

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Criminal Appeal No. 1194 of 2001

Old Number

Criminal Appeal No. 1024 of 1997

Dharmatma Singh
and another.

.....Appellants.

Versus

State of U.P.

.....Respondent.

Present:

Mr. Rajendra Kotiyal, Advocate for the appellants.

Mr. S.S. Adhikari, learned AGA for the State/ respondent.

Coram:

Hon'ble B.C. Kandpal, J

Hon'ble Nirmal Yadav, J.

(Per Nirmal Yadav, J)

Accused Chandrabali Tewari, Ambika Prasad, Acchey Lal, Dharmatma Singh, Baij Nath along with Gautam Puri (since deceased) stood trial for the offence punishable under sections 147, 148, 302 read with section 149 IPC. Accused Chandrabali Tewari, Ambika Prasad and Acchey Lal have been acquitted of all the charges whereas accused Dharmatma Singh and Baij Nath have been acquitted of charges under sections 147, 148 IPC, however, they have been found guilty and convicted for offence punishable under section 302 read with section 34 IPC and sentenced to imprisonment for life and also to pay fine of Rs. 1000/- each.

The facts, in brief, are that on 29.01.1991 at about 1.15 p.m. Jagmohan (deceased) along with Deena Nath, Foreman at Spinning Mills, Kashipur were coming on

motorcycle from his factory Tarai Textiles towards Spinning Mills. At a distance of about 100 metres, Brij Kishore Singh (complainant) son of Jagmohan Singh along with Rajendra Singh and Sangram Singh was following his father on another motorcycle.

When Jagmohan Singh reached at crossing of Kharakpur, all the accused named above tried to stop the motorcycle of Jagmohan Singh. When he did not stop the motorcycle, the accused who were armed with lathis, dandas, swords and sharp cutting edged weapon attacked the motorcycle riders, consequently, they fell on the ground. Meanwhile, complainant Brij Kishore Singh and his companion also reached the spot and raised alarm. The accused attacked Jagmohan Singh with their respective weapons, as a result of which, he became unconscious. Accused persons considering that Jagmohan Singh was dead, threw his dead body in the Nallah. When many persons collected at the spot, the assailants fled from the scene, threatening and wielding the weapons in their hands. Body of Jagmohan Singh was taken out of Nala by Brij Kishore Singh and his friends while Deena Nath went to Spinning Mills to inform the other employees about the incident. Jagmohan Singh was removed to hospital with the help of Mill's officials, where he was declared dead.

Brij Kishore Singh reported the matter through written application (exhibit Ka 1) which was scribed by PW 3 Mr. S.C. Saxena, P.A. to General Manager of Spinning Mill, Kashipur. Mr. S. C. Saxena, Mr. S.K. Sharma, Engineer and other persons of the Mill had reached on the spot, on receiving the information from

Deena Nath. As per the complainant, the accused were bearing grudge against his father, as his father was the President of the Mill's Labour Union in the year 1986 when services of the accused were terminated by the Management. Accused felt that Jagmohan Singh was siding with the Management, therefore, accused considered him their arch rival, which was the motive for causing the death of his father.

The chik First Information Report was registered on the basis of written complaint on the same date at 3.45 p.m. The investigation was conducted by PW 5, SI Joginder Singh Kanjala, who recorded the statements of Brij Kishore Singh at the spot, prepared site plan of the place of incident and taken into possession blood stained earth and simple earth. He also recorded the statement of other witnesses. Thereafter, the body was sent for postmortem report. Postmortem was conducted by Dr. R.A. Gupta PW 6, who found following ante mortem injuries:

- i. *Incised wound size 10 cm X 2 cm X scalp deep. Margin regular. Proximal and deeper on front side, tapered backward 7 cm above the right pinna in transverse direction.*
- ii. *Incised wound 12 cm X 2 cm X tissue deep. Brain matter coming out, margins regular. Proximal and deeper. Front side taped on back side parallel to injury no. 1 X 3 cm below the injury no. 1.*
- iii. *Incised wound 13 cm X 2 cm X tissue deep X brain coming out extending from right upper*

1/3rd pinna to occipital region parallel to injury no.

2, 3 cm below the injury no. 2.

iv. Incised wound 6 cm X 2 cm X muscle deep running lower part of right pinna oblique in direction.

As per the opinion of doctor, death was caused due to shock and haemorrhage as a result of ante mortem injuries.

On the completion of investigation, challan was presented and the accused were charged under sections 147, 148, 302 read with section 149 IPC to which they pleaded not guilty and claimed trial. All the incriminating evidence was put to the accused, when the accused examined under section 313 Cr.P.C. they denied all the allegations and pleaded false implication.

In order to prove it's case, the prosecution has produced as many as 9 witnesses. PW 1 Brij Kishore Singh and PW 2 Sangram Singh are the eye witnesses. PW3 Mr. S.C. Saxena is the scribe of written report (exhibit ka 1). PW 4 Head Constable Salim Miyan was posted at reporting Chowki, ITI, Kashipur where written report was submitted. PW5 Joginder Singh Kanjala conducted the investigation. PW6 Dr. R. A. Gupta, conducted the autopsy. PW7 Investigating Officer Dharamveer Singh prepared the inquest report and necessary police papers and sent the dead body for postmortem. PW 8 Constable Suresh Chandra Mishra produced General Diary No. 27 wherein it is reported that wardboy of Anand Lal Bhatt Hospital had informed about dead body of Jagmohan having been brought to the hospital at 2.45 p.m. PW 9

Roop Singh filed affidavit that he had accompanied the dead body to the hospital.

