

**Chinta and ors. Vs. State of U.P.**

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**SooperKanoon Citation :** [sooperkanoon.com/488663](http://sooperkanoon.com/488663)

**Court :** Allahabad

**Decided On :** Oct-10-2001

**Reported in :** 2002CriLJ2067

**Judge :** J.C. Gupta and ;S.K. Agarwal, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 300, 302, 304, 307, 323 and 325; Code of Criminal Procedure (CrPC) 1974 - Sections 82 and 83

**Appeal No. :** Criminal Appeal No. 294 of 1981

**Appellant :** Chinta and ors.

**Respondent :** State of U.P.

**Advocate for Def. :** A.G.A.

**Advocate for Pet/Ap. :** Govind Saran and ;Apul Misra, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**S.K. Agarwal, J.**

1. This appeal was preferred by Chinta, Ram Saroj and Gyan Das against their conviction under Section 302 read with Section 34 I.P.C. and Section 323 read with Section 34 I.P.C. They were sentenced to life imprisonment and six month's

R.I. in the abovesaid two counts by the Sessions Judge, Basti.

2. The deceased Jamil Ahmad was a Clerk with an Advocate in the Court at Basti. He had litigation with the appellants of this appeal on some landed property. The date fixed in the case was 22-7-1980. Deceased Jamil Ahmad along with his brother P.W. 1 Mohd. Umar, his mother P.W. 2 Smt. Jumratan and P.w. 6 Jalis Khan were going to Jaunpur on 21-7-1980 to attend the case. At about 10.00 A.M. when they reached near Muniwa Ghat they were accosted by the four accused persons, the three appellants and Vishwanath, who died during trial. They were lying in wait in nearby Munja bushes. Seeing the deceased along with his mother and brother coming towards them they pounced upon him. They started belabouring him with their respective weapons, Phasra, Lathi and Ballam.

3. According to F.I.R., Chinta struck first a Phasra blow upon the deceased. Immediately that was followed by a blow of Ballam by Gyan Das, due to which Jamil Ahmad fell down. When the witnesses Mohd. Umar and Smt. Jumratan rushed to save him, they were also assaulted by Pharsa and Lathis. Mohd. Umar was assaulted by Chinta (appellant) with a Pharsa and Smt. Jumratan was assaulted by Vishwanath with Lathi. An independent witness Jalis Khan was also accompanying them. When he tried to save, they rushed to beat him upon which he ran away and stood at some distance so as to be away from the reach of the appellants.

4. The witnesses carried Jamil Ahmad to P.S. Kotwali, District Basti, where Mohd. Umar got the written report (Ext. Ka-1) scribed by Jalis. He submitted the report at the abovesaid police station. P.W.4 Head Constable Dhruv Narain Singh received the report and prepared check report on its basis on 21-7-1980 at 12.05 P.M. A case was registered in the General Dairy at Sl. No. 34. True copy of the G.D. entry was proved by the abovesaid P.W. 4 as Ext. Ka-3. The deceased and the injured were sent to the District Hospital, Basti where the injuries of Jamil Ahmad were examined by P.W. 9 Dr. D.P. Mishra at about 12.15 P.M. The general condition of the patient was very low. His pulse was non-recordable. He was gasping. His blood pressure was also not recordable. Blood from the right ear and both nostrils was oozing out. He died in the hospital on the same day at 1.21 P.M., i.e. in an

hour from his being brought there. The information about the demise of the deceased was conveyed to the abovesaid police station at 2.15 P.M. P.W. 4 Head Moharir Dhruv Narain Singh converted the case into one under Section 302 I.P.C. vide G.D. entry No. 39, its true copy is Ext. Ka-5 on the record. A Sub-Inspector from the police station Kotwali reached the District Hospital to prepare the inquest memo on the dead body of Jamil Ahmad. It is Ext. Ka-17. Other connected papers were also prepared, viz. Challan Lash (Ext. Ka-16), Naksha Lash (Ext. Ka-15) and the letter for the post-mortem (Ext. Ka-14). The dead body was sent in a sealed condition to the mortuary. Constables Purshottam Pandey and Hari Narain Rai brought it there.

