

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

Criminal Appeal No. 1382 of 2001
(Old No. 651 of 1998)

Jeet Singh
Resident of Ram Chandrapur
Police Station Gadarpur, District
Udham Singh Nagar ...Appellant

Versus

State of U.P. (Now State of Uttarakhand) ...Respondent

Present:

Mr. Pankaj Purohit, Advocate present for the appellant.
Mr. S.S. Adhikari, learned A.G.A. with Mr. B.S. Parihar Brief Holder for the State.

Along with
Criminal Appeal No. 1551 of 2001
(Old No. 680 of 1998)

Surjeet Singh S/o of Darshan Singh
Resident of Ram Chandrapur,
Police Station Gadarpur,
District Udham Singh Nagar ...Appellant

Versus

State of U.P. (Now State of Uttarakhand) ...Respondent

Present:

Mr. Pankaj Purohit, Amicus Curiae present for the appellant.
Mr. S.S. Adhikari, learned A.G.A. with Mr. B.S. Parihar Brief Holder for the State.

Coram: Hon'ble Prafulla C. Pant, J.
Hon'ble Nirmal Yadav, J.

Oral: Prafulla C. Pant.

Both these appeal are directed against the judgment and order dated 06.04.1998 passed by Additional Sessions Judge/ Special Judge, Nainital in Sessions Trial No. 234 of 1996 whereby the said court has convicted appellant Surjeet Singh under Section 302 IPC, and appellant Jeet Singh under Section 302 read with Section 34 IPC. Each one of the convicts has been sentenced to imprisonment for life.

2. Heard learned counsel for the parties and perused the lower court record.

3. The prosecution story, in brief, is that about one year before the incident Kashmir Singh (deceased) had given a loan of Rs. 5,000/- to his nephew Surjeet Singh (appellant). He used to demand the repayment of the loan but Surjeet Singh avoided to pay it. On 01.01.1996 Kashmir Singh again demanded the repayment of loan. Annoyed by the demand, accused appellants Surjeet Singh and Jeet Singh armed Patal (heavy sharp edged weapon) came to the house of Kashmir Singh. Accused appellant Jeet Singh caught hold of Kashmir Singh, and accused appellant Surjeet Singh assaulted him (Kashmir Singh) on his head with Patal. On this PW-1 Rajjo Bai (wife of Kashmir Singh) raised alarm on which PW-2 Inder Singh (father of Kashmir Singh) and Mahendra Singh s/o Ram Singh (nephew of Kashmir Singh) rushed there whereafter the accused appellants ran away from the house of the deceased. PW-1 Rajjo Bai, after making arrangement of conveyance, took her husband Kashmir Singh for medical treatment in the Government Hospital Gadarpur. However, in the wee hours (3:00 a.m.) on 02.01.1996 Kashmir Singh succumbed to injuries. On this PW-1 Rajjo Bai got scribed first information report (Ex. A-1) and gave it at Police Station, Gadarpur on the basis of which crime no. 3 of 1996 was registered against accused Surjeet Singh and Jeet Singh relating to offence punishable under Section 302 IPC. PW-4 Sub Inspector Har Kamal Singh took up the investigation. Dead body of Kashmir Singh was taken into possession by the police and inquest report (Ex. A-7), Sketch of dead body (Ex. A-8), Police Form No. 13 (Ex. A-9), Sample of Seal (Ex. A-10) and letter to Chief Medical Officer (Ex. A-11) were prepared by the police and the dead body was sent for postmortem examination in sealed

condition. PW-3 Dr. D.C. Mull conducted postmortem examination on 02.01.1996 at about 3:00 p.m. He recorded one incised wound size 10 cm. x 0.5 c.m. x brain deep on the left side of the head in the autopsy report (Ex A-2), and opined that the deceased had died due to coma as a result of ante mortem injury. The Investigating Officer after interrogating the witnesses, prepared site plan (Ex. A-5) and submitted chargesheet (Ex A-12) against both the accused appellants namely, Surjeet Singh and Jeet Singh for their trial in respect of offence punishable under Section 302 IPC.

4. The Magistrate, on receipt of the chargesheet, after giving necessary copies to the accused as required under Section 207 of Cr.P.C., appears to have committed the case to the court of Sessions for trial. Learned Additional Sessions Judge, to whom the case was transferred, on 09.09.1996, after hearing the parties framed the charge of offence punishable under Section 302 read with Section 34 IPC against accused Jeet Singh and one punishable under Section 302 IPC against accused Surjeet Singh (earlier Gadarpur was part of district Nainital) to which both accused/appellants pleaded not guilty and claimed to be tried. On this, prosecution got examined PW-1 Rajjo Bai (complainant and eyewitness), PW-2 Inder Singh (eyewitness), PW-3 Dr. D.C. Mull and PW-4 Sub Inspector Har Kamal Singh, Investigating Officer.

