IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 357 of 2025

Prakash Singh ..... Appellant

Vs.

State of Uttarakhand ..... Respondent

Present:
Mr. Vikas Anand, Advocate for the appellant.
Mr. Siddhartha Bisht, A.G.A. for the State of Uttarakhand.

Criminal Appeal No. 383 of 2025

Chandi Singh and Others ..... Appellants

Vs.

State of Uttarakhand ..... Respondent

Present:
Mr. Arvind Vashistha, Senior Advocate assisted by Ms. Devanshi Joshi, Advocate for the appellants.
Mr. Siddhartha Bisht, A.G.A. for the State of Uttarakhand.

Criminal Appeal No. 386 of 2025

Jaswant Singh alias Jassa and Another ..... Appellants

Vs.

State of Uttarakhand ..... Respondent

Present:
Mr. Arvind Vashistha, Senior Advocate assisted by Ms. Devanshi Joshi, Advocate for the appellants.
Mr. Siddhartha Bisht, A.G.A. for the State of Uttarakhand.

Criminal Appeal No. 387 of 2025

Jaswant Singh alias Nandi and Others ..... Appellants

Vs.

State of Uttarakhand ..... Respondent

Present:
Mr. Arvind Vashistha, Senior Advocate assisted by Ms. Devanshi Joshi, Advocate for the appellants.
Mr. Siddhartha Bisht, A.G.A. for the State of Uttarakhand.

JUDGMENT

Coram: Hon'ble Ravindra Maithani, J.
Hon'ble Siddhartha Sah, J.

Hon'ble Ravindra Maithani, J. (Oral)

Since all these criminal appeals arise from one and the same sessions trial, they are heard together and being decided by this common judgment.

2. The instant appeals have been preferred against the judgment and order dated 26.05.2025/27.05.2025, passed in Sessions Trial No. 223 of 2014, State v. Kashmir Singh and others, by the court of Third Additional Sessions Judge, Rudrapur, District Udham Singh Nagar. By it, the appellants have been convicted under Sections 302 read with 34, Section 120B read with Section 302 IPC and Section 201 read with 34 IPC and sentenced as follows:-

(i) Under Section 302 read with 34 IPC – imprisonment for life and a fine of Rs. 10,000/- and in default of payment of fine to undergo further imprisonment for a period of two years.

(ii) Under Section 120B read with 302 IPC - imprisonment for life and a fine of Rs. 10,000/- and in default of payment of fine to undergo further imprisonment for a period of two years.

(iii) Under Section 201 read with 34 IPC – rigorous imprisonment for a period of three years and a fine of Rs. 500/- and in default of payment of fine to undergo

further imprisonment for a period of one month.

3. Heard learned counsel for the parties and perused the record.

4. The prosecution case, briefly stated, is as follows. PW 1 Bachan Singh lodged a first information report on 24.08.2014. According to it, his son Harnam Singh @ Honey would make complaint against the manufacturers of illicit liquor, due to which Kashmir Singh & Sheeri, Lakhvinder Singh @ Viri, Jaswant Singh @ Nandi, Jassa SIngh, Mangal Singh @ Bhagat Singh, Binder Singh, Babbu Singh, Dara Singh, Prakash Singh @ Paasi Singh and Pappi Singh were inimical to him. They had extended threat to Harnam Singh @ Honey on multiple occasions in the past. On 21.08.2014, at about 02:00 p.m., these named persons visited the house of the informant, inquired about his son Harnam Singh and threatened him to kill Harnam Singh, which was witnessed by Bachan Singh, Gurmeet Singh, Ravindra Singh, etc. The FIR further records that backdrop of this was that on 20.08.2014, police had raided and destroyed the illicit liquor manufacturing unit of the appellants. On 22.08.2014, Abdul Rehman called the deceased Harnam Singh @ Honey at his residence and on the same night, his son Harnam Singh @ Honey and Kulwant Singh @ Gole were killed by the appellants and their dead bodies were thrown in the forest.