5. The post-mortem on the dead body of Jamil Ahmad was conducted by P.W. 10 Dr. B.P. Shukla at 4.00 P.M. on 22-7-1980. He noticed following injuries on the person of the victim :-

1. Lacerated wound 6 cm. x 1 cm. x scalp deep right side of head 2 cm. behind right ear, on opening two lined fracture underneath the injury, one 11 cm. and other 10 cm. long at a distance of 1 cm., on opening blood clot present on membranes in brain.
2. Lacerated wound 8 cm. x 0.5 cm. x scalp deep on head 10 cm. above root of nose 12 cm. above left ear.
3. Lacerated wound 6 cm. x 1 cm. x scalp deep on left side of head 9.5 cm. above left ear underneath injury. Blood present, on opening lined fracture seen 9 cm. long. On opening skull bone underneath, blood clot present in brain & contains blood clot.
4. Incised wound 2 cm. x 1 cm. 1 cm. deep. Margins clean cut smooth on right upper arm. Outer aspect 9.5 cm. below right shoulder joint.
5. Incised wound 6 cm. x 3 cm. x bone deep outer aspect of right arm 14 cm. above right elbowjoint. Margins clean cut, smooth. Bone cut in pieces seen.
6. Incised wound 2 cm. x 0.5 cm. 1 cm. deep on outer aspect on right arm 2.5 cm. below injury No. 5. Margins clean cut, smooth.

7. Incised wound 1 cm. x 0.5 cm. 1 cm. deep back of right forearm 13 cm. above right wrist joint. Margins smooth clean cut.

8. Incised wound 2 cm. x 0.5 cm. x 1 cm. deep back of right forearm 12 cm. above right wrist joint.

9. Incised wound 6 cm. 1 cm. x bone deep back of left forearm 3 cm. below left upper elbow joint. Margins smooth clean cut.

10. Incised wound 10 cm. x 1 cm. x bone deep upto cavity right side of chest outer front 14 cm. below right arm pit. On opening right 6th, 7th ribs cut underneath right pleura right lower lung cut 3 cm. x 0.2 cm. x 1 cm. deep. Margins clean cut smooth.

11. Incised wound 3 cm. x 1 cm. x bone deep front of right leg 8 cm. below injury No. 11.

12. Abrasion on medial aspect of left leg 1.3 cm. x 0.5 cm. 8 cm. below left knee.

13. Incised wound on medial aspect of right elbow 13 cm. x 5 cm. x bone deep. Bone pieces visible.

The Doctor found the brain membranes congested and blood clots present in the brain. 6th and 7th ribs of the right side were cut under injury No. 10. Pleura was also cut underneath. Lower lobe of the lung was cut under injury No. 10. 4 ozs. of blood was found in right chest cavity. Both chambers of heart were empty. Stomach contained digested food material 6 ozs. Small intestines contained pasty material and large intestines contained fecal matter. Bladder was empty.

6. In the opinion of the Doctor, death of Jamil Ahmad was due to coma as a result of ante-mortem injuries caused on his person.

7. The injuries of Mohd. Umar and Smt. Jumratan were examined on the same day by Dr. B.P. Shukla at 1.00 P.M. and 1.15 P.M. Following injuries were noticed by him on the person of Mohd. Umar :-

1. Lacerated wound 5 cm. x 0.5 cm. x bone deep on lateral side head 8 cm. from left eyebrow. Bleeding present.
2. Abraded contusion 4 cm. x 2.5 cm. over back of head 15 cm. above 7th cervical.
3. Traumatic swelling 4 cm. x 2.5 cm. over lateral and outer part of right thigh, red.
4. Complaint of pain over left side back, no mark of injury seen.

In the opinion of the Doctor, all the injuries were found simple.

