

Uttam Singh Vs. State of U.P.

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Court : Allahabad

Decided On : Mar-21-1991

Reported in : 1992CriLJ708

Judge : Palok Basu and ;P.P. Gupta, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 304

Appeal No. : Criminal Appeal No. 2911 of 1983

Appellant : Uttam Singh

Respondent : State of U.P.

Advocate for Def. : Dy. Govt. Adv.

Advocate for Pet/Ap. : Navin Chandra and ;H.K. Sharma, Advs.

Judgement :

P.P. Gupta, J.

1. This is an appeal filed by the appellant Uttam Singh against his conviction and sentence under Section 302, IPC passed by the Sessions Judge, Nainital in Sessions Trial No. 95 of 1982.

2. Briefly stated the facts of the case are that the informant Amarjeet Singh and deceased Thakur Singh were real brothers. Their sister Indra Bai Kaur is married

to one Kundan Singh, resident of Feeka Barrage Bhojpur Dam, district Nainital who had a son namely Pokhan Singh. On 17-3-82, at about 5.30 p.m. the deceased Thakur Singh and his brother Amarjeet Singh were going to village Reeka Barrage Bhojpur Dam to meet their sister Indra Bai Kaur. When they reached near the house of Smt. Indira Bai Kaur, they found their sister and her husband absent. They met their nephew (Bhanja) Pokhar Singh in the house. Taking him along with them, they proceeded towards nearby field where Kundan Singh had gone. They were going on a pathway which passed through the field and near the house of the appellant Uttam Singh. Uttam Singh armed with Barchha and his son Surjeet Singh armed with a lathi enquired from Thakur Singh and Amarjeet Singh whether they had come to abduct Surjeet Kaur, the daughter of Uttam Singh, They denied and said that they were going to the field of Kundan Singh. Not being satisfied, Surjeet Singh accosted his father to kill them whereupon the appellant Uttam Singh attacked Thakur Singh with barchha causing one injury to him. At that time Amarjeet Singh also had a danda which he yielded causing injuries to Uttam Singh. Thakur Singh was taken to Jaspur Police Station first and then to the Hospital, there he was examined by Dr. D. C. Dhyani, the same day at 9 p.m. He, however, succumbed to the injury on 19-3-82 post mortem examination was conducted by Dr. J. C. Arora on 19-3-82 at 3.30 p.m.

3. Dr. D. C. Dhyani (PW 5) found one incised and punctured wound on epigetric region 7 cm x 3 cm vicera deep downward and laterally towards mid injunial ligament. Injury was fresh and bleeding. In the post mortem examination as conducted by Dr. J. C. Arora one stitched wound 11 cm over epigetric region and abdomen vertical oblique towards right side was found. Pleura on lower lobe of right lung and inner side of lower lobe of right lung were lacerated. Diaphragm was lacerated and right side of chest was full of blood. Small and large intestines and also the liver were lacerated. In the opinion of the doctor death was caused on account of haemorrhage and shock due to ante-mortem injuries.

4. The prosecution examined three witnesses, namely, PW 1 Amarjeet Singh, the informant, PW 3 Pokhar Singh and PW 6 Kundan Singh. All of them are close relatives of the deceased. Amarjeet Singh PW 1 is real brother, Pokhar Singh, PW 3 is real sister's son and Kundan Singh is the real Bahnoi of the deceased Thakur

Singh.

5. The case was investigated by PW 8 S.I. Balbir Singh. He recorded the statement of Thakur Singh, Amarjeet Singh, Kundan Singh and others on the date of incident i.e., 17-3-82. The next day, he recorded the statement of Pokhar Singh and inspected the place of occurrence. On 19-3-1982 he went to Jaspur Hospital to take possession of the dead body of Thakur Singh. A panchayatnama was prepared and after completing other necessary formalities the body was sent for post mortem examination. It was on 6-5-82 that the charge sheet against the accused was submitted by him.

