

State vs Sudama Singh on 10 April, 2025

Author: Rajiv Gupta

Bench: Rajiv Gupta, Subhash Chandra Sharma

HIGH COURT OF JUDICATURE AT ALLAHABAD

Judgment reserved on: 19.03.2025

Judgment delivered on: 10.04.2025

Neutral Citation No. - 2025 : AHC : 48915 - DB

Court No. - 46

Case :- GOVERNMENT APPEAL No. - 1762 of 1988

Appellant :- State of U.P.

Respondent :- Sudama Singh and Others

Counsel for Appellant :- A.G.A., Raghubhans Sahai

Counsel for Respondent :- S. Shukla, Kameshwar Singh, Manoj Kumar Singh, Virendra Pratap

Hon'ble Rajiv Gupta, J.

Hon'ble Subhash Chandra Sharma, J.

(Delivered by Hon'ble Rajiv Gupta, J.)

1. The instant government appeal under Section 378(3) CrPC has been preferred against the judgment and order dated 21.04.1988 passed by 2nd Additional Sessions Judge, Ballia in Sessions

Trial No. 232 of 1985 (State of U.P. Vs. Sudama Singh and Others), arising out of Case Crime No. 186 of 1984, under Sections 307, 323 IPC, Police Station Garhwar, District Ballia, by which, all the four accused-respondents have been acquitted of all the charges framed against them.

2. Learned AGA has filed compliance affidavit on behalf of the State today in Court, which is taken on record. In paragraph nos. 3 & 4 of the said affidavit, it has been stated that accused- respondent no.1 Sudama Singh has already passed away on 20.04.2024, while other co-accused- respondents, namely, Uday Singh, Parshu Ram and Shyama Singh are alive and as such, he prayed that instant government appeal qua the accused- respondent no.1 Sudama Singh be dismissed as abated, which is accordingly dismissed as abated and the instant government appeal is being decided on behalf of remaining three surviving accused- respondents.

3. The prosecution story in nutshell as narrated in the FIR lodged by one Suresh Ram is that there has been a civil dispute between the first informant Suresh Ram on one hand and the accused-respondents Sudama Singh, Parshu Ram, Uday Singh and Shyam Singh on the other, which was pending in the Civil Court, Ballia, in which, next date 17.01.1985 was fixed. The proceedings under Sections 107/116 CrPC were also in progress before the Sub-Divisional Magistrate, Ballia and a Complaint Case is also shown to be pending between the parties, in which, next date 01.01.1985 was fixed. In the backdrop of the said inimical terms, on 24.12.1984 at about 5:30 AM in the morning, accused- respondent Sudama Singh, armed with licensee gun, whereas other accused-respondents, namely, Parshu Ram, Uday Singh and Shyam Singh, armed with lathis, reached at the doorstep of the first informant Suresh Ram and stated that they have removed his Charni (Cattle Drum), as such, they would not permit his Palani (Chappar) to remain there and started demolishing it, consequent to which, first informant Suresh Ram tried to stop them and raised alarm. Hearing the alarm, villagers Kanhai, Rama Kant, Uma, Bhagelu and others along with number of male, female and children rushed towards the scene of the incident. Seeing them, accused-respondent Sudama Singh started firing from his licensee gun, consequent to which, the first informant Suresh Ram and other persons took shelter in the house and Palani (Chappar). On account of firing and assault made by lathi, the accused-respondents, first informant Suresh Ram, his brother Thag, Shiv Parsana, his mother Smt. Tetari, his sister Lakshminiya, Bachani, Jiriya and Durgawati have received injuries.

4. On the basis of the said allegations, a written report was drawn, which has been proved and marked as Ext. Ka-1 and FIR was registered at Police Station Garhwar, District Ballia vide Case Crime No. 186 of 1984, under Sections 307, 323 IPC at 7:10 AM, a copy of which has been proved and marked as Ext. Ka-15.

5. After registration of the FIR, victims-injured were taken to the District Hospital, Ballia by their respective relatives and they are shown to be medically examined by P.W.-5 Dr. A.K. Sareen, Medical Officer and their injury reports have been proved and marked as Ext. Ka-2 to Ext. Ka-8. Their respective X-Ray Reports have also been prepared and proved by P.W.-6 R. N. Singh, X-Ray Technician, which have been proved and marked as Ext. Ka-9 to Ext. Ka-14. Material Exhibit, being X-Ray plates, has also been proved as Material Ext.-1 to Material Ext-10 and X-Ray plate as Material Ext.-11.

6. After completing the necessary formalities, the Investigating Officer submitted the charge-sheet against the accused-respondents. After submission of the charge-sheet, the case was committed to the court of Sessions, where the charges were framed against the surviving accused-respondents under Sections 307/34, 323/34 and 325/34 IPC, to which, they denied and insisted to be tried.

