

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1676 OF 2011  
(Arising out of SLP (Crl.) No.4 of 2011)

MAHBOOB & ORS. Appellants

VERSUS

STATE OF U.P.(NOW UTTARAKHAND) & ANR. Respondents

WITH

CRIMINAL APPEAL NO.784 OF 2013  
(Arising out of SLP (Crl.) No.4036 of 2011)

STATE OF UTTARAKHAND Appellant

VERSUS

AKBAR & OTHERS Respondents

AND

CRIMINAL APPEAL NO.783 OF 2013  
(Arising out of SLP (Crl.) No.4178 of 2011)

MANSAB Appellant

VERSUS

AKBAR & OTHERS Respondents

ORDER

These appeals filed by three convicted accused, namely, Mahboob, Ibrahim and Isamil, challenge the final judgment and order dated 31.08.2010 passed by the High

Court of Uttarakhand at Nainital in Criminal Appeal No.1379 of 2001 (D/B) (Old No.247 of 1998).

The basic facts leading to the registration of crime pursuant to which the instant proceedings were undertaken before the Trial Court, were set out by the High Court and for facility, we reproduce the same as under:

“3. Prosecution story, in brief, is that on 13.08.1992, at about 1:00 P.M., in the jungle of village Mustafabad, accused/appellants with common object formed unlawful assembly and committed murder of Abdul and Riyaz (both deceased). They were armed with deadly weapons rifle, TABAL (heavy sharpened edged weapon), sword, GANDASA (heavy sharpened edged weapon), and LATHIES. They after committing murder of the aforesaid two persons namely Abdul, and Riyaz @ Seena, threw their dead bodies in Ratmao river to cause disappearance of evidence of commission of crime. A first information report (Ex.A1) was orally given by P.W.1 Mansab (brother of the deceased) at Police Station Jwalapur, District Haridwar, which was registered as crime no. 335 of 1992, against the fourteen accused namely Sarafat, Yaseen, son of Nabi Bux, Mahboob, Ibrahim, Ismail, Asghar, Akbar, Yaseen, son of Zahoora Yameen, Mustakim, Riyasat, Mubarik, Akil, and Irshad @ Sada, relating to offences punishable under section 147, 148, 149, 302, and 201 IPC. The investigation was taken up by Sub-Inspector Mukundi Lal Sharma. Later on, investigation was taken over by Sub-Inspector B.S. Negi (since deceased). The motive of commission of crime is said to be dispute between P.W.1 Mansab and the accused in respect of pouring the garbage in a pit in the village. In connection with said quarrel a Panchayat is said to had taken place earlier a day before but the dispute between parties could not be resolved. Prosecution case is that due to that enmity, on 13.08.1992, the accused/ appellants formed unlawful assembly and committed murder of the Abdul and Riyaz @ Seena and threw their dead bodies in the river. It is alleged in the first information report that accused Sarafat was armed with lathi, accused Yaseen with gandasa, accused Mahboob with lathi, accused Ibrahim with lathi, accused Ismail with sword, accused Asghar with lathi, accused Akbar with lathi, Yaseen with Gandasa, accused Yameen with Tabal, accused Mustkim with Tabal, accused Riyasat with rifle, accused Mubarik with lathi, accused Akil with lathi, and accused Irshad also armed with lathi at the time of incident. During investigation, only dead body of Riyaz @ Seena could be recovered on 16.08.1992. The dead body of the other deceased could not be traced out. The police, after recovery of dead body of Riyaz @ Seena prepared inquest report (Ex.A7), Sample seal (Ex. A8), sketch of the dead body (Ex.A10), police form no. (Ex.A11), and letter for post-mortem examination (Ex.A9). The dead body was sent for post-mortem examination. P.W.5 Dr. B.K. Gairola, conducted post-mortem

examination on 17.08.1992, on the dead body of Riyaz and found as many as ten ante-mortem injuries. He opined in the autopsy report (Ex.A14) that cause of death was shock and hemorrhage due to ante-mortem injuries. After interrogating the witnesses, and on completion of investigation the Investigating officer submitted charge sheet (Ex.A3) against all the fourteen accused/appellants for their trial in respect of offences punishable under section 147, 148, 149, 302, 201, I.P.C.”

Out of two persons, who were subjected to assault, only the dead body of Riyaz alias Seena could be recovered. The dead body was recovered four days later and was identified by many persons from the village including PW2 Irshad.

The post-mortem conducted on the body of Riyaz showed following ante-mortem injuries:

- “(i) Multiple incised wound in an area of 14x12cm bone deep on the top of the head biggest and smallest being 8x2 cm and 3x1cm.
- (ii) Incised wound 2x3cm x bone deep on left side of forehead 1cm above the outer edge of left eye brow.
- (iii) Incised wound 2x1cm chest cavity deep on right side close to right nipple.
- (iv) Incised wound 3x1/2cm x muscle deep 3cm below injury No.3.
- (v) Abraded contusion 12x10cm on the left side of face.
- (vi) Contusion 22x10 cm on the back and outer side of right forearm.
- (vii) Contusion 10x8cm on top of shoulder on left side.
- (viii) Contusion 8x6cm on front of left upper forearm.
- (ix) Contusion 10x12cm in front of neck and upper part of chest.

- (x) Injury in abdomen a lacerated wound extending from umbilicus to both the thighs showing under line viscera and muscles a post-mortem injury probably due to animal bite.”

