

(2015) 03 UK CK 0061

In the Uttarakhand High Court

Case No : Criminal Appeal Nos. 123 and 134 of 2010

Ganga Singh and Others

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 11-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 176, 229-B

Citation : (2015) 2 NCC 176

Hon'ble Judges : Alok Singh, J; S.K. Gupta, J

Bench : Division Bench

Advocate : M.S. Pal, Senior Advocate, assisted by Deepak Bisht, for the Appellant; D.K. Sharma, Addl. Advocate General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Alok Singh, J—Criminal Appeal No. 123 of 2010 has been filed assailing the judgment and order dated 09.06.2010, passed by the Sessions Judge, Nainital in S.T. No. 265 of 2002, whereby all the appellants were held guilty for the offence punishable under Section 302 read with 34 I.P.C. and awarded life imprisonment and fine of Rs. 10,000/-; appellants were also held guilty for the offence punishable under Section 324 read with 34 I.P.C. and were sentenced to undergo rigorous imprisonment for a period of two years; all the accused/appellants were also held guilty for the offence punishable under Section 323 read with 34 I.P.C. and were sentenced to undergo rigorous imprisonment for a period of one year with the stipulation that all the sentences shall run concurrently. Criminal Revision No. 134 of 2010 has been preferred against the judgment and order dated 09.06.2010, passed by the Sessions Judge, Nainital in S.T. No. 88 of 2004, whereby accused/respondents in the revision were acquitted from the charges punishable under Sections 147, 148, 323 read with 149, 452 and 506 I.P.C.

2. Since both the trials were outcome of the cross cases lodged against each

other for the same occurrence, therefore, with the consent of the learned counsel for the parties, both the cases were heard together and are being disposed of by this common judgment.

3. Undisputed fact of the present cases, inter alia, are that one litigation was going on between Chandan Singh and others v. Kharag Singh under Section 229-B read with Section 176 of U.P.Z.A.L.R. Act, which was decreed on 22.06.2002 allotting the lots in favour of the plaintiff Chandan Singh and others, over Khasra No. 24, 59, 57M, 58M, 100M, 122 and 123M in Village Lakhanpur, Tehsil Haldwani, District Nainital.

4. As per the facts of Criminal Appeal No. 123 of 2010 PW1 Balam Singh handed over written report to the Police Station, Haldwani on 25.06.2002, written by Kunwar Singh PW4, stating therein that on 25.06.2002 P.W. 1 Balam Singh alongwith his real brothers Chandan Singh (deceased) and Chatur Singh (PW3) and his nephew Prem Narain Singh PW2 and Chandan Singh S/o. Daleep Singh (Servant) was going at about 01:00 p.m. towards the house of Village Pradhan; since case pending between them and their uncle Kharak Singh was decided on 22.06.2002, therefore, they were going to the house of Gram Pradhan to settle the dispute amicably and to take possession over the lot as decided by the S.D.M with the intention if possession is not handed over peacefully as per the amicable settlement, they will approach the Police; the moment PW1 Balam Singh and his brothers and nephews reached near the agricultural field, in question, for the purpose of measuring the land, meanwhile, Ganga Singh S/o. Kharak Singh, Pan Singh S/o. Ganga Singh, Ishwar Singh S/o. Kharak Singh and Pappu S/o. of Diwan Singh came and started abusing PW1 Balam Singh and his brothers and nephews; all of a sudden, all the accused persons went to their house which was in the field in question and came out armed with khukhari, sword, iron rod and stick and started assaulting PW1 Balam Singh and his brothers and nephews; having received the injuries at the hand of the accused, brother of PW1 Balam Singh, Chandan Singh S/o. Soban Singh fell down on the ground and other members of the complainant party received injuries at the hands of the accused persons; accused Ishwar Singh was armed with the weapon looking like sword, Ganga Singh was armed with khukhari, Pan Singh was armed with iron rod while Pappu Singh was armed with stick; on this complainant party started crying; thereafter, accused party left the spot; thereafter, complainant party went to the Hospital in Jeep; meanwhile, Chandan Singh expired and others are being treated in the Hospital.

