

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 29/2020

DARSHAN SINGH APPELLANT

VERSUS

STATE OF UTTARAKHAND RESPONDENT

WITH

CRIMINAL APPEAL NO. 31/2020

CRIMINAL APPEAL NO. 32/2020

CRIMINAL APPEAL NO. 33/2020

O R D E R

The present appeals by Darshan Singh, Mahender, Prakash, Kashmir Singh, Niranjan Singh, Bakshish Singh, and Nirmal Singh impugn the common judgment dated 20.02.2019 in Criminal Appeal No.35/2004, whereby the learned single Judge of the High Court of Uttarakhand at Nainital has upheld their conviction and sentence, as detailed below:

Name of the Appellant	Conviction and Sentence
Darshan Singh	Six months' Rigorous Imprisonment (RI) under Section 147, three years' RI under Section 332/149, four years' RI under Section 333/149 and two years' RI under Section 353/149 of the Indian Penal Code, 1860 ¹ .
Mahender	Six months' RI under Section 147, three years' RI under Section 332/149, four years' RI under Section 333/149 and two years' RI under Section 353/149 of the IPC.
Prakash	Six months' RI under Section 147, three years' RI under Section 332/149, four years'

¹ For short, "IPC"

Name of the Appellant	Conviction and Sentence
	RI under Section 333/149 and two years' RI under Section 353/149 of the IPC.
Kashmir Singh	Six months' RI under Sections 147 and 148, three years' RI under Section 332/149, four years' RI under Section 333/149, two years' RI under Section 353/149 and seven years' RI under Section 395/397 of the IPC.
Niranjan Singh	Six months' RI under Sections 147 and 148, three years' RI under Section 332/149, four years' RI under Section 333/149, two years' RI under Section 353/149, seven years' RI under Section 395/397, and seven years' RI under Section 412 of the IPC.
Bakshish Singh	Six months' RI under Sections 147 and 148, three years' RI under Section 332/149, four years' RI under Section 333/149, two years' RI under Section 353/149, seven years' RI under Section 395/397, and seven years' RI under Section 412 of the IPC.
Nirmal Singh	Six months' RI under Sections 147 and 148, three years' RI under Section 332/149, four years' RI under Section 333/149, two years' RI under Section 353/149, and seven years' RI under Section 395/397 of the IPC.

We have heard the learned counsel for the parties at some length, and we are of the opinion that the appellants/accused are entitled to acquittal on benefit of doubt.

While we do not doubt that an occurrence had taken place at the *dera* (dwelling place/residence) of Resham Singh (accused no. 5) in village Chamaria under the jurisdiction of Police Station - Shyampur, District Haridwar, Uttarakhand on 24.07.1996 at about 10.30 P.M., we believe that there are various factors that cast grave doubt on the police/prosecution version of the case. We will narrate the material.

As per the First Information Report (F.I.R.) No.17/1996 registered at P.S. Shyampur, District - Haridwar, Resham Singh (accused no. 5) had fired from a rifle on the police. This fact has not been proven. The rifle, along with the cartridge, were not recovered, seized or produced before the trial court. In fact, S.I. Nathu Ram Maurya (P.W.-1) has deposed that Didar Singh (father of Resham Singh - accused no. 5) had one local pistol(*tamancha*). This local pistol was not produced in the Court. Further, no charge was framed under the provisions of the Arms Act, 1959.

As per the prosecution, on 24.07.1996, the police team - S.I. Nathu Ram Maurya (PW-1), Constable Raghbir Singh (PW-2), Constable Kamal Singh (PW-3) and S.I. Kiran Pal Singh (PW-4) who had proceeded to the the *dera* (dwelling place/residence) of Resham Singh (accused no. 5) in village Chamaria, were posted at the Police Station Najibabad, District - Bijnor, and not at any police station located at Haridwar, Uttarakhand. They were on night patrol duty at Bijnor, when they had allegedly received information that the rifle stolen from their Police Station and the subject matter of Case Crime No. 288/1996 under Section 396/332 of the IPC, was hidden at the *dera* of Resham Singh at village Chamaria, District Haridwar, Uttarakhand. FIR No. 288/1996 was not brought on record, the contents etc. are unknown. The police team had driven in a private jeep from Bijnor to the *dera* of Resham Singh (accused No. 5) at Haridwar, without making any recording in the police register, or General Diary at the Police Station Najibabad. They

did not inform or record their presence and purpose of visit at the Police Station at Haridwar, Uttarakhand, before proceeding to the dera of Resham Singh (accused No. 5). The driver of the jeep and the public witness - Idrish Ahmed who were stated to be present throughout with them have not deposed.

S.I. Nathuram Maurya (PW-1), Constable Kamal Singh (PW-3), and S.I. Kiran Pal Singh (PW-4) did not identify the accused by their names. On the other hand, Constable Raghubir Singh (PW-2) has stated that he knew the names of the accused, but could not identify them by their faces.

