
(2011) 04 UK CK 0071

In the Uttarakhand High Court

Case No : Criminal Appeal No. 672 of 2001 and Old No. 1847 of 2000

Nitin @ Vippu

APPELLANT

Vs

State of U.P (now State of Uttarakhand)

RESPONDENT

Date of Decision : 08-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307
Uttar Pradesh Reorganisation Act, 2000 — Section 35

Citation : (2011) 1 NCC 850

Hon'ble Judges : V.K. Bist, J; Prafulla C. Pant, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—All these four appeals, are directed against the judgment and order dated 27.07.2000/31.07.2000 passed by Additional Sessions Judge/Special Judge, Anti Corruption, (East), Dehradun in Session Trial No. 125 of 1997, where by said court has convicted accused/Appellants Dheeraj Kalra, Saurabh, Bhagat @ Bharat Singh, Nitin @ Vippu, Rishi Kumar, Sanjeev @ Happy and Som Prakash u/s 302 read with Section 149 of Indian Penal Code, 1860 (for short I.P.C), and each one of them has been sentenced to imprisonment for life and also directed to pay fine of Rs. 10,000/-. The accused/Appellants named above are further convicted u/s 148 I.P.C, and each one is sentenced to rigorous imprisonment for a period of two years on that count.

2. Heard learned Counsel for the parties and perused the lower court record.

3. Prosecution story, in brief, is that on 24.09.1996, at about 10.30 a.m, Vipin Singh Negi (PW1) along with Alok Chandana (deceased), Suyash Kukreti (PW3) and Rajneesh Chatwal(PW4) were standing near cycle stand within the campus of D.A.V (PG) College, Dehradun. Accused/Appellant Dheeraj Kalra accompanied with other accused/Appellants namely Rishi Kumar, Som Prakash, Saurabh, Nitin @ Vippu , Bhagat and Sanjeev @ Happy, armed with LATHI'S and KHUKRI'S

asked Vipin Singh Negi (PW1/informant) and Alok Chandana (deceased), not to contest election of commerce faculty of the College. When the two declined to oblige, the accused/Appellants assaulted them in which Vipin Singh Negi (PW1) informant and Alok Chandana (deceased) suffered injuries. Other students of the College rushed to the spot and some of them took Alok Chandana to Coronation Hospital for treatment. Vipin Singh Negi was also taken to the same hospital. However, he appears to have advised to lodge the First Information Report, on which he came to Police Station Dalanwala, and gave a written First Information Report (Ex A1) on the very day (24.09.1996) at about 11.a.m, on the basis of which crime No. 275 of 1996 was registered at the police station relating to offences punishable u/s 147, 148, 149, 307 and 323 I.P.C against the seven accused/Appellants namely Dheeraj Kalra, Rishi Kumar, Som Prakash, Saurabh, Vippu @ Nitin, Bhagat and Happy @ Sanjeev and other unknown persons. Necessary check report (Ex A-8) was prepared by PW7 Rajendra Prasad (Head Constable) , and entry was made in the General Diary (copy of extract A-9). Vipin Singh Negi (PW1) was taken back to Coronation Hospital where he got his injuries recorded by PW8 Dr. Bharat Kishore at 11.30 a.m who prepared injury report (Ex A-15). Meanwhile, PW8 Dr. Bharat Kishore at about 11.20 a.m on the very day (24.09.1996) recorded injuries on the person of Alok Chandana in the Coronation Hospital and prepared injury report (Ex A-16) in which he mentioned that the general condition of the injured was low and he was admitted in the Emergency Ward. Urgent call was sent to the surgeon. As per the prosecution case Alok Chandana was referred for further medical treatment to Post Graduate Institute of Medical Sciences, Chandigarh , but on his way to said hospital in the late hours of 24.09.1996, he died and brought back to the same hospital (by the same ambulance). The case crime was converted relating to offence punishable u/s 302 I.P.C. Initially, the investigation was taken up by PW12 Sub Inspector Prem Pal Singh , who interrogated the witnesses, inspected the spot, and arrested the four accused (Rest appear to have surrendered to the court). However, subsequently the investigation was transferred to PW11 Inspector Virendra Kumar Sharma. After death of Alok Chandna, his dead body was taken into possession by the police on 25.09.1996, at about 7.15 P.m and inquest report (Ex A-4) was prepared. The police further prepared Site Plan (Ex A-22), sketch of the dead body (Ex-A20), letter of the Chief Medical Officer (Ex-A18), and police form No. 13 (Ex-A19), etc, and the dead body was sent for post mortem examination in sealed condition through PW10 Constable Anil Kumar and one Constable Lokendra Singh. Post mortem examination was conducted by PW6 Dr. C.M. Tyagi, of Doon Hospital, on 25.09.1996, at about noon, who prepared autopsy report (Ex A-7). Said Medical Officer opined that the deceased had died due to shock and hemorrhage, as a result of ante mortem injuries. The Investigating Officer took the blood stained clothes of the deceased and got the same sent for chemical analysis to Forensic Science Laboratory Agra. On completion of investigation, charge sheet (Ex A-21)was filed by PW 11 Inspector Virendra Kumar Sharma against accused/Appellants namely Dheeraj Kalra, Rishi Kumar, Saurabh, Som Prakash, Sanjeev @ Happy , Nitin @ Vippu and Bhagat @

