

**Constable 907 Surendra Singh & Anr.**

v.

**State of Uttarakhand**

(Criminal Appeal No. 355 of 2013)

28 January 2025

**[B.R. Gavai\* and Augustine George Masih, JJ.]**

**Issue for Consideration**

Matter pertains to the correctness of the judgment of the High Court setting aside the acquittal by trial court and convicting the appellants u/s.302/34 IPC.

**Headnotes<sup>†</sup>**

**Penal Code, 1860 – ss.302, 34 – Murder – Common intention – Head Constable-main accused along with the appellants- Constables intercepted a car on suspicion of smuggling illegal liquor, and the Head Constable fired a shot from his revolver hitting the co-passenger seated in the front seat of the car, resulting in her death – Courts below convicted and sentenced the main accused, however his appeal was disposed of as abated – As regards the appellants, trial court acquitted them, however, the High Court convicted them for the offence punishable u/s.302/34 and sentenced them to imprisonment for life – Correctness:**

**Held:** For convicting the accused with the aid of s.34, the prosecution must establish prior meetings of minds – It must be established that all the accused had preplanned and shared a common intention to commit the crime with the accused who has actually committed the crime – It must be established that the criminal act has been done in furtherance of the common intention of all the accused – Prosecution failed to place on record any evidence to show that the appellants had common intention with Head Constable prior to shooting the deceased – Impugned judgment quashed and set aside – Code of Criminal Procedure, 1973 – s.379 – Arms Act, 1959 – s.27(3). [Paras 18-20]

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### **Code of Criminal Procedure, 1973 – s.378 – Appeal against acquittal – Scope of interference – When:**

**Held:** Interference with the finding of acquittal recorded by the trial judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record. [Para 12]

#### **Case Law Cited**

*Babu Sahebagouda Rudragoudar and Others v. State of Karnataka* [\*\*\[2024\] 5 SCR 174\*\*](#) : (2024) 8 SCC 149; *Gadadhar Chandra v. State of West Bengal* (2022) 6 SCC 576; *Ezajhussain Sabdarhussain and another v. State of Gujarat* (2019) 14 SCC 339; *Jasdeep Singh alias Jassu v. State of Punjab* [\*\*\[2022\] 2 SCR 647\*\*](#) : (2022) 2 SCC 545; *Madhusudan and Others v. State of Madhya Pradesh*, 2024 SCC OnLine SC 4035 – relied on.

#### **List of Acts**

Penal Code, 1860; Arms Act, 1959; Code of Criminal Procedure, 1973.

#### **List of Keywords**

Acquittal by trial court; Common intention; Prosecution to establish prior meetings of minds; Preplanning and sharing common intention to commit crime; Criminal act; Furtherance of common intention; Patent perversity; Misreading/omission to consider material evidence on record.

#### **Case Arising From**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 355 of 2013

From the Judgment and Order dated 27.12.2012 of the High Court of Uttarakhand at Nainital in GA No. 100 of 2008 and CRLA Nos. 217 and 218 of 2006

With

Criminal Appeal No. 788 of 2013

**Constable 907 Surendra Singh & Anr. v. State of Uttarakhand****Appearances for Parties**

Devadatt Kamat, Sr. Adv., Atul Kumar, Ms. Sweety Singh, Ms. Archana Kumari, Rahul Pandey, Harsh Kumar, Sudipta Singha Roy, Himanshu Raj, Avdhesh K Singh, Munindra Dwivedi, Ms. Divya Bhalla, Rajesh Gulab Inamdar, Revanta Solanki, Hruday Bajentri, Ms. B. Vijayalakshmi Menon, Advs. for the Appellants.

Kaushalpati Gautam, A.A.G., Akshat Kumar, Advitiya Awasthi, Rajeev Kumar Dubey, Kamlendra Mishra, Advs. for the Respondent.

**Judgment / Order of the Supreme Court****Judgment****B.R. Gavai, J.**

1. These appeals challenge the judgment and final order dated 27<sup>th</sup> December 2012 passed by the High Court of Uttarakhand at Nainital by which the High Court dealt with three Criminal Appeals which had been filed challenging the judgment and order dated 6<sup>th</sup> September 2006 passed by the learned Sessions Judge, Dehradun<sup>1</sup>. The first set of appeals before the High Court being Criminal Appeal Nos. 217 of 2006 and 218 of 2006 challenging the judgment and order of the trial court had been preferred by accused No.1-Jagdish Singh by which he had been convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860<sup>2</sup> and Section 27(1) of the Arms Act, 1959<sup>3</sup> and sentenced to undergo imprisonment for life. The second set of appeal being Government Appeal No. 100 of 2008 before the High Court was filed by the respondent-State of Uttarakhand against the present appellants namely, Constable 907 Surendra Singh, Constable 192 Surat Singh and Ashad Singh Negi (accused Nos. 4, 2 and 3 respectively) challenging the said judgment of the trial court by which they had been acquitted of the charges under Section 302 read with Section 34 of the IPC.
2. The High Court dismissed the first set of criminal appeals preferred by accused No.1-Jagdish Singh thereby confirming the judgment

<sup>1</sup> Hereinafter referred to as the 'trial court'.