Injuries of Smt. Jumratan are as under:-

1. Traumatic swelling 6 cm. x 5 cm. over lateral and outer part of left upper arm, red. Advised x-ray.
2. Traumatic swelling 6 cm. x 4 cm. over upper and lateral aspect of left forearm, red.

The Doctor suspected fracture of left forearm.

8. The investigation of this case was undertaken by P.S. Walterganj because the offence related to them. From P.S. Kotwali, District Basti, copy of the F.I.R., G.D. entry and check F.I.R. etc. was sent to P.S. Walterganj. P.W. 5 Head Constable Ram Das Tiwari of P.S. Walterganj made the necessary entries after receiving the F.I.R. in its General Diary. A true copy of the same was proved as Ext. Ka-4.

9. The investigation of the case was taken over by P.W. 8 S.I. Daya Nidhi Sharma. Investigation was commenced on 22-7-1980 at 11.00 A.M. He recorded the statements of eyewitnesses Mehd, Umar, Smt, Jumratan ana Jalis Khan. He prepared the site map (Ext, Ka-7), He recovered blood stained and simple earth from the place of incident, They were sealed, Recovery memo is Ext. Ka-8, He had also taken into custody the Bandi and shirt from the person of Jamil Ahmad. Their recovery memo is Ext. Ka-9. The search of the accused was conducted, but no arrest could be effected. Sections 82/83 Cr.P.C. proceedings were drawn. Investigation was completed by P.W. 7 S.O. Mahesh Singh. He recorded the

statement of Km. Afsarunnisa, minor daughter of the deceased. He submitted charge-sheet Ext. Ka-6 against the abovesaid accused persons on 6-8-1980.

10. The appellants claimed to be tried. They denied the truthfulness of the prosecution story. Vishwanath died during the trial.

11. The prosecution, in support of its case, has examined P.W. 1 Mohd. Umar, P.W. 2 Smt. Jumratan, P.W. 3 Km. Afsarunnisa and P.W. 6 Jalis Khan as ocular witnesses and P.W. 4 Head Moharir Dhruv Narain Singh, who initially registered the case under Sections 307/323/325 I.P.C. and subsequently converted the same, on receiving the information of death of Jamil Ahmad, under Section 302 I.P.C. Other witnesses are formal in nature. Their evidence in short has already been discussed earlier.

12. Before this Court the factum of the incident has not been challenged. As a matter of fact there is hardly any scope for any challenge. It is amply proved from the testimony of Mohd. Umar and Smt. Jumratan, the two injured witnesses and the medical evidence. We have examined the evidence of these two witnesses. We hardly find any contradiction materially affecting their truthfulness,

13. So far as P.W. 3 Km. Afsarunnisa is concerned, her evidence is to be discarded. P.W. 3 Km. Afsarunnisa is the daughter of the deceased. She was neither nominated in the F.I.R. nor in 161 Cr.P.C. statements of the witnesses P.W. 1 Mohd. Umar and P.W. 2 Smt. Jumratan. For the first time her name occurred in their testimony in Court. We find this fact specially occurring in the statement of P.W. 1 Mohd. Umar in paragraph No. 37 of this cross-examination. She had claimed that she was present near the spot of occurrence and was grazing her cattle. She had seen her father, Mohd. Umar, Smt. Jails Khan and her grand mother coming to that side. They were assaulted when they reached near Munlwa Ghat by these appellants. She had also stated about the assault on Mohd. Umar and his grand mother Smt. Jumratan. She had stated that she pleaded with the accused persons not to assault his father with folded hands, but they paid no heed to her entreaties. She had also admitted in cross-examination that at the time of occurrence 10-15 persons and children were grazing their cattle. Some 25-30 buffaloes were grazing there. She had already seen these appellants sitting there

before the incident. In paragraph No. 9 she had said that when the dead body of her father was being taken away then she had gone to the spot and after the body was taken away she had driven her buffalo back home. However, P.W. 1 Mohd. Umar was unable to explain omission of her in the F.I.R. as well as in his statement to the I.O. Her statement was recorded by the I.O. after four days. It is also a fact that her statement was taken by the second I.O. when he took over from the first I.O. These are the circumstances in the light of which we find ourselves unable to accept her presence and also the fact that she had witnessed the occurrence. Accordingly we feel it safe to discard her testimony

