

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 147 OF 2009

Sompal Singh & Anr.

...Appellants

Versus

State of U.P.

..Respondent

J U D G M E N T

Dr. B.S. Chauhan, J.

1. This appeal has been preferred against the impugned judgment and order dated 24.5.2007 of the High Court of Judicature at Allahabad in Criminal Appeal No. 2681 of 1982, by which the High Court has affirmed the judgment and order passed by the IInd Additional Sessions Judge, Budaun dated 12.10.1980 in S.T. No. 540 of 1980, wherein the trial court had convicted the appellants alongwith other accused Jaganant Singh, Sahaab Singh and Meharban Singh under Sections 148, 323, 149, 324/149 of the Indian Penal Code, 1860 (hereinafter referred to as the `IPC') and also under Sections 320/149 IPC. All the accused were sentenced to undergo RI for one year under Section 148 IPC and were further convicted for six months RI under Sections 324/149 IPC and for another six months RI under Sections 323/149 IPC and all of them were also stood convicted under Sections 302/149 for imprisonment for life.

2. The High Court has converted the aforesaid conviction and also acquitted all of them for the offence punishable under Sections 302/149 IPC. Kunwar Pal Singh and Sahaab Singh have been sentenced for ten years RI under Section 304-I IPC and the other remaining convicts were held guilty under Sections 148, 323, 324/149 IPC and reduced their sentences.

3. So far as the present appeal is concerned, it relates only to two appellants i.e. Sompal Singh and Kunwar Pal Singh. Sompal Singh is reported to have served out the sentence of 1-1/2 years awarded to him and in view of the statement made by Shri Ratnakar Desh, learned senior counsel appearing on behalf of the appellants, his appeal is dismissed as having become infructuous. So, we have to consider the case of remaining sole appellant Kunwar Pal Singh, the second appellant who has been convicted under Section 304-I IPC and sentenced to 10 years RI.

4. The facts and circumstances giving rise to this appeal are that:

A. Shanker Singh, the complainant, was irrigating his agricultural field by Persian Wheel (Rahat) on 21.5.1980. At about 11.00 AM, the cattle of Jaganant Singh reached on the well and started drinking water. As a result of which the water drain got damaged and this ultimately resulted in exchange of words between Shanker Singh and Jaganant Singh. Both of them subsequently finished their agricultural work

and came to the village at their respective houses.

B. On the same day, both the appellants alongwith Meharban Singh, Sahaab Singh and Jaganant Singh attacked Shanker Singh at around 2.00 p.m. Kunwar Pal Singh and Sahaab Singh had Kanta, Sompal Singh had a ballam, Jaganant Singh had bhala and Meherban Singh had a lathi. When Bhoop Singh, Pooran Singh and Mukku Singh, family members of Shanker Singh, tried to save him, they also suffered injuries at the hands of the accused. Hearing the hue and cries, witnesses Bahadur Singh (PW.8), Hakim Singh (PW.9) and many other persons arrived at the place of occurrence. On seeing this, the accused ran away.

C. Shanker Singh, injured, dictated a report to his nephew Rajbir Singh and when taken to the police station Wazirganj in bullock-cart, he handed over the same to Constable Vidya Ram (PW.6), on the basis of which an FIR was registered for riot and assault. Shanker Singh, injured, as well as Mukku Singh, Bhoop Singh and Pooran Singh, injured persons were also examined. Shanker Singh was admitted in the hospital where he succumbed to the injuries on 24.5.1980. The postmortem was conducted on his body on 25.5.1980.

D. On conclusion of the investigation, chargesheet was filed and after conclusion of the trial, they stood convicted and sentenced by the trial court as referred to herein above.

E. Aggrieved, two appeals i.e. Criminal Appeal Nos. 2681 of 1982 and 2687 of 1982, were filed by the convicts which have been partly allowed by the High Court vide common judgment and order dated 24.5.2007.

Hence, this appeal.

