2025 INSC 1193

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOs. 476-477 OF 2013

RAJENDRA SINGH AND ORS. ...APPELLANT(S)

VERSUS

STATE OF UTTARANCHAL ETC. ...RESPONDENT(S)

J U D G M E N T

PANKAJ MITHAL, J.

1. All the three appellants, father, son and son-in-law are accused in Session Trial No.215 of 2000 for the murder of Pushpendra Singh, son of Diler Singh.

2. They were acquitted by the Trial Court but have been convicted under Section 302 of Indian Penal Code (for short, 'IPC') with life imprisonment and a fine of Rs.10,000/- each by the High Court *vide* the judgment and order dated 02.01.2013 passed in Government Appeal No.347 of 2007 (State of Uttaranchal vs. Rajendra Singh and Ors.).

3. All the three accused have challenged the aforesaid judgment and order of their conviction and sentence by means of this appeal.

4. The prosecution story in brief is that on the morning of 03.06.2000, the appellant no.1 – Rajendra Singh and his son appellant no.2 – Bhupender Singh started digging the field of Diler Singh, the father of the deceased, for laying down plinth. Due to the aforesaid action of the appellants, an altercation took place between them and Diler Singh.

5. On the same day at about 1.30 p.m. when the deceased – Pushpendra Singh was sitting at the Jogither diversion (Tiraha), his father – Diler Singh who had gone to the flour mill of Kakka Singh, while returning accompanied by his brother-in-law - Papender Singh, saw the appellants coming on the motorcycle driven by the appellant no.3 – Ranjeet Singh at the said spot. They parked their vehicle and exhorted the deceased who started running followed by all the three accused persons armed with swords and carrying a kanta (a sharp edged weapon).

6. The deceased ran for some time towards the northern fields raising an alarm. Witnessing the same, Diler Singh, Papender Singh and some other persons including Jwala Singh started running behind the accused persons to save the deceased. The deceased, attempting to save his life, entered into the house of one Mukhtyar Singh. The appellants also entered the said premises and inflicted blows with swords and Kanta upon the deceased who ultimately died on the spot. The father of the deceased Diler Singh (PW-1) on the same day lodged an FIR at 02.50 p.m. at Police Station, Nanak Matta under Section 302 of IPC (Section 103(1) BNS). The panchnama was prepared, statement of the witnesses were recorded, site plan was also prepared and the dead body was sent for post-mortem, which was conducted the next day.

7. The appellant nos.1 and 3 were arrested on 05.06.2000 and one sword and the Kanta, the alleged weapons of crime, were recovered as per the disclosure made by the appellants.

8. The appellant no.2 was arrested on 07.06.2000 and the sword used by him in the commission of the offence was recovered based on his disclosure.

9. Upon completion of investigation, the police submitted the chargesheet on 14.06.2000 charging all the three accused for an offence under Section 302 read with Section 34 of the IPC.

10. We had heard Shri Rajul Bhargava, senior advocate and Shri Siddharth Agarwal, senior advocate along with Shri Vivek Singh, advocate-on-record from the side of the appellants and Shri Kuldeep Parihar, D.A.G and Ms. Anubha Dhulia, advocate for the State of Uttarakhand.

11. The primary submission on behalf of the appellants is that they have been falsely implicated. There is no reliable evidence to establish the identity of the appellants as the alleged assailants. There is no eyewitness to the incident, except the lady of the house into which the deceased had entered to save his life. There are large contradictions in the statements of the witnesses and that the discovery of the

weapons of crime is false and otherwise also has no relevance to establish the identity of the accused with that of the assailants.

12. The State counsel has stoutly opposed the submissions advanced from the side of the appellants and has submitted that all the three accused were seen by the witnesses chasing the deceased, who had entered the house of Mukhtyar Singh, and assaulted him with the swords and the kanta which fact was witnessed by the lady of the house, Amarjeet Kaur (PW-7). The clothes of PW-7 which had blood stains were sealed by the police and the FSL report confirmed the presence of blood on the clothes. On the disclosure of the appellants, the weapons of crime were recovered, and they admitted to having committed the crime with the same. The above evidence leaves no scope for doubt about the commission of the offence at the hands of the appellants. Therefore, the High Court rightly reversed the decision of acquittal recorded by the Trial Court, so as

to convict the appellants for the offence under Section 302 of IPC and sentenced them to life imprisonment.