14. Statement of P.W. 6 Jalis Khan cannot be accepted in its entirety because he has turned hostile and had denied to identify the appellants. Undoubtedly, he had proved that he accompanied these persons in order to attend his classes at Jaunpur. He was a student of Kishan Degree College and was living with Mohd. Umar. He had also proved that the deceased was accompanied by Mohd. Umar and his mother apart from him. They had started from the village at about 9.30 A.M. The distance between the place of occurrence and Jaunpur was not too far. Therefore, there is no improbability of their starting at 9.30 A.M. He had also proved that Jamil Ahmad was assaulted by these appellants and late Vishwanath. He had further proved that the two injured witnesses were also assaulted and that Jamil Ahmad died as a consequence of the injuries suffered by him at the hands of these appellants. It is admitted by him that he was not knowing, apart from Mohd. Umar, any other villager. He had proved his relationship with Mohd, Umar by stating that his uncle was married in the family of Mohd. Umar, In these circumstances and in the light of the statements of P.Ws. 1 and 2, who are injured witnesses, whose presence and sustenance of injuries by them at the hands of the appellants establishes his presence, He was nominated in the F.I.R. and also in their statements to I.O. The Incident is a broad daylight one and there could not be any mistake in the identity of these appellants by these two injured persons.

15. P.W. 1 has very clearly stated that he was assaulted by Chinta with Pharsa but the blade of Pharsa had not struck him, rather its blunt part, i.e. the Danda, in which that Pharsa was fastened, struck on the back of his head. Though this fact was not there in his report, the F.I.R. only shows that the Pharsa blow struck him

on the head. F.I.R. cannot be an encyclopedia and this omission is not material as to disbelieve him on this ground alone. He had made a little improvement so far as assault on P.W. 2 Smt. Jumratan is concerned. The improvement is to the effect that she was first pulled off from the deceased whom she had covered and thereafter assaulted with Lathis. Both the Lathiwalas struck on her person. 2/3 blows could have been given on her and when she was assaulted she was lying on one side. According to him the occurrence had taken place about a furlong from Muniwa Ghat. There is no mention of the presence of Km. Afsarunnisa in his report or in his 161 Cr.P.C. statement. The omission that Jamil Ahmad was assaulted after his fall to the ground is too insignificant to be given any credence to. The other omission, as pointed out by the learned counsel for the defence, in his F.I.R. that he has not described that P.W. 2 Smt. Jumratan covered the deceased Jamil Ahmad and she was pulled off him. He made an evasive reply to the question that whether he had disclosed this or not to I.O. as to who assaulted him and who assaulted Smt. Jumratan. He had denied the defence suggestion that they were assaulted during night. These circumstances do not affect in any manner the truthfulness of this witness. Under the pressure of cross-examination sometimes most matured and learned men may falter. He being a rustic villager has wilted a little bit is no wonder. For a major part he has withstood the test of cross-examination,

16. In the testimony of P.W, 2 Smt. Jumratan we find that the occurrence had taken place during Id and the family members were on fast (Roza). They had taken their morning meals (Sargahl) at about 3.00 A.M, In her cross-examination the defence has elicited that her earthen pot containing milk and measurement had neither broken nor fallen. After the occurrence she had left her vessel containing milk and the measurement at the spot. Some one may have taken it away. There is no mention in her statement to the I.O. that she was pulled off from her son and assaulted. According to her Mohd. Umar was assaulted by Chinta, Vishwanath and Ram Saroj. She failed to describe the number of blows. She had also admitted that the blood on her son Jamil Ahmad stained her clothes, but since it was raining most of it was washed of. She had further admitted that the I.O. had examined her blood stained Sari but it was not taken into possession. Clothes of her son was taken by the I.O. Thus, in her cross-examination we do not find

anything which may affect adversely the truthfulness of her testimony to the incident and the manner of assault.

