

NON-REPORTABLEIN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTIONCRIMINAL APPEAL NO.719 OF 2022

VIRENDRA KUMAR CHAMAR

APPELLANT(S)

VERSUS

THE STATE OF UTTAR PRADESH

RESPONDENT(S)

J U D G E M E N TABHAY S. OKA, J.

1. The appellant is accused no.3. The Trial Court convicted him for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short, 'the IPC'). One Jaggilal, a brother of the deceased Harilal, was the complainant. He is the first informant. He stated that on 20th June, 2005, his brother, deceased Harilal, was conversing with one Mohan Lal at around 6:30 p.m. At that time, accused nos.1 and 2, holding pistols in their hand, and the present appellant, holding a knife in his hand, came there with the intention of killing the deceased. Accused nos.1 and 2 fired on Harilal with their pistols. Harilal entered Mevalal's house. He was shouting. The three accused, while chasing him, entered Mevalal's house and again fired pistols. The appellant assaulted him by using a knife.

2. PW1—Ram Sumer is another brother of the deceased who also claims to be an eyewitness. We may note here that Jaggilal, another brother of the deceased who had filed the complaint, died before the trial started. The appellant's conviction is based on evidence of PW1 Ram Sumer.

3. With the assistance of learned counsel appearing for the appellant and learned counsel appearing for the State, we have carefully perused the evidence of PW1.

4. Before we appreciate the evidence of PW1, we may note here that the case of the prosecution is that firearm injuries caused the death of the deceased. The allegation against the appellant is that he was carrying a knife in his hand, and he assaulted the deceased after the bullets were fired on the deceased by the other two accused. Surprisingly, a charge under Section 34 of the IPC has not been framed against the appellant.

5. PW1 - Ram Sumer, in his examination-in-chief, stated that he heard the sound of fire and noise, and after hearing the noise, he and his brother Jaggilal (complainant) ran towards the spot. He saw his brother Harilal entering Mevalal's house, and three accused were running after him. The three accused entered Mevalal's house. He, along with Jaggilal, also entered the house, and he saw accused nos.1

and 2 firing on his brother, and after that, the appellant injured his brother with a knife.

6. In the cross-examination by the Advocate for the accused, the PW1 admitted that he reached the spot two or three minutes after hearing the firing sounds. He stated that when he and his brother Jaggilal reached there, people were shouting, and no one was standing near the spot. He answered in the cross-examination that he had not seen the actual incident of accused nos.1 and 2 firing bullets at the deceased and accused no.3 (appellant) assaulting the deceased with a knife. His statement in the cross-examination indicates that the deceased had already died when he reached the scene of the offence. In the cross-examination, he further admitted that he did not know how many rounds were fired on the deceased Harilal because, at that time, he was at home. Thus, a serious doubt is created whether PW1 had seen the incident of assault by the accused.

7. No other eyewitness was examined, though from the evidence of PW1, it is apparent that the incident happened at 6.30 pm. and that there were many people around. We are surprised to note that the courts have convicted the appellant only based on evidence of PW1—Ram Sumer. He has already undergone incarceration for sixteen years. This is a shocking state of affairs.

8. Therefore, we are of the considered view that the conviction of the appellant cannot be sustained. Accordingly, the impugned judgments are set aside. The appellant, accused no.3 in Sessions Trial No.82 of 2006 before the Court of the Additional Sessions Judge/FTC-Second, Kaushambi is acquitted of the charges framed against him.

9. The appellant shall be immediately set at liberty if he is not required to be detained in any other case.

10. The appeal is accordingly allowed.

11. Pending application(s), if any, shall stand disposed of.

.....J.
(ABHAY S.OKA)

.....J.
(AUGUSTINE GEORGE MASIH)

New Delhi;
August 7, 2024.

ITEM NO.107

COURT NO.6

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No.719/2022

VIRENDRA KUMAR CHAMAR

Appellant(s)

VERSUS

THE STATE OF UTTAR PRADESH

Respondent(s)

(IA No. 47007/2024 - EARLY HEARING APPLICATION
IA No. 47000/2024 - EXEMPTION FROM FILING O.T.
IA No. 46998/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/
FACTS/ANNEXURES)

Date : 07-08-2024 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ABHAY S. OKA
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

For Appellant(s) Mr. Vishal Vishwadheesh, Adv.
Ms. Manju Jetley, AOR
Mr. Shailendra Kumar Singh, Adv.

For Respondent(s) Mr. Adarsh Upadhyay, AOR
Mr. Rajesh Kumar Singh, Adv.
Mr. Aman Pathak, Adv.
Ms. Pallavi Kumari, Adv.
Mr. Shashank Pachauri, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed non-reportable judgment.

The operative portion of the judgment reads thus:

"Therefore, we are of the considered view that the conviction of the appellant cannot be sustained. Accordingly, the impugned judgments are set aside. The appellant, accused no.3 in

Sessions Trial No.82 of 2006 before the Court of the Additional Sessions Judge/FTC-Second, Kaushambi is acquitted of the charges framed against him."

The appellant shall be immediately set at liberty if he is not required to be detained in any other case.

The appeal is accordingly allowed."

Pending application(s), if any, shall stand disposed of.

(KAVITA PAHUJA)
ASTT. REGISTRAR-cum-PS

(AVGV RAMU)
COURT MASTER (NSH)

[Signed non-reportable judgment is placed on the file]