Bharat Singh.

4. On receipt of the charge sheet, the Chief Judicial Magistrate, Dehradun, after giving necessary copies to the accused, as required u/s 207 of Code of Criminal Procedure , appears to have committed the case to the court of Sessions for trial. On 30th of March 1998, after hearing the parties, the trial court framed charge of offences punishable u/s 148 and 149 read with Section 302 I.P.C against all the seven accused, namely Rishi Kumar, Som Prakash, Saurabh, Dheeraj Kalra, Nitin @ Vippu, Bhagat and Sanjeev @ Happy who pleaded not guilty and claimed to be tried. Additional charge was framed separately against accused/Appellants Rishi Kumar, Saurabh and Dheeraj Kalra relating to offence punishable u/s 147 and 323 I.P.C., and alternative charge relating to offence punishable u/s 302 read with Section 149 I.P.C was framed against the accused/Appellants Happy @ Sanjeev, Som Prakash, Nitin @ Vippu and Bhagat @ Bharat on the very day (30.03.1998). All the accused pleaded not guilty to all the charges and claimed to be tried. On this prosecution got examined PW1 Vipin Singh Negi (informant and injured eye witness) , PW2 Rajeev Negi (eye witness), PW3 Suyash Kukreti (eye witness) , PW4 Rajneesh Chatwal (declared hostile), PW5 Dr. Ajay Sharma (who sent information from Coronation Hospital to police station regarding death of Alok Chandana), PW6 Dr. C.M. Tyagi (who conducted post mortem examination), PW7 Assistant Sub Inspector Rajendra Prasad (who prepared check report and made entry in the General Dairy relating to the First Information Report), PW8 Dr. Bharat Kishore (who recorded injuries on person of Alok Chandana and Vipin Singh Negi on 24.09.1996), PW9 Mahendra Lal Sharma, (the then Sub Inspector who prepared inquest report), PW10 Constable Anil Kumar (who along with Constable Lokendra Kumar took dead body of deceased for post mortem examination), PW11 Inspector Virendra Kumar Sharma (who completed the investigation) and PW12 Sub Inspector Prem Pal Singh (who initially investigated the crime). Oral and documentary evidence was put to the accused u/s 313 Code of Criminal Procedure , in reply to which they alleged same to be false and pleaded that they have been falsely implicated in the case, due to enmity. Accused Saurabh took plea of alibi. Accused Nitin @ Vippu, Sanjeev @ Happy and Som Prakash pleaded that they were not students of the College. In defence DW1 P.L. Bist Office Superintendent of D.A.V. (P.G) College and DW2 Jaywant Singh cycle stand contractor , DW3 Tajendra Pal Singh and DW4 Pravesh Kumar Nagpal were examined. The last two witnesses were got examined on behalf of the defence in support of plea of alibi of accused Saurabh. On 27.07.2000 the trial court, after hearing the parties, found that prosecution has successfully proved charge of offence punishable u/s 148, and that of one punishable u/s 302 read with Section 149, against all the seven accused. After hearing on sentence, on 31.07.2000, the trial court sentenced each one of the convicts to imprisonment for life, and directed to pay fine of Rs. 10,000/-under Section 302 read with Section 149 I.P.C. It further sentenced each one of the convicts to rigorous imprisonment for a period of two years u/s 148 I.P.C. Aggrieved by said judgment and order dated 27.07.2000/31.07.2000,

passed by Additional Sessions Judge/Special Judge, Anti Corruption, (East), Dehradun in Session Trial No. 125 of 1997, all these four appeals were filed before Allahabad High Court, from where, the same are received u/s 35 of U.P. Reorganization Act, 2000 (Central Act 29 of 2000), for their disposal.