5. After the registration of F.I.R., investigation commenced and accused were arrested.

6. As per the facts of Criminal Revision No. 134 of 2010, CW3 Rajendra Singh moved an application under 156(3) Cr.P.C. before the C.J.M. Nainital on 17.08.2002 stating therein that complainant has received information that on 25.06.2002 accused/respondents of Revision No. 134 of 2010 namely Chandan Singh S/o. Soban Singh, Prem Singh S/o. Chandan Singh, Balam would have

forcefully acquired the land, in question; while going from the spot, respondents in Revision extended threat that this time complainant party was saved, however, they would come again to take Singh S/o. Soban Singh Chatur Singh S/o. Soban Singh, Govind Singh S/o. Balam Singh, Rajendra Singh S/o. Mohan Singh, Tikam Singh S/o. Himmat Singh and Bhupal Singh S/o. Satpal resident of Lakhanpur Golapaar, Police Station Haldwani, District Nainital alongwith their family members forcefully entered into the house of complainant and assaulted his family members and also fired the shots; having received such knowledge, complainant went to Nainital Jail to meet his family members Ishwar Singh and others whereupon they have disclosed that on 25.06.2002 at about 1:00 p.m. all the respondents of Revision alongwith 10-12 other persons came in the Tractor on the spot which was being driven by Bhupal Singh and respondents in Revision were armed with country made pistol, stick, iron rod and other sharp edged weapons. All the respondents in Revision and other members of unlawful assembly entered into the Khet/khasra No. 24, 25A, 55, 56, 57, 58, 59, 100A, 122 and 123 with intention to take forceful possession thereon; Respondents in Revision started firing from country made pistol whereupon family members of the complainant entered into their house, which was in the same agricultural field, however, all the respondents in Revision forcefully entered into the house of complainant party and started assaulting ladies namely Moti Devi and Kanchan; if complainant party had not defended themselves, they would have been killed by the respondents in Revision and respondents in Revision possession and teach them lesson; on the application so moved under Section 156(3) Cr.P.C. report was called from the Police and, thereafter, vide order dated 21.08.2002 Police was directed to register the F.I.R. and to investigate the matter whereupon Case Crime No. 1973A of 2002 under Section 147, 148, 149, 307, 452, 323, 506 and 504 of I.P.C. was got registered and investigation commenced.

7. After the investigation, Police did not find any case to have been made out against the respondents in the Revision and was pleased to submit the final report. Thereafter, learned Magistrate was pleased to summon the accused for the offences punishable under Sections 147, 148, 323 read with 149, 452 and 506 of I.P.C.

8. To prove the prosecution story in Case Crime No. 1973 of 2002, under Sections 302, 452 and 323 (in Criminal Appeal No. 123 of 2010), Balam Singh (PW1), Prem Narain Singh (PW2), Chatur Singh (PW3), Kunwar Singh (PW4), Dr. Nilambar Bhatt (PW5), Dr. S. Anwar (PW6), Dr. M.S. Sharma (PW7), Dr. B.S. Deopa (PW8), ASI Mahesh Pal Singh (PW9), SI Shyam Singh (PW10), SI Roshan Lal Gangwar (PW11), Kanchan Kumar Bhagat (PW12), Dr. B.S. Deopa (PW13) and SI Rajendra Kumar Sharma (PW14) were examined.

9. PW1 Blam Singh, PW2 Prem Narain Singh and PW3 Chatur Singh all the injured witnesses stated on oath that case pending between the complainant party and Kharak Singh was decided by the learned S.D.M. in favour of the complainant party on 22.06.2002, with the direction that agricultural property in

possession of the accused party shall be given in the possession of the complainant party; on 25.06.2002, PW1, PW2 and PW3 alongwith Chandan Singh at about 1:00 p.m. were going with intention to measure the agricultural field in question with the help of Gram Pradhan so that peaceful possession thereof by mutual consent with the intervention of the Panchayat could be taken so that Police help might not be necessary; the moment PW1, PW2 and PW3 and Chandan Singh reached near the agricultural field in question all the accused persons, namely Ganga Singh armed with khukari, Ishwar Singh armed with sword, Pan Singh armed with iron rod and Pappu Singh armed with stick came out and first of all started abusing and thereafter started assaulting them; Chandan Singh received two fatal injuries and fell down on the spot; having noticed that Chandan Singh has fallen down on the ground, accused party left the spot thereafter PW1, PW2 and PW3 went to Soban Singh Jeena Base Hospital, Haldwani in the Jeep alongwith Chandan Singh; however, Chandan Singh was declared brought dead; PW1, PW2 and PW3 have stated in so many words that Chandan Singh died due to the injuries received at the hands of the accused persons and all of them have also received fatal injuries on their person at the hands of the accused persons.

