

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Government Appeal No. 1005 of 2001
(Old No. 423 of 1981)

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

..... Appellant

Versus

1. Gurbachan Lal (since deceased)
 S/o Ganga Ram
 R/o Village Keshowala,
 P.S. Bazpur, Distt. Nainital.
2. Daulat Ram (since deceased)
 S/o Ganga Ram
 R/o Village Keshowala,
 P.S. Bazpur, Distt. Nainital.
3. Tilak Raj
 S/o Balwant Ram
 R/o Haitalpur Keshowala,
 P.S. Bazpur, Distt. Nainital.
4. Janak Raj (since deceased)
 S/o Gurbachan Lal
 R/o Village Keshowala,
 P.S. Bazpur, Distt. Nainital.
5. Sarjeet Lal (since deceased)
 S/o Gurbachan Lal
 R/o Village Keshowala,
 P.S. Bazpur, Distt. Nainital.
6. Dilip Chand S/o Arjun Das
 R/o Mundia Kala
 P.S. Bazpur, Distt. Nainital.
7. Kishore Sharma (since deceased)
 S/o Shyam Das
 R/o Hajira, P.S. Bazpur, Distt. Nainital.

..... Accused / Respondents

Along With

Criminal Revision No. 995 of 2001
(Old No. 276 of 1981)

Beant Singh
 S/o Bhagwan Singh
 R/o Village Vikrampur
 P.S. Bazpur, District Nainital.

..... Revisionist / Complainant

Versus

1. Gurbachan Lal (since deceased)
 S/o Ganga Ram
 R/o Village Keshawala,
 P.S. Bazpur, Distt. Nainital.
2. Daulat Ram (since deceased)
 S/o Ganga Ram
 R/o Village Keshawala,
 P.S. Bazpur, Distt. Nainital.
3. Tilak Raj S/o Balwant Ram
 R/o Village Keshawala,
 P.S. Bazpur, Distt. Nainital.
4. Janak Raj (since deceased)
 S/o Gurbachan Lal
 R/o Village Keshawala,
 P.S. Bazpur, Distt. Nainital.
5. Sarjeet Lal (since deceased)
 S/o Gurbachan Lal
 R/o Village Keshawala,
 P.S. Bazpur, Distt. Nainital.
6. Dilip Chand S/o Arjun Das
 R/o Mundia Kala
 P.S. Bazpur, Distt. Nainital.
7. Kishore Sharma (since deceased)
 S/o Shyam Das
 R/o Hajira, P.S. Bazpur, Distt. Nainital.
8. State of U.P. (now State of Uttarakhand)

..... Respondents

Mr. G.S. Sandhu, Government Advocate, present for the appellant / State.
 Mr. Yogesh Pandey, Advocate, present for the revisionist.
 Mr. S.K. Aggarwal, Sr. Advocate, assisted by Mr. Surendra Sharma, Advocate, and Mr. Manav Sharma, Advocate, present for the accused / respondents.

**Coram : Hon'ble Prafulla C. Pant, J.
Hon'ble V. K. Bist, J.**

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

This appeal filed by the State, and the Criminal Revision filed by the complainant, are directed against the judgment and order dated 12th of November 1980, passed by Sessions Judge, Nainital, in Sessions Trial No. 54 of 1980, whereby said court has acquitted accused / respondents Gurbachan Lal and Janak Raj from the charge of offences punishable under Section 148, 302 and 307 of the Indian Penal Code, 1860 (for short I.P.C.), and accused / respondents Sarjeet Lal, Tilak Raj, Daulat Ram, Dalip Chand and Kishore Sharma from the charge of offences punishable under Section 147, 302 / 149 and 307 / 149 of I.P.C.

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

3) Prosecution story, in brief, is that on 23rd of November 1979, at about 10:00 P.M., a reception party was going on in Ramraj Farm, within the limits of police station Bazpur, after the marriage of son of one Lala Jagan Nath. Prosecution story is that accused /

respondents Gurbachan Lal, Daulat Ram, Tilak Raj, Janak Raj, Sarjeet Lal, Dalip Chand and Kishore Sharma formed an unlawful assembly. Two of them namely Gurbachan Lal and Tilak Raj were armed with pistols. They came in the reception and fired shots at Daljeet Singh (P.W. 1), who got injured. Shamsheer Singh (deceased) in an attempt to save Daljeet Singh went close to him and fires were shot at him also. When Milkhiyat Singh (P.W. 4), Beant Singh (P.W. 3) and Virendra Kumar (P.W. 5) went to save Shamsheer Singh, the accused / respondents Daulat Ram, Tilak Raj, Sarjeet Lal, Dalip Chand and Kishore Sharma caught hold of them. In the incident Milkhiyat Singh (P.W. 4) also got injured. The first information report (Ext. A -3) was lodged by Beant Singh (P.W. 3) on 23.11.1979, at about 11:05 P.M., at police station Bazpur. On the basis of said report, Crime No. 334 of 1979 was registered against the accused, and crime was investigated by P.W. 12 Sub Inspector Vikram Singh Rana. The Investigating Officer after interrogating the witnesses, and on completion of investigation, submitted charge sheet against seven accused, namely Gurbachan Lal, Daulat Ram, Tilak Raj, Janak Raj, Sarjeet Lal, Dalip Chand and Kishore Sharma, for their trial in respect of offences punishable under Section 147, 148, 302 / 149 and 307 / 149 of I.P.C.

