

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

Criminal Appeal No. 368 of 2003

Gurmeet Singh.Appellant.

Versus

State of Uttaranchal. Respondent.

Present:

Mrs. Pushpa Joshi Sr. Advocate with Mr. Amit Kapri, Advocate for the appellant.
Mr. H.O. Bhakuni, Brief Holder for the State / respondent.

Coram:

**Hon'ble Sudhanshu Dhulia, J.
Hon'ble Servesh Kumar Gupta, J.**

(Per : Hon'ble Servesh Kumar Gupta, J.)

1. This appeal has been preferred against the judgment and order dated 05.12.2003 rendered by Additional Sessions Judge / 1st FTC, Nainital in Sessions Trail No. 271 of 1996 and Sessions Trial No. 272 of 1996, which were clubbed together by the learned Sessions Judge for trial. Both the Sessions Trials titled 'State Vs. Gurmeet Singh @ Gurdeep Singh @ Gurudev Singh' pertaining to crime no. 39 of 1996 and crime no. 40 of 1996 police station - Sitarganj, District - Udhampur ended in conviction and the learned Sessions Judge sentenced Gurmeet Singh to undergo imprisonment for life under Section 302 IPC nay a fine of Rs. 5000/-. He was also sentenced to undergo seven years rigorous imprisonment under Section 307 IPC, nay a fine of Rs. 5000/-. Both the above sentences have been passed in Sessions Trial No. 271 of 1996. Learned Sessions Judge also sentenced accused Gurmeet Singh to undergo three years rigorous imprisonment for the offence under Section 25 of the Arms Act. The said sentence was passed in Sessions Trial No. 272 of 1996.

2. An FIR was lodged by Bachan Singh on 01.02.1996 at 17.00 hours. Initially, it was registered under Section 393, 307 IPC read with Section 25 of the Arms Act but when injured Soni alias Talwinder Singh succumbed to the injuries caused by accused then the case was converted to Section 302 IPC. This witness Bachan Singh was examined as PW4 during the trial.

3. The facts of the case are that on 01.02.1996 at about 03.00 p.m. Karnail Singh, his brother-in-law Soni @ Talwinder Singh, both residents of village Lamakhera went to inspect their agricultural field, Bachan Singh was also with them. As soon, they reached at sugarcane field of Karnail Singh, a noise was heard by them, which was being made by a hawker, who was shouting that he has been plundered. Hearing this all the three persons named above, rushed to the spot and noticed that a person having country made pistol in his hands was looting a hawker. All these persons challenged the culprit, who in turn, opened fire from his country made pistol ("Katta"). The fire hit on the temple of Karnail Singh and he fell on the ground. The culprit took to his heels from the spot. Meanwhile, Jaswir Singh @ Jassa Singh and Harbansh Singh, who were coming from Sitarganj in their tractor, reached the spot and chased accused along with Bachan Singh and Talwinder Singh alias Soni. The accused while running reached the wheat field of Karnail Singh where wheat was grown and here, he again fired from his pistol on Soni @ Talwinder Singh, with an intention to kill him. The fire hit in the abdomen of Soni, and he fell down. Accused again ran but ultimately he was apprehended in the field of Karnail Singh along with his country made pistol in his hands. He disclosed his name as Gurmeet Singh.

4. Since Karnail Singh and Soni had been hit by bullets so first priority of Jaswir Singh @ Jassa Singh and Harbansh

Singh was to take them to hospital, which was at Sitarganj wherfrom he was referred to Khatima Hospital, a higher Centre. Later on, with the help of other villagers Gurmeet Singh was brought to the police station by Bachan Singh. Since accused had committed this crime and opened fire two times, which hit Talwinder Singh in his abdomen and also Karnail Singh at his temple, so he was beaten by the villagers, which was now a sort of a mob. An FIR was lodged which is exhibit Ka 14. After struggling for life continuously for 11 days Talwinder Singh alias Soni succumbed to his injuries, so the case was converted to Section 302 IPC. The investigation was made which resulted into submission of charge sheet against Gurmeet Singh for the offence under Section 393, 307, 302 IPC which is Exhibit Ka-18. The charge was levelled accordingly and after trial the Sessions Judge held him guilty, as stated above.