5. Based on this FIR, Chik FIR was recorded at the Police Station Kunda, District Udham Singh Nagar and Case Crime No. 58 of 2014 under Sections 302, 120B, 34 IPC was lodged against the appellants and against Kashmir Singh and Abdul Rahman.

6. In fact, the dead bodies of the deceased were located prior to lodging of the FIR and the inquest report of the deceased Harnam Singh was prepared on 24.08.2014 at 07:10 a.m. From near his dead body, a motorcycle bearing Registration No. DL 85 AM-2381 was also taken into custody by the police. The postmortem of the deceased Harnam Singh was conducted on 24.08.2014 at 03:45 p.m. According to the doctor, who conducted the postmortem of the deceased Harnam Singh, the cause of death was asphyxia as a result of ante-mortem strangulation.

7. The inquest of the deceased Kulwant Singh was also prepared on the same day i.e. 24.08.2014. His postmortem was conducted on 24.08.2014 at 02:45 p.m. As per the postmortem report, the cause of death of the deceased Kulwant Singh was also asphyxia as a result of ante-mortem strangulation.

8. According to the prosecution case, on 06.09.2014, the appellants Jaswant Singh @ Nandi and Bhagat Singh were apprehended while they were riding on a motorcycle bearing Registration No. UK06T 1978. The motorcycle was taken into custody, which according to the prosecution case, was used by the appellants in the commission of the crime. It is further the

prosecution case that on 31.08.2014, at the instance of the appellants Lakhvinder Singh @ Viri and Jaswant Singh @ Jassa, two ropes and a pair of shoes worn by the deceased Kulwant Singh @ Gole were recovered, and the appellants Lakhvinder Singh @ Viri and Jaswant Singh @ Jassa confessed that with the help of those ropes, they had killed the deceased.

9. The police also took into custody the blood stained soil and the simple soil and sent them for forensic examination. The FSL report was received, according to which there were blood on those articles. However, as such, no report was received that the appellants or any one of them were also present at the scene of occurrence. The Investigating Officer also prepared the site plans of multiple places relating to the offence, which are on record. After investigation, the charge sheet was submitted against all the appellants and one Kashmir Singh under Sections 302, 201, 120B and 34 IPC.

10. The cognizance was taken and on 12.01.2015, charges were framed against the appellants and Kashmir Singh for the offences punishable under Sections 120B read with 302 IPC, 302 read with 34 IPC and 201 read with 34 IPC, to which the appellants denied and claimed trial.

11. During trial, Kashmir Singh died and the case stood abated against him vide order dated 20.05.2023. Trial proceeded against the appellants.

12. In order to prove its case, the prosecution examined as many as 18 witnesses, namely, PW 1 Bachan Singh, PW 2 Ravindra Singh, PW 3 Ranjeet Singh, PW 4 SI Bhuwan Chandra Joshi, PW 5 Kaltar Singh, PW 6 Balwant Singh, PW 7 Gurmeet Singh, PW 8 Gurumukh Singh, PW 9 Arjun Singh, PW 10 Dr. Rakesh Kumar Sundariyal, PW 11 Jogendra Singh, PW 12 Harbhajan Singh @ Bhajan Singh, PW 13 Retd. SI Umesh Ram Arya, PW 14 SI Narendra Singh Rawat, PW 15 SI Kuldeep Singh, PW 16 Constable Gajendra Singh, PW 17 Constable Dharmendra Bharti and PW 18 Arvind Dangwal.

13. After the prosecution evidence was over, the appellants were examined under Section 313 of the Code of Criminal Procedure, 1973 ("the Code"). According to them, they have falsely been implicated and the witnesses have given false evidence against them.

14. After recording of the statement of the appellants under Section 313 of the Code, at the stage of argument, two witnesses, namely, CW1 Smt. Husna Bibi and CW2 Abdul Rahim were examined by the Court. They were cross-examined by the prosecution, but not cross-examined by the appellants.

15. CW1 Smt. Husna Bibi was examined in question and answer form. She has not stated anything about the prosecution case.