4) After the case was committed to the court of Sessions, it appears that charge of offences punishable

under Section 148, 302 and 307 of I.P.C. were framed against accused Gurbachan Lal and Janak Raj, and the charge of offences punishable under Section 147, 302 / 149 and 307 / 149 of I.P.C. appears to have been framed against rest of the accused, namely Sarjeet Lal, Tilak Raj, Daulat Ram, Dalip Chand and Kishore Sharma. All the accused pleaded not guilty and claimed to be tried. On this prosecution appears to have got examined P.W. 1 Daljeet Singh (injured eyewitness), P.W. 2 Dr. Mohd. Hussain (who conducted postmortem examination on the dead body of Shamsher Singh), P.W. 3 Beant Singh (informant), P.W. 4 Milkiyat Singh (injured eyewitness); P.W. 5 Virendra Kumar (eyewitness); P.W. 6 Dr. R.K. Singh (who recorded injuries on the person of the injured in the hospital); P.W. 7 Kamal Krishan (Arms license clerk); P.W. 8 Constable Gopal Dutt (who made necessary entry in the General Diary, and prepared the inquest report); P.W. 9 B. Rai (Ballistic Expert); P.W. 10 Kamal Hussain (whose generator is said to have been lighting the place of incident); P.W. 11 Constable Mewa Lal (who had taken the dead body in sealed condition for postmortem examination); P.W. 12 Sub Inspector Vikram Singh Rana (Investigating Officer); and P.W. 13 Gurmukh Singh (witness of recovery). However, after hearing the parties, the trial court did not find that charge framed against the accused are proved beyond reasonable doubt, and giving them benefit of reasonable doubt, acquitted all the seven

accused / respondents from the charge framed against them. Aggrieved by said judgment and order dated 12.11.1980, passed by Sessions Judge, Nainital, in Sessions Trials No. 54 of 1980, this appeal was filed by the State of U.P. before the Allahabad High Court on 6th August 1981. A criminal revision was also filed by the complainant before the Allahabad High Court on 19th February 1981.

5) Both the appeal and the revision were transferred to this court by the Allahabad High Court under Section 35 of the U.P. Re-organization Act, 2000 (Central Act No. 29 of 2000), for their disposal. However, lower court record was not received from the Allahabad High Court. Attempt of reconstruction of the lower court record was made and on the basis of copies filed by the complainant with affidavit, and the papers filed by the State, statement of P.W. 1 Daljeet Singh, statement of P.W. 2 Dr. M. Hussain, statement of P.W. 3 Beant Singh, statement of P.W. 4 Milkiyat Singh, statement of P.W. 5 Virendra Kumar, statement of P.W. 6 Dr. R.K. Singh, statement of P.W. 7 Kamal Krishan Bhatt, statement of P.W. 8 Contable Gopal Dutt, statement of P.W. 12 Sub Inspector Vikram Singh Rana, statement of P.W. 13 Gurmukh Singh, injury report of Milkiyat Singh, Daljeet Singh, Gurdeep Singh, Shamsher Ali and Daulat Ram, postmortem report of dead body of Shamsher Singh, injury reports, copy of the report of the Ballistic Expert, were reconstructed.

Other papers could not be reconstructed even after the best efforts. In compliance of the order dated 25th February 2011, passed by the Apex court in Writ Petition (Criminal) No. 110 of 2008, Beant Singh Vs. State of U.P. and others, this appeal and the criminal revision are being disposed of on the basis of the reconstructed record.

6) Before further discussion, we think it just and proper to mention here the ante mortem injuries mentioned in the postmortem examination report prepared by P.W. 2 Dr. M. Hussain, who conducted postmortem examination on the dead body of Shamsheer Singh on 24.11.1979. The same are being reproduced below:

- “ i) Gunshot wound on middle outer side of back part of left upper arm 3/4 inch X 3/4 inch with margins inverted and tattooed (wound of entry) wound passing inward and slightly backward and exit of this is on the middle and inner part of left upper arm coincide with (I/b) of gunshot wound on the left lateral side in axillary line of chest left side 6 inches below chest cavity deep. 3/4 inch X 3/4 inch.***
- ii) Gunshot wound 7/10 inch X 7/10 inch, blackened margins on left iliac fossa, cavity deep.***
- iii) Gunshot wound 7/10 inch X 7/10 inch on front slightly lateral of middle of the right forearm, right radius bone was fractured,***

bullet embedded on back of right forearm has passed slightly downward. Bullet extracted and sealed.

