

(2011) 09 UK CK 0105

In the Uttarakhand High Court

Case No : Criminal Appeal No. 155 of 2004

Kakka Singh alias Kakkan Singh and Phumman Singh both
Sons of Banta Singh alias Bhanta Singh

APPELLANT

Vs

State of Uttaranchal (Uttarakhand)

RESPONDENT

Date of Decision : 27-09-2011

Acts Referred:

Arms Act, 1959 — Section 25

Criminal Procedure Code, 1973 (CrPC) — Section 207, 313

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2011) 2 NCC 780 : (2012) 1 UC 633 : (2011) 2 UD 370

Hon'ble Judges : Barin Ghosh, C.J.;V.K. Bist, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V.K. Bist, J.—Since, in both these appeals common set of facts are involved, therefore, for the sake of convenience, both are consolidated and are being decided together by a common judgment. Criminal Appeal No. 155 of 2004 shall be the leading appeal.

2. A First Information Report was lodged at 7:30 p.m. on 16.10.2000 with Kotwali Police Station Khatima, District Udham Singh Nagar. This First Information Report was lodged by Suchha Singh, brother-in-law of the victim. It was alleged in the First Information Report that he along with his wife-Sillo Kaur had gone to his in-laws' house two days before the incident. His brother-in-law, the victim, had an enmity with his cousins, namely, Kakka alias Kakkan Singh, Phumman Singh, Nahar Singh and Bhanta Singh regarding partition of land. On 16.10.2000, when Surjeet Singh, after sowing Barseem (a type of green grass for feeding cattle) in his field and after passing through the house of the accused reached at his house at about 5:30 p.m., accused Kakka alias Kakkan Singh and Phumman Singh, armed with TAMANCHA (country made pistol) and Nahar Singh, armed with Ballam (lance, a thrusting weapon with a long wooden shaft and a sharp metal head) and Bhanta Singh with empty hands, came there and Bhanta

Singh and Nahar Singh asked Kakka alias Kakkan Singh and Phumman Singh to kill Surjeet Singh, as Surjeet Singh wanted to grab their land and had broken the boundary of their field that day at the time of sowing Barseem. Kakka@ Kakkan Singh fired at Surjeet Singh from country made pistol. When his mother-in-law, Nanki tried to save her son, Phumman Singh and Kakkan Singh, both fired from their country made pistols, which hit Nanki. Surjeet Singh and Nanki Kaur, after getting injured by firearms, fell down and died on the spot. On the basis of First Information Report, a Chik Report was prepared by the Police Station, Sitarganj, and a Crime No. 514 of 2000 was registered against Kakka alias Kakkan Singh, Phumman Singh, Nahar Singh and Bhanta Singh relating to offence punishable u/s 302/34 I.P.C. and u/s 25 Arms Act. Investigation of the case was entrusted to Inspector Prahlad Singh Yadav, who during investigation on 20.10.2000 at 18:20 hrs., arrested accused Phumman Singh and Kakka Singh, and on their pointing out, recovered country made pistols, used in the crime and prepared Recovery Memo. Against accused Phumman Singh and Kakkan Singh, a separate criminal case was registered u/s 25 Arms Act, 1959. The Inquest Reports of the dead bodies of the deceased Surjeet Singh and Nanki Kaur were prepared and the same were sent for post mortem examination. Dr. T.C. Pant (P.W.5) conducted post mortem examination on the dead bodies of deceased Surjeet Singh and Nanki Kaur on 17.10.2000, and thereafter, prepared Autopsy Reports. The Medical Officer opined that deceased Surjeet Singh and Nanki Kaur had died of shock and haemorrhage due to ante-mortem injuries. The Investigating Officer interrogated the witnesses and recorded their statements and after investigation filed charge sheets.

3. The Magistrate, on receipt of the charge sheets, after giving necessary copies to the accused, as required u/s 207 of Code of Criminal Procedure, committed the case to the Court of Sessions for trial. On 01.05.2002, learned Addl. Sessions Judge/ Ist F.T.C. Rudrapur, Udham Singh Nagar, after hearing the parties, framed charge of offences punishable u/s 302 read with Section 34 against accused Kakka Singh alias Kakkan Singh, Phumman Singh, Nahar Singh and Banta Singh alias Bhanta Singh. Accused Kakka Singh alias Kakkan Singh and Phumman Singh were further charged of offence punishable u/s 25 Arms Act. Appellants pleaded not guilty and claimed to be tried.

