

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 125 of 2001
(Old No. 3003 of 1999)

1. Jai Singh S/o Sri Pratap Singh
2. Baijnath (since deceased)
S/o Sri Moti Ram
Both R/o Village Ratanpur,
Police Station Khatima,
Distt. U.S. Nagar (Nainital).

..... Appellants

Versus

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

..... Respondent

AND

Criminal Appeal No. 365 of 2001
(Old No. 2604 of 1999)

1. Har Prasad S/o Sri Ganga Ram
2. Puttu S/o Sri Aase Ram (since deceased)
3. Udai Singh (since deceased)
S/o Sri Ram Chander
4. Mahesh Singh S/o Chander Singh
5. Dashrath S/o Sri Ram Lal
All R/o Village Ratanpur,
Police Station Khatima,
Distt. U.S. Nagar (Nainital).

..... Appellants

Versus

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

..... Respondent

Mr. I.S. Mehra, Advocate, along with Mr. Prem Kaushal and
 Mr. B.S. Bhandari, Advocates, present for the appellants.
 Mr. S.S. Adhikari, Asstt. Government Advocate, with Mr. B.S. Parihar,
 Brief Holder, present for the State.

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

Hon. Prafulla C. Pant, J. (oral)

Both these appeals are directed against the judgment and order dated 28.09.1999, passed by Addl. Sessions Judge / Special Judge (E.C. Act), Nainital, in Sessions Trial No. 299 of 1990, whereby said court has convicted accused / appellants, namely Har Prasad, Puttu (since deceased), Udai Singh (since deceased), Mahesh Singh, Dashrath, Jai Singh and Baijnath (since deceased) under Section 147, 302 / 149 and under Section 307 / 149 of the Indian Penal Code, 1860 (for short I.P.C.). Each one of the convicts has been sentenced to rigorous imprisonment for a period of two years under Section 147 of I.P.C., imprisonment for life with fine of ₹ 2,000/- under Section 302 / 149 of I.P.C., and rigorous imprisonment for a period of ten years with fine of ₹ 1,000/- under section 307 / 149 of I.P.C.

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

3) Prosecution story, in brief, is that on 11.04.1990, there had been a quarrel between the sons of complainant Aan Singh (P.W. 1) with Basant Singh (since deceased) and his sons in Village Ratanpur, within the limits of police station Khatima (earlier Khatima was part of District Nainital). On the next day, i.e. 12.04.1990, at about 07:00 A.M., Aan Singh, Diwan Singh (deceased), Ramesh Singh (deceased) and Mohan Chand (P.W. 3) were passing near the house of Basant Singh (since deceased). They were surrounded by accused Basant Singh (since deceased), Har Prasad, Balbir, Keval Singh, all armed with spears, accused Jai Singh, Udai Singh, both armed with KANTA, and Gopal Singh, Annu Seth, Prem Singh, Baijnath, Puttu, Kala Singh, Dashrath, Umed Singh, Mahesh Singh, Kishori Lal, Roshan Singh, Pritivi Singh, Basse Singh, Basant Singh, and two sons of Basant Singh, all armed with lathis. They assaulted Diwan Singh, Ramesh Singh and Mohan Chand with the weapons they were armed with. P.W. 1 Aan Singh raised alarm, on which Milap Singh (P.W. 2), Manohar Singh, Jagat Singh and Bishan Singh reached at the spot, and when Diwan Singh, Ramesh Singh and Mohan Chand fell down after suffering injuries, the accused left them and ran away. The first information report (Ext. A –1) of the incident was lodged by P.W. 1 Aan Singh at police station Khatima on the very day (12.04.1990), at about 08:46 A.M. On the basis of said report, check report (Ext. A –13) was prepared, and Crime No. 191 of 1990, was registered against all the above 21 persons, in respect of offences punishable under Section 147, 148, 149, 307, 324 and 323 of I.P.C. After the first information report was lodged, two of the injured, namely Diwan Singh and