5. Before further discussion, we think it just and proper to mention here the ante mortem injuries found on the dead body of Alok Chandana by PW6 Dr. C.M. Tyagi , on 25.09.1996, which are mentioned in the autopsy report (Ex A-7). The same are being reproduced below:

1. Stitched wound 1cm x 0.5cm on left side head, 1/2 cm above left eye brow.
2. Abraded contusion in area of 1cm x .1cm 6 cm below chin.
3. Abraded contusion in area of 2cm x 1cm on left side of thigh. Laterally 1 cm above left knee joint.
4. A stitched wound 5 cm x 0.5 cm on back of trunk. Right side 8 cm below lower angle of neck.
5. A stitched wound 1 cm x 0.5 cm on back of neck. 1.5 cm above lower angle of neck, frontal bone of neck was found fractured.

On internal examination haematoma was also found present. Brain was found lacerated. Right lung was found ruptured. Cavity on left lung was found full of blood. PW6 Dr. C.M. Tyagi opined that deceased had died due to shock and hemorrhage as a result of ante mortem injury.

6. Corresponding injuries were observed by PW8 Dr. Bharat Kishore at 11.20 a.m on 24.09.1996 in Coronation Hospital on the person of Alok Chandana (before his death) in respect of which injury report (Ex A-16) was prepared . The four injuries observed by said Medical Officer are being reproduced below:

1. An incised wound of 1cm x 0.5 cm on the neck at the back. Skin deep. Bleeding present.
2. An incised wound of 3cm x 1 cm on the back at right scapulary region. Depth not probed in patient interest. Bleeding present.
3. An incised wound of 2 cm x 0.5 cm on the left eyebrow at lateral angle. Clotted blood present.
4. An abrasion of 1x3 cm on the right ala of nose. Clotted blood present.

PW8 Dr. Bharat Kishore observed that the condition of the patient was serious. His blood pressure was 50 and difficulty in respiration. According to aforesaid Medical Officer Alok Chandana was admitted in Emergency Ward, and urgent call was sent to surgeon. Police and Magistrate, were also informed. PW8 Dr. Bharat Kishore further told that injury No. 1, 2 and 3 observed by him in the injury report (Ex A-16) could have been caused by sharp edged weapon. He further told that the injuries could have been caused on 24.09.1996 at about 10.30 a.m.

He further told that injury No. 4 observed by him could have been caused by LATHI.

7. After going through the evidence of PW6 Dr. C.M. Tyagi read with autopsy report (Ex A-7), and that of PW8 Dr. Bharat Kishore read with injury report (Ex A-16), we find it proved on the record that Alok Chandana had died a homicidal death on 24.09.1996. Now, we have to examine whether accused/Appellants namely Dheeraj Kalra, Rishi Kumar, Saurabh, Som Prakash, Sanjeev @ Happy, Nitin @ Vippu and Bharat @ Bhagat, armed with deadly weapons, formed an unlawful assembly, and with common object committed murder of Alok Chandana (deceased) .

8. PW1 Vipin Singh Negi , is informant and injured eye witness. This witness has stated that on 24.09.1996 at about 10.30 a.m he along with Alok Chandana(deceased), Suyash Kukreti (PW3) and Rajneesh Chatwal (PW4) was standing near cycle stand, when accused/Appellants Dheeraj Kalra, Som Prakash, Happy @ Sanjeev, Nitin @ Vippu, Bhagat, Rishi and Saurabh came there. The witness further states that accused Dheeraj Kalra asked him not to contest the election. In reply to this the accused Dheeraj Kalra was told that election can be contested by any one. Thereafter, Alok Chandana also told the accused Dheeraj Kalra that he would certainly participate in the election. On this Dheeraj Kalra said, " ;g cgqr cksy jgk gS bl lkys dks ;gha ekj Mkyks "(He is speaking too much. Kill him). And thereafter accused Bhagat, armed with knife, gave a blow with it on the back of Alok Chandana , and immediately thereafter accused Som Prakash armed with KHUKHRI(sharp edged pointed weapon) assaulted with said weapon on the neck on Alok Chandana, accused Vippu (Nitin) assaulted with another KUKHRI near the eye of Alok Chandana. PW1 Vipin Singh Negi further narrates that as soon as he came forward to mediate, accused Saurabh and accused Rishi caught hold of him and accused Dheeraj Kalra gave a blow with a DANDA (rod) on his head. The witness states that he and Alok Chandana were got injured in the incident. The witness further states that Alok Chandana after getting injured went towards the canteen but he got entangled with barbed wire of cycle stand and fell down. PW1 Vipin Singh Negi further states that accused Dheeraj Kalra, Saurabh, and Rishi chased him and assaulted with DANDA. There was panic among the 300 students, who were in the College. Some students took Alok Chandana immediately on a motor cycle to Coronation Hospital. The witness further states that he too was taken to Coronation Hospital for treatment but advised to get the First Information Report lodged of the incident. PW1 Vipin Singh Negi further told that thereafter he and Suyash Kukreti (PW3) went to police station Dalanwala and got lodged the First Information Report by giving written report (Ex A-1). According to this witness thereafter he was taken back to Coronation Hospital for medical examination. This witness has also proved the fact that later his blood stained clothes and that of Alok Chandana were handed over by him to the police who prepared memorandums Ex A-2 and Ex A-3. According to PW1 Vipin Singh Negi, Alok Chandana was referred from Coronation Hospital to Chandigarh but on his way to Chandigarh he succumbed to the

