



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 2024 OF 2012

MATHU ALIAS JAGDISH

APPELLANT(S)

VERSUS

STATE OF UTTARAKHAND

RESPONDENT(S)

J U D G M E N T

UJJAL BHUYAN, J.

This criminal appeal is directed against the judgment and order dated 25.07.2012 passed by the High Court of Uttarakhand at Nainital (briefly, ‘the High Court’ hereinafter) in Criminal Appeal No. 241/2002 (*Manua @ Puran & Others Vs. State of Uttaranchal*).

2. Be it stated that the three appellants and one Kaley alias Kaloo were prosecuted by the State under Section 304/34 of the Indian Penal Code, 1860 (IPC) in the Court of Sessions Judge, Dehradun (briefly, ‘the Sessions Court’ hereinafter) in Sessions Trial No. 86/1997. By the judgment

and order dated 23.09.2002, the learned Sessions Court had acquitted Kaley alias Kaloo but convicted the other three accused Manua alias Puran, Ramu and Mathu alias Jagdish under Section 304/34 IPC and sentenced them to undergo rigorous imprisonment (RI) for a period of five years each and to pay fine of Rs. 2000.00 each with a default stipulation.

3. Aggrieved by their conviction and sentence, the three appellants had preferred Criminal Appeal No. 241/2002 before the High Court. By the impugned judgment and order, the High Court while affirming the conviction and sentence awarded to the three appellants, dismissed the criminal appeal.

4. The three appellants thereafter filed SLP (Criminal) No. 7224 of 2012 before this Court. *Vide* order dated 21.09.2012, this Court had issued notice while rejecting the prayer for bail of the appellants. Subsequently, this Court *vide* the order dated 10.12.2012 granted leave and directed release of the appellants on bail to the satisfaction of the Sessions Court concerned.

5. During the pendency of the appeal, the first appellant Manua alias Puran and the second appellant Ramu

passed away. As such, the appeal *qua* the aforesaid two appellants stands abated. The present criminal appeal is, thus, confined to the third appellant Mathu alias Jagdish.

6. The case of the prosecution as per the first information report is that 15 days prior to the date of the incident which is 12.02.1997, deceased Padam Singh Shahi had sold a watch to Manua alias Puran for Rs. 500.00. It appears that Manua did not like the watch. So, he went back to the house of Padam Singh to ask him to take his watch back. It has come on record that the residence of Padam Singh was in the close vicinity of the residence of Manua. For reasons not explained, Manua went back to his residence and after some time, Padam Singh came to the residence of Manua. This incident of purchase of watch and the attempt to return the same soon escalated into altercations and scuffle. Soon Ramu and Mathu alias Jagdish joined Manua and assaulted Padam Singh who was standing on the edge of a dry canal. While assaulting Padam Singh, the three accused persons pushed him into the empty canal. It was alleged that the present surviving appellant i.e. Mathu alias Jagdish gave a blow on the head of Padam Singh by a heavy stone because

of which Padam Singh fell down into the dry canal and sustained serious injuries. Padam Singh's father Roop Singh Shahi, PW-2, and brother-in-law Ramesh Chand Kshetri, PW-3, took the injured Padam Singh to the Doon Hospital where he succumbed to his injuries.

7. PW-2, Roop Singh Shahi, is the father of the deceased. He stated in his examination-in-chief that the incident happened on 12.02.1997 at around 10:30 PM to 10:45 PM. On that day, his son-in-law PW-3 had come to his house. The accused were his neighbours. Manua had come to his house and had told Padam Singh that the wrist watch that was sold by him about 15 days back was defective and that he did not want to keep the watch with him. Therefore, he asked Padam Singh to take back his watch from his home. Padam Singh went alongwith Manua. PW-2's daughter-in-law who had gone out to feed his pet dog at about 10:30 PM heard quarrelling noise between the accused persons and her brother-in-law Padam Singh. She also heard the voice of Kaley. According to PW-2, when he came out of the house, he saw the accused persons and Kaley jointly pushing Padam Singh into the canal which was dry. Then, after pushing

Padam Singh into the canal, Kaley and Mathu alias Jagdish threw stones at Padam Singh which hit his head. He and his son-in-law, PW-3, then rushed to the canal to rescue his son. On seeing them, the accused persons fled from the scene. His neighbour PW-1 also came out of his residence and saw the incident. Though Padam Singh was taken to the hospital, he was declared dead.