5. We have rendered hearing to learned counsel for the appellant as well as learned Brief Holder and have also given our anxious consideration to entire evidence produced by the prosecution on record. PW1 Karnail Singh, an injured eyewitness, has proved that accused Gurmeet Singh was robbing Hawker Shahbuddin, who informed him that accused has snatched Rs. 1250 from him. Karnail Singh asked the accused to return money to Shahbuddin on which he fired on the temple of Karnail Singh. He was admitted to Khatima Hospital for 15 days and this fact has been proved by PW 9 Dr. Girish Chandra Pandey, who has stated that on 01.02.1996 Karnail Singh was admitted in the hospital in a subconscious state. He was operated and discharged from the hospital on 15.02.1996 with an advice to visit hospital for check up after

every fortnight. The following injuries have been found by the doctor upon the body of the Karnail Singh:

- "i. There were multiple gun shot injuries on the head, ear and also in mouth.*
- ii. In surgical operation his right temple was opened, which was from parietal to temporal region.*
- iii. Small pellets were taken out from the right skull in surgical operation.*
- iv. Some pellets were also taken out from periosteum region of head.*
- v. Some pellets were present in temporomandibular joint of year.*
- vi. At the time of admission, X ray was done for further treatment, which displayed a number of pellets on right skull."*

6. PW2 Jaswir Singh alias Jassa, is another eyewitness, who was coming from Sitarganj by his tractor and had seen the incident. After chasing the accused, he was one of the persons, who apprehended the accused and he admits that he had beaten the accused.

7. PW 3 Shahbuddin has been declared hostile. Although he has not supported the prosecution version but this does not make any difference because this is a strong case supported by number of eyewitnesses where one of the eyewitnesses is injured Karnail Singh himself. The version of eyewitness gets support from the injury report of accused, which is Exhibit Ka 4. The accused was handed over to police. After performing all the formalities, he was taken to the

hospital by the police constable and was examined in the Government Hospital on 01.02.1996. PW 7 Dr. Rakesh has examined the accused and recorded the following injuries on his body:

- "i. Lacerated wound V shaped measuring 2.5 cm. X 2 cm. bone deep covered with bright red wet seab (blood clot) on the left middle forehead 3 cm from middle of left eye brow.*
- ii. There is a V shaped lacerated wound on the left side of forehead measuring 1 cm X 1.5 cm bone deep covered with bright red wet seab 2 cm above the lateral end of left eye brow.*
- iii. There is a lacerated wound of 3 cm X .25 cm on the left side of face 2.5 cm from tragus of left ear.*
- iv. There is a lacerated wound of 1.5 cm. X 0.5 cm on the left side of face 0.5 cm in front of left tragus covered with wet bright red clot.*
- v. There is a lacerated wound on right parietal region measuring 6 cm X 1 cm bone deep covered with red wet seab 8 cm above the right ear.*
- vi. There is a abraded wound of 1 cm X 0.25 cm at tip of the nose covered with bright red seab wet (blood clot).*
- vii. There is a abraded contusion at right buttock measuring 2 cm X 4 cm covered with wet red seab.*
- viii. There are multiple abrasions at the middle of right thigh dorsal aspect.*

ix. There is lacerated wound on occipital region measuring 1.5 cm X 0.5 cm covered with bright red wet seab bone deep.

x. There is complaint of pain on right shoulder."

8. So the nature of the injuries corroborates the version of PW2 Jaswir Singh and PW 4 Bachan Singh that in order to apprehend the accused and further to prevent him from escape he was beaten, after snatching his own country made pistol from his hands.

9. PW4 Bachan Singh, who lodged the FIR and was with deceased Talwinder Singh @ Soni at the time of occurrence, is eyewitness of the entire sequence of the incident and has proved the same categorically.