Lastly, we find it rather strange that the police party who were armed, claim that they were divested of the Rifle No. 5761 belonging to Constable Kamal Singh (PW-3) and one Self Loaded Rifle (SLR) No. 9413 along with 30 cartridges belonging to Constable Raghubir Singh (PW-2), by the appellants/accused and their family members. It is difficult to believe and accept that the police team consisting of four police officers including two Sub-Inspectors, along with Idrish Ahmed and the driver, would have been over-powered by the appellants/accused. Possibly, this is the reason why the FIR refers to the rifle being used by Resham Singh (accused No.5), which fact has not been established, and should be disbelieved as far-fetched.

We have examined the Medical Certificates, Exhibit Ka.3-Ex Ka.7, which record the injuries suffered by S.I. Nathuram Maurya (PW-1), Constable Raghubir Singh (PW-2), Constable Kamal Singh (PW-

3) and Constable Kiran Pal (PW-4). S.I. Nathuram Mourya (PW-1) had sustained three injuries simple in nature. Similarly, Constable Kiran Pal (PW-4) had suffered three injuries including swelling on the left forearm. They were also simple. Constable Kamal Singh (PW-3) suffered two injuries i.e., a contused swelling on the backside of both the shoulders and contused swelling on both left and right forearms. Constable Raghubir Singh (PW-2) had suffered four injuries in the nature of laceration and contusion. The injuries were simple in nature.

As stated above, it does appear that there was an occurrence in the night of 24.07.1996 at the *dera* of Resham Singh (original accused no. 5) in village Chamaria, District Haridwar, but the exact truth as to what had transpired and why the police team went to the *dera* at night has not come out and established. We cannot in the absence of any evidence and facts hold that the police had visited the residence/*dera* of Resham Singh (accused No.5), in another district, not within their jurisdiction, in discharge of official duties. Therefore, the very genesis of the complaint and basis of the F.I.R./charge sheet is not made out.

On the basis of injuries suffered, while one can convict the appellants/accused under Sections 323 and 324 of the IPC, their conviction under Sections 333/149, 395 and 397 cannot be sustained. Even, in respect of charge under Sections 323 and 324 IPC, as stated above, we have grave doubt for the reason that the cause for the police team to visit the *dera* of Resham Singh in the night of 24.07.1996 has not been established. The visit at the *dera* of

Resham Singh at night without just and sufficient cause would be wrong and in violation of law.

Accordingly, we allow the present appeals and the convictions of the appellants/accused are set aside. The appellants, Darshan Singh, Mahender, Prakash, Kashmir Singh, Niranjan Singh, Bakshish Singh, and Nirmal Singh are acquitted of all the charges in the prosecution case arising from FIR No.17/1996 registered at Police Station Shyampur, District Haridwar, Uttarakhand.

The appellants, except Darshan Singh, are already on bail. Their bail bonds shall stand cancelled/discharged.

In Criminal Appeal No. 29 of 2020, the appellant - Darshan Singh has been granted exemption from surrendering. As his appeal has been allowed and he has been acquitted, the appellant - Darshan Singh is not required to surrender.

Pending application(s), if any, shall stand disposed of.

.....J.
(SANJIV KHANNA)

.....J.
(BELA M. TRIVEDI)

NEW DELHI;
JULY 12, 2023.

ITEM NO.102

COURT NO.3

SECTION II-B

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. 29/2020

DARSHAN SINGH

Appellant(s)

VERSUS

STATE OF UTTARANCHAL

Respondent(s)

(IA No. 53541/2019 - EXEMPTION FROM FILING O.T.
IA No. 52982/2019 - EXEMPTION FROM FILING O.T.
IA No. 53538/2019 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

WITH

Cr1.A. No. 31/2020 (II-B)

Cr1.A. No. 32/2020 (II-B)

(IA No. 75970/2022 - INTERIM BAIL)

Cr1.A. No. 33/2020 (II-B)

Date : 12-07-2023 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE BELA M. TRIVEDI

For Appellant(s)

Mr. Mohit Kumar, Adv.
Mr. Vamsikrishna Thota, Adv.
Mr. Chander Shekhar Ashri, AOR

Dr. Harshvir Pratap Sharma, Sr. Adv.
Mr. Pankaj Kumar, AOR
Mr. Tejas Patel, Adv.
Mrs. Meera Kaura, Adv.
Mr. Amit Kumar, Adv.
Ms. Stitu Jain, Adv.
Mr. Akshu Jain, Adv.

Mr. Samrat Krishnarao Shinde, AOR

For Respondent(s)

Mr. Jatinder Kumar Bhatia, AOR
Mr. Ashutosh Kumar Sharma, Adv.

Mr. Virendra Rawat, D.A.G.
Mr. Sunny Sachin Rawat, Adv.

Mr. Mohit Kaushik, Adv.
Mr. Sudarshan Singh Rawat, AOR

Mr. Atul Sharma, AOR
Mr. Vikas Negi, Adv.

UPON hearing the counsel, the Court made the following
O R D E R

The appeals are allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(BABITA PANDEY)
COURT MASTER (SH)

(Signed order is placed on the file)

(R.S. NARAYANAN)
ASSISTANT REGISTRAR