13. There is no dispute to the fact that on the morning of the fateful day, appellant nos.1 and 2 had a quarrel with the father of the deceased – Diler Singh, as they were stopped from digging the field for laying the plinth. The aforesaid altercation between the two groups may be a motive to attack and kill the son of Diler Singh, but that by itself would not be sufficient to rope in the appellants unless their involvement in the offence is established by cogent evidence. Therefore, the primary issue which arises for our consideration is, whether the appellants are the real persons who chased the deceased and killed him. This has to be ascertained on the basis of the ocular evidence.

14. In this connection, the primary evidence is of the lady of the house Amarjeet Kaur (PW-7). The said witness, who is the wife of Mukhtyar Singh, the owner of the house, clearly deposed that the three accused persons killed the boy in the house. They entered carrying swords and other weapons

in their hands. She tried to refrain them from assaulting the boy, and in that process, her kurta received blood stains. The victim fell down on the *dewan* after sustaining injuries. Nobody inflicted any injury after the victim fell on the *dewan*. The victim's father and other people came there within half an hour of the departure of the assailants. The police took her blood-stained kurta and even the bedsheet in their possession, which she identified as Exhibit-1 and Exhibit-2. She categorically stated that she did not know the name of the accused persons.

15. The aforesaid testimony of PW-7 clearly reflects that she had seen three unknown persons, assaulting the deceased with weapons like swords and that the deceased fell down on the *dewan*, whereafter the assailants left without inflicting further injuries upon him. The father of the deceased and other persons came there only after about half an hour. A careful reading of the testimony of PW-7, as a whole, would indicate that she did not know the names of the accused persons and thus, could not disclose their identity. She had

only seen three persons attacking and assaulting the boy but could not identify those persons.

16. No identification parade was carried out and PW-7 was not even asked to confirm whether the appellants were the accused persons. The police failed to get the appellants identified by her. Therefore, it is doubtful whether the persons who assaulted the deceased were actually the appellants.

17. The prosecution sought to establish the identity of the accused persons with the help of testimony of Diler Singh (PW-1) and Jwala Singh (PW-2).

18. A close look at the testimony of PW-1 would reveal that on 03.06.2000 at about 1.30 p.m., on returning from the flour mill of Kakka Singh, he saw his deceased son sitting at Jogither diversion on a bench, when all the three appellants came on motorcycle carrying naked swords. They parked the motorcycle and threatened/provoked his son, whereupon his son started running towards the fields. The appellants chased him with swords and kanta. His son kept

crying “Save Me, Save Me”. Thereupon, on hearing the scream, he and his brother-in-law - Papender Singh, ran after the accused persons to save the deceased. They were followed by Jwala Singh, Bachan Singh and Bhagat Singh. The deceased entered the house of Mukhtyar Singh to save himself. The appellants also went inside. He saw the appellants striking his son with weapons. His son fell on the *dewan* and died due to the injuries. The appellants, thereafter, fled from the scene.

19. In his cross-examination, he admitted that the Jogither diversion is about 1.5 kms. away from his house and that there are three to four shops at the diversion itself. The house of Mukhtyar Singh is also at a distance of 1.25 kms. At the time of the incident, people were working in the fields and they also saw the appellants chasing his son. He also stated that he chased the appellants for about 10-15 minutes towards the house of Mukhtyar Singh and was about 40 to 50 steps behind them when his son entered the house of Mukhtyar Singh. The appellants attacked his son

with swords and Kanta even after he fell down on the *dewan*. They kept hitting him, mainly on the head, for about a minute. Amarjeet Kaur (PW-7) had tried to save his son and, in the process, her clothes got blood stains. Thereafter, he hugged his son due to which his clothes also got blood stains. He went to the police station in those very clothes, but the clothes were neither taken nor seized by the police.