<sup>2</sup> For short 'IPC'.

<sup>3</sup> For short 'Arms Act'

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and order of conviction and sentence passed by the trial court. However, the High Court allowed the Government Appeal preferred by the respondent-State of Uttarakhand and set aside the order of acquittal qua the appellants herein and convicted them for the offence punishable under Section 302 read with Section 34 of the IPC and sentenced them to undergo imprisonment for life. Aggrieved by the same, the present appeals have been filed by the appellants herein.

3. Shorn of details, the facts which lead to the present appeals are as follows:-

- 3.1 On 15<sup>th</sup> November 2004, the SHO of the Police Station, Rishikesh received information that illegal liquor was being smuggled in a Maruti Car bearing registration No. DL2CR4766. On receipt of such information, at about 8:55 p.m., Head Constable of the Police Station Jagdish Singh along with the other accused-appellants Constable Surendra Singh, Constable Surat Singh and Constable Driver Ashad Singh set out in a silver-coloured Indica car to intercept the aforementioned Maruti car. At around 8:30 p.m., the police personnel spotted a Maruti car near IDPL Gate. Constable Ashad Singh, who was driving the car, and Head Constable Jagdish Singh attempted to stop the car by overtaking it and indicating to the driver of the Maruti car to halt. However, when the driver of the Maruti car failed to stop his car, Head Constable Jagdish Singh fired a single shot from 0.38 bore revolver that he was carrying with himself. The said shot hit the co-passenger seated in the front seat of the Maruti car in her temporal region, eventually leading to her death.
- 3.2 As a corollary to this incident, on 16<sup>th</sup> November 2004, one Sanjeev Chauhan lodged a written complaint at Police Station, Rishikesh. According to the complaint, the complainant was driving down from Roorkee to Rishikesh in his Maruti car on 15<sup>th</sup> November 2004. He was in the driving seat while his wife Manisha (hereinafter referred to as 'the deceased') was sitting in the front passenger seat and his sister Km. Bharti and his daughter Km. Bhumika were sitting in the rear seats. Having started at around 6:45 p.m. from Roorkee, their car crossed Shyampur Railway Crossing which was close to IDPL gate at about 8:30 p.m. when a silver-coloured Indica car without a registration plate overtook the car of the complainant. The

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occupants of the Indica car who were dressed in police uniforms, indicated to the complainant to stop his car. However, when the complainant failed to comply, a bullet came to be fired by one of the occupants of the Indica car. The said bullet hit the wife of the complainant on her temporal region. Upon the occurrence of the incident, a crowd gathered at the spot and the complainant was informed by the onlookers that one of the occupants of the Indica car was Jagdish Singh who was posted as Head Constable at Police Station, Rishikesh. With the aid of the assembled bystanders, the complainant took his wife to Government Hospital, Rishikesh, where she was declared 'brought dead'.

- 3.3 Thereafter, the complainant went to lodge a complaint at Police Station Kotwali, Rishikesh where he saw the Indica car parked within the premises of the Police Station. He telephoned his brother Rajeev who arrived at the Police Station with their uncles Jugal Kishore and Vijay Chauhan. On the basis of the complaint dictated by the complainant and scribed by Vijay Chauhan, a First Information Report being Case Crime No. 455 of 2004 was registered at the aforesaid Police Station against Head Constable Jagdish Singh and other unknown police constables for the offence punishable under Section 302 of the IPC.
- 3.4 The dead body of the deceased was sent for a post-mortem and according to the Post-Mortem Report the cause of death was cranio-cerebral damage following a bullet injury.
- 3.5 Upon the conclusion of the investigation and on receiving permission from the S.S.P., Dehradun to prosecute the accused persons, a charge sheet (Ext. Ka-27) was preferred against the four accused persons for the offences punishable under Section 302 read with Section 34 of the IPC. A separate charge sheet (Ext. Ka-28) was preferred against Head Constable Jagdish Singh for the offence punishable under Section 27(3) of the Arms Act.
- 3.6 As the case was exclusively triable by the Sessions Court, the learned Chief Judicial Magistrate, Dehradun committed the case of the four accused persons to the trial court, leading to the registration of S.T. No. 50 of 2005. The learned Chief Judicial Magistrate, Dehradun further committed the case of accused

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No.1-Jagdish Singh qua the separate charge sheet before the trial court, leading to the registration of S.T. 108 of 2005. Both the aforementioned Sessions Trials were consolidated and numbered as S.T. No. 50 of 2005.