7. Thereafter, the trial started and during the course of trial, the prosecution produced as many as four prosecution witnesses; P.W.-1 Suresh Ram, first informant, P.W.-2 Thag Ram, real brother of the first informant, P.W.-3 Bhagelu and P.W.4 Bachani, as witnesses of fact, whereas P.W.-5 Dr. A.K. Sareen was examined as Medical Officer, who examined the injuries of the victims-injured and noted the same. P.W.-6 R.N. Singh was examined as Radiologist. P.W.-7 Constable Banke Bihari, who had drawn the chik FIR and proved the same, P.W.-8 Inspector R.P. Sinha was examined as Investigating Officer. In addition to this, the prosecution has also produced number of documents, which were proved and duly exhibited.

8. After conclusion of the prosecution evidence, incriminating evidence and circumstances were put to the accused-respondents in their statements under Section 313 Cr.P.C. The accused-respondents alleged the prosecution story to be false and fabricated but did not examine any witness in their defence.

9. Learned IInd Additional Sessions Judge, Ballia after thrashing the evidence and critically analysing it, acquitted all the accused-respondents from all the charges framed against them and set them at liberty.

10. Being aggrieved and dissatisfied with the said judgment and order dated 21.04.1988, the instant Government Appeal under Section 378(3) CrPC on behalf of the State/appellant has been preferred.

11. Heard Shri Purushottam Upadhyay, learned AGA for the State/ appellant, Shri Virendra Pratap Pal, learned counsel for the accused-respondents and perused the material available on record.

12. Learned State counsel, relying upon the prosecution witnesses, has submitted that the trial court has miserably failed to appreciate the material and evidence available on record in true perspective and has illegally recorded the finding of acquittal in favour of the accused-respondents.

13. Learned State counsel has further submitted that findings recorded by the trial court in the impugned judgment and order are perverse and against the material and evidence available on record, warranting interference by this Court.

14. The said submissions have been vehemently countered by learned counsel for the accused-respondents.

15. In support of his submissions, Shri Virendra Pratap Pal, learned counsel for the accused-respondents has placed implicit reliance upon the celebrated judgment of the Privy Council in the case of Mahbub Shah Vs. Emperor reported in AIR 1945 PC 118, and has categorically submitted that looking to the general, vague and omnibus role assigned to the surviving

accused-respondents, it cannot be said that they had a common intention to cause injury to the victim Lakshminiya, who is said to have received lathi injury on her head, which is superficial in nature and on the basis of which, common intention on the part of the surviving accused-respondents cannot be drawn and has thus supported the impugned judgment and order dated 21.04.1988 passed by the trial court and has submitted that in the light of the principles of law, discussed in the aforementioned case, the view taken by the trial court cannot be said to be perverse and illegal and is a plausible view, which needs no interference by this Court and therefore, the instant Government Appeal so far as the surviving accused-respondents are concerned, is liable to be dismissed.

16. Since, the instant Government Appeal is against the judgment and order of acquittal, it would be relevant to note the principles of law laid down by the Hon'ble Apex Court with regard to the appreciation of evidence and approach to be adopted while dealing with an appeal against acquittal.

17. In Jafarudheen and others vs. State of Kerala, 2022 SCC Online SC 495, reiterating the principle on the subject the Hon'ble Apex Court reminded to the Courts as extracted below:

"25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters."

18. In Mohan alias Srinivas alias Seena alias Tailor Seena vs. State of Karnataka, (2022) 12 SCC 619, the Hon'ble Apex Court held as hereunder:

"20. Section 378 CrPC enables the State to prefer an appeal against an order of acquittal Section 384 CrPC speaks of the powers that can be exercised by the Appellate Court. When the trial court renders its decision by acquitting the accused, presumption of innocence gathers strength before the Appellate Court. As a consequence, the onus on the prosecution becomes more burdensome as there is a double presumption of innocence. Certainly, the Court of first instance has its own advantages in delivering its verdict, which is to see the witnesses in person while they depose. The Appellate Court is expected to involve itself in a deeper, studied scrutiny of not only the evidence before it, but is duty bound to satisfy itself whether the decision of the trial court is both possible and plausible view. When two views are possible, the one taken by the trial court in a case of acquittal is to be followed on the touchstone of liberty along with the advantage of having seen the witnesses. Article 21 of the Constitution of India also aids the accused after acquittal in a certain way, though not absolute. Suffice it is to state that the Appellate Court shall remind itself

of the role required to play, while dealing with a case of an acquittal.

19. In *Atley v. State of U.P.*, 1955 Cri. LJ 1653, the approach of the appellate court while considering a judgment of acquittal was discussed and it was observed that unless the appellate court comes to the conclusion that the judgment of the acquittal was perverse, it could not set aside the same.

20. The Hon'ble Apex Court in the case of *Bannareddy v. State of Karnataka*, (2018) 5 SCC 790, has considered the power and jurisdiction of the High Court while interfering in an appeal against acquittal and held as under:

"26. The High Court should not have re-appreciated the evidence in its entirety, especially when there existed no grave infirmity in the findings of the trial Court. There exists no justification behind setting aside the order of acquittal passed by the trial Court, especially when the prosecution case suffers from several contradictions and infirmities".