According to the post-mortem, Riyaz had died because of shock and hemorrhage as a result of ante-mortem injuries. Injury No.3 which had pierced the chest cavity had resulted in blood getting filled in the lungs. According to the medical report, the person had died first and then his body was thrown into the water.

As stated hereinabove, 14 persons were arrayed as accused in Sessions Trial pursuant to Crime no.335 of 1992.

The prosecution relied upon the eye-witness account which was unfolded through the testimony of PW1 Mansab (Informant) and PW2 Irshad. Both these witnesses testified to the assault.

According to PW1 Mansab, soon after the assault was opened, he started running towards the East while his brother Abdul ran in the direction towards West i.e. towards the River while his other brother Riyaz ran towards Southern direction. According to this witness, both were assaulted at the places indicated in the Site Plan “Exhibit KA-4”. Abdul was assaulted close to the river whereafter his body was thrown into the river while dead body of Riyaz was dragged from the place of assault and was thereafter thrown into the water.

Exhibit KA-4 itself indicated the agricultural field where Irshad was working.

PW2 Irshad supported the case of the prosecution and also stated that he had identified the dead body of Riyaz.

Considering the entirety of the material on record, the Trial Court by its judgment and order dated 06.02.1998 accepted the case of the prosecution and convicted all 14 accused of the offences punishable under Section 302 read with 149 IPC as well as for the offences punishable under Section 201 read with 149 IPC and sentenced them to suffer imprisonment for life under the first count and rigorous imprisonment for seven years under the second count. Seven of them were also convicted for the offence under Section 147 IPC while the rest were convicted for the offence under Section 148 IPC and given two years and three years of sentence respectively. All the sentences were directed to run concurrently.

All 14 convicted accused preferred Criminal Appeal No.247 of 1998 before the High Court of Allahabad, which after reorganization of States was transferred to the High Court of Uttarakhand at Nainital and registered as Criminal Appeal No.1379 of 2001 (D/B).

After considering the material on record, the High Court took the view that first five accused alone could be said to be responsible for the assault which resulted in the death of Abdul and Riyaz and their conviction as recorded by the Trial Court was required to be sustained. With regard to the rest of the accused, the High Court granted them benefit of doubt and acquitted them of the charges levelled against them.

Out of first five accused named by the High Court, two accused namely Sharafat and Yasin were already dead. Remaining three convicted accused, namely,

Mahboob, Ibrahim and Isamil are in appeal against the judgment rendered by the High Court.

The original complainant PW1 Mansab has also preferred Criminal Appeal No.783 of 2013 challenging the acquittal of those who were granted relief by the High Court. Similarly, the State of Uttarakhand has also preferred Criminal Appeal No.784 of 2013 challenging such acquittal.

We have heard Ms. Anjana Prakash, learned Senior Advocate for the convicted accused in Criminal Appeal No.1674 of 2011; Mr. Sanjay Kumar Dubey, learned Advocate who appeared for the complainant in Criminal Appeal No.783 of 2013; Mr. Ratnakar Dash and Mr. J.C. Gupta, learned Senior Advocates for the acquitted accused; and, Mr. Krishnam Mishra, learned Advocate for the State.

The eye-witness account through the depositions of PWs 1 and 2 is quite cogent, consistent and creditworthy. The cross-examination of these two witnesses has not yielded anything on the basis of which their evidence could be discredited. Both the witnesses were natural and had every occasion to be there at the place of incident. We, therefore, do not find any infirmity in their testimony. The medical evidence on record also supports the eye-witness account.

The appeal against conviction is without any merit and is, therefore, dismissed.

In the appeals against acquittal, Mr. Sanjay Kumar Dubey and Mr. Krishnam Mishra, learned Advocates strenuously argued that there was no reason for the High Court to acquit the remaining accused.

With the assistance of the learned counsel, we have gone through the reasoning which weighed with the High Court and are quite satisfied that the High Court adopted a cautious approach and, therefore, was justified in granting benefit of doubt to those persons who were acquitted by the High Court.

We, therefore, see no reason to entertain these appeals against acquittal at the instance of the complainant as well as the State. These appeals are also dismissed.

.....J.  
(UDAY UMESH LALIT)

.....J.  
(S. RAVINDRA BHAT)

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

New Delhi,  
December 09, 2021

ITEM NO.103

COURT NO.2

SECTION II-B

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No.1676/2011

MAHBOOB &amp; ORS.

Appellants

VERSUS

STATE OF U.P.(NOW UTTARAKHAND) &amp; ANR.

Respondents

(IA No.100897/2021 - FOR EXEMPTION FROM FILING O.T.; and, IA No.100896/2021 - FOR GRANT OF BAIL)

WITH

Cr1.A. No.784/2013 (II-B)

Cr1.A. No.783/2013 (II-B)

Date : 09-12-2021 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE BELA M. TRIVEDI

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Mr. Devendra Kumar Shukla, Adv.

Mr. Ratnakar Dash, Sr. Adv.  
Mr. J.C. Gupta, Sr. Adv.  
Mr. Anurag Tomar, Adv.  
Mr. Tushar Bakshi, Adv.  
Mr. Naresh Bakshi, AOR

Mr. Krishnam Mishra, Adv.  
Mr. Jatinder Kumar Bhatia, AOR

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

**The appeals are dismissed, in terms of the Signed Order placed  
on the file.**

**Pending applications, if any, also stand disposed of.**

**(MUKESH NASA)  
COURT MASTER**

**(VIRENDER SINGH)  
BRANCH OFFICER**