

**IN THE HIGH COURT OF UTTARAKHAND  
AT NAINITAL**

**Government Appeal No. 1887 of 2001**

**Old Number**

**Government Appeal No. 3527 of 1999**

State.

.....Appellant.

Versus

Balkar Singh  
and others.

.....Respondents.

**Hon'ble Nirmal Yadav, J.**

Mrs. Mamta Bisht, learned AGA for the appellant /  
State of Uttarakhand.

Mr. J.S. Virk, learned counsel for the respondents.

State has filed this appeal challenging the judgment and order dated 23.09.1999 passed by Special Judge, CBI / ADJ, Nainital by which the learned trial court acquitted the accused – Balkar Singh, Satnam Singh and Preetam Singh for the offence under section 307 read with section 34 IPC.

The prosecution case, in brief, is that on 17.01.1996 at about 4.35 p.m. Jasvinder Singh submitted a written report in Police Station – Kashipur stating that he along with his brother-in-law Baldev Singh, was going towards Kashipur on motorcycle, meanwhile, accused Balkar Singh, Satnam Singh and Preetam Singh on another motorcycle overtook and stopped them. All the accused took out country made pistols from their pocket and exhorted to kill him and not to leave him alive. On alarm being raised by Jasvinder Singh all the accused fired on the person of Baldev Singh.

Baldev Singh received injury on his right shoulder and back. Due to noise of fire arm, many persons reached the spot. Meanwhile accused ran away towards village – Rampur Damman. According to the complainant, Baldev Singh and accused were having old enmity. Injured was referred to hospital where he was medically examined and X-ray was conducted. After completion of the investigation the accused were challaned under section 307 / 34 to which they pleaded not guilty and claimed to be tried.

In order to prove the case, prosecution has examined PW1 – Jasvinder Singh complainant who did not support the prosecution case and was declared hostile. In the cross examination he admitted that he did not lodge any report with regard to this incident. He denied that his statement was recorded by the police under section 161 Cr.P.C. however, his thumb impression was obtained by police official. PW2 - Paramjeet Singh did not support the prosecution case. He categorically stated that accused present in the court were not the assailants. He further stated that about 1 ½ to 2 years ago he was present at his house he came out when he heard some noise and he saw one person lying while two persons were directing pistols towards him. On alarm raised by him, those persons ran away towards dadhiyal. He could not identity those persons. Thereafter he took the injured person to the hospital where he was medical examined. He, in the cross examination has categorically stated that he had seen assailants who were clean shaven while accused persons are Sikh gentlemen and none of the accused persons

present in the court was assailant. Nobody recorded his complaint when he went to the police station.

PW3 – Dr. P.N. Tandon medically examined the injured and found following injuries:

1. Multiple gunshot wound entry in the area of 12 cm X 8 cm having main wound 5 cm X 3 cm in centre surrounded by wounds on the upper parts of right upper arm.
2. Multiple gunshot wound of entry in an area of 12 cm X 12 cm left scapular region average size .2cm X .2 cm.

According to doctor, the injuries suffered on the person of Baldev Singh injured were caused by fire arm and were grievous in nature. He clarified that injuries could be caused by country made pistol on 17.01.1996 at about 4.00 p.m.

Injured Baldev Singh appeared as PW 4 and he reiterated the statement made before the police. According to him, accused Balkar Singh, who is his uncle was inimical to him on account of dispute over distribution of eucalyptus trees and accused wanted to grab his land. According to him a case under section 307 was registered at the behest of accused against him. PW5 – Mohd. Hanif Khan conducted the investigation of the case. He recorded the statement of the witnesses and inspected the spot.

When examined under section 313 accused denied the allegations, however, he produced the copy of the First Information Report no. 199 of 1994 under sections

307/506/427 IPC. The trial court after taking into consideration the entire evidence on record acquitted the accused persons.