Ramesh Singh succumbed to the injuries suffered due to which Section 302 of I.P.C. was added in the check report. The injured Diwan Singh died at Khatima, while injured Ramesh Singh died in a hospital at Pilibhit. P.W. 8 Sub Inspector Prithvi Singh investigated the crime. Inquest report (Ext. A –5) was prepared after taking dead body of Diwan Singh in the possession by the police, at about 11:30 A.M. on the very day (12.04.1990) in the Government Hospital, Khatima. The police further got prepared police form No. 13 (Ext. A –6), sketch of the dead body (Ext. A –7), sample seal (Ext. A –8), and letter (Ext. A –10) to the chief Medical Officer, requesting for postmortem examination, relating to dead body of Diwan Singh. The dead body of Diwan Singh appears to have been sent to Base Hospital Haldwani, where autopsy was conducted by P.W. 4 Dr. U.D. Sati, who recorded as many as eight ante mortem injuries in the autopsy report (Ext. A –2). The Medical Officer opined that the deceased had died due to shock and haemorrhage, as a result of ante mortem injuries. Injured Ramesh Singh who was undergoing treatment in District Hospital Pilibhit also succumbed to the injuries on 12.04.1990, and inquest report (Ext. A –24) and other necessary papers were prepared by the police. P.W. 5 Dr. P.R. Awasthi conducted postmortem examination on the dead body of Ramesh Singh on 13.04.1990, at about 04:15 P.M. He recorded as many as eleven ante mortem injuries, and prepared autopsy report (Ext. A –3). The said Medical Officer opined that deceased (Ramesh Singh) had died due to shock and haemorrhage as a result of ante mortem injuries. Injuries of Mohan Chand (P.W. 3) were examined on 12.04.1990 by P.W. 6 Dr. M.K.

Mallik in the Primary Health Center, Jogidher, Pilibhit, who prepared injury report (Ext. A –4). The said Medical Officer found six injuries suffered by the injured (Mohan Chand). The Investigating Officer after interrogating the witnesses, inspecting the spot, and on completion of investigation submitted two charge sheets. One against 16 accused, namely Basant Singh, Har Prasad, Kewal Singh, Udai Singh, Gopal Singh, Annu Seth, Prem Singh, Puttu, Kala Singh, Dashrath, Umed Singh, Mahesh Singh, Kishori Lal, Roshan Singh, Prithvi Singh and Balbir Singh, for their trial in respect of offences punishable under Section 147, 148, 149, 307, 302, 324 and 323 of I.P.C. Another charge sheet was separately filed against five accused, namely Jai Singh, Baijnath, Beman Singh @ Basse Singh, Shekhar Chand and Subhash, relating to offences punishable under Section 147, 148, 149, 307, 302, 323 and 324 of I.P.C.

4) The Magistrate, on receipt of the charge sheets after giving necessary copies to the accused, as required under Section 207 of Cr.P.C., committed the case to the court of sessions for trial. After hearing the parties, Addl. Sessions Judge, Nainital, on 05.06.1991, framed charge of offences punishable under Section 147, 302 read with Section 149, and one punishable under Section 307 read with Section 149 of I.P.C., against all the accused, namely Har Prasad, Keval Singh, Udai Singh, Annu Seth, Prem Singh, Puttu, Kala Singh, Dashrath, Umed Singh, Kishori Lal, Roshan Singh, Jai Singh, Baijnath, Beman Singh @ Basse Singh, Shekhar, Subhash, Basant Singh, Gopal Singh, Mahesh Singh, Prithvi Singh and Balbir Singh. All of them pleaded not guilty and claimed to be

tried. On this, prosecution got examined P.W. 1 Aan Singh (complainant and eyewitness); P.W. 2 Milap Singh (another eyewitness); P.W. 3 Mohan Chand (injured eyewitness); P.W. 4 Dr. U.D. Sati (who conducted postmortem examination on dead body of Diwan Singh); P.W. 5 Dr. P.R. Awasthi (who conducted postmortem examination on dead body of Ramesh Singh); P.W. 6 Dr. M.K. Mallik (who examined injuries on the person of Mohan Chand); P.W. 7 Sub Inspector Satyavir Singh (who prepared inquest report of Diwan Singh), and P.W. 8 Sub Inspector Prithvi Singh (Investigating Officer). During trial accused Basant Singh and accused Subhash died and cases against them stood abated. The oral and documentary evidence was put to the remaining 19 accused under Section 313 of Cr.P.C., in reply to which they alleged that they have been falsely implicated in the case due to enmity. In defence D.W. 1 Balbir Kumar was examined. The trial court, after hearing the parties, found that the prosecution has not proved charge of offences punishable under Section 147, 302 / 149 and 307 / 149 of I.P.C. against any of the accused, except accused Har Prasad, Dashrath, Puttu, Udai Singh, Mahesh Singh, Jai Singh and Baijnath. Accordingly, only those seven (present appellants) were convicted by the trial court. After hearing on sentence, the trial court sentenced each of the convicts to imprisonment for life and directed to pay fine of ₹ 2,000/- under Section 302 read with Section 149 of I.P.C., rigorous imprisonment for a period of ten years and directed to pay fine of ₹ 1,000/- under Section 307 read with Section 149 of I.P.C., and rigorous imprisonment for a period of two years under Section 147 of I.P.C. Aggrieved by said judgment and order dated

