

PART-II

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 1167 OF 2007****HARBANS SINGH & ANR.****.....****APPELLANT****VERSUS****STATE OF UTTARAKHAND****.....****RESPONDENT****O R D E R**

1. This appeal by way of special leave arises out of the following facts:-

At about 7:00p.m. on the 30th of October, 2001, Gurbachan Singh - P.W. 1, was riding pillion on the motor cycle being driven by his son Gurjeet Singh-deceased. As the two reached near the Kichha railway station about half a kilo metre away from Police Station, Kichha, the four accused Jagdeep Singh and Manjeet Singh armed with country-made weapons and Harbans Singh and Jaswant Singh, the present appellants, chased them in their Esteem Car bearing No. HR 06-G 2165 and after overtaking the motor cycle came in front thereof with the result that Gurjeet Singh had

to stop on the road side. The accused thereupon fired gun shots at Gurjeet Singh killing him on the spot. The incident was witnessed by Bhagat Singh, Deedar Singh, Kuldeep Singh and Ashok Kumar and several other persons. Gurbachan Singh rushed to Police Station Kichha and recorded the First Information Report at about 7:30p.m. in which bare details with regard to the incident were given by him. P.W. 7 - Harish Mehra, the SHO, of P.S. Kichha reached the place of incident and made the necessary enquiries and sent the body for the post mortem examination. On the completion of the investigation, a charge under Section 302 of the Indian Penal Code simplicitor was framed against the four accused whereas a separate charge under Section 25 of the Arms Act was framed against Jagdeep Singh and Manjeet Singh, the two accused who had been armed with a fire arm each had fired the fatal shots. As the accused denied charges levelled against them they were brought to trial.

2. The prosecution in support of its case examined Gurbachan Singh - P.W. 1, the first informant, as one of the eye witnesses and his nephew Deedar Singh - P.W. 2 as the second eye witness; Dr. S.K. Mishra - P.W. 4, the doctor, who had performed the post mortem

examination on the body and P.W. 7 the Investigating Officer, Harish Mehra. The prosecution case was then put to the accused and the statement under Section 313 Cr.P.C. were duly recorded. They denied all allegations levelled against them. The trial court relying on the aforesaid ocular evidence as supported by the medical evidence of Dr. S.K. Mishra, - P.W. 4, held all the four accused Jagdeep Singh and Manjeet Singh guilty of murder simplicitor under Section 302 whereas present appellants Harbans Singh and Jaswant Singh were held guilty under Section 302/149 IPC and sentenced accordingly. An appeal was thereafter taken by all the four accused to the High Court. The High Court dismissed the appeal by its judgment dated 15th June, 2007.

3. We are told that special leave petitions were subsequently filed in this Court. The Special Leave Petition filed by Jagdeep Singh and Manjeet Singh was dismissed by a simple order of dismissal whereas leave was granted in the Special Leave Petition filed by Harbans Singh and Jaswant Singh, the present appellants.

4. We have heard the learned counsel for the

parties and gone through the record with their assistance.

5. Several arguments have been raised by Mr. S.R. Bajwa, the learned senior counsel for the appellants. He has first pointed out the appellants had been roped in under Section 301/149 of the IPC and as no charge under Section 149 had been framed against them, their conviction on that basis was wrong. He has also pleaded that the statements of the accused recorded by the trial court under Section 313 of the Code of Criminal Procedure were defective and the material circumstances which would have been relevant for determining their culpability had not been put to them invalidated their conviction. For this argument, Mr. Bajwa has placed reliance on several judgments of this Court. He has also further pointed out on facts, that the FIR did not contain any details with regard to the incident and the improvements made during the course of the evidence in Court, could not, therefore, be relied upon the more so as it was the admitted position that the relations between the parties were strained on account of a dispute pertaining to a petrol pump. He has also emphasised on the general tendency in such matters (and where enmity is writ large) to cast the

net far and wide as there was absolutely no reason whatsoever that the two appellants, being elders in the family, would have accompanied the two young co-accused to commit a murder for the purpose of sorting out what was apparently a dispute relating to property.

6. Mr. A.P. Sahay the learned counsel for the respondent-State has, however, controverted the arguments made by Mr. Bajwa again on the basis of several judgments of this Court and has emphasised that a defective charge or statement under Section 313 of the Cr.P.C. recorded by the trial could would not *per se* vitiate the trial as an obligation was cast on the accused to show that both these factors had led to prejudice during the course of the trial. He has also submitted that Section 465 of the Cr.P.C. specifically provided that in determining the question of prejudice the fact as to whether the objection had been raised at the earliest possible stage, would be an extremely relevant factor and as the appellants had for the first time raised the question of prejudice in this Court, the plea was not open to them. He has also pointed out on facts that the FIR was not an encyclopedia of events and that in the background that Gurbachan Singh had seen the brutal murder of his young son, if some facts

had been left out, some latitude was to be given to him on account of his unfortunate situation.

7. We have heard the learned counsel for the parties and considered the arguments advanced by them and have perused the evidence on record. We do find that the charge framed against the four accused (including the two appellants) as also the statements under Section 313 of the Cr.P.C. recorded by the trial court with regard to the circumstances that had been found against them during the course of the trial have not been framed or recorded in the manner required by law but this factor by itself would not entirely determine the matter in the light of the fact that the appellants have not taken an objection regarding prejudice at the earliest stage and that no prejudice has in fact been shown, as they were fully aware of the case against them.

8. We, however, feel that the appellants are entitled to relief in the facts of the case. We observe that the FIR is rather sketchy and gives no details about the specific role of each of the accused. When these questions were put to Gurbachan Singh in his evidence in Court he stated that he had in fact given

all details to the police officer but he had neglected to record them. Mr. Sahay's argument, therefore, that Gurbachan Singh was puzzled on account of the incident is not confirmed by Gurbachan Singh. Moreover, we are also not unmindful of the fact that where enmity is admitted (as in this case) and as some parleys had taken place that very morning with regard to a settlement and the ownership of the petrol pump, the possibility that the appellants had been roped in cannot be ignored the more so as all the accused were closely related to each other. We notice that Jagdeep Singh and Manjeet Singh, the two accused whose conviction has become final upto this Court are the sons of Harbans Singh and Jaswant Singh, appellants herein respectively, whereas the appellants are brothers-in-law *interse*. We also find that Deedar Singh -P.W. 2 the other eye witness also did not give any relevant details in his statement under Section 161 Cr.P.C. and he was repeatedly confronted with the omissions in his deposition in Court.

9. We, therefore, remain uncertain about the involvement of the appellants in the incident. They are, accordingly, entitled to the benefit of the doubt.

10. We, accordingly, allow this appeal. The appellants shall be set at liberty forthwith if not required in any other case.

.....J
[HARJIT SINGH BEDI]

.....J
[DEEPAK VERMA]

NEW DELHI
NOVEMBER 24, 2009.



PART-I

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1167 OF 2007

HARBANS SINGH & ANR. APPELLANTS

VERSUS

STATE OF UTTARKHAND RESPONDENT

O R D E R

We have heard the learned counsel for the parties.
Vide our separate reasoned order, we have
allowed the appeal and set aside the conviction of the
appellants and ordered their acquittal.

It is stated by the learned counsel for the
appellants that the appellants are in jail. We direct
that they be set at liberty forthwith if not required
in connection with any other case.

The reasoned order to follow.

.....J
[HARJIT SINGH BEDI]

.....J
[DEEPAK VERMA]

NEW DELHI

NOVEMBER 24, 2009.