21. In *Ramesh Babulal Doshi vs. State of Gujarat*, (1996) 9 SCC 225, the Hon'ble Apex Court observed vis-a-vis the powers of an appellate court while dealing with a judgment of acquittal and held as under:

"7. While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then and then only reappraise the evidence to arrive at its own conclusions."

22. In the light of the submissions made by learned counsel for both the sides, we have carefully gone through the evidence available on record, analysis and appreciation thereof and conclusion arrived at by the trial court in the impugned judgment and order dated 21.04.1988.

23. The crux of the prosecution story is that from the averments made in the FIR itself and the evidence adduced therein, it is clear that several civil and criminal litigations were pending between the parties and on the day of the incident, Sudama (Now dead) armed with gun and other surviving accused-respondents, said to be armed with lathis, are alleged to have reached the place of the incident and by stating that since they have removed their Charni (Cattle Drum), they would demolish their Palani (Chappar) and started demolishing the same and when the first informant Suresh Ram, his brother Thag Ram and other villagers rushed to rescue, the three accused-respondents, armed with lathi, started the assault causing injuries to him and his sister Lakshminiya and when they retrieved, accused-respondent Sudama Singh fired upon the victims by his licencee gun, causing firearm injuries to Bachani, Shiv Parsana, Durgawati, Thag Ram, Jiriya and Tetri.

24. However, when we go through the injury reports of the injured persons, we find that all the injured persons have received stray pellet injuries, which even, according to the prosecution own case, are said to have fired by accused-respondent Sudama Singh from his gun. There is only one lacerated wound shown to be caused to the victim Lakshminiya, which too is superficial in nature in the form of lacerated wound of 1 c.m. x 0.5 c.m. bone deep on forehead, which has been noted to be simple in nature caused by some blunt object and no internal damage has been noted in the said injury report.

25. It is germane to point out here that though the first informant Suresh Ram in the FIR as well as in his testimony recorded during the course of trial has categorically stated that the three accused-respondent armed with lathi also assaulted him, however, from the careful perusal of the record and the injury reports, we find that he has not received any lathi injury and has not even been medically examined, his testimony to this extent becomes unreliable.

26. Furthermore, during the course of recording the testimony of the four prosecution witnesses, the author of the single injury, alleged to be caused to Lakshminiya, has not been pointed out at all by any of the said witnesses.

27. In view thereof, the three surviving accused-respondents, all armed with lathies, have been acquitted by the trial court.

28. Even, when we go through the testimonies of P.W.-1, P.W.-2, P.W.-3 and P.W.-4, there is not a whisper in any of the statement of the aforesaid witnesses that in what manner, a superficial lacerated wound was caused to the victim Lakshminiya and looking to the nature of the injuries caused to her and in the backdrop of the law laid down by the Privi Council in the celebrated decision in the case of Mahbub Shah (supra), wherein discussing the Section 34 of the Indian Penal Code, it has been held that:

Under Section 34 of the Indian Penal Code, the essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. To invoke the aid of Section 34 IPC successfully, it must be shown that the criminal act complained against was done by one of the accused persons in furtherance of the common intention of all; if this is so, then liability for the crime may be imposed on any one of the persons in the same manner as if the act were done by him alone. This being the principle, it is clear that common intention within the meaning of the section implies a pre-arranged plan, and to convict the accused of an offence applying the section it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan. It is no doubt difficult if not impossible, to procure direct evidence to prove the intention of an individual, and in most cases it has to be inferred from his act or conduct or other relevant circumstances. Where evidence falls far short of showing that the accused ever entered into a pre-meditated concert to commit murder in carrying out their intention of rescuing a kinsman, care must be taken not to confuse same or similar intention with common intention. The partition which divides their bounds is often

very thin; nevertheless the distinction is real and substantial and if overlooked will result in miscarriage of justice. The inference of common intention within the meaning of the term in Section 34 IPC should never be reached unless it is a necessary inference deducible from the circumstances of the case.

29. In view thereof, it cannot be said that the said offence has been committed in furtherance of the common intention and makes the prosecution story doubtful. Further, from the evidence aduced during the course of trial, it is crystal clear that the parties were on inimical terms and the possibility of false implication cannot be ruled out.

30. Thus, keeping in view the aforesaid principle of law laid down in the aforesaid case and applying the principle of an appeal filed against the acquittal, as already discussed above, we are of the considered opinion that the trial court has rightly acquitted the surviving accused-respondent nos. 2, 3 and 4 and the view taken by the trial court is a plausible view, for which, learned trial court has given cogent and logical finding in the impugned judgment and order, which is just, proper and reasonable and carries no perversity therein, hence, it does not warrant any interference by this Court. The reasoning adopted by the learned Trial Judge is based upon proper application of judicial mind. No illegality or infirmity is found in the impugned judgment and order and therefore, it needs no interference by this Court.

31. In view of the foregoing discussions, we are of the opinion that the instant Government Appeal lacks merit and the same is accordingly dismissed upholding the impugned judgment and order dated 21.04.1988.

32. Let a copy of this judgment and order be forwarded to the court concerned alongwith trial court record for information and necessary compliance.

Order Date:- 10.04.2025.

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