

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). 14-16 OF 2009

LALLAN SINGH & ORS. Appellant (s)

VERSUS

STATE OF U.P. Respondent(s)
(With office report)

Date: 13/09/2012 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MRS. JUSTICE GYAN SUDHA MISRA

For Appellant(s) Mr. Abhishek Atrey,Adv.
Mr. Sunil Kr. Jain,Adv.
Mr. Sachin Sharma,Adv.
Mr. Brijessh Panchal, Adv.

For Respondent(s) Mr. Vivek Vishnoi,Adv
Mr. M.R. Shamshad,Adv.
Mr. Gaurav Agarwal,Adv.

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

The appeals are dismissed in respect of appellants Lallan Singh, Jay Shree And Tej Bahadur Singh.

As regards Accused Awadesh Singh and Sawaroo who are stated to be absconding, the trial court shall submit a report to this court expeditiously but not later than six months from today. The report shall be put up for appropriate orders in Chambers.

|(Shashi Sareen)
|Court Master

|(Veena Khara)
|Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 14-16 OF 2009

Lallan Singh & Ors. ...Appellant

Versus

State of U.P. ...
Respondent

O R D E R

These appeals arise out of a common judgment and order dated 19.10.2005 passed by the High Court of Judicature at Allahabad whereby Criminal Appeals No. 1018 of 2001 and 2599 of 2004 filed by the appellants have been dismissed, their conviction under Sections 302,

147, 148, 149 of the Indian Penal Code and the sentence of life imprisonment awarded to them upheld.

The prosecution case as set out in the judgment under appeal, is that Gauri Shankar Yadav resident of village -

Dharahara S.P.Lar, District Deoria lodged a first information report with Police Station Lar alleging that on 21.06.1987 while his father Radha Binesh was working in the field adjoining to his house at around 6 a.m. in the morning, the accused persons namely; Prithvi Nath Misra, Lallan Singh, Kamla Singh all armed with guns, and accused persons Arjun Singh, Sawaroo, Jay Shree, Nayan Singh alias Rama Narayan Singh armed with pharsa came on the spot. Accused Hari Nandan Singh, Sarvajeet Yadav, Awadesh, Baldeo Singh also armed with guns, Prem Sagar, Beeran, Tejoo alias Tej Bahadur Singh, Vikrama, Rama Kant and Hari Lal armed with pharsa also ran towards the deceased Radha Binesh. Seeing the accused persons, approaching him in a menacing fashion the deceased Radha Binesh ran towards Chakroad but was surrounded by the accused persons mentioned above and fired at by them. As a result of the gunshot injuries sustained by Radha Binesh, the deceased fell down whereupon his neck was chopped off by the accused with the help of a pharsa. The prosecution -

case, further, is that the accused persons chased the informant and his brother Bashistha Yadav upon whom they opened fire while the informant was running towards the east and deceased Bashistha Yadav in the other direction where he eventually fell. Bashistha Yadav was also fell to the ground by the gun shot injuries which was followed by injuries caused with the help of pharsas. The occurrence was, according to the prosecution, witnessed by Bansh Bahadur Yadav, Yugal Kishore, Brij Kishore, Prem Prakash and other persons from the village. After committing the murder of deceased Radha Binesh and Bashitha Yadav, the accused persons threatened the family members of the informant and the village community that if any one dared to share witness to the incident he will meet the same fate.

With the registration of the FIR, the police swung into action and started the investigation in the course whereof the investigating officer conducted the inquest of the dead bodies and sent the same for post mortem examination. -

Blood stained earth and plain earth from the place of occurrence was also seized apart from bloodstained gamcha and farsa (Phawra) in terms of the seizure memos prepared for that purpose. The Investigating Officer in addition picked up and seized two empty cartridges from near the dead body of the deceased Radha Binesh while two empty cartridges were seized from near the dead body of deceased Bashistha Yadav. The samples of earth and plain earth were also seized from near the dead body of Bashistha Yadav.

The post-mortem examination of the deceased showed that the death of the two victims had occurred within 36 hours of the post mortem examination and was the result of shock and haemorrhage. The injuries sustained by Radha Binesh were as under:

Incised wound in whole circumference of face neck at the level of upper part of neck in line Rt. Side of face below the Rt. Ear and behind the occipital region. Head and face separated from the neck. Both belong to the -

same person (body and face). All the soft tissue, B.V. cervical spine divided.

1) Firearm wound of entry 0.5 cm in diameter, medial aspect of Rt. Thigh just below the inguinal ligament.

2) Firearm wound of entry 0.5 cm in diameter medial aspect of Rt. Thigh 17 cm above the Rt. Knee joint.

3) Firearm wound of entry 0.5 cm in diameter medial aspect of Rt. Thigh 12 cm above the Rt. Knee joint.

4) Firearm wound of entry 0.7 cm in diameter lateral aspect of Rt. Thigh 6 cm below the iliac crest.

5) Firearm wound of entry 0.7 cm in diameter lateral aspect of Rt. Thigh 15 cm above the Rt. Knee joint.

6) Firearm wound of entry 0.7 cm in diameter lateral aspect of Rt. Thigh 13 cm above the Rt. Knee joint.

7) Wound of entry (Firearm) front of Lt. Thigh 14 cm. Above the Lt.

Knee joint 0.5 cm in diameter.

8) Wound of entry (Firearm) medial aspect of (Lt.) thigh 10 cm. Above the (Lt.) knee joint 0.7 cm in diameter.

The ante-mortem injuries on the dead body of Bashistha Yadav were as follows:

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1) Incised wound 22cm x 10 cm x bone deep on (Lt.) side of neck extending from (Lt.) angle of mouth to back of neck. All the soft tissue, blood vessels muscles and cervical spine divided.