10. Balam Singh PW1 was medically examined on 25.6.2002 by PW6 Dr. S. Anwar in the hospital and as per the medical report of Balam Singh PW1, prepared by Dr. S. Anwar PW6, and as per the statement of Dr. S. Anwar PW6, Balam Singh PW1/complainant has received traumatic swelling of 5 cm x 3 cm present over lower posterolateral aspect of right chest, colour red and that injury might have been caused by the blunt object like stick or iron rod. Prem Narayan Singh PW2 was also medically examined on 25.6.2002 in the same hospital by Dr. B.S. Deopa PW8 and as per the medical report, Prem Narain Singh PW 2 was having incised wound of 4 cm x 2 cm about 7 cm deep in the left hand. Chatur Singh PW3 was medically examined by Dr. M.S. Sharma PW7 and as per the statement of Dr. M.S. Sharma PW7, Chatur Singh PW3 was having fracture in the fourth finger of his left hand.

11. Postmortem on the dead body of Chandan Singh was performed by Dr. Nilambhar Bhatt PW5 on 26.6.2002 and as per the opinion of Dr. Nilambhar Bhatt PW5, Chandan Singh was having two incised wounds, which might have been caused by sharp edged weapon and cause of death of Chandan Singh was due to fatal injuries and excessive bleeding.

12. In our considered opinion, statements on oath of PW1, PW2 and PW3 stand corroborated by the postmortem report of Chandan Singh (deceased) and medical reports of PW1, PW2 and PW3 and statements of doctors PW5, PW6, PW7 and PW8.

13. To prove the prosecution story, in Criminal Revision No. 134 of 2010, Pan Singh (CW1), Ishwar Singh (CW2), Rajendra Singh (CW3), Dr. S. Anwar (CW4) and Head Constable Sri Hemchand Joshi (CW5) were examined.

14. It is important to mention herein that CW3 is not an eye-witness of the incident. However, he is the person, who has moved the application under Section 156(3) of the Code of Criminal Procedure. He has stated on oath that he has received information on 26.6.2002 on telephone about the incident of 25.06.2002; he was informed by Hayat Singh about the incident; having received information, he took leave and went to see accused of Criminal Appeal No. 123 of 2010 in jail, where he was informed about the incident and thereafter he moved the application under Section 156(3) of the Code of Criminal Procedure after almost one week short of two months. CW3 is not an eye-witness, since admittedly he was not present on the spot and whatever he has narrated in his complaint under Section 156(3) CrPC or while appearing in the witness box was on the basis of the information received by him. Therefore, his statements are of no value.

15. CW1 Pan Singh is the accused in Criminal Appeal No. 123 of 2010. He has stated on oath that on 25.6.2002, he (Pan Singh), his brother Pappu (accused in appeal No. 123 of 2010), Ganga Singh (accused in Appeal No. 123 of 2010), his uncle Ishwar Singh (accused in Appeal No. 123 of 2010), Mala Devi, Chanchal and Puja were sitting in the Barandah of their house in the noon of 25.6.2002 and were talking with their grandfather Kharak Singh; meanwhile, at about 01:00 P.M., Chandan Singh (deceased), Balam Singh (PW1 in Criminal Appeal No. 123 of 2010), Chatur Singh (PW3 in Criminal Appeal No. 123 of 2010) along with their sons Govind Singh and Prem Singh @ Prem Narayan Singh (PW2 in Criminal Appeal No. 123 of 2010) and Rajendra, Tikam and Raju came in tractor trolley on the spot; about 8-10 more people were along with them; they parked their tractor near their field and started measuring the agricultural field in question; on this, CW1 inquired from Chandan Singh (deceased) as to why they were measuring the agricultural field and if they have any court's order, they may show; on this, Chandan Singh (deceased) said - "who are you to ask about the court's order?" and started abusing CW1 and his family members, whereupon, Chandan Singh (deceased) exhorted his companions - "kill them all"; on this, Chandan Singh (deceased) attacked Ganga Singh with the Khukhari; whereupon, CW1 and his family members rushed towards their constructed house, however, accused/respondents (in revision) followed them and started beating them; having heard hue and cry, villagers gathered on the spot and villagers with the intent to save the complainant party from the hands of the accused party (in revision) started beating accused (in revision).

16. CW2 Ishwar Singh (one of the accused in Criminal Appeal No. 123 of 2010) also made statements in the line of the statements of CW1.

17. From the statements of CW1 and CW2 (accused of the present appeal), place and time of occurrence of both the cases i.e. in appeal and in the revision stand corroborated. In our considered opinion, statements of CW1 and CW2 (in revision) in fact supported the statements of PW2 and PW3 (injured in Criminal Appeal No. 123 of 2010).