Learned AGA for the State / appellant argued that conviction can be based on the basis of testimony of sole injured witness – Baldev Singh. It is argued that injured Baldev Singh is most reliable and trustworthy witness though his statement has not been supported by Jasvinder Singh, who accompanied him on the motorcycle. She further pointed out that Paramjeet Singh has categorically supported the prosecution case with regard to the manner of the occurrence. According to him, fire arm injuries were caused by the accused persons. She further pointed out that medical evidence duly supports the statement of Baldev Singh as injuries were caused by fire arm i.e. country made pistol. The motive for causing injuries is also proved by Baldev Singh stating that there was some dispute over land between the parties. The trial court fell into error by not accepting the truthful of testimony of the injured witness.

On the other hand, learned counsel for the respondents/ accused submitted that they have been falsely implicated and the genesis of the incident has not been proved at all. The First Information Report is alleged to have been lodged by Jasvinder Singh, but he has categorically denied having reported the matter to the police. He also denied that he accompanied Baldev Singh on the motorcycle or he was the eye witness of the occurrence. He further argued that PW2 – Paramjeet Singh has totally demolished the prosecution case. According to him, assailants were clean shaven and none of the accused

present in the court was assailable. His presence on the spot has been accepted by Baldev Singh himself. He further pointed out that if the prosecution witness did not support the prosecution case and was not cross examined by the prosecution and he was not declared hostile, his testimony can be relied by the defence. In support of his argument, he referred to the judgment of Apex Court in the case of **Raja Ram Vs. State of Rajasthan reported in 2005 SCC (Cri) 1050**. Learned counsel for the respondents / accused stated that if there are two sets of contradictory evidence, the court should give benefit of such a situation to the accused. In support of his argument, he placed reliance upon the judgment of Hon'ble Apex Court **Harchand Singh Vs. State of Haryana reported in 1973 CAR 372 SC**.

After hearing the learned counsel for the parties and taking into consideration the entire evidence on record, I am of the view that prosecution has failed to bring the guilt of the accused beyond reasonable doubt. The prosecution has miserably failed to prove the genesis of the incident in the court. Jasvinder Singh who is alleged to have accompanied the injured on his motorcycle has totally denied any knowledge about the incident. He denied having lodged the First Information Report. He also denied that he was accompanied Baldev Singh on the motor cycle. This witness is a very close relative of the injured Baldev Singh being his brother-in-law. The other independent witness of the incident is Paramjeet Singh, whose presence was admitted and accepted by injured Baldev Singh, has not supported the prosecution case. He categorically stated in the court that accused were not

persons, who caused injury to Baldev Singh. According to him, assailants were some clean shaven persons while accused are sikh gentlemen. Now, the only evidence left with the prosecution which could support its case is that of Baldev Singh injured. The testimony of this witness cannot be accepted mainly on the ground that he was inimical towards accused. It is admitted that a case is already pending against him under section 307 IPC, which was registered at the behest of Balkar Singh. This witness admitted that he was having dispute on account of distribution of eucalyptus trees and some land. Both, the injured as well as all the accused are relatives. Balkar Singh is uncle of injured while Pritam Singh and Satnam Singh are his cousin brother. It may be quite possible that accused were falsely implicated on account of enmity between the parties.

There is no independent witness on record to bring home the allegations against the accused persons. Paramjeet Singh, who is an independent witness, has not supported the prosecution case. He was not declared hostile by the prosecution, therefore, his testimony clearly demolishes the prosecution case. In the present case, prosecution has led two sets of evidence. Each of which contradicts and strikes at the each other. The testimony of PW2 Paramjeet Singh clearly contradicts the statement of witness, injured Baldev Singh, therefore, the trial court was left with no reliable and trustworthy witness upon which conviction of the accused could be based. Therefore, it is a case where it can be safely said that prosecution has failed to prove the guilty of the accused.

In cases where two views are possible benefit of acquittal will go to the accused. The Hon'ble Apex Court in the case of **Ashok Kumar Vs. State of Rajasthan reported in 1971 (1) SCC 166** has observed that interference in appeal against acquittal would be called only if judgment under challenge is perverse or based on misreading of the evidence and merely because the appellate court was inclined to take a different view could not be the reason calling for interference.

Learned AGA for the State / appellant has failed to show that judgment under challenge is perverse or based on misreading of the evidence on record.

In view of the reasons stated above, this appeal fails and the same is accordingly dismissed.

**(Nirmal Yadav, J.)**

26.02.2010