

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 243 of 2001
(Old No. 1503 of 1985)

1. Sewa Singh
2. Mangat Singh
3. Satnam Singh
All S/o Bhagwan Singh @ Garha Singh
4. Budh Singh S/o Chakar Singh
5. Bhajan Singh S/o Budh Singh
6. Inder Singh S/o Mala Singh
7. Jarnail Singh S/o Inder Singh
8. Jagat Singh S/o Laina Singh

All R/o Village Laukura Bajewala,
P.S. Bazpur, District Nainital.
(Now District Udham Singh Nagar).

..... Appellants

Versus

The State

..... Respondent

Mr. Gopal K. Verma, Advocate for the appellants.
Mr. M.A. Khan, Brief Holder for the respondent State.

Hon. Prafulla C. Pant, J.

This criminal appeal, preferred under Section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C.), is directed against the judgment and order dated 31st May 1985, passed by learned II Additional Sessions Judge, Nainital, in Sessions Trial No. 18 of 1985, whereby the appellants Sewa Singh, Satnam Singh, Budh Singh, Bhajan Singh, Inder Singh, Jarnail Singh and Jagat Singh have been convicted under Section 147 and 304 Part II read with section 149 of the Indian Penal Code, 1860

(hereinafter referred as I.P.C.), and each one of them has been sentenced to rigorous imprisonment for a period of five years under Section 304 Part II read with Section 149 of I.P.C. and rigorous imprisonment for a period of 1 year under Section 147 of I.P.C. Appellant Satnam Singh has been further convicted under Section 323 of I.P.C. and sentenced to undergo rigorous imprisonment for a period of six months. Appellant Mangat Singh has been convicted under Section 148 and 302 Part II read with Section 149 of I.P.C. He too has been sentenced to rigorous imprisonment for a period of five years under Section 304 Part II / 149 of I.P.C. and rigorous imprisonment for a period of one year under Section 148 of I.P.C. All the sentences are directed to run concurrently by the trial court.

2) Heard learned counsel for the parties and perused the entire evidence on record.

3) Prosecution story, in brief, is that in the intervening night of 29th / 30th of September 1984, in the house of Gango Bai (deceased), in Village Sarkhari, Police Station Bazpur, appellants Sewa Singh, Mangat Singh, Satnam Singh, Budh Singh, Bhajan Singh, Inder Singh, Jarnail Singh and Jagat Singh formed an unlawful assembly with a common object to commit murder of Gango Bai. (Earlier Bazpur was part for District Nainital). They also committed rioting. Appellant Mangat Singh was armed with sword, a deadly weapon, and others were armed with Lathies and Danda. Prosecution case is that appellant Sewa Singh, a day before the incident, was running his electric motor by

committing theft of electricity regarding which Gango Bai (deceased) complained to the officials of the electricity department. The officials of the electricity department came to the place where the theft of electricity was being committed and stopped Sewa Singh from committing the same. Annoyed by this, on the aforesaid intervening night of 29th / 30th of September 1984, the appellants came in the house of Gango Bai (deceased). A lantern is said to have been burning in her room. The appellants gave beating to Gango Bai with Lathies and Dandas, and ran away leaving Gango Bai, dead. P.W. 2 Chhilllo Bai, daughter of the deceased lodged the first information report of the incident on 30.09.1984, at about 9:15 A.M. In the incident Chhilllo Bai (P.W. 2) also received injuries. She was got medically examined at Primary Health Centre, Kelakhera on 30.09.1984, by P.W. 4 Dr. K. Tyagi, who prepared the injury report (Ext. A -3). After P.W. 5 Head Constable Radha Krishan prepared check report (Ext. A -2) of the first information report and made necessary entry in the general diary (Ext. A -4) at police outpost Kelakhera, within the limits of Police Station Bazpur, P.W. 6 Sub Inspector R.S. Pandey took up the investigation. Dead body of the deceased was taken into custody by the police and inquest memo (Ext. A -5) was prepared in the presence of the witnesses on 30.09.1984. The dead body was sent for postmortem examination along with necessary papers viz. police form No. 13 (Ext. A -6) and sketch of the dead body (Ext. A -7). The postmortem examination was conducted by P.W. 1 Dr. D.K. Agarwal on 1st October 1984, at L.D. Bhatt Civil Hospital, Kashipur. The

Investigating Officer at the time of visiting the spot prepared site plan (Ext. A –8). He also recorded statements of the witnesses. Further investigation was conducted by P.W. 9 Station Officer Bazpur, Ranbir Singh. On completion of the investigation, a charge sheet was submitted by the Investigating Officer against all the eight accused, named above, for their trial in respect of the offences punishable under Section 147, 148, 149, 302, 323 of I.P.C.