We have heard learned counsel for the appellants and learned AGA for the State. The prosecution's case mainly rests on the testimony of the two eye witnesses namely Brij Kishore Singh and Sangram Singh. Both the witnesses have supported and reiterated the version given in the First Information Report. They were strenuously examined by the defence but nothing could be elicited to demolish their testimony.

Learned counsel for the appellants stated that both the alleged eye witnesses are interested witnesses; Brij Kishore Singh being son of the deceased and Sangram Singh being the subordinate employee of the deceased in the Mill. We have gone through the testimony of these witnesses. We find that their testimony is truthful, consistent, therefore, we find the same to be credit worthiness as there are no material contradictions which could go to the root of the case. Admittedly, it is a day light murder committed at a public place. Statement of Brij Kishore Singh was recorded by the Investigating Officer immediately after the occurrence at the scene of crime, while preparing the site plan. Thus, First Information Report was lodged with promptitude. Occurrence took place at 1.15 p.m. and the complaint was scribed by Mr. S.C. Saxena and the same was lodged at 3.45 p.m. in the police station.

Moreover, the information about the incident had already been reported by ward boy of the hospital

through telephone at 2.45 p.m. and on the basis of the said information Sub Inspector PW7 Dharamveer Singh proceeded for the hospital. After reaching the hospital, he prepared inquest report (exhibit K 8). He also took the photograph and prepared other police papers. It is true that information, about the dead body of Jagmohan Singh brought to the hospital, was given by ward boy but the names of accused and the complainant and the manner of occurrence were not disclosed. The said information cannot be treated as First Information Report because the ward boy simply sent a message with regard to the receipt of dead body, the said information cannot constitute First Information Report.

The ocular account is fully supported by medical evidence. There were five incised injuries on the body of Jagmohan Singh. The injuries were on vital part of the body and these injuries could have been caused by heavy sharp edged cutting weapon like sword with which both the accused Dharmatma Singh and Baij Nath were armed with.

Learned counsel for the appellants argued that these injuries could have been caused by Gautam Puri, who was alleged to have been armed with farsa as all the injuries appeared to be caused by some heavy sharp edged weapon. Argument of the learned counsel for the appellants does not find force in view of the opinion of doctor that all the injuries could have been caused by heavy sharp edged cutting weapon like sword. Both the eye witnesses have categorically stated that Baij Nath and Dharmatama Singh assaulted Jagmohan with their sword

besides Gautam Puri having caused farsa injury to Jagmohan Singh. All the injuries alleged to have been caused by three accused i.e. Gautam Puri, Baij Nath and Dharmatama Singh. Since Gautam Puri is dead, therefore, prosecution has been able to prove its case against Baij Nath and Dharamatma Singh.

The prosecution became successful in proving that accused had motive to cause injuries to Jagmohan Singh, which is fully supported by the eye witnesses and medical evidence.

Learned counsel for the appellants argued that First Information Report lodged in the case is delayed because the Investigating Officer Sub Inspector Dharamveer had already proceeded to the hospital for preparing the inquest report before the actual First Information Report was lodged. This argument of the learned counsel has no force as information on the telephone already given by the ward boy of the hospital cannot be treated as First Information Report as discussed above.

Learned counsel for the appellants further submitted that none of the eye witness has specifically stated which injury was caused by which individual accused. It has simply been stated by the eye witnesses that injuries were caused by farsa, sword and other weapons. The argument is totally misconceived. We have gone through the deposition of Brij Kishore Singh and Sangram Singh. They have clearly stated that accused Dharmatma Singh and Baij Nath caused injuries to Jagmohan Singh with their swords.

Learned counsel for the appellants feebly argued that the prosecution has withheld one of the eye witnesses i.e. Rajendra Singh, who allegedly accompanied the two eye witnesses Brij Kishore Singh and Sangram Singh on the motorcycle. It is true that Rajendra Singh has not been produced by the prosecution, however, it does not make any dent in the prosecution case. In fact, it is the prerogative of the prosecution to choose the witness to be produced out of the list of witnesses. There is nothing to suggest that Rajendra Singh would not have supported the prosecution case, if he was produced. It is not the quantity but the quality of the witnesses which actually matters.

Taking into consideration the evidence discussed above, we are of the view that prosecution has successfully proved its case against both the accused appellants beyond reasonable shadow of doubt. We do not find any ground to interfere with the findings of the trial court. There is no merit in the appeal, hence, the same is dismissed.

Appellants are on bail. They be taken into custody forthwith in order to serve the remainder of sentence as awarded by the court below. It is provided that the period already undergone by the appellants during the period of investigation, trial or appeal shall be adjusted after verifying the records.

(Nirmal Yadav, J.) **(B.C. Kandpal, J)**

31.03.2010