16. CW2 Abdul Rahim is perhaps the person, who, according to the prosecution, had called the deceased at his residence on 22.08.2014. According to him, he did not call the deceased at his residence. He has also not supported the prosecution case.

17. After hearing the parties, by the impugned judgment and order the appellants have been convicted under Sections 302 read with 34, Section 120B read with Section 302 IPC and Section 201 read with 34 IPC and sentenced as stated hereinbefore.

18. Learned Senior Counsel for the appellants, except the appellant Prakash Singh S/o Dhanna Singh submits that it is a case of circumstantial evidence and the chain is not complete; even there is no last seen evidence; there is no direct evidence; merely on the basis of some threat allegedly extended by the appellants, they have been convicted, which, it is argued, at the most may be termed as suspicion. Learned Senior Counsel submits that it cannot take a shape of proof beyond reasonable doubt. He also submits that at the instance of the appellants Lakhvinder Singh @ Viri and Jaswant Singh @ Jassa, two ropes and a pair of shoes worn by the deceased Kulwant Singh @ Gole were allegedly recovered, but, neither the prosecution has proved the contemporarily recorded disclosure statement nor the articles allegedly recovered are connected with the appellants. He also submits that even otherwise, these articles were found from some open place accessible to all, therefore, the prosecution has failed to prove its case beyond doubt; the appellants ought to have been

acquitted of the charges leveled against them, therefore, while allowing the appeals, the impugned judgment and order is liable to be set aside.

19. Learned counsel for the appellant Prakash Singh S/o Dhanna Singh submits that this appellant is not named in the FIR; nothing has been recovered from him; he has been implicated based on the confessional statement made by the co-accused, which is not corroborated to any extent; hence the appellant Prakash Singh S/o Dhanna Singh ought to have been acquitted of the charges levelled against him. Therefore, it is argued that while allowing the appeal of the appellant Prakash Singh S/o Dhanna Singh, the impugned judgment and order is liable to be set aside.

20. Learned State Counsel submits that the conviction is based on the evidence of PW 1 Bachan Singh, PW 2 Ravindra Singh, PW 3 Ranjeet Singh, PW 6 Balwant Singh and PW 7 Gurmeet Singh. He submits that PW 6 Balwant Singh is the person, who had lastly seen the deceased in the company of the appellants; there is a recovery at the instance of the appellants Lakhvinder Singh @ Viri and Jaswant Singh @ Jassa.

21. Learned State Counsel very fairly submits that the case is mainly based on rivalry between two groups, wherein the appellants had given threat to the deceased Harnam Singh; the appellants were in the manufacturing of illicit liquor, of which a complaint was made by the deceased Harnam Singh.

22. One of the basic principles of criminal jurisprudence is that the prosecution has to prove its case beyond reasonable doubt. A person may have killed someone is not a case proved beyond reasonable doubt. It should be with certainty that the person must have killed or has killed or, in fact, killed another person.

23. In the case of circumstantial evidence, in fact, each circumstance should be so interconnected so as to exclude every possibility of innocence of the person so charged.

24. In fact, what is proof beyond reasonable doubt and what are those aspects, have been discussed in the case State of Karnataka v. J. Jayalalitha and others, (2017) 6 SCC 263. In para 222 to 224, the Hon'ble Supreme Court discussed the law on this point and observed as follows:-

> "**Burden of proof and benefits of doubt**
>
> 222. That the burden of proof of a charge is on the prosecution subject to the defence of insanity and any other statutory exception has been authoritatively proclaimed in Woolmington v. Director of Public Prosecutions [Woolmington v. Director of Public Prosecutions, 1935 AC 462 (HL)] and testified by the following extract : (AC pp. 481-82)
>
> > "... Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception. If, at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner, as to whether the prisoner killed the deceased with a malicious intention, the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the

> charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained."