5. Shri Ratnakar Dash, learned senior counsel appearing on behalf of the appellant, has submitted that the High Court after appreciating the evidence on record came to the correct conclusion that injuries had been caused to Shanker Singh with Kanta by giving two blows on the head and one of them had been given by the present appellant Kunwar Pal Singh and another by Sahaab Singh. The injuries caused by each of them separately were not sufficient to cause death. It was the cumulative effect of both the injuries that Shanker Singh had died. There had been no intention to kill Shanker Singh, as nobody could prevent the accused to cause further injuries. Thus, the case falls within the ambit of Section 304-II IPC and even if the appellant is convicted under Section 304-I IPC, the sentence of 10 years is disproportionate to the offence committed by him. Thus, the appeal deserves to be allowed to that extent.

6. On the contrary, Shri Gaurav Bhatia, learned Additional Advocate General for the State of U.P., has opposed the appeal contending that the injury caused by the appellant was grievous in nature and sufficient to cause death. Therefore, as the High Court has already converted

the conviction from Section 302 IPC to Section 304 Part-I IPC and sentence has been reduced from life imprisonment to 10 years, no further interference is warranted and the appeal is liable to be dismissed.

7. We have considered the rival submissions made by the learned counsel for the parties and perused the records.

8. The appeal lies in a very narrow compass and is to be decided considering as what could be the nature of offence and what could be the appropriate punishment/sentence for the same, taking into account the injury caused by the appellant to Shanker Singh (deceased) as the other injured witnesses had suffered injuries at the hands of the other co-accused with whom we are not concerned at all.

9. The injuries found on the person of Shanker Singh (deceased) are as given below:

(1) Incised wound 9 c.m. X 1 c.m. X bone deep on the right skull, 7 c.m. from the right ear.

(2) Incised wound 7 c.m. X 1 c.m. X bone deep on the mid-line of skull, 8 c.m. away from injury No. 1.

(3) Contusion 6 c.m. X 2 c.m. on the left anterior chest below the left nipple.

(4) Contusion 8 c.m. X 2 c.m. middle of right thigh.

(5) Contusion 4 c.m. X 2 c.m. on the left back of shoulder.

Injuries Nos. 1 and 2 were caused by some sharp

edged object and injuries Nos. 3, 4 and 5 were caused by some blunt object. They were half days old in duration. The doctor also prepared the injury report Ex.Ka-15.

In the opinion of Dr. V.K. Mehta (PW.7), Medical Officer at Saidpur Primary Health Centre, injuries nos. 1 and 2 had been caused by some sharp edged weapon and other injuries had been caused by blunt object.

10. The trial court after appreciating the entire evidence, came to the conclusion that Kunwar Pal Singh - the appellant was responsible for causing only one injury on the head as the other injury on the head had been caused by Sahaab Singh. However, considering the entire evidence on record the court came to the conclusion that Shanker Singh died in the hospital next day on account of the aforesaid injuries caused by the accused persons. The prosecution witness established that the accused persons formed an unlawful assembly armed with lathis and other lethal weapons and in order to prosecute common object of such assembly they voluntarily caused serious injuries to Shanker Singh causing his death and they also voluntarily caused simple injuries to Bhoop Singh, Mikhu Singh and Pooran Singh. Thus, on the basis of the prosecution witness, ocular and medical it was established that all the accused persons were guilty for the offences punishable under Sections 147, 148, 302, 324 and 323 IPC all read with Section 149 IPC.

11. In appeal, the High Court re-appreciated the

entire evidence and came to the conclusion that appellant Kunwar Pal Singh and accused Sahaab Singh were responsible for causing injuries on the head of the deceased with 'Kanta'. The deceased survived for two days after receiving such incised wounds on his head and died after three days of the incident and the common object of the unlawful assembly was to belabor the deceased. Considering the common object of the assembly it was not possible to draw an inference that there was no intention to murder the deceased or cause him such bodily injury as was sufficient in the ordinary course of nature to cause death. The force applied inflicting the injury was such that if it did not make the deceased even unconscious and he remained alive for three days prior to his death the victim was in physical and mental condition to dictate an FIR of the incident, and therefore it was not a case where the conviction of any of the accused could be affirmed under Section 302/149 IPC, rather it was a case for conviction under Section 304 Part I IPC simplicitor. Using sharp edged weapon on the head indicates that Kunwar Pal Singh and Sahaab Singh accused knew that death might ensue because of the assault made by them.