7.1. In his cross-examination, PW-2 stated that he did not mention the name of Kaley in the first information as accused Kaley had threatened him in the Doon Hospital, though, thereafter, he did not threaten him. He said that the stone thrown by Kaley had hit the head of his son whereas the stone thrown by Mathu had hit at some other place.

8. In his deposition, PW-3 Ramesh Chand Kshetri narrated the incident more or less on the same lines as PW-2. In his cross-examination, he stated that while the accused persons had pushed Padam Singh into the canal, Kaley and Mathu had thrown stones at him. However, he had not seen the stones which had hit Padam Singh while rushing to the place of incident.

9. Though PW-1, Vijay Singh, a neighbour of both the deceased and the accused, had deposed in court, he was declared hostile at the instance of the prosecution. He had stated in his examination-in-chief that it was Kaley who had pushed the deceased Padam Shahi into the canal and thereafter he had thrown one stone which hit the deceased Padam Shahi on his head. However, in his cross-examination, he stated that though he had seen Kaley throwing a stone at Padam Singh, he was not sure whether the stone had hit him or not.

10. As per post-mortem report (Exhibit A-4), the following injuries were noted on the dead body of the deceased:

- (i) Lacerated wound 17 cm x 5 cm x brain cavity deep on front & middle of skull & forehead and face between two eyes with compound comminuted fracture of underlying bone.
- (ii) Lacerated wound 4 cm x 1.5 cm x bone deep on outer side of face, just lateral to left eye.
- (iii) Lacerated wound 3.5 cm x 1 cm x bone deep on occipital region of skull.

11. It is evident from the nature and extent of the aforesaid injuries that those could only have been suffered by the deceased because of his fall into the dry canal with a rock bed. Though PW-9, the Investigating Officer, had stated in his evidence that he had seized one stone from the place of occurrence and had sent the same for forensic examination to find out the presence of any human blood stain therein and whether such bloodstain matched that of the blood of the deceased, no such forensic report was exhibited. In any case, the three injuries could have been suffered by the deceased only because of his abrupt fall into the dry canal and not by getting hit by stone(s) which could be lifted by a human being and thrown with force. Therefore, the accusation that the present appellant had thrown stones at the deceased which had resulted in grievous injuries to the deceased causing his death is, in our view, not a plausible scenario.

12. At this stage, we may examine Section 304 IPC which reads as under:

304. Punishment for culpable homicide not amounting to murder.—

Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for

life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death,

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

12.1. Thus, Section 304 IPC has got two parts. The first part is attracted if the act by which the death is caused is done with the intention of causing death or of causing such bodily injury as is likely to cause death. If the first part is attracted, then the punishment is either imprisonment for life or imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

12.2. The second part of Section 304 IPC would be attracted if the act by which the death is caused is done with the knowledge that it is likely to cause death but without any intention to cause death or to cause such bodily injury as is likely to cause death.

13. Considering the evidence on record, though the Trial Court as well as the High Court has not specified as to which part of Section 304 IPC is attracted, nonetheless we are of the view that it is part II of Section 304 IPC which is applicable in the facts of this case.

14. The incident had occurred on 12.02.1997. From the materials on record, it is seen that appellant was at that point of time, 33 years old. Today, we are in 2026, almost three decades have gone by since then. Appellant is now well over 60 years of age. We have also noted the genesis of the altercation between the deceased and the accused which escalated into a scuffle leading to fall of the deceased into the dry canal. All the injuries as noted above, around the face or on the skull of the deceased, clearly occurred because of the fall of the deceased into the dry canal which had a rock-bed.

15. It has also come on record that appellant Mathu alias Jagdish has undergone imprisonment for a period of over one and a half years. At this distant point of time, we are of the view that it would meet the ends of justice if we alter the sentence of imprisonment from RI for five years

to the period already undergone while maintaining the conviction.

16. Ordered accordingly.

17. Since the appellant is already on bail, the bail bond stands discharged.

18. Criminal Appeal is allowed to the extent indicated above.

.....J.
[UJJAL BHUYAN]

.....J.
[ARUN PALLI]

**NEW DELHI;
JUNE 25, 2026.**