223. In Shivaji Sahabrao Bobade v. State of Maharashtra [Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033] , Hon'ble Krishna Iyer, J., in his inimitable expressional felicity cautioned against the dangers of exaggerated affinity to the rule of benefit of doubt as hereunder : (SCC p. 799, para 6)

> "6. ... The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand especial emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community. The evil of acquitting a guilty person light-heartedly as a learned author (Glanville Williams in "Proof of Guilt") has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicated "persons" and more severe punishment of those who are found guilty."

224. In Collector of Customs v. D. Bhoormall [Collector of Customs v. D. Bhoormall, (1974) 2 SCC 544 : 1974 SCC (Cri) 784] , this Court had observed (SCC p. 553, para 30) that in all human affairs, absolute certainty is a myth and the law does not require the prosecution to prove the impossible. It was highlighted that all that was required is the establishment of such a degree of probability that a prudent man may on this basis believe in the existence of the fact in issue. It was

> exposited that legal proof is thus not necessarily perfect proof and is nothing more than a prudent man's estimate as to the probability of the case."

25. Before the arguments are appreciated, it would be apt to examine as to what the witnesses have stated?

26. PW1 Bachan Singh is the informant. According to him, his son the deceased Harnam Singh @ Honey would complain against the manufacturer of illicit liquor, due to which Kashmir Singh @ Sheeri, Lakhvinder Singh @ Viri, Jaswant Singh @ Nandi, Binder Singh, Jassa Singh, Dara Singh, Mangal Singh @ Bhagat, Babbu Singh, Dara Singh, Prakash Singh @ Paasi, Pappi Singh and Abdul Rehman were inimical towards him. On 20.08.2014, at the information of deceased Harnam Singh @ Honey, police had destroyed the illegal liquor manufacturing unit of the appellants, due to which on 21.08.2014, all of them visited the house of this witness and enquired about the deceased Harnam Singh @ Honey, and extended threat of life to the deceased Harnam Singh @ Honey. According to this witness, on 21.08.2014, Abdul Rehman had telephonically called the deceased Harnam Singh @ Honey at his residence. The deceased Harnam Singh @ Honey along with his friend the deceased Kulwant Singh @ Gole visited the house of Abdul Rehman, but thereafter, they did not return. Their dead bodies were found in the forest on 24.08.2014. Thereafter, this witness lodged the FIR. He has proved the FIR, Ex. A1.

27. PW2 Ravindra Singh along with PW7 Gurmeet Singh, visited the house of the appellant Jaswant Singh @ Jassa on 20.08.2014 and purchased liquor. There, according to this witness, the appellant Jaswant Singh @ Jassa had said that the deceased Kulwant Singh @ Gole and one another had destroyed their articles, which were kept for making liquor. He also abused the deceased Kulwant Singh @ Gole and threatened him to life. This witness also stated that on 21.08.2014, the appellant Jaswant Singh @ Jassa along with other appellants extended threats. According to him, on 22.08.2014, the deceased Kulwant Singh @ Gole along with the deceased Harnam Singh @ Honey, had gone to Kashipur, but they did not return. They had visited Abdul Rehman at his residence on that day, and, subsequently, their dead bodies were recovered. PW7 Gurmeet Singh has corroborated the statement of PW2 Ravindra Singh.

28. PW3 Ranjeet Singh has stated that on 22.08.2014, at about 07:00, in the evening, he had spotted the appellants Lakhvinder Singh @ Viri, Mangal Singh @ Bhagat and Prakash Singh @ Paasi holding some articles in their hands and moving towards forest. This witness also tells that these appellants were into the manufacturing of illicit liquor. He has also stated that on the same date, he had further seen that Jassa, Lakhvinder Singh @ Viri, Nandi, Paasi and Mangal Singh @ Bhagat, Prakash, Lala Singh, Chandi Singh were enquiring about the deceased Kulwant Singh @ Gole, and also said that they would not spare the deceased Kulwant Singh @ Gole, on that date. According to this witness, the dead bodies of the deceased Harnam Singh @ Honey

and Kulwant Singh @ Gole were recovered from a place near the illicit liquor manufacturing unit of the appellants.