12. Undoubtedly, both the said injuries have been on the skull. The first injury is 7 Cm. away from the right ear, however, the second injury is 8 Cm. away from injury no.1. Much arguments have been advanced as what is the meaning of bone deep. In case, the injury is caused on the

part of the body other than head, it can be measured as skin deep. If injury is deep to certain extent, it may cut muscles and then may go upto the bone. In case of head injury, if the injury remains superficial, it is generally described as skull deep. On the head, there is hair which rooted to the skin with bulb. There are cartilages below the skin and then comes cranium.

13. The gravity of the injury is to be determined in view of the provisions contained in Section 320 IPC, which read:

"Grievous hurt - The following kinds of hurt only are designated as "grievous":-

Firstly -
xxx xxx xxx

Sixthly - Permanent disfiguration of the head or face.

Seventhly -Fracture or dislocation of a bone or tooth.

Eighthly - Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

14. So far as the instant case is concerned, clauses sixthly and seventhly may be relevant. Nature of the injuries is to be determined taking into consideration the intense suffering to which it gives rise and the serious disability which it causes the sufferer. However, in clause seventhly, as the term 'fracture' has been referred to, it may be necessary that the bone is broken. Mere abrasion

would not amount to fracture. Even a cut that does not go across the bone cannot be termed as a fracture of the bone. But if the injury is grave even partial cut of the skull vault (root or chamber) may amount to a fracture. However, clause eighthly refers to the injuries which are not covered under any one of the above clauses firstly to seventhly of the section. However, it labels the injuries as grievous if it endangers life or it causes the sufferer to be during the space of 20 days in severe bodily pain or which causes the sufferer to be during the space of 20 days unable to follow his ordinary pursuits and all the three clauses have to be read independently. This is a very thin and subtle demarcation line between 'hurt which endangers life' and 'injury as is likely to cause death'. Therefore, sometimes it becomes very difficult as to whether a person is liable under Section 325 IPC for causing grievous hurt or under Section 304 IPC for culpable homicide not amounting to murder when the injury results in the death of the victim. In the present case, the injuries nos. 1 and 2 are beyond 'hurt which endanger life' and clearly falls in the category of 'injuries as are likely to cause death' even though each injury may not be individually sufficient to cause death.

15. The High Court has set aside the conviction under Section 302 read with Section 149 IPC and the finding attained finality to that extent. There is ample evidence on record to draw the conclusion that the injury caused by the appellant was not sufficient to cause death independently.

In such a fact-situation, the conviction of the appellant as recorded by the High Court under Section 304 Part I IPC is upheld. However, in the facts of the case as the incident occurred about thirty four years ago, sentence is reduced to seven years. The appeal stands disposed of with the aforesaid modification.

.....J.
(Dr. B.S. CHAUHAN)

.....J.
(A.K. SIKRI)

New Delhi,
May 16, 2014

ITEM NO.1A

Court No.2

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CRIMINAL APPEAL NO(s). 147 OF 2009

SOMPAL SINGH & ANR.

Appellant (s)

VERSUS

STATE OF U.P.

Respondent(s)

(With office report)

Date: 16/05/2014 This Appeal was called on for pronouncement of judgment today.

For Appellant(s)

Mr. Irshad Ahmad, Adv.
Mr. Samir Ali Khan , Adv

For Respondent(s)

Mr. Gaurav Bhatia, AAG
Mr. Aviral Saxena, Adv.
Mr. Anuvrat Sharma, Adv.

Hon'ble Dr. Justice B.S. Chauhan pronounced the judgment of the Bench comprising of His Lordship and Hon'ble Mr. Justice A.K. Sikri.

The appeal is disposed of in terms of the signed non-reportable judgment.

(DEEPAK MANSUKHANI) (M.S. NEGI)
Court Master Assistant Registrar
(Signed non-reportable judgment is placed on the file)