4) The Magistrate, on receipt of the charge sheet (Ext.A –12), after giving necessary copies to the accused, committed the case to the court of Sessions, for trial. Learned II Additional Sessions Judge, Nainital, to whom the trial was transferred, after hearing the prosecution and the defence, framed charge of offences punishable under Section 147 and that of 302 read with Section 149 of I.P.C., against the accused / appellants Sewa Singh, Satnam Singh, Budh Singh, Bhajan Singh, Inder Singh, Jarnail Singh and Jagat Singh. A separate charge was framed against accused / appellant Mangat Singh in respect of offence punishable under Section 148 of I.P.C. and the offence punishable under Section 302 read with Section 149 of I.P.C. A separate additional charge was framed against accused / appellant Satnam Singh under Section 323 of I.P.C. for causing hurt to Km. Chhilllo Bai (P.W.2).

5) All the accused pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1 Dr. D.K. Agarwal (who conducted the postmortem examination);

P.W. 2 Chhilllo Bai, complainant and daughter of the deceased (an eyewitness); P.W. 3 Lakhvir Singh (ten year old eyewitness, son of the deceased); P.W. 4 Dr. K. Tyagi (who examined the injuries on the person of Chhilllo Bai); P.W. 5 Sub Inspector R.S. Pandey (who started the investigation); P.W. 7 Charan Singh (declared hostile) and P.W. 9 Station Officer Ranbir Singh (who completed the investigation). P.W. 8 Constable Vijay Kumar Sharma filed his affidavit, who corroborated the fact that the dead body was kept in a sealed cover, till the postmortem was done. The prosecution evidence was put to the accused / appellants under Section 313 of Cr.P.C., in reply to which the accused alleged the same to be false. They further alleged that they have been falsely implicated in the crime.

6) In defence no oral evidence was adduced, but extract of general diary (Ext. A -4) was got proved. After hearing the parties, the trial court found all the accused guilty of the offence, punishable under Section 304 Part II read with Section 149 of I.P.C. and other offences mentioned in Para 1 above, and convicted them accordingly. Thereafter, after hearing on sentence, the trial court sentenced the convicts, as mentioned in Para 1 above. Aggrieved by said judgment and order dated 31.05.1985, passed in Sessions Trial No. 18 of 1985, convicts preferred this appeal before the Allahabad High Court in the year 1985, from where it is received by transfer to this Court under Section 35 of the U.P. Re-organization Act, 2000, for its disposal.

7) Before further discussions, it is pertinent to mention here the ante mortem injuries found on the dead body of Gango Bai by Dr. D.K. Agarwal (P.W. 1), at the time of postmortem examination, which are recorded in postmortem report (Ext. A –1), prepared by him. The said document discloses following ante mortem injuries on the person of the deceased:

- “1. Contusion 2 cm X 1 cm present on the left cheek.*
- 2. Contusion ½ cm X ½ cm present on the middle of chin.*
- 3. Sub conjunctiva haemorrhage present on left eye.*
- 4. Mild bleeding coming out of mouth.*
- 5. A linear contusion present on left side of chest 2 cm X 1 cm in size 5 cm from left nipple.*
- 6. Linear contusion present on left side of the chest 4 cm X 1 cm in size, 3 cm below injury No. 5.*
- 7. Multiple contusion present on upper part of back in an area of 6 cm X 10 cm in between the scapula.*
- 8. Abrasion 1 cm X 1 cm present on left knee joint.”*

On internal examination, spleen of the deceased was found ruptured. According to the Medical Officer, who conducted the postmortem examination, cause of death of the deceased was shock and excessive bleeding. As such,

from the statement of P.W. 1 Dr. D.K. Agarwal, the prosecution has successfully proved that Gango Bai died homicidal death. Now, the question is who caused the injuries on the person of the deceased, which resulted in her death.

8) P.W.2 Chhilllo Bai and P.W. 3 Lakhvir Singh, daughter and son respectively of the deceased, are the natural witnesses, who had opportunity to see the incident in the intervening night of 29th / 30th of September 1984, and have supported the prosecution story. P.W.2 Chhilllo Bai has stated, that one day before the incident, his mother Gango Bai (deceased) had made complaint against Sewa Singh that he runs his electric motor by committing theft of the electricity. The witness has further stated that this annoyed accused / appellant Sewa Singh, who along with accused appellant Mangat Singh armed with sword, Satnam Singh armed with Danda along with others entered in their house in the night and caused injuries on the person of the deceased. This witness (P.W. 2) Chhilllo Bai has further stated that Satnam Singh gave a blow on her (Chhilllo's) person with Danda. This witness lodged the first information report. On oath she has stated that it was Sewa Singh, who caused injuries to her mother Gango Bai.