10. PW5 Dr. V.P. Agarwal conducted autopsy of deceased Talwinder Singh and prepared postmortem report which is Exhibit Ka 2. Dr. V.P. Agarwal stated that after 12 days' continuous treatment, life of Talwinder Singh could not be saved because several pellets had wounded his intestine and other part within abdomen. Talwinder Singh was aged about 19 years and he breathed his last on 12.02.1996 at 07.00 a.m. in Bareilly District Hospital. Dr. V.P. Agarwal reported the following ante mortem injuries on the body of deceased:

"i. Infected stitched right paramedian wound with 10 stitches present wound 12 cm long.

ii. Multiple small gun shot wounds of entry with lacerated and inverted margins seep red in the area of 14 X 12 cm also surrounding injury no. 1 wound measuring in size from 0.2 cm. X 0.2 cm to 0.3 X 0.3 X muscle and abdominal cavity deep. Some injury wound partially healed.

iii. Stitched wound with rubber tubing coming out wound is 2.0 X 2.0 cm abdominal cavity deep on the left side abdominal in front aspect lower part."

The doctor has opined that cause of death was septaeæmia and toxæmia due to ante mortem injuries.

11. PW6 Sub Inspector Harish Chandra was posted in Police Station Sitarganj on the date of incident. He has made inspection of the spot and prepared site plan (Exhibit Ka 3) and proved the same. PW8 Senior Sub Inspector Rajveer Sharma, has proved the inquest report (Exhibit Ka 5) which was prepared before him.

12. It has been argued on behalf of the accused that there was a cross Session Trial no. 290 of 1998, which was initiated at the complaint of Kaushlya Kaur, wife of accused.

13. She has been produced as DW 1. In defence her version was that she was returning along with her husband Gurmeet Singh after attending marriage of her brother on bicycle. While on the way four persons namely Karnail Singh, Soni Singh, Jagdish and Sudama intercepted them with arms in their hands. Karnail Singh, Soni, Jagdish and Sudama were armed with sword and Ballam (a sharp piercing weapon), country made pistol and lathi respectively. All the aforesigned persons assaulted them. They also looted the ear-rings and necklace of Kaushlya Kaur. She and her husband were injured at the hands of these persons.

14. This version of Smt. Kaushlya is wholly unreliable because she got herself medically examined on 05.02.1996 i.e. four day after the alleged incident. The incident is of 01.02.1996. This examination is done at 03.00 p.m. and it appears that the

doctor has been asked to write that injuries upon the body of Kaushlya were more than 2 days but less than 7 days old in order to cover the date of incident i.e. 01.02.1996, otherwise, the medical officer does not write in such cases, giving quite a margin as to period of injuries. Also the injuries, which were found by doctor on the body of Kaushlya, are so superficial in nature that the Court can discern them to have been made frivolously. There is no plausible explanation as to why Kaushlya did not lodge the FIR promptly. If her FIR was not lodged by the police, then she could have approached higher authorities. She did not do so. So far as cross Sessions Trial No. 290 of 1998 is concerned it appears that this Sessions Trial was not cross one because the sessions trial wherein accused Gurmeet Singh was punished is sessions trial no. 271 of 1996, so it was obvious that the story, as advanced by Kaushlya was concocted in order to make a bogus and fake cross Sessions Trial. The Court was curious to know as to what was the outcome of the trial but the learned Senior Advocate Mrs. Pushpa Joshi was of no help. All the same since that matter pertains to District Nainital it was enquired and it was found that the said trial resulted in the acquittal of accused and it happened on the same day on which the present trial resulted in the conviction of the person accused i.e. the appellant it was on 05.12.2003.

15. Some minor discrepancies have been pointed by the learned counsel for the appellant like absence of blood at the spot where Soni fell down, time of lodging the FIR, the statement of the witnesses regarding carrying the accused Gurmeet Singh to the hospital etc. but these incongruities are not of such worth to disbelieve the prosecution story.

16. In view of what has been stated above, the Court feels that learned trial court has rightly convicted the accused for the offence he was charged. The appeal does not have any force and liable to be dismissed. The appeal is dismissed. Appellant is on bail. His bail bonds are cancelled and sureties are discharged. He shall be taken into custody forthwith to serve out the sentence awarded by the trial court. Inform the court below for compliance.

(Servesh Kumar Gupta, J.) (Sudhanshu Dhulia, J.)

25.05.2012

SKS