28.09.1999, passed by Addl. Sessions Judge / Special Judge (E.C. Act), Nainital, in Sessions Trial No. 299 of 1990, these two appeals were filed by the convicts before the Allahabad High Court from where the same are received by this court under Section 35 of the U.P. Re-organization Act 2000 (Central Act No. 29 of 2000), for their disposal.

5) Before further discussion, we think it just and proper to mention here the ante mortem injuries found on the bodies of the deceased (Diwan Singh and Ramesh Singh) by the Medial Officers. P.W. 4 Dr. U.D. Sati, who conducted postmortem examination on dead body of Diwan Singh on 13.04.1990, has observed following eight ante mortem injuries in the autopsy report (Ext. A – 2):

- i) ***“Incised wound 4.2 cm X 2 cm scalp (skin) deep on left side of head, 10 cm above from the left mastoid bone .***
- ii) ***Traumatic swelling 4 cm X 6 cm, blackish in colour on right side of head, 6 cm above from the right mastoid bone.***
- iii) ***Abrasion 3 cm X 2 cm on the right elbow.***
- iv) ***Abrasion 3 cm X 2 cm, 3 cm above right elbow.***
- v) ***Traumatic swelling 23 cm X 15 cm on right upper arm upto lower arm. All traumatic swelling blackish in colour.***
- vi) ***Abrasion 1 cm X 1 cm on the back side of knee.***
- vii) ***Traumatic swelling 25 cm X 35 cm on the right leg, 5 cm below the knee.***
- viii) ***Traumatic swelling on left knee joint.”***

The Medical Officer (Dr. U.D. Sati) in the autopsy report (Ext. A –2) opined that the deceased (Diwan Singh) had died due to shock and haemorrhage, as a result of ante mortem injuries.

6) P.W. 5 Dr. P.R. Awasthi, who conducted postmortem examination on 13.04.1990 on dead body of Ramesh Singh at Pilibhit, and prepared autopsy report (Ext. A –3), has mentioned following eleven ante mortem injuries in said autopsy report:

- i) ***“Contused swelling 40 cm X 18 cm on the outer side and back of lower $\frac{3}{4}$ of left arm and upper $\frac{3}{4}$ of left forearm with extensive haematoma underneath.***
- ii) ***Lacerated wound 2 cm X 1 cm X bone deep on the back side of left elbow .***
- iii) ***Contused swelling 1.2 cm X 12 cm on the back of left hand and little finger of left hand with extensive haematoma underneath.***
- iv) ***Contused swelling 20 cm X 8 cm on the upper $\frac{3}{4}$ of left leg with extensive haematoma underneath.***
- v) ***Lacerated wound 1½ cm X 1 cm, bone deep on the middle and front side of left leg.***
- vi) ***Abraded contusion 1½ cm X 1 cm on the upper side of left knee .***
- vii) ***Contused swelling 20 cm X 10 cm on the outer side on the back of lower $\frac{2}{3}$ of right leg with extensive haematoma underneath.***
- viii) ***Contused swelling 10 cm X 6 cm on the back lower $\frac{1}{3}$ of right arm with extensive haematoma underneath.***

- ix) *Contused swelling 20 cm X 10 cm on the back of right shoulder and scapular region.*
- x) *Multiple contusions with contused swelling 20 cm X 15 cm on the right side of back of the upper part of with extensive haematoma underneath.*
- xi) *Contused swelling 5 cm X 5 cm on the left side of the skull above the left ear. ”*

In the autopsy report (Ext. A –3), P.W. 5 Dr. P.R. Awasthi opined that the deceased (Ramesh Singh) had died due to shock and haemorrhage, as a result of ante mortem injuries. The above medical evidence establishes on record that Diwan Singh and Ramesh Singh had died homicidal death on 12.04.1990. Now, this court has to see, whether the accused / appellants have committed murder of the two deceased and attempted to commit murder of Mohan Chand (P.W. 3), after forming an unlawful assembly.