9) As far as the role of other accused namely, Budh Singh, Bhajan Singh, Inder Singh, Jarnail Singh and Jagat Singh are concerned, there is no specific role assigned to them either in the first information report or in the statement of P.W. 2 Chhilllo Bai, or in the statement of P.W. 3 Lakhvir Singh. There appears no motive on the part

of these five accused against Gango Bai. Having gone through the statements of P.W. 2 Chhilllo Bai and P.W. 3 Lakhvir Singh, it is difficult to say that they had common intention or common object with accused Sewa Singh, who caused death of Gango Bai. It is possible that they might be present at the time of the incident, but their common object in killing Gango Bai could not be said to have been established, on record. In the circumstances, as far as these five accused namely, Budh Singh, Bhajan Singh, Inder Singh, Jarnail Singh and Jagat Singh are concerned, this Court does not find that the prosecution has been successful in proving the charge of offence punishable under Section 147 or 304 Part II read with Section 149 of I.P.C., as against them.

10) However, as far as the role of accused / appellant Sewa Singh and accused / appellant Satnam Singh are concerned, their presence at the spot is proved beyond reasonable doubt. It is also fully established that Sewa Singh caused injuries on the person of deceased Gango Bai, who died due to the shock and excessive bleeding on account of ante mortem injuries, as stated by P.W. 1 Dr. D.K. Agarwal. The postmortem examination corroborates the statement of P.W. 2 Chhilllo Bai. P.W. 2 Chhilllo Bai is an injured witness who herself received injuries as is clear from the injury report (Ext. A –3) proved by Dr. K. Tyagi P.W. 4. P.W. 3 Lakhvir Singh, who is a minor son of the deceased, has also corroborated the statement of P.W. 2 Chhilllo Bai. As such, as far as charge of offence punishable under Section 304 Part II of I.P.C. as against accused / appellant Sewa Singh is concerned, the same is

proved beyond all reasonable doubt, on the record, Similarly, charge of offence punishable under Section 323 of I.P.C. a against accused / appellant Satnam Singh who caused hurt to P.W. 2 Chhilllo Bai, is proved beyond all reasonable doubt, on the record.

11) However, as far as accused / appellant Mangat Singh is concerned, though it is alleged that he was armed with sword, but there is no injury of sword either on the person of P.W. 2 Chhilllo Bai or on the person of the deceased. AS such, it is doubtful if he (Mangat Singh) participated in commission of crime with a common intention or common object with accused / appellant Sewa Singh. Therefore, accused / appellant Mangat Singh also deserves benefit of reasonable doubt, as it cannot be said that the charge as against him is proved beyond reasonable doubt. It has already been disclosed above, that charge as against accused / appellant Budh Singh, Bhajan Singh, Inder Singh, Jarnail Singh and Jagat Singh cannot be said to have been proved beyond reasonable doubt, a neither they are said to have caused any injuries, nor is it clear that how they joined accused Sewa Singh, as their appears no motive on the part of these five accused / appellants to participate in the crime. The motive is assigned only to accused / appellant Sewa Singh, and the same cannot be said in respect of other five accused, named above.

12) In the circumstances, for the reasons as discussed above, this appeal deserves to be allowed partly. The appeal, so far it relates to accused / appellants Mangat Singh, Budh Singh, Bhajan Singh, Inder Singh, Jarnail

Singh and Jagat Singh deserves to be allowed, as they are entitled to the benefit of reasonable doubt. Appeal of all these six appellants are allowed. The impugned judgment and order dated 31st May 1985, to the extent it records conviction and sentence as against these six appellants is set aside. They stand acquitted of the charge of offence punishable under Section 304 Part II read with Section 149 of I.P.C. and that of Section 147 and 148 of I.P.C. Appellants Mangat Singh, Budh Singh, Bhajan Singh, Inder Singh, Jarnail Singh and Jagat Singh are on bail. They need not to surrender. Their bail bonds are cancelled and sureties stand discharged.

As far as the conviction and sentence awarded against accused / appellant Sewa Singh under Section 304 Part II is concerned, the same is maintained. However, he is acquitted of the charge of offence punishable under Section 147 of I.P.C. As far as accused / appellant Satnam Singh is concerned, his appeal is allowed in respect of his conviction and sentence recorded against him regarding offence punishable under Section 304 Part II read with Section 149 and under Section 147 of I.P.C., and from said charges Satnam Singh also stands acquitted, but his conviction and sentence recorded in respect of offence punishable under Section 323 of I.P.C. is maintained. However, since age of Satnam Singh was 16 years at the time of incident, instead of sending him to jail, he shall be released on probation of one year on furnishing of two surety bonds for his good conduct for a year. He need not to serve out sentence if keeps good conduct for one year. Accordingly, the appeal stands disposed of. The Registry

is directed to send the lower court record back to the lower court for making accused / appellant Sewa Singh to serve out his sentence of rigorous imprisonment of five years in respect of offence punishable under Section 304 Part II of I.P.C. The bail bonds of the accused / appellant Sewa Singh are cancelled. He shall be taken into custody forthwith by the court concerned to make him serve out the sentence.

(Prafulla C. Pant, J.)

Dt. September 28, 2007.

H.Negi