29. PW4 Bhuwan Chandra Joshi was posted at Police Station Rudrapur on the date of incident. According to him, he had prepared inquest report. He proved the inquest report of the deceased Harnam Singh @ Honey, Ex. A2. According to him, upon information having been received, he had also arrested the appellants Lakhvinder Singh @ Viri and Jaswant Singh @ Jassa, who, on interrogation on 31.08.2014, revealed that they could get recovered the ropes used in the killing of the deceased as well as the shoes of the deceased Kulwant Singh @ Gole, which were subsequently recovered. This witness has stated that a recovery memo was recorded at the spot, which this witness has also signed. He has also stated that on 20.09.2014, upon information having been received, the appellant Dara Singh, Prakash Singh and others were also arrested.

30. PW5 Kaltar Singh is the witness of inquest of the deceased Kulwant Singh @ Gole. He was subsequently declared hostile by the prosecution.

31. PW6 Balwant Singh has corroborated the statement of PW3 Ranjeet Singh.

32. PW8 Gurumukh Singh is also the witness of inquest of the deceased Harnam Singh @ Honey, Ex. A2.

33. PW9 Arjun Singh is another witness of inquest of the deceased Harnam Singh @ Honey.

34. PW10 Dr. Rakesh Kumar Sundariyal has conducted the post-mortem of the deceased Kulwant Singh @ Gole at 2:45 p.m. on 24.08.2014. According to him, the following injuries were found on the person of the deceased Kulwant Singh @ Gole:-

> "1. Face swollen and congested with tongue protruded and caught between teeth.
>
> 2. Conjunctiva congested and both eyeballs protruding
>
> 3. Ligature mark present in neck below thyroid cartilage encircling complete neck 26 cm x 1 cm with echymosis."

According to this witness, the cause of death was asphyxia as a result of ante-mortem strangulation. He has proved the post-mortem report, Ex. A7.

35. PW10 Dr. Rakesh Kumar Sundariyal has also conducted the post-mortem of the deceased Harnam Singh @ Honey at about 3:45 p.m. on the same date, and found the following injuries on his person:-

> "1. Face swollen with tongue protruded and caught between teeth.
>
> 2. Conjunctiva congested and both eyes protruding.
>
> 3. Ligature mark present in neck below thyroid cartilage. Ligature mark is a groove 26 cm x 1 cm encircling whole neck with surrounding echymosis.
>
> 4. No other injury found."

He has proved the post-mortem report of the deceased Harnam Singh, Ex. A8. According to him, the deceased Harnam Singh @ Honey also died due to asphyxia as a result of ante-mortem strangulation.

36. PW11 Jogender Singh and PW12 Harbajan Singh @ Bhajan Singh, both have not supported the prosecution case during trial. They have been declared hostile.

37. PW13 SI Umesh Ram Arya was Incharge Police Station Kunda on the date of incident. According to him, on that date, information was received at the police station that two dead bodies have been spotted at a place. Thereafter, he directed for preparation of inquest. This witness also reached at the place of incident where the dead bodies were located. According to him, a motorcycle, bearing Registration No. DL 85 AM-2381 was also spotted near the place where the dead bodies were found. This motorcycle was taken into custody. He has proved the recovery memo of it, Ex. A9. This witness has also proved the documents by which the plain and the blood stained soil were taken into custody. He prepared site plans, etc. According to him, the appellants Lakhvinder Singh @ Viri and Jaswant Singh @ Jassa were arrested and on their instance, some articles were also recovered. He has also stated about the arrest of appellant Prakash Singh and the recovery of the motorcycle from him, which, according to him, was used in the commission of crime. This witness has proved the recovery memo pertaining to it. He has also stated about the arrest of the appellants Jaswant Singh

@ Nandi and Mangal Singh @ Bhagat and recovery of the motorcycle. He has also proved the recovery memo pertaining to it. According to PW13 Umesh Ram Arya, on 20.09.2014, upon information having been received, Dara Singh, Prakash Singh @ Paasi, Chandi Singh and Balwinder Singh @ Binder were also arrested. He proved those documents. He has also stated about the arrest of Kashmir Singh @ Sheeri and Lal Singh @ Balwinder Singh. He proved their arrest memo, etc. as well as certain articles recovered from them.