5. The oral and documentary evidence was put to the accused under Section 313 of Cr.P.C. in reply to which the accused only admitted their relationship with the deceased but alleged that the other evidence adduced on behalf of the prosecution, is false. They further pleaded that they have been falsely implicated due to enmity. However, no evidence in defence was adduced. The trial court after hearing the parties

found both the accused guilty of charge. After hearing on sentence each of the convicts was sentenced to imprisonment for life. Aggrieved by the said judgment and order dated 06.04.1998 passed by learned Additional Sessions Judge/ Special Judge, Nainital in Sessions Trial No. 234 of 1996, these two appeals were filed before the Allahabad High Court in the year 1998. The appeals are received by this Court under Section 35 of U.P. Re-organization Act, 2000 (Central Act No. 29 of 2000) for their disposal.

6. We have already mentioned above that PW-3 Dr. D.C. Mull who conducted postmortem examination on dead body of Kashmir Singh on 02.01.1996 found following ante mortem injury:-

“An incised wound 10 c.m. x 0.5 c.m. x brain deep on the left side of head lying obliquely 5 c.m. above left eyebrow. Margins are clean cut and tailing present towards the forehead.”

The cause of death as per the Medical Officer was due to ante mortem head injury. On the internal examination, he has observed in the autopsy report (Ex. A-2) that the left parietal and left temporal bones were fractured and Haematoma was present below the ante mortem injury. The evidence adduced by PW-3 Dr. D.C. Mull read with the autopsy report establishes on record that Kashmir Singh had died a homicidal death. It has been mentioned in the autopsy report that the deceased had died about 3/4 day before (less than one day). Now we have to see whether accused appellants have committed murder of Kashmir Singh with common intention as suggested by prosecution.

7. PW-1 Rajjo Bai (widow of deceased) has stated on oath before the trial court that Kashmir Singh was her husband. Accused Surjeet Singh had taken loan of Rs. 5,000/- from him in connection with his marriage, about a year before the day of incident. She has further told that Surjeet Singh did not repay the amount even after being demanded again and again. According to this witness on the day of incident at about 7:00 p.m., accused appellant Surjeet Singh armed with 'Patal' along with Jeet Singh entered in her house. Accused appellant Jeet Singh caught hold of Kashmir Singh, and Surjeet Singh gave a blow with 'Patal' (heavy sharp edged weapon) on his head. The witness further narrates that after getting injured her husband fell down. The witness further states that her father-in-law Inder Singh (PW-2) was also inside the house and he also came there and saw the incident. The witness further states that when PW-2 Inder Singh and Mahendra Singh challenged the accused they ran away from the house. Lastly she states that she got lodged the first information report (Ex. A-1) at the police station.

8. The statement of PW-1 Rajjo Bai is corroborated by another eyewitness PW-2 Inder Singh (father of deceased). He has also narrated the incident as stated by PW-1 Rajjo Bai. The presence of these two eyewitnesses in their house at the time of incident is natural and cannot be doubted. Specific role has been assigned to accused appellant Surjeet Singh by the two eyewitnesses that he gave the fatal blow on the vital part of the deceased. As against Surjeet Singh the eye account given by the two eyewitnesses cannot be doubted. As to the source of light both the witnesses have stated that there was electric light in their house. Therefore, after re-appreciating the evidence on record as against accused appellant Surjeet Singh, we do not find any error committed by the trial court in coming to the

conclusion that accused appellant Surjeet Singh committed murder of Kashmir Singh. Since the deceased has eyewitnesses and the accused were related to each other, as such otherwise also there was no scope of mistaking the identity of the accused.

9. As far as accused appellant Jeet Singh is concerned. None of the witnesses has stated that he had given blow on the person of the deceased. The only question to be seen by this Court is whether he had common intention with the accused Surjeet Singh or not. It is pertinent to mention here that there was no motive on the part of accused appellant Jeet Singh to commit crime with accused appellant Surjeet Singh. Whatever dispute had arisen with the deceased it was with accused Surjeet Singh. It cannot be ruled out that accused Jeet Singh did not have common intention to commit murder of Kashmir Singh, with another accused Surjeet Singh. As such, though Jeet Singh might be present with Surjeet Singh but since there appears no prior meeting of minds of the two nor there was overt act of Jeet Singh, we do not find it proved beyond reasonable doubt that accused appellant Jeet Singh had common intention with Surjeet Singh in committing murder of Kashmir Singh. Therefore, we are of the view that he (Jeet Singh) is entitled to the benefit of reasonable doubt.

10. For the reasons as discussed above, appeal of Jeet Singh deserves to be allowed but appeal of Surjeet Singh is liable to be dismissed. Accordingly, Criminal Appeal No. 1382 of 2001 (Old No. 651 of 1998) filed by Jeet Singh is allowed but Criminal Appeal No. 1551 of 2001 (Old No. 680 of 1998) filed by Surjeet Singh is dismissed. Conviction and sentence recorded by the trial court vide its judgment and order dated 06.04.1998 passed by Additional Sessions Judge/ Special Judge, Nainital in Sessions Trial No. 234 of 1996, so far as it relates to Jeet Singh

is set aside. He is acquitted of the charge of offence punishable under Section 302 read with Section 34 IPC. He is on bail. He need not to surrender and his sureties are discharged. Conviction and sentence recorded by the trial court as against accused appellant Surjeet Singh is affirmed. If he is on bail, his bail is cancelled. He shall serve out remaining part of sentence awarded by the trial court. Let a copy of this order along with lower court record be sent back for its compliance.

(Nirmal Yadav, J.) (Prafulla C. Pant, J.)
31.08.2010

VKG