2) Incised wound 5 cm x 2cm x muscle deep on ant. Aspect of Rt. Arm 6 cm above from wrist joint.

3) Abrasion 4cm x 1 cm front of lower abdomen 6 cm below the umbilicus.

4) Firearm wound of exit 0.7 cm in diameter, medial aspect of left thigh upper part.

5) Firearm wound of exit 0.7 cm in diameter, medial aspect of left thigh upper part.

6) Incised wound 15 cm x 8cm x bone deep on front of Rt. Leg lower part 7 cm above the (Rt.) ankle joint Rt. Tibia fractured.

At the trial, the prosecution examined PW 1 Brij Kishore, PW 2 Gauri Shankar Yadav, PW 3 Dr. R.S.Yadav PW 4 Inspector Shambhoo Narain, Investigating Officer and PW 5 Constable Rudra Bux Ojha.

In their statements under Section 313, Cr.P.C. the accused persons denied their involvement and pleaded innocence but did not lead any evidence in their defence. At -

the conclusion of the trial, the Sessions court by its judgment and order dated 30.03.2001 convicted 14 out of the 17 accused persons for the offence of murder and sentenced them to imprisonment for life as mentioned above, two of the accused Hari Nandan and Arjun having died during the pendency of the trial, while accused Prem Sagar absconded.

Aggrieved by the conviction and sentence awarded to them the accused persons filed separate appeals which came to be decided by the High Court in terms of a common order dated 19.10.2005. By the said order the High Court acquitted all the accused persons except appellants Lallan Singh, Jay Shree and Tej Bahadur, besides three others namely Awadesh Singh, Sawaroo and Kamla Singh. It is noteworthy that since accused Sawaroo and Awadesh Singh had not surrendered to custody, the appeals, namely Criminal Appeal No.1018/2001 filed by Awadesh Singh and Criminal Appeal No.1273 of 2001 filed -

by Sawaroo were dismissed by this Court by order dated 19.10.2005. Accused Kamla Singh has separately challenged his conviction in SLP (Crl.) No.3078 of 2006 which was dismissed by this Court by order dated 28.8.2006. We are, therefore, left with Crl. Appeal No.1018 of 2001 insofar as the same relates to appellant Lallan Singh and Criminal Appeal No.2599 of 2004 filed by Jay Shree and Tej Bahadur Singh.

We have heard learned counsel for the parties at some length and perused the judgment and order passed by the trial court and the High Court. That the death of deceased Radha Binesh and Bashistha Yadav was homicidal in nature was not questioned before us as indeed the same could not have been questioned in view of the overwhelming evidence adduced by the prosecution. The deposition of Dr. R.S. Yadav who conducted post-mortem examination of the dead bodies firmly establishes that the two victims died because of the injuries including gunshot wounds sustained -

by them. As to the involvement of the appellants in the incident, the prosecution has entirely relied upon the depositions of PW 1 Brij Kishore, PW 2 G.S.Yadav, both sons of deceased Radha Binesh and brothers of the deceased Bashistha Yadav. Both the courts below have critically evaluated the depositions of the said two witnesses in the course of their judgments and come to the conclusion that their version is completely trustworthy. We have also been taken through the said depositions. We entirely agree with the view taken by the courts below that the depositions of the said two witnesses narrate the sequence of events in the manner in which the same appear to have taken place. There is nothing improbable or suspicious about the said depositions so as to render the prosecution case suspect. The place of occurrence as also the time at which the occurrence took place are also not suggestive of

anything unnatural or improbable about the two witnesses being on the spot at the time the occurrence took place. From the depositions it is in our view correctly deduced by - the courts below that the injuries which the deceased suffered were inflicted by the appellants and others found guilty by the High Court. In the absence of any perversity in the principle of appraisal of evidence by the two courts below or any miscarriage of justice, we see no reason much less a compelling one to interfere with the said findings of fact in exercise of our extra ordinary powers under Article 136 of the Constitution of India. We, therefore, affirm the view taken by the High Court and dismiss the appeals filed by the appellants mentioned above viz. Lallan Singh, Jay Shree and Tej Bahadur.

We had by our order dated 18.07.2012 noticed the fact that out of six persons who had been convicted only four appear to be in custody including Kamla Singh while the remaining two namely Awadesh Singh and Sawaroo are absconding. We had directed learned counsel for the State of U.P. to verify whether the said two persons had actually surrendered to custody since the dismissal of their SLPs by -this Court and if they had not so surrendered the steps, if any, taken by the authorities to take said two convicts into custody. Learned counsel appearing for the State submits that pursuant to the said direction he has filed two affidavits sworn by Shri R.S. Rawat DSP, Deoria. We have carefully gone through the said two affidavits but find the explanation regarding the steps taken by the authorities to apprehend the convicts wholly unsatisfactorily. The affidavits do not give the details of steps that were taken over the past six years or so for apprehending the two convicts whose conviction for double murder had been upheld by this court with the dismissal of the SLPs but who had despite the said order of dismissal failed to surrender to custody. We are in the circumstances constrained to direct an inquiry by the trial court into the circumstances in which the convicts still remain at large and whether any and if so which of authorities are responsible for their remaining so on account of the neglect by them in the discharge of their duties. The trial court shall submit a -report to this Court expeditiously but not later than six months from today. The report shall be put up for appropriate orders in Chambers.

.....J.
(T. S. THAKUR)

.....J.
(GYAN SUDHA MISRA)

New Delhi,
September 13, 2012