38. PW14 SI Narendra Singh Rawat has recorded the chik FIR and made its entry in the General Diary. He has proved the documents as Ex. P15 and Ex. P16.

39. PW15 SI Kuldeep Singh has prepared inquest of the deceased Kulwant Singh @ Gole, which is Ex. P17. He has also stated about the arrest of some of the appellants. He has proved other police documents.

40. PW16 Constable Gajendra Singh is also the witness of certain arrest and recovery. He has stated about it.

41. PW17 Constable Dharmendra Bharti has also stated about the arrest of Kashmir Singh @ Sheeri and Lal Singh @ Balwinder.

42. PW18 Arvind Dangwal is the Investigating Officer, who has submitted the chargesheet. According to him, during

investigation, he made certain arrests; interrogated the arrested persons. He has proved some disclosure statements as well, and finally, proved the charge sheet, Ex. P34. This is the entire evidence.

43. Mainly, the prosecution relies on the following evidence:-

(i) The appellants were into the manufacturing of illicit liquor.

(ii) The deceased Harnam Singh @ Honey, the son of PW1 Bachan Singh was against the manufacturing of illicit liquor and he would make complaint against it.

(iii) On a complaint of the deceased Harnam Singh @ Honey, on 20.08.2014, the illicit liquor manufacturing unit of the appellants was destroyed by the police.

(iv) On 21.08.2014, at 02:00, in the afternoon, the appellants extended threat to the life of the deceased Harnam Singh @ Honey.

(v) On 22.08.2014, one Abdul Rehman had telephonically called the deceased Harnam Singh @ Honey, and his friend Kulwant Singh @ Gole at his residence. Thereafter, the deceased did not return to their respective homes.

(vi) On 22.08.2014, some of the appellants were located near a dam, when some of the

witnesses had gone to get fish, and at that time also, threats were extended to the deceased.

(vii) At the instance of the appellant Lakhvinder Singh @ Viri, two ropes, allegedly used in the commission of crime, were recovered on 31.08.2014, and on the same day, at the instance of the appellant Jaswant Singh @ Jassa, a pair of shoes, allegedly worn by the deceased Kulwant Singh @ Gole was recovered near the place of occurrence.

(viii) The FSL report records that the blood stained soil and other articles had human blood.

44. Admittedly, the ropes allegedly recovered at the instance of the appellant Lakhvinder Singh @ Viri were never forwarded for forensic examination. Did they have any blood or any DNA match with the deceased? The prosecution case is silent on it. Has there been any blood or any biological evidence, which could connect the appellants with the offence? There is no such forensic evidence.

45. In the case of Sharad Birdhichand Sarda v. State of Maharashtra, (1984)4 SCC 116, the Hon'ble Supreme Court has laid down five golden principles, which are applicable in the case

of circumstantial evidence. In para 153 of the judgment, the Hon'ble Supreme Court observed as follows:-

> "153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:
>
> (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.
>
> It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]
>
> > "Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."
>
> (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,
>
> (3) the circumstances should be of a conclusive nature and tendency,
>
> (4) they should exclude every possible hypothesis except the one to be proved, and
>
> (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

46. Learned State Counsel has argued that PW 6 Balwant Singh has given last seen evidence, but it is not so. PW 6 Balwant Singh has merely stated that he had seen some of the appellants on 22.08.2014, who were extending threats to the deceased Kulwant Singh @ Gole.

47. The threat allegedly extended by the appellants to the deceased Harnam Singh @ Honey and Kulwant Singh @ Gole, in no manner connects the appellants with the crime. Threats extended, howsoever grave may be, unless accompanied by some overt act and proof in the court of law may not bring home guilt to an accused.