4. The prosecution, in order to prove its case, got examined P.W.1 Suchha Singh (complainant and eye witness of the incident), P.W.2 Km. Pammi (eyewitness of the incident), P.W.3 Mangat Singh (witness of recovery of weapons used in crime), P.W.4 Amarjeet Singh (another witness of recovery of weapons used in crime), P.W.5 Dr. T.C. Pant, who conducted post mortem examination, P.W.6 S.I. R.K. Parasari and P.W.7 Inspector Prahlad Singh (Investigating Officers). Appellants presented D.W.1, Paramjeet Kaur, who is the wife of deceased Surjeet Singh, as a defence witness. The oral and documentary evidence was put to the accused u/s 313 Code of Criminal Procedure ., in reply to which, they alleged the same to be false. After hearing the learned Counsel for the parties, the trial Court found accused/Appellants Kakka Singh alias Kakkan Singh, Phumman

Singh, Nahar Singh & Banta Singh @ Banta Singh guilty of offence punishable u/s 302 read with Section 34 I.P.C. Each one of the Appellants has been sentenced by the trial court to undergo rigorous imprisonment for life for the offence punishable u/s 302 read with Section 34 I.P.C. and directed to pay fine of Rs. 5,000/- each, in default of which further imprisonment of one year each was awarded. Phumman Singh and Kakka Singh have also been convicted under the offence punishable u/s 25 Arms Act and sentenced to undergo rigorous imprisonment for two years.

5. Being aggrieved by the impugned judgment and order dated 06.04.2004 passed by Addl. Sessions Judge/ Ist F.T.C. Rudrapur, Udham Singh Nagar, the accused/Appellants have preferred the aforesaid appeals before this Court.

6. Before further discussion, we think it just and proper to mention the ante-mortem injuries recorded by P.W.5 Dr. T.C. Pant, who conducted post mortem examination on 17.10.2000 on the dead bodies of the deceased. Following ante-mortem injuries were recorded on the body of Surjeet Singh:

1. Gun shot wound of entry measuring 1.2 cm X 1 cm X chest cavity deep present on left side of back of chest 5 cm below lower tip of left scapale margins irregular inverted. No blackening scorching or tattooing present around wound. 3 cm back to post axillary line. This wound is surrounded by multiple small gun shot wound of entry ranging from .3 cm X .4 cm X skin deep to .3 cm X .3 cm X skin & muscle deep in an area of 4 cms around upper gun shot wound of entry margins of all wound are irregular and inverted. No blackening scorching or tattooing. On exploration of wound chest wall, muscles one lacerated. 8th rib of left chest fractured. Left lower lobe, left pleura one lacerated at multiple places. Chest cavity filled by 2 ? liter of blood. Left lobe of diaphragm lacerated. Post aspect of stomach lacerated. Abdominal cavity filled with one litre of blood on exploring 10 metallic pellets recovered from left lung tissue, four pellets from muscle and skin. Three pellets from abdominal cavity (total 17 pellets).

On the same day i.e. on 17.10.2000, P.W.5 Dr. T.C. Pant also conducted post mortem examination on the body of Nanki Kaur and recorded the following ante-mortem injuries on her body:

1. Gun shot wound of entry measuring 2 cm X 2 cm X chest cavity deep present on right front of chest on 3rd intercostal space 5 cm lat. to middle chest margins irregular inverted. Blackening, scorching and tattooing present around wound. On exploring the wound right upper lobe of lung lacerated at places. 3rd rib fractured. Pericardium lacerated at places. Chest cavity filled with 2 litre of blood (Rt. Side). Twelve metallic pellets identified and one bard piece recovered from chest cavity. Lung and muscles.