- 3.7 At the conclusion of the trial, the trial court convicted accused No.1-Jagdish Singh as aforementioned and sentenced him to imprisonment for life while acquitting the three other accused-appellants since the prosecution had failed to prove the case beyond reasonable doubt insofar as they were concerned.
  - 3.8 Being aggrieved thereby, accused No.1-Jagdish Singh preferred two criminal appeals before the High Court against the order of his conviction and sentence. The respondent-State also preferred a criminal appeal before the High Court against the acquittal of the other accused-appellants.
  - 3.9 The High Court by the impugned judgment dismissed the criminal appeals preferred by accused No.1-Jagdish Singh and allowed the criminal appeal preferred by the respondent-State of Uttarakhand.
  - 3.10 Being aggrieved thereby three Criminal Appeals under Section 379 of the Code of Criminal Procedure, 1973<sup>4</sup> came to be filed before this Court. Criminal Appeal No. 355 of 2013 was filed by Constable 907 Surendra Singh and Constable 192 Surat Singh. Criminal Appeal No. 788 of 2013 was filed by Ashad Singh Negi. Finally, Criminal Appeal Nos. 1425-1426 of 2015 were filed by Head Constable Jagdish Singh.
4. This Court by order dated 15<sup>th</sup> July 2013 admitted Criminal Appeal Nos. 355 of 2013 and 788 of 2013 and granted bail to the appellants in both the appeals.
  5. During the hearing of the appeals, we were informed that Head Constable Jagdish Singh had passed away. Accordingly, on 16<sup>th</sup> January 2025 Criminal Appeal Nos. 1425-1426 of 2015, preferred by him, were disposed of as abated.
  6. We have heard Mr. Devadatt Kamat, learned senior counsel appearing on behalf of the appellants and Mr. Rajeev Kumar Dubey, learned counsel appearing on behalf of the respondent-State.

<sup>4</sup> For short 'Cr.P.C.'

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7. Mr. Devadatt Kamat submits that the Division Bench of the High Court has grossly erred in convicting the appellants with the aid of Section 34 of the IPC. It is submitted that the learned trial judge on an elaborate consideration of the evidence had come to a considered opinion that insofar as the present appellants are concerned there is no evidence to show that the present appellants had shared a common intention with the accused No.1-Jagdish Singh. It is submitted that the allegation of alleged assault made by Sanjeev Chauhan, PW-1 (husband of the deceased) and Km. Bharti, PW-2 (sister-in-law of the deceased) in their evidence for the first time before the Court cannot be relied on. Insofar as the said alleged assault is concerned, it is submitted that though the said incident has taken place in public, no independent witness has been examined by the prosecution. Learned Senior Counsel relied on the judgment of this Court in the case of ***Gadadhar Chandra v. State of West Bengal***<sup>5</sup> in support of his submissions.
8. It is further submitted that the interference in the judgment of acquittal by the learned trial judge would have been warranted by the High Court only in the event the view taken by the learned trial judge was found to be perverse or impossible. It is submitted that no perversity or impossibility could be noticed in the view taken by the learned trial judge and as such the interference by the High Court in an appeal against the acquittal was totally unwarranted.
9. As against this, the learned counsel for the respondent-State submits that the Division Bench of the High Court has given sound reasons for reversing the order of acquittal and as such no interference is warranted in the present appeals.
10. We have perused the entire material on record with the assistance of the learned counsel for the parties.
11. Recently, in the case of ***Babu Sahebagouda Rudragoudar and others v. State of Karnataka***,<sup>6</sup> a Bench of this Court to which one of us was a Member (B.R. Gavai, J.) had an occasion to consider the legal position with regard to the scope of interference in an appeal against acquittal. It was observed thus:

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5 (2022) 6 SCC 576

6 [2024] 5 SCR 174 : (2024) 8 SCC 149

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**“38.** First of all, we would like to reiterate the principles laid down by this Court governing the scope of interference by the High Court in an appeal filed by the State for challenging acquittal of the accused recorded by the trial court.