- iv) *Gunshot wound 6.5 inch X 6.5 inch on front right side chest, 4 inches below right nipple, cavity deep.*
- v) *Gunshot wound 7/10 inch X 7/10 inch cavity deep on axillary line right side chest just at 9th rib.”*

The Medical Officer (P.W. 2) has opined that Shamsher Singh had died due to shock and haemorrhage.

7) Injuries on the person Daljeet Singh (P.W. 1), Gurdeep Singh and Milkiyat Singh (P.W. 4) were recorded by P.W. 6 Dr. R.K. Singh, who prepared injury reports Ext. A –7, Ext. A –8 and Ext. A –6, respectively. The injury reports reproduced by the trial court in the impugned judgment tally with the reconstructed injury reports (which are photocopies of the injury reports prepared by the Medical Officer). We do not think it necessary to reproduce the same again. Dr. R.K. Singh (P.W. 6) has also examined injuries on the person of Shamshad Ali (not examined) and Daulat Ram (accused / respondent). Injuries of all other persons except Daulat Ram are the firearm injuries. Daulat Ram (accused / respondent) has suffered five lacerated wounds, one incised wound, and one defused swelling.

8) It is pertinent to mention here that since 1981 during the pendency of this appeal, by the time the appeal is received from the Allahabad High Court and reconstruction could be done, out of the seven accused / respondents, five accused / respondents, namely Gurbachan Lal, Daulat Ram, Janak Raj, Sarjeet Lal and Kishore Sharma have already died. As such, cases against these five accused / respondents stood abated. The only surviving accused / respondents are Tilak Raj and Dalip Chand. As such, we have heard learned counsel for the parties and perused the record only to see as to whether these two surviving accused / respondents have been wrongly acquitted by the trial court, or not.

9) On going through the statement of P.W. 1 Daljeet Singh (injured eyewitness), P.W. 3 Beant Singh (informant), P.W. 4 Milkiyat Singh (injured eyewitness) and P.W. 5 Virendra Kumar (eyewitness), we find that all these eyewitnesses have stated that the fires were shot by the accused / respondents Gurbachan Lal (since deceased) and Janak Raj (since deceased). The other accused / respondents have been assigned catching hold role by the aforesaid eyewitnesses, but none of them have stated as to which of the remaining five accused / respondents, namely Daulat Ram, Tilak Raj, Sarjeet Lal, Dalip Chand and Kishore Sharma had caught hold of whom. In other words, the specific role

of the two surviving accused / respondents, namely Tilak Raj and Dalip Chand is not clear from the statements of the eyewitnesses.

10) Had it been a case where the seven accused / respondents have surrounded the deceased and the injured eyewitnesses at some other place, it could have been said that they had come after forming unlawful assembly with common object to commit the murder or attempt to commit the murder. But, in the present case the scene of occurrence is where a reception party was going on in Ramraj Farm, and dinner and reception was on. It has come in the statement of witnesses that large number of people had come in the reception of marriage of son of one Lala Jagan Nath at the place of incident. It is also relevant to mention here that neither accused / respondent Tilak Raj, nor accused / respondent Dalip Chand were armed with any weapon. Therefore, unless their role is specifically stated by the eyewitnesses in the incident, it cannot be said that prosecution has proved beyond reasonable doubt the charge as against them in respect of offences punishable under Section 147, 302 / 149 and 307 / 149 of I.P.C.

11) On behalf of the appellant / State and on behalf of the complainant it is vehemently argued that even though the injured eyewitnesses have supported the prosecution case, the trial court has acquitted the accused ignoring their testimony, as such, the trial court

committed grave error of law. On the other hand, on behalf of the surviving accused / respondents, namely Tilak Raj and Dalip Chand it is contended that as far as the two are concerned, they are rightly acquitted by the trial court for the reason that in a case of shooting no one will endanger his live by catching hold a person who is being shot by the other accused. We had already discussed above that there is consistent evidence on record that only accused / respondents Gurbachan Lal and Janak Raj were armed with the weapons and fired shots. As against them what has been argued on behalf of the complainant and the State could have been accepted, but since said two accused / respondents (Gurbachan Lal and Janak Raj) have died during the pendency of appeal, and their appeals are abated, this court cannot look into that matter. But same cannot be said for respondents Tilak Raj and Dalip Chand regarding whom it is stated that they along with three others caught hold of Daljeet Singh and Milkiyat Singh without specifying who held whom. In the cross-examination of P.W. 5 Virendra Kumar it has been stated that after firing shot injured were caught by the five accused, but for what purpose is not clear.

12) For the reasons as discussed above, as far as the acquittal of accused / respondents Tilak Raj and Dalip Chand recorded by the trial court is concerned, there is no sufficient evidence to reverse the finding recorded by the trial court. Therefore, the appeal filed

by the State and criminal revision filed by the complainant, as against the accused / respondents Tilak Raj and Dalip Chand are liable to be dismissed. Accordingly, the same are dismissed to that extent. As against other accused / respondents, the appeal as well as the criminal revision stood abated.

(V.K. Bist, J.)

(Prafulla C. Pant, J.)

Dt. March 31, 2011.

H. Negi