2. Gun shot wound of entry measuring 2 X 2 cm X abdominal cavity deep on left lateral aspect of abdomen. 1 cm anterior to anterior auxiliary line 15 cm above left anterior superior iliac spine. Margins irregular inverted, blackening, scorching and tattooing present around wound. On exploring muscles periform, small

intestine and large intestine lacerated at places. Abdominal cavity contains 2 litres of blood and faecal matter right lobe of liver lacerated. One cardboard piece found embedded in liver tissue. Ten pallets recovered from abdominal cavity and muscle tissue.

7. PW-1 Suchha Singh was the informant. In his deposition, he repeated what was stated by him in the First Information Report. In his statement, he categorically stated that Kakka Singh @ Kakkan Singh fired at Surjeet Singh from his country made pistol. When his mother-in-law, Nanki Kaur came to save her son Surjeet Singh, Phumman Singh fired at her. Thereafter, Kakkan Singh also fired at Nanki Kaur. Both of them died on the spot. PW-2 Km. Pammi is unmarried daughter of victim Nanki Kaur and sister of another victim Surjeet Singh. She has also stated same facts, which were stated by PW-1. In her cross-examination, this witness stated that Kakka Singh fired two shots from one spot only. Phumman Singh was standing behind Kakka Singh and fired at Nanki Kaur from that place. Nanki Kaur was 3-4 feet away from Surjeet Singh.

8. PW-5 Dr. T.C. Pant, in his deposition proved the post mortem report.

9. PW-3 Mangat Singh has stated in his statement that about three years ago, when he along with his brother-in-law Amarjeet was going to Sitarganj from their village, at about 6:20 at a distance of 2 to 3 kilometers from Sitarganj, police party in a Jeep met them and asked them to sit in the Jeep in order to apprehend Phumman Singh and Kakkan Singh. When they reached at a Pulia situated at Vijti Road, they found Phumman Singh and Kakkan Singh sitting there. Police apprehended them in the presence of this witness. On inquiry, they stated that they can give murder weapon. Thereafter, they reached the village of Surjeet. After getting down from the Jeep, Kakkan Singh and Phumman Singh got recovered the country made pistols. Recovery memo was prepared in his presence. He stated that he signed the document.

10. PW-4 Amarjeet Singh has corroborated the statement given by PW-3 Mangat Singh and has stated that the Police had recovered the country made pistols in his presence and the recovery memo had been prepared in his presence. This witness had identified the country made pistols in the Court below.

11. In defence, D.W.1 Paramjeet Singh, wife of victim Surjeet Singh was examined. She stated in her statement that deceased Surjeet Singh was her husband. Deceased Nanki Kaur was her mother-in-law. She stated that Succha Singh is her brother-in-law and Km. Pammi is her sister-in-law. According to her, murder of her husband and her mother-in-law took place in the night at 7:00 p.m. This witness also stated in her statement that when the murder of both the victims took place, informant Succha Singh and her sister-in-law Pammi Kaur were not in the house. She stated that two-three days ago, Km. Pammi had gone to Giddhor at the house of her sister Sillo Kaur, wife of Succha Singh. She further stated that only Kakka Singh committed murder. Kakka Singh was in drunken condition and was hurling abuses. When her mother-in-law Nanki Kaur objected,

Kakka Singh first fired at her by country made pistol and thereafter fired at Surjeet Singh. When the murder took place, then a person of the village went to call her brother-in-law Succha Singh. Succha Singh reached there at 12:00 O'clock in the night. According to this witness, Succha Singh was not present at the place of occurrence, when incident took place. DW-1 has stated that she has narrated the above facts to Succha Singh. She further said that other accused persons, namely, Nahar Singh, Phumman Singh and Banta Singh were not present at the time, when the incident took place. Their names were wrongly shown in the report. She stated that she has only one son and by swearing in the name of her son, she is telling the truth. She also stated that one month before the incident, Succha Singh came in the village in drunken condition and had a quarrel with Kakka Singh, Phumman Singh, Nahar Singh and Banta Singh, and was disgraced. Displeased with this, Succha Singh named the accused falsely. She further stated that Succha Singh told her that due to enmity, he named them in the report. She also stated that Succha Singh did not get her statement done, as truth would have come out by her statement. She stated that the statements given by Succha Singh and her sister-in-law Km. Pammi Kaur in the Court are false.