17. We cannot doubt the testimony of these two witnesses (P.Ws. 1 & 2). It is materially corroborated by P.W. 6 Jalis Khan. He had, no doubt, failed to identify the culprits in the Court, but that will not make his testimony completely out of context. He had given out that the assailants were four in number and they were armed with Pharsa, Ballam and Lathi. They were lying in wait and as soon as these persons reached near them, they emerged out from their hiding and launched the assault upon Jamil Ahmad and the other two when they tried to intervene. These facts and circumstances leave no room for any doubt that the incident had taken place in the manner as alleged by the prosecution. The participation of these three appellants and one Vishwanath, who died during trial, is beyond doubt. The number and nature of injuries sustained by Jamil Ahmad established their common intention effectively. The fact that they were lying in wait is an additional circumstance that lends assurance with regard to their participation in this incident. The enmity has not been seriously challenged by the defence. Thus, the participation of these appellants is established beyond reasonable doubt in the murderous assault on Jamil Ahmad.

18. Now the question as submitted by the learned counsel for the appellants before us is what will be the offence, whether Section 302 I.P.C. or Section 304 Part I I.P.C. In order to ascertain the nature and gravity of the offence we have to examine the injuries sustained by the deceased very closely. The deceased had suffered three lacerated wounds scalp deep (injuries No. 1,2 and 3). The sharp edged weapon injuries of Ballam and Pharsa are mostly on arm, elbow, wrist joint, left elbow (injuries Nos. 5 to 9 and 14), right leg and left leg (injuries Nos. 11 to 13). Injury No. 10 is an injury which was caused on right side chest. The length of the injuries is 10 cm. Its width is 1 cm. The depth was not probed. It was 14 cm. below the right armpit. Margins of the wound were clean cut. Hissing sound was emanating. The postmortem examination report also shows same number of injuries on the person of the deceased. First three injuries, according to post-mortem examination report, were scalp deep. On opening of injury No. 1, which was on right side of head 2 cm. behind right ear, two lined fracture were noticed.

One of them was 11 cm. and other was 10 cm. long. Both were apart by 1 cm. Blood clot in the membranes was also noted. No internal damage was noticed by the Autopsy Surgeon in injury No. 2, which is also a lacerated wound. A lined fracture 9 cm. long on opening the skull was noticed (vide injury No.3). Blood clot was also found present in brain. In injury No. 5, which is an incised wound, bone was found cut into pieces. In injury No. 10, on opening, right 6th and 7th ribs were found cut underneath right pleura. Right lower lung was also found cut. In injury No. 14 also bone pieces were visible. Injuries No. 5 to 14 are incised wounds with clean cut margins. The Doctor has very categorically stated that the death has occurred as a consequence of these injuries which were caused on the head. The coma had occurred as a consequence to that. But as earlier discussed, underneath injury No. 10, which is of a sharp-edged weapon there is serious damage to the lung and the ribs. The other injuries also (injuries No. 5 & 14) further add strength to the opinion, expressed by the Medical Officer. Thus, injury No. 10 in itself, in our opinion, was sufficient to cause death. We cannot lose sight of the fact that as many as 11 injuries of sharp edged weapons were caused to him. Injury No. 10 is attributable to a Ballam. No specific suggestion of its non-user in the incident was given to the Doctor (P.W. 10 Dr. B.P. Shukla). No such suggestion was even given to P.W. 9 Dr. D.P. Mishra, who had examined the deceased while he was alive. It has come in evidence when the victim was brought to the hospital at 12.45 P.M. his condition was critical. His pulse was low. He was gasping. His blood pressure was not recordable. Blood was oozing from his right ear and both the nostrils. He was unable to give any dying declaration. He was in a coma, In these circumstances it is difficult, rather impossible, for us to come to a conclusion that the intention of the assailants was only to cause grievous hurt. The weapons with which they were armed were Lethal, specially Pharsa and Ballam. The Lathis are equally Lethal weapon if they are used specifically on vulnerable part with sufficient force, such as head. As many as three injuries are there on the head. Two persons were participating in the incident with Lathi. The fact that these persons were concealing themselves in the bushes of Munja further leads to the inference about their common intention. There is motive also against them. Thus, we find no difficulty in arriving at a conclusion that the intention of these appellants was to cause the death of Jamil Ahmad. It is