18. Mr. M.S. Pal, learned Senior Counsel, appearing for the appellants as well as for the revisionists, has vehemently argued that on 25.6.2002, at about 01:00 P.M., respondents in the criminal revision No. 134 of 2010 came on the spot and started measuring the agricultural field in possession of the revisionist, whereupon, revisionist objected, however, they did not stop and started assaulting; and meanwhile, villagers gathered on the spot and started assaulting the respondents in the revision, wherein respondents (in revision and PW1, PW2 and PW3 in the appeal) as well as deceased Chandan Singh received injuries; therefore, for the injuries received by PW1, PW2 and PW3 (in Criminal Appeal No. 123 of 2010) and Chandan Singh (deceased) cannot be attributed to the revisionists and it can very well be said that injuries on the person of the respondents (in appeal) and Chandan Singh (deceased) was caused by the villagers and not by the revisionists.

19. Mr. M.S. Pal, learned Senior Counsel, further contends that even if it is presumed that PW1, PW2 and PW3 (in Criminal Appeal No. 123 of 2010) and Chandan Singh (deceased) sustained injuries at the hands of the accused (in appeal No. 123 of 2010), it can very well be said that since PW1, PW2 and PW3 of Criminal Appeal No. 123 of 2010 and Chandan Singh (deceased) came on the spot and entered into the agricultural field of the revisionists without any authority, therefore, accused (in appeal) had every right to save their agricultural field and whatever revisionists (accused in appeal) did, same was done in exercise of their right to defend their person and property and, hence, accused in appeal cannot be held guilty. Mr. M.S. Pal, learned Senior Counsel, further contends that first of all respondents (in revision) entered into the agricultural field of the revisionists illegally and forcefully and, moreover, they were the aggressors, who started fighting with the revisionists (accused in appeal), therefore, accused (in appeal) are entitled for acquittal since they have caused injuries in exercise of their right to defend their person and property and respondents (in revision) should be convicted.

20. From the facts narrated hereinbefore, it is proved that SDM had passed decree in favour of the respondents party (in Revision) against the revisionist party on 22.6.2002 allotting the land in possession of the revisionists party in favour of the respondents party (in Criminal Revision No. 134 of 2010). On 25.6.2002, at about 01:00 P.M., respondents (in revision) went on the spot for the purpose of measuring land with the help of Village Pradhan, whereupon, scuffling started.

21. Had incident been taken place in the fashion revisionists are agitating, revisionists would have lodged the report then and there and would not have waited for two months to move the application under Section 156(3) CrPC. However, since matter was not reported immediately after the incident (in Criminal Revision), therefore, story as set up in criminal complainant does not seem to be probable. Moreover, neither Mala Devi nor Chanchal or Puja was produced in the witness box. Therefore, we are of the view that story set up in

private complaint does not stand proved.

22. We find force in the submission of Mr. R.P. Nautiyal, learned Senior Counsel appearing for the respondents (in revision) that to create the false defence, application under Section 156(3) of CrPC was moved by the revisionists party after two months from the date of incident.

23. Even if it is presumed that respondents (in revision) illegally started measuring the agricultural field allotted to them, it will not give any legal right to the revisionists party to attack the respondents party that too with the help of deadly weapon like sword, khukhari, iron rod, etc. It is nowhere stated by the revisionists party that respondents party (in revision) started throwing belongings of the revisionists party and Revisionists party out of the agricultural field for the purpose of grabbing the agricultural field of revisionists party forcefully, therefore, accused in appeal had no right to use weapons in the fashion they used. Hence, benefit of right to defend is not available to the revisionists (accused in the appeal). Otherwise also, if decree was passed in favour of the respondent party (in revision), there seems to be no need for the respondents party (in revision) to come on the spot to take forceful possession. They would have been given possession by process of the court within few next days.

24. There is another aspect of the matter.

25. In an appeal or revision against the acquittal, even if two views are possible, the view taken by the Trial Court acquitting the accused must be allowed to prevail. The view taken by the Trial Court acquitting the accused should be reversed only when the higher court finds perversity therein or important piece of evidence against the accused party was left to be considered by the Trial Court. We do not find any perversity in the findings recorded by the Trial Court acquitting the respondents party (in revision) nor any such evidence has been pointed out by the learned senior counsel appearing for the revisionists, which was left to be considered by the Trial Court acquitting the respondents (in revision).

26. At the risk of repetition, we are once again observing that statements on oath of PW1, PW2 ad PW3 (in Criminal Appeal No. 123 of 2010) stand corroborated by the medical evidence and postmortem report, therefore; the findings recorded by learned Trial Court in both the judgments deserve to be upheld.

27. Consequently, criminal appeal as well as revision fail and are hereby dismissed.

28. The appellants in Criminal Appeal No. 123 of 2010 were granted bail by this Court vide order dated 11.08.2010. Their bail bonds are cancelled. They will be taken into custody forthwith to serve out the sentence awarded by the Trial Court. Let copy of this judgment alongwith lower court record be sent back to

learned Trial Court for compliance.