20. If the testimony of PW-1 is seen in the light of the testimony of PW-7, there are striking contradictions in the statements of the two witnesses. The testimony of PW-7 is quite trustworthy and natural. She is an independent witness and therefore, it is safer to rely upon her statement. She has categorically stated that the father of the deceased and other persons had arrived at her house about half an hour after the incident or after the accused had left the place. The testimony of PW-7 is apparently quite trustworthy as there is no reason to disbelieve it. It is clear from her statement that PW-1 had reached the place of incident after

half an hour of the incident. He is, therefore, not actually an eyewitness who was present at the time when the appellants allegedly attacked the deceased. He had come there after about half an hour and as such cannot be an eyewitness to the incident of attack. Secondly, PW-1 categorically stated that when his son fell down on the *dewan*, he hugged him and, in the process, his clothes were stained with blood. He never offered his blood-stained clothes to the police for investigation, nor did the police seized the same, despite the fact that he had gone to the police station wearing them. Rather, he stated that he washed them and wore them again. This is quite unnatural and an indicator to the fact that the PW-1 was not actually present when the incident of assault took place in the house of Mukhtyar Singh, and that the story of hugging the deceased is concocted.

21. It is also very unnatural for PW-1 to go to the Jogither diversion while returning from the flour mill of Kakka Singh as admittedly the said diversion is not on the way back to

his home. He is, therefore, a chance witness and probably may not have seen the appellants coming on the bike or even chasing the deceased. In these circumstances, PW-1 cannot be treated as a trustworthy witness and his evidence cannot be relied upon to identify the appellants as the persons who have attacked and assaulted the deceased.

22. PW-2 - Jwala Singh also appears to be a chance witness. He was going to Jogither Diversion to purchase a soap but when he found the PW-1 chasing the appellants, he also ran behind him in order to help him and save the life of the deceased. He categorically stated that he was 60-70 steps behind PW-1. Naturally, his entry in the house of Mukhtyar Singh would have been only after PW-1, who had entered the house as per the ocular evidence of PW-7, about half an hour after the incident. In the above situation, PW-1 could not have been an actual eyewitness of the incident of assault or the person who would have seen the appellants well enough to recognize them as the real assailants.

Therefore, his evidence also could not have established the identity of the appellants.

23. Furthermore, no independent person of the area, the shopkeepers or the labourers working in the fields, who allegedly saw the appellants chasing the deceased, were called upon to enter the witness box to corroborate the evidence of PW-1 and PW-2.

24. In view of the aforesaid facts and circumstances, the ocular evidence of PW-7, PW-1 and PW-2, if read together, is not sufficient to identify the appellants as the persons who attacked and assaulted the deceased resulting in his death. It may be pertinent to mention here that even PW-4 - Kakka Singh, to whose flour mill PW-1 had allegedly gone and was said to be returning from there also did not support the statement of PW-1. He has nowhere stated that PW-1 had been to his flour mill, as alleged by him. Therefore, the presence of PW-1 at the scene of crime becomes doubtful. Once his presence is doubtful, the presence of PW-2 also

stands belied, because he categorically stated that he was following PW-1 and was 60-70 steps behind him.

25. The prosecution did not ask any of these witnesses to identify the accused persons.

26. This Court, in several decisions, while considering the evidentiary value of a chance witness, has held that the deposition of a chance witness whose presence at the place of incident is doubtful should be discarded, or at least be treated with great caution and close scrutiny. Such a chance witness must adequately explain his presence at the place of incident, which has not been satisfactorily done in the instant case.

27. Now, what remains before us is the recovery of the weapons of crime to establish the identity of the appellants as the persons involved in the crime. On the basis of the recovery of the said weapons, we have to determine if the said recoveries are good enough to connect the appellants with the crime.

28. Undoubtedly, the recovery of one of the swords was made from a garage, and the recovery of another sword and the Kanta was made from bushes in sugarcane field, which was an open space. The weapons were no doubt recovered allegedly on the pointing out of the appellants. However, no effort was made to match the blood on the said weapons with that of the deceased. The weapons were sent for forensic examination but no report of the forensic laboratory was produced to establish that the weapons so recovered were smeared with the blood of the deceased to prove that they were actually used in the murder of the deceased.