amply borne out from the circumstances discussed above.

19. So far as motive is concerned, the evidence shows that Mohd. Umar had gone to his field at Banwari for sowing. The appellants Chinta, Ram Saroj, Gyan Das and Vishwanath chased him out of his field and told him that this field was purchased by them from his father. He made an enquiry from his father regarding the sale of the property to the above said persons, who declined to have sold that to them. He came to the Court and informed Jamil Ahmad of the above facts and then they went to examine the record. On search and examination of the papers they found that the property was got mutated in the name of Ram Deo father of Chinta and Ram Saroj by prosecuting a false case. He made an application for restoration of the case. Pairvi was being done by Jamil Ahmad. He searched the papers, examined them and got moved the necessary application. After the application for restoration was given, summons were issued to Ram Deo. Jamil Ahmad was working as clerk to an advocate. 22-7-1980 was fixed for his appearance. The incident had taken place just a day before this date when they were proceeding to Civil Court, Basti. The motive has not been challenged at all by the defence. In cross-examination he admitted that he knew that a false Sulhanama (compromise deed) was moved before the S.D.M. and his father did not move any application for its cancellation. His father is alive. Instead he had made an application for the cancellation of the above compromise deed. Thus, the existence of an application for restoration of the mutation proceedings is proved on record by cross-examination of these witnesses. The motive, therefore, is also proved beyond any doubt. It cannot be discarded on the ground that restoration application was not filed by the father. There may be many reasons for his not doing so including his old age. The defence has not dared the witness any further.

20. In the light of the above discussions, it is established that these appellants were holding the common intention to kill Jamil Ahmad, who was seriously doing Pairvi in the restoration of the mutation case against the appellant's father Ram Deo in the Tehsil. The accused did not like it. Thus, it exhibits a common intention on their part to eliminate him from the scene. The number of injuries caused to the victim, its nature and gravity leaves no room for any doubt that their common intention was to kill him. As many as five injuries on his person were such in which

bones were fractured or cut into pieces. Ribs were also cut. Pleura and lower part of the lung were also cut. No benefit to any of these accused appellants themselves is available from the fact that except four injuries all other injuries were on non-vital parts. These injuries were bleeding injuries and when the deceased reached the hospital at 12.15 P.M., i.e. within 2-1/2 hours, his condition was critical and in all probability no amount of medical attention could possibly have ensured his survival. Huge loss of blood and presence of haematoma in the head, especially in the nerves and brain and a sharp edged weapon lung deep injury apart from two other injuries where bones were cut into pieces is sufficient to hold that these appellants shared a common intention to kill the victim. None of the explanations attached to Section 300 I.P.C. come to the rescue of the defence in the circumstances discussed by us. In the light of the above discussions, we are of categorical opinion that the offence against these appellants is to be under Section 302 I.P.C. and not under Section 304 Part I I.P.C.

21. Accordingly their appeal is dismissed. The conviction of these appellants under Sections 302 read with Section 34 I.P.C. and Section 323 read with Section 34 I.P.C. is confirmed. The sentences under these two counts are also affirmed. They are on bail. They shall be taken into custody forthwith to serve out their sentences. These sentences shall run concurrently.

22. Let a copy of this judgment and order be sent to the trial Court to effect the arrest of these appellants forthwith to serve out their sentences. He will also report back to this Court about the arrest of these appellants and their incarceration in jail.