12. Learned Counsel for the Appellants Shri A.S. Gill submitted that as per the First Information Report and statements of PW-1 and PW-2, it is shown that Nahar Singh was holding Ballam and accused Banta Singh was empty handed. He submitted that there is nothing to show that these two accused had any common intention to kill Surjeet Singh and Nanki Kaur. Thus, no case u/s 34 I.P.C. is made out against them. It was contended by the learned Counsel for the Appellants that prosecution did not produce another alleged eye witness Sillo Kaur, wife of Succha Singh, and even Paramjeet Kaur, wife of deceased Surjeet Singh has categorically stated that Phumman Singh, Nahar Singh and Banta Singh have falsely been implicated. It was further contended that as per Post Mortem Report (Ext.A-6) and statement of PW-5 Dr. T.C. Pant, before the trial Court, there is no injury found, which was caused by Ballam, therefore, the involvement of Nahar Singh in the murder of the deceased persons, is totally ruled out. Learned Counsel for the Appellants also submitted that PW-1, Succha Singh does not belong to the village Kaundha Ratan, Sitarganj (place of incident) and he is only a chance witness and his presence on the place of occurrence is highly doubtful. He further submitted that in the First Information Report, it is stated that the deceased Surjeet Singh came from the field to his house after doing his agricultural work. It is also stated that he came from in front of the house of the accused, thus if the accused had any intention to kill him or if the act was preplanned, they would have killed him in front of their own house.

13. We have considered the arguments of learned Counsel for the Appellants. PW-1 Succha Singh and PW-2 Km. Pammi are witness of the incident. PW-1 is brother-in-law of the victim Surjeet Singh. Km. Pammi PW-2 is the sister of Surjeet Singh and daughter of Nanki Kaur. Both of them have corroborated the prosecution story. These two witnesses were cross-examined, but nothing came

out in their statements, which creates doubt, as to the truthfulness of the facts stated by them. Their statements are natural and trustworthy.

14. DW-1 Smt. Paramjeet Kaur is the wife of deceased Surjeet Singh. In her statement, she has categorically stated that murder was committed by Kakka Singh only and at the time of incident other accused, namely, Phumman Singh, Nahar Singh and Banta Singh were not present. She has also denied presence of PW-1 and PW-2 at the place of incident. Her testimony has to be examined very carefully. Though, we would have given weight age to the testimony of DW-1, who is the wife of deceased Surjeet Singh and would have rejected the testimony of PW-1 and PW-2 regarding role of the Appellants in the crime, but seeing post mortem report, we are unable to believe the statement of DW-1. As per post mortem report, no blackening, scorching or tattooing around the wound of victim Surjeet Singh was found, whereas such blackening, scorching and tattooing was found present around the wounds of victim Nanki Kaur. Thus, statement of DW-1 that only Kakka Singh committed murder of both the victims is found false. DW-1 also stated in her evidence that after the murder of the victim, one person was sent to call Succha Singh and Succha Singh came to place at 12:00 O" clock in the night. This statement is also an incorrect statement, as First Information Report was lodged by Succha Singh in the police station at 7:30 p.m. Thus, testimony of DW-1 is not at all reliable and we find the testimony of PW-1 and PW-2 trustworthy.

15. As far as role of Nahar Singh and Banta Singh is concerned, the prosecution has miserably failed to prove role of these two persons in the crime. Even no attempt was made by the prosecution to prove that these two Appellants had any common intention to kill Surjeet Singh.

16. We, accordingly, allow the Criminal Appeal No. 119 of 2004, filed by Nahar Singh and Banta Singh and set aside the judgment and order under appeal as well as sentence awarded to them. Let these Appellants be set free forthwith. Insofar as, Appellants Kakka Singh @ Kakkan Singh and Phumman Singh are concerned, we dismiss Criminal Appeal No. 155 of 2004, filed by them and confirm the judgment and order under appeal as well as the sentence. Let a copy of this judgment, along with the record of court below, be sent back to the trial Court.