48. The prosecution has relied upon another piece of evidence, which is the alleged recovery of the ropes under Section 27 of the Indian Evidence Act, 1872 ("the Act"). On this aspect, it is argued that there is no disclosure statement as such. The prosecution has tried to prove the recovery under Section 27 of the Act. The law is settled that confession made before the police is not admissible and it cannot be proved, but, if any recovery is made based on such statement, to that extent the recovery may be proved.

49. In the case of Bodhraj *alias* Bodha and others v. State of Jammu and Kashmir, (2002) 8 SCC 45, the Hon'ble Supreme Court has discussed the law relating to recovery at the instance of the accused. In para 18, the Hon'ble Supreme Court observed as follows:-

> "18. .....
> .....
> The object of the provision i.e. Section 27 was to provide for the admission of evidence which but for the existence of the section could not in consequence of the preceding sections, be admitted in evidence. It would appear that under Section 27 as it stands in order to render the evidence leading to discovery of any fact admissible, the information must come from any accused in custody of the police. The requirement

> of police custody is productive of extremely anomalous results and may lead to the exclusion of much valuable evidence in cases where a person, who is subsequently taken into custody and becomes an accused, after committing a crime meets a police officer or voluntarily goes to him or to the police station and states the circumstances of the crime which lead to the discovery of the dead body, weapon or any other material fact, in consequence of the information thus received from him. This information which is otherwise admissible becomes inadmissible under Section 27 if the information did not come from a person in the custody of a police officer or did come from a person not in the custody of a police officer. The statement which is admissible under Section 27 is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused and the prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. ....”

50. In view of the law settled by the Hon'ble Supreme Court, the prosecution has to record the information given by the accused and prove it. As held in the case of Bodhraj (*supra*), the exact information must be adduced through evidence. At the cost of repetition, it may be noted that in the case of Bodhraj (*supra*), the Hon'ble Supreme Court has held that “**The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events**”.

51. PW 18 Arvind Dangwal is the Investigating Officer. He has been asked about the disclosure statement. According to him, it was recorded in the case diary and in para 35 of his statement, he states that the disclosure statement was not separately recorded by him.

52. The fact remains that the recovery was made from an open place accessible to all and it has not been established that the ropes allegedly recovered were, in fact, used. These ropes were never sent for forensic examination.

53. Therefore, this Court is of the view that whatever evidence has been adduced by the prosecution, it is much weak kind of evidence. The circumstances are not connected to each other to indicate that it is the appellants and the appellants alone, who have committed the offence.

54. In view of the above discussions, this Court is of the view that the prosecution has utterly failed to prove its case beyond reasonable doubt and the appellants ought to have been acquitted of the charge levelled against them. Learned court below has committed an error in convicting and sentencing the appellants. Therefore, the appeals deserve to be allowed.

55. The appeals are allowed.

56. The judgment and order dated 26.05.2025/27.05.2025, passed in Sessions Trial No. 223 of 2014, State v. Kashmir Singh and others, by the court of Third Additional Sessions Judge, Rudrapur, District Udham Singh Nagar is set aside.

57. The appellants Prakash Singh, Chandi Singh, Lal Singh @ Balwinder Singh, Balwinder Singh @ Binder, Jaswant Singh @ Jassa, Lakhveer Singh @ Viri, Jaswant Singh @ Nandi, Bhagat Singh @ Bhagat, Prakash Singh @ Paasi and Dara Singh are acquitted of the charge under Sections 302 read with 34, Section 120B read with Section 302 IPC and Section 201 read with 34 IPC.

58. The appellants are in jail. Let they be released forthwith, if not wanted in any other case, subject to their furnishing personal bond and to sureties each of the like amount to the satisfaction of the court concerned under Section 437A of the Code.

59. Let a copy of this judgment along with the trial court record be sent to the court concerned.

60. Let a copy of this judgment along with the trial court record be sent to the court concerned.

(Siddhartha Sah, J.) **(Ravindra Maithani, J.)**

25.02.2026

Avneet/