6. Admittedly Uttam Singh and Surjeet Singh are father and son and the deceased Thakur Singh and the informant Amarjeet Singh were real brothers. It is also not in dispute that PW 6 Kundan Singh is the brother-in-law (Bahnoi) of Uttam Singh and Pokhar Singh is the son of Kundan Singh. Rest of the prosecution case was denied by both the appellants. Their contention was that Surjeet Kaur, the daughter of appellant Uttam Singh, was married to Chamba Singh, brother of PW 6 Kundan Singh. Chamba Singh used to treat Surjeet Kaur with cruelty and had ultimately deserted her. Kundan Singh wanted to keep her as his wife to which she was not willing probably because Kundan Singh had already one wife. For this reason, Kundan Singh accompanied by Thakur Singh, Mahendra Singh and Chamba Singh came to the house of Uttam Singh with the intention to abduct Surjeet Kaur, and beat Uttam Singh and his daughter and wife as a result of which they sustained injuries. It may be noted that in his FIR, Ex-Ka-9, the appellant Uttam Singh has stated that at the time of the incident Mahendra Singh and Mega Singh armed with barchhas, Kundan Singh and Thakur Singh armed with swords and Chamba Singh and Amarjeet Singh armed with lathies came there and beat them with barchha and lathies.

7. Defence got proved through PW 6 Dr. D. C. Dhyani, their injury reports are Ex-kha-1 to Ex-kha-3. Ex-kha-3 is the injury report of Smt. Sadda Bai, wife of Uttam Singh accused. The said injury report does not show any injury having been suffered by her. She merely complained of pain on her right index finger. Ex-kha-2 is the injury report of Smt. Surjeet Kaur, daughter of Uttam Singh. According to it,

she had sustained only one abrasion 1 cm x 1 cm on her left thigh. This injury is quite superficial. Ex Kha 1 is the injury report of Uttam Singh. It shows one lacerated wound 2 cm x 1 cm over the left skin on Tibia. It was a fresh bleeding injury. Dr. Dhyani has deposed that because fresh bleeding stops within 6 hours hence it was not possible that the said injury could have been sustained at the time of the incident. It may be noted that Uttam Singh was examined by the said Doctor on 18-3-82 at 11-45 p.m. It may be mentioned here that PW 1 Amarjeet Singh and PW 3 Pokhar Singh have deposed that the former had a small Danda in his hand which he had wielded in self defence. Even if it may be presumed that the aforesaid injury was caused by Amarjeet Singh in self defence, the same does not belie the case of the prosecution. Had there been any truth in the defence version that so many persons armed with deadly weapon in pre-planned manner attacked his house, the injury sustained by the accused side would have been more in number and grievous in nature and not as superficial as found by the Doctor. We, therefore, uphold the finding of the learned trial Judge that the defence set up by the accused is false and concocted and it has been rightly rejected by him.

8. The evidence of P.W. 1 Amarjeet Singh, P.W. 3 Pokhar Singh and P.W. 6 Kundan Singh is consistent and reliable. The ocular evidence is fully corroborated by the medical evidence also. In the circumstances, we agree with the findings of the learned Sessions Judge that the charges against the appellant have been proved beyond doubt.

9. The only question to be answered now is whether the appellant could be said to have caused death of Thakur Singh with the intention to cause his murder. According to the prosecution, the deceased Thakur Singh and his brother Amarjeet Singh, while passing in front of the house of the appellant Uttar Singh, were asked by Uttam Singh whether they had come to abduct his daughter Surjeet Kaur. They denied and said that they were going to the field of their brother in law Kundan Singh. Not being satisfied, Surjeet Singh accosted his father to kill whereupon the appellant Uttam Singh attacked Thakur Singh with Barchha causing one injury to him. It was, therefore, under this misapprehension that probably Thakur Singh had come to abduct his daughter, that he (Thakur Singh)

was attacked. There was no premeditation. The theory of nailing does not appear convincing. Only one blow was given. No attempt was made by the appellant to cause further injuries. Thakur Singh died three days after this injury. In the circumstances and on the material placed before us, it cannot be said that the appellant intended to cause death or cause the particular injury that has resulted in the death of Thakur Singh. We are, therefore, of the view that it would be just and proper to convict the appellant Under Section 304, part I instead Section 302, IPC.

10. Coming to the question of sentence, the learned counsel has brought to our notice that the appellant has already undergone imprisonment for about 10 years. Therefore, keeping in view the nature of the offence, the setting in which the incident took place and the fact that injured died three days after the occurrence, we consider that the terms of imprisonment already undergone would sufficiently meet ends of justice.

11. Consequently the appeal is partly allowed. The conviction of the appellant Under Section 302, IPC and sentence of imprisonment for life are set aside. Instead, he is convicted Under Section 304, Part I, IPC and sentenced to the period already undergone. He is in jail. He will be released forthwith unless wanted in Some other case.

12. Sri H. K. Sharma, amicus curiae appointed by his Court may be paid Rs. 250/- as his fee.