclusion that the Appellant was guilty of the offences alleged under the FIR; and accordingly proceeded to convict the Appellant.

Digital Supreme Court Reports

Subsequently, the High Court affirmed the order passed by the Trial Court. Aggrieved, the Appellant preferred the present petition. *Vide* an order dated 03.12.2021, this Court issued notice and on a limited question in the matter i.e. as to whether the appellant could be held guilty of offence under Section 304 Part I or Part II of the IPC, as against under Section 302 of the IPC.

11. The undisputed facts of the case reveal that the incident took place on 17.03.2016 amidst the marriage ceremony of Nizamuddin's daughter. Thereafter, the recovery of a weapon along with cartridge(s) from Appellant has been proved before the Trial Court. It is also undisputed fact that the Deceased died on account of a single bullet injury; and that there was no known prior enmity between the Deceased and Appellant.
12. The fulcrum of the dispute before this Court is whether the Appellant's act of engaging in celebratory firing during a marriage ceremony could be construed to be an act so imminently dangerous so as to, in all probability, cause death or such bodily injury as was likely to cause death?
13. The act of celebratory firing during marriage ceremonies is an unfortunate yet prevalent practise in our nation. The present case is a direct example of the disastrous consequences of such uncontrolled and unwarranted celebratory firing. Be that as it may, in the absence of any evidence on record to suggest that either that the Appellant aimed at and / or pointed at the large crowd whilst engaging in such celebratory firing; or there existed any prior enmity between the Deceased and the Appellant, we find ourselves unable to accept the Prosecution's version of events as were accepted by the Trial Court and confirmed by the High Court.
14. At this juncture it would be apposite to refer to a decision of this Court in ***Kunwar Pal Singh v. State of Uttarakhand***, (2014) 12 SCC 434 wherein, this Court in a similar situation observed as under:

"12. In these circumstances, we find that the intention of the appellant to kill the deceased, if any, has not been proved beyond a reasonable doubt and in any case the appellant is entitled to the benefit of doubt which is prominent in this case. It is not possible therefore to sustain the sentence under Section 304 Part I IPC, which requires that the act by

Shahid Ali v. The State of Uttar Pradesh

which death is caused, must be done with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death. Though it is not possible to attribute intention it is equally not possible to hold that the act was done without the knowledge that it is likely to cause death. Everybody, who carries a gun with live cartridges and even others know that firing a gun and that too in the presence of several people is an act, is likely to cause death, as indeed it did. Guns must be carried with a sense of responsibility and caution and are not meant to be used in such places like marriage ceremonies.

X-X-X

14. In the present case, we are of the view that the appellant is guilty of committing the act which caused the death of the deceased since the act was done with the knowledge that it is likely to cause death within the meaning of Section 304 Part II IPC. In the circumstances, the appeal is allowed in part, however, we reduce the sentence imposed upon the appellant to a period of 7 (seven) years without making any alteration in the fine amount imposed by the trial court and confirmed by the High Court.”
15. Pertinently, the view in *Kunwar Pal Singh (Supra)* came to be followed in *Bhagwan Singh v. State of Uttarakhand*, (2020) 14 SCC 184 wherein this Court observed as under:
- “15. The facts and circumstances of the instant case, however, do not permit to draw such a conclusion. We have already rejected the prosecution version to the extent that the appellant aimed at Smt Anita and then fired the shot(s). The evidence on record contrarily shows that the appellant aimed the gun towards the roof and then fired. It was an unfortunate case of misfiring. The appellant of course cannot absolve himself of the conclusion that he carried a loaded gun at a crowded place where his own guests had gathered to attend the marriage ceremony. He did not take any reasonable safety measure, like to fire the shot in the air or towards the sky, rather he invited full risk and aimed the gun towards the roof and fired the shot. He was expected to know that pellets could cause

Digital Supreme Court Reports

multiple gunshot injuries to the nearby persons even if a single shot was fired. The appellant is, thus, guilty of an act, the likely consequences of which including causing fatal injuries to the persons being in a close circuit, are attributable to him. The offence committed by the appellant, thus, would amount to “culpable homicide” within the meaning of Section 299, though punishable under Section 304 Part 2 IPC.”

16. There can be no qualm about the fact that the Appellant opened fire in a crowded place i.e., a marriage ceremony without taking reasonable measures for safety, which led to the unfortunate demise of the Deceased.
17. In this context, keeping in view the totality of circumstances of the case i.e., especially the fact that (i) there was no previous enmity between the Deceased; (ii) no intention may be attributed to the Appellant as may be culled out from the record to cause death of the Deceased; and (iii) position of law enunciated by this Court in **Kunwar Pal Singh (Supra)** and subsequently, followed in **Bhagwan Singh (Supra)**, we find that the Appellant is guilty of commission of ‘culpable homicide’ within the meaning of Section 299 IPC i.e., punishable under Section 304 Part II of the IPC.
18. In view of the aforesaid, the conviction and sentence of the Appellant under Section 302 IPC is set aside. The Appellant is convicted for an offence under Section 304 Part II of the IPC. The appellant has already undergone approximately 8 years of incarceration. Considering the facts and circumstances of the case, we award a sentence equivalent to the period already undergone. The conviction and sentence awarded to the Appellant under Sections 25 & 27 of the Arms Act remains unaltered. Resultantly, the Appellant be released forthwith, if not required in any other case.
19. The appeal is allowed accordingly, in part. Pending application(s), if any, shall stand disposed of.

Headnotes prepared by:
Mukund P Unny, Hon'y. Associate Editor
(Verified by: Liz Mathew, Sr. Adv.)

Result of the case:
Appeal partly allowed.