**39.** This Court in *Rajesh Prasad v. State of Bihar* [*Rajesh Prasad v. State of Bihar* (2022) 3 SCC 471 : (2022) 2 SCC (Cri) 31] encapsulated the legal position covering the field after considering various earlier judgments and held as below : (SCC pp. 482-83, para 29)

“29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words : (*Chandrappa* case [*Chandrappa v. State of Karnataka*, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325], SCC p. 432, para 42)

‘42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”,

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etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. *Secondly*, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.’ ”

**40.** Further, in H.D. Sundara v. State of Karnataka [H.D. Sundara v. State of Karnataka (2023) 9 SCC 581 : (2023) 3 SCC (Cri) 748] this Court summarised the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC as follows : (SCC p. 584, para 8)

“8. ... 8.1. The acquittal of the accused further strengthens the presumption of innocence;

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8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

**41.** Thus, it is beyond the pale of doubt that the scope of interference by an appellate court for reversing the judgment of acquittal recorded by the trial court in favour of the accused has to be exercised within the four corners of the following principles:

**41.1.** That the judgment of acquittal suffers from patent perversity;

**41.2.** That the same is based on a misreading/omission to consider material evidence on record; and

**41.3.** That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.”

12. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based

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on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

13. In the instant case, the learned trial judge on the basis of ocular testimony of the eyewitnesses has held that the accused No.1-Jagdish Singh is guilty of the offence punishable under Section 302/34 IPC as well as under Section 27(1) of the Arms Act. Since the appeal of the said accused No.1-Jadgish Singh is disposed of as abated, we did not go into the findings against the said accused.
14. The learned trial judge while recording the finding of acquittal insofar as the present appellants are concerned, has come to the following conclusions:
  - (i) That these three accused (appellants herein) were in the car and the accused No.1-Jagdish Singh was senior to them, and that they were under the command of their senior officer;
  - (ii) Accused Ashad Singh had admitted this aspect and had stated that he was driving the car under the orders of his superior officer;
  - (iii) The remaining two accused had raised a plea of alibi, which was based on certain entries in the General Diary (G.D.)
  - (iv) That accused Nos. 2, 3 and 4 (the appellants herein) were not named in the report;
  - (v) From the evidence of Rajendra Singh Nagarkoti, P.W.9 as well as identification memo Exhibit Ka-13 prepared by the Executive Magistrate Bishan Singh Bisht, it was clear that only one accused, namely, Ashad Singh could be identified and that too only by one witness i.e. by P.W.1;
  - (vi) That the identification of the accused by only one witness was not sufficient to come to a conclusion of guilt against the accused.
15. Upon consideration of these factors, the learned trial judge came to a conclusion that even if it was assumed that the remaining three accused had accompanied accused No.1-Jagdish Singh, there was no evidence to come to a conclusion that accused Nos. 2, 3 and 4 (the appellants herein) who were in car with accused No.1-Jagdish Singh had shared a common intention with him to fire upon or to kill the deceased.

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16. The learned trial judge, therefore, found that the prosecution had failed to prove the mental involvement of accused Nos. 2, 3 and 4 (the appellants herein) with accused No.1-Jagdish Singh beyond the shadow of reasonable doubt.
17. However, this well-reasoned finding of the learned trial court has been upset by the High Court on the ground that the remaining three accused were sitting in the same vehicle along with accused No.1-Jagdish Kumar was sufficient to convict them with the aid of Section 34 of the IPC.
18. By now it is a settled principle of law that for convicting the accused with the aid of Section 34 of the IPC the prosecution must establish prior meetings of minds. It must be established that all the accused had preplanned and shared a common intention to commit the crime with the accused who has actually committed the crime. It must be established that the criminal act has been done in furtherance of the common intention of all the accused. Reliance in support of the aforesaid proposition could be placed on the following judgments of this Court in the cases of:
  - (i) ***Ezajhussain Sabdarhussain and another v. State of Gujarat;***<sup>7</sup>
  - (ii) ***Jasdeep Singh alias Jassu v. State of Punjab;***<sup>8</sup>
  - (iii) ***Gadadhar Chandra v. State of West Bengal (supra);*** and
  - (iv) ***Madhusudan and others v. State of Madhya Pradesh.***<sup>9</sup>
19. In the present case, as observed by the learned trial judge, the prosecution has failed to place on record any evidence to show that the accused Nos. 2, 3 and 4 (the appellants herein) had common intention with accused No.1-Jagdish Singh prior to the accused No.1-Jagdish Singh's shooting at the deceased resulting in her death.
20. In the result, we pass the following order:
  - (i) The appeals are allowed.
  - (ii) The judgment and order of the High Court of Uttarakhand at Nainital in Government Appeal No. 100 of 2008 is quashed and aside.

7 (2019) 14 SCC 339

8 [2022] 2 SCR 647 : (2022) 2 SCC 545

9 2024 SCC OnLine SC 4035

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- (iii) The judgment and order dated 6<sup>th</sup> September 2006 passed by the learned Sessions Judge, Dehradun in Sessions Trial No.50 of 2005 is affirmed.
- (iv) The appellants herein are on bail. Their bail bonds shall stand discharged.
- (v) Pending application(s), if any, shall stand disposed of.

*Result of the case:* Appeals allowed.

<sup>†</sup>*Headnotes prepared by:* Nidhi Jain