29. We are afraid that the submission of the State counsel, that as the appellants themselves stated that they took the police to the place where they hid the weapons, by which they committed the offence indicates that the appellants admitted to have committed the offence with the above weapons, cannot be accepted. The statement of the appellants that the weapons recovered were the weapons of

crime cannot be read against them in view of Sections 25 and 26 read with Section 27 of the Indian Evidence Act, 1872. Only that part of the statement which leads the police to the recovery of the weapons is admissible, and not the part which alleges that the weapons recovered were actually the weapons of crime.

30. The above three provisions of the Evidence Act are beneficial to bring home the point. They read as under:

> "**25. Confession to police officer not to be proved.**—No confession made to a police officer, shall be proved as against a person accused of any offence.
>
> **26. Confession by accused while in custody of police not to be proved against him.**—No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.
>
> ***Explanation.***—In this section "Magistrate" does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under

the Code of Criminal Procedure, 1882 (10 of 1882)

27. How much of information received from accused may be proved.—Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

31. A simple reading of all the three provisions conjointly reveals that the first two provisions are substantive, whereas Section 27 is in the nature of an exception. Sections 25 and 26, at one hand, provide that no confession made to a police officer or to any person while in custody of the police, shall be admissible against a person accused of any offence, on the other hand, Section 27 provides an exception to the above provisions. It states that so much of the information, received from an accused person in custody of the police, whether in the nature of confession or otherwise, as related distinctly to the fact thereby discovered, may be admissible. This means that not all

information disclosed by a person in police custody is required to be proved as against the accused person; only that part which distinctly relates to the discovery of a fact is admissible and can be proved.

32. In ***Pulukuri Kottaya and Ors. vs. The King Emperor***[1], the Privy Council while analysing the aforesaid three provisions of the Evidence Act, held that the fact of discovery, on information supplied by the accused is a relevant fact except in a case in which the possession or concealment of an object constitute the gist of the offence charged. Information supplied by a person in custody such as "I will produce a knife concealed in the roof of my house", only leads to the discovery of the knife concealed in the house of the informant, but whether the knife is proved to have been used in the commission of an offence is another question. So if the above information is followed by the words, "with which I stabbed A", those words would be inadmissible since they do not relate to the discovery of the knife from the house of the informant, but are rather

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independent in nature, amounting to confession of the crime which cannot be used against the person making it i.e. the accused, in view of prohibition contained under Sections 25 and 26 of the Evidence Act.

33. The aforesaid decision has recently been followed with approval by the Division Bench of this Court in ***Manjunath and Ors. vs. State of Karnataka***[2] wherein it has been said that only "so much of the information" as relates distinctly to the fact thereby discovered is admissible, and the rest of the information stands excluded. In other words, the information leading to the recovery of the weapons of crime is admissible, but not the information that the crime was actually committed by the said weapons.

34. In view of the aforesaid facts and circumstances, the identity of the appellants as the persons involved in the offence has not been established either by any ocular evidence or from the recovery of the weapons of crime.

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35. It is important to note that the order of acquittal passed by the Trial Court was not open to interference by the First Appellate Court until and unless the findings recorded by the Trial Court were *per se* perverse or erroneous. It is safer and more appropriate to rely upon the findings of the Trial Court which has seen the demeanor of the witnesses rather than to rely upon the findings of the First Appellate Court. In our opinion, the High Court erred in reversing the finding of the Trial Court without coming to the conclusion that the findings of the Trial Court were perverse.

36. Thus, in the aforesaid facts and circumstances of the case, we are of the view that High Court manifestly erred in interfering with the findings of acquittal recorded by the Trial Court and reversing the judgment so as to convict the appellants. It is doubtful whether the offence has been committed by the appellants. The conviction of the appellants is accordingly set aside. The appeals are allowed, and the appellants are acquitted of the alleged offence by granting them the benefit of doubt.

37. The appellants are on bail. Their bail bonds stand discharged.

..... J.
(PANKAJ MITHAL)

..... J.
(PRASANNA B. VARALE)

NEW DELHI;
OCTOBER 7, 2025.