7) P.W. 1 Aan Singh (complainant) states that a day before the incident his sons had some altercation with Basant Singh and his sons. On the next day (12.04.1990), he (P.W. 1) along with his son Ramesh Singh (deceased), Diwan Singh (deceased) and Mohan Chand (P.W. 3) was going together in village Ratanpur, and when they reached near the house of Basant Singh, accused armed with lathis and ballam, attacked and assaulted Diwan Singh, Ramesh Singh and Mohan Chand. This witness further states that the incident was witnessed by Milap Singh (P.W. 2), Manohar, Jagat Singh and Bishan Singh. Strangely, complainant who has specified as to which accused was having what arm in the first information

report, did not disclose even the names of the accused, except that of Basant Singh (since deceased), Kewal Singh, Har Prasad, Dashrath and Puttu (since deceased).

8) P.W. 2 Milap Singh, who has been got examined by the prosecution, as an eyewitness of the incident, is son-in-law of the complainant, who lives in a different village from Ratanpur. His presence in the village at 07:00 A.M., on the day of incident appears to be doubtful. Assuming for a moment, that he witnessed the incident, he did not name in his statement any of the accused except Basant Singh (since deceased). In his statement P.W. 2 Milap Singh has stated that Basant Singh and others assaulted Mohan Chand, Ramesh and Diwan Singh with DANDA, BALLAM and KANTA. He further states that he (P.W. 2), Jagat Singh, Manohar Singh and Bishan Singh intervened in the scuffle. None of these witnesses, namely Jagat Singh, Manohar Singh and Bishan Singh are examined on behalf of the prosecution.

9) P.W. 3 Mohan Chand, who is an injured eyewitness, though corroborates the prosecution story that he, Ramesh Singh and Diwan Singh were assaulted by the accused, but he names only Basant Singh (since deceased), Anand Singh, Udai Singh (since deceased) and Mahesh. As such, none of the three eyewitnesses, who were got examined on behalf of the prosecution have named accused / appellants Jai Singh and Baijnath (since deceased). There is no evidence at all against Jai Singh and Baijnath on the record. As such, the trial court has erred in law in holding them guilty of the charge of

offences punishable under Section 147, 302 / 149 and 307 / 149 of I.P.C. As far as accused / appellants Har Prasad, Puttu, Udai Singh, Mahesh Singh and Dashrath are concerned, P.W. 1 Aan Singh has named Har Prasad, Dashrath and Puttu, but names of these three persons are not mentioned in the statement of P.W. 2 Milap Singh and P.W. 3 Mohan Chand. The names of Udai Singh and Mahesh Singh are mentioned in the statement of P.W. 3 Mohan Chand, but names of these two accused are not mentioned either by P.W. 2 Milap Singh or by P.W. 1 Aan Singh. Apart from this, it is relevant to mention here that accused / appellants Puttu and Udai Singh are said to have died during the pendency of these appeals. As to the remaining three accused / appellants Har Prasad, Mahesh Singh and Dashrath, the prosecution evidence adduced by the three eyewitnesses is not consistent. None of the eyewitnesses have stated that the accused / appellants were armed with the weapons mentioned against their names in the first information report.

10) Having reassessed the entire evidence on record, we are of the view that the prosecution has taken this double murder case very lightly and casually, and they did not even put question to the accused to name the assailants while getting recorded the examination-in-chief before the trial court. The conviction recorded by the trial court against the accused / appellants is against the evidence on record. In our opinion, charge of offences punishable under Section 147, 302 / 149 and 307 / 149 of I.P.C., are not proved against the accused / appellants, beyond shadow of reasonable doubt.

11) Therefore, both these appeals deserve to be allowed. The appeals are allowed. The impugned judgment and order dated 28.09.1999, passed by Addl. Sessions Judge / Special Judge (E.C. Act), Nainital, in Sessions Trial No. 299 of 1990, is hereby set aside. Appeals of accused / appellants Baijnath, Puttu and Udai Singh due to their death during the pendency of these appeals, stand abated. Rest of the accused / appellants, namely Jai Singh, Har Prasad, Mahesh Singh and Dashrath are acquitted of the charge of offences punishable under Section 147, 302 / 149 and 307 / 149 of I.P.C. giving them benefit of reasonable doubt. They are on bail. They need not to surrender. Their bail is cancelled and sureties discharged. Lower court record be sent back to the trial court.

(Nirmal Yadav, J.)

(Prafulla C. Pant, J.)

Dt. September 30, 2010.

H. Negi