injuries.

9. The statement of above mentioned eye witness(injured PW1 Vipin Singh Negi) gets corroboration from the injury report (Ex A-15) prepared by PW8 Dr. Bharat Kishore of Coronation Hospital who recorded following injury on person of Vipin Singh Negi on 24.09.1996, at about 11.30 a.m:

A lacerated wound of 2.5 cm x 0.5 cm on the right side of head. 7 cm above the right eye brow. Clotted blood present.

Above mentioned medical officer PW8 Dr. Bharat Kishore has observed in the injury report (Ex A-15) that the injury found on person of Vipin Singh Negi could have been caused by some blunt object. Duration was fresh and injury was simple. In his statement PW8 Dr. Bharat Kishore has stated that the injury could have been caused on the person of Vipin Singh Negi on 24.09.1996, at about 10.30 a.m.

10. The prosecution story is further corroborated from the statement of another eye witness PW3 Suyash Kukreti who has also narrated the incident. He told that he was present near cycle stand in the D.A.V College with Vipin Negi (informant), Alok Chandana (deceased) and Rajneesh Chatwal (PW4). The witness further told that accused/Appellants Dheeraj Kalra, Som Prakash, Happy, Bhagat, Nitin @ Vippu, Saurabh and Rishi Kumar came there. The witness further states that when Vipin Negi declined to accept the request of Dheeraj Kalra not to contest election, and Alok Chandana also told that he would certainly contest the election Dheeraj Kalra told that he speaks too much, kill him, on this, according to the witness (PW3) accused Bhagat gave a blow with KNIFE on the back of Alok Chandana, where after Som Prakash armed with KHUKHRI assaulted on his neck. The witness has further corroborated the fact that Dheeraj Kalra gave a blow with DANDA on the head of Vipin Singh Negi. This witness has further corroborated that after Alok Chandana fell down he was assaulted by accused Happy with a KHUKHRI. He has further corroborated that he has also gave a blow with DANDA of Alok Chandana. PW3 Suyash Kukreti has also corroborated the fact that Vipin Singh Negi (informant) lodged First Information Report, and two students took Alok Chandana to Coronation Hospital. The witness further corroborated that Vipin Singh Negi lodged First Information Report at police station Dalanwala.

11. PW4 Rajneesh Chatwal had not supported the prosecution case and this witness was got declared hostile as he told that he could not see the incident. But this witness corroborated the fact that Alok Chandana, Vipin Negi and Kukreti were present at the place of incident on 24.09.1996, at about 10.30 a.m. It appears that this witness was won over by the defence. The injury report (Ex A-16) shows that injured Alok Chandana was brought by Rajneesh Chatwal in the Coronation Hospital where his injuries were recorded at 11.20 a.m (on 24.09.1996).

12. PW2 Rajeev Negi has also partly corroborated the prosecution story. This

witness has proved the fact that Vipin Negi gave blood stained clothes to the police and (Ex A-2) was prepared , which was signed by him. The witness has further proved inquest report (Ex A-4) prepared by the police after death of Alok Chandana.

13. After carefully reading the ocular evidence adduced by injured eye witness PW1 Vipin Singh Negi and that of PW3 Suyash Kukreti, which is corroborated by the medical evidence, we agree with the trial court that as against accused/Appellants Dheeraj Kalra, Som Prakash, Bhagat @ Bharat Singh, Rishi, Nitin @ Vippu, Saurabh and Sanjeev @ Happy, it is fully proved beyond reasonable doubt that all the seven accused armed with deadly weapons (LATHI"S, KHUKRI"S and KNIVES) formed an unlawful assembly and in furtherance of common object committed murder of Alok Chandana.

14. On behalf of the Appellants it is argued that the First Information Report is ante time. In this connection it is pointed out that injuries on the person of PW1 Vipin Singh Negi were recorded by the medical officer in Coronation Hospital at 11.30 a.m and as such if it is accepted that he went from there to police station, the F.I.R could not have been lodged at 11.a.m. However, on scrutiny of the evidence on record, we find that what has been stated by PW1 Vipin Negi is that he firstly went to Coronation Hospital from where he was advised to get lodged First Information Report, and after lodging First Information Report went again to Coronation Hospital. As such there is no reason to doubt the time of lodging of First Information Report.

15. It is also argued on behalf of the Appellants that since PW1 Vipin Singh Negi has stated that after Alok Chandana was assaulted, he ran towards cycle stand where he fell down after getting entangled with the wire as such it can not be ruled out that he died of the injury suffered after falling down on hard surface. We do not find substance in the argument advance on behalf of the Appellants as the nature of injuries suffered by the injured shows that the two injuries were caused by sharp edged weapon, and depth of the injury on the back is not such which could have been caused due to fall by entangling with the barbed wire.

16. It is also submitted on behalf of the Appellants that no specific role has been assigned to the Appellants in the First Information Report and the prosecution has tried to improve by assigning specific role in the statements of PW1 Vipin Negi and PW3 Suyash Kukreti. In this connection our attention is drawn to principle of law laid down in Deoraj Goala and Anr. v. State of Assam 2011 CRI.L.J. 817. We have gone through said case law and examined the evidence on record. In the present case the facts are different to the case referred on behalf of the Appellants. In the present case in the First Information Report, PW1 Vipin Negi has given all necessary facts. We can not turn a blind eye that informant Vipin Negi (PW1) was in an injured condition when he lodged the First Information Report.

17. Attention of this Court is also drawn to the contradiction in the statements of

PW1 Vipin Singh Negi (injured eye witness) and the one given by PW12 Sub Inspector Prem Pal Singh (Investigating Officer) . The informant has stated that Station House Officer and Investigating Officer were at the police station when he lodged the First Information Report. On the other hand Investigating Officer has stated that he was not at the police station. Reliance is placed in this connection on the principle of law laid down by Apex court in Dr. Sunil Kumar Sambhudayal Gupta and Ors. v. State of Maharashtra 2011, CRI.L.J. Page 705. We have considered the contradiction pointed out in the statements of the two witnesses and went through the case of Dr. Sunil Kumar Sambhudayal Gupta (SUPRA). Unlike the case referred, in the present case the contradiction can not be said to be material one. Unless the informant knows at the police station as to who is the Station House Officer or Investigating Officer, he can not say that whether such person was present at the spot or not. Apart from this, the Investigating Officer gets investigation only after the check report is prepared of F.I.R and crime is registered, and not before that, as such we find little force in the submission made on behalf of the Appellants.

18. Much emphasis was given on behalf of the Appellants that Bed Head Ticket of injured Alok Chandana (deceased) was not produced by the prosecution as such it is not clear that when surgery took place and when he was referred to P.G.I. Had there been no evidence given by PW8 Dr. Bharat Kishore that Alok Chandana was examined at the time of admitting him in the hospital and surgeon was immediately called, it could have been said that non production of Bed Head Ticket creates some doubt as to the exact time of death of Alok Chandana, but having considered all the medical evidence on record, including the statement of PW6 Dr. C.M. Tyagi, who conducted post mortem examination we do not find the above mentioned reason sufficient to disbelieve the testimony of injured eye witness PW1 Vipin Negi which is supported by another eye witnesses PW3 Suyash Kukreti.

19. Lastly, it is argued that accused/Appellants Saurabh was not at the place of incident at the time when the occurrence is said to have taken place. It is also pointed out that accused/Appellants Sanjeev @ Happy, Nitin @ Vippu, Bhagat Singh @ Bharat and were not the students of College. In our opinion it does not make the difference whether the accused/Appellants were students of the College or not. What matter is that they committed the murder in the presence of the witnesses. It is not uncommon that during the election of College, outsiders are also brought to settle score with the rival party. As far as plea of alibi is concerned, it has come on the record that DW4 Pravesh Kumar Nagpal himself has admitted that Saurabh told his father that he is going to College as some quarrel has taken place. He further admitted that when he went to police station Dalanwala, Saurabh was found sitting there. Learned Counsel for the Appellants failed to explain as to what made Saurabh to go to the police station, if he had no concern with the incident. In the circumstances, what the eye witnesses are stating can not be doubted.

20. For the reasons as discussed above we do not find force in these appeals, which are liable to be dismissed. Accordingly, all the four appeals are hereby dismissed. The impugned judgment and order dated 27.07.2000/ 31.07.2000, passed by Additional Sessions Judge/Special Judge, Anti Corruption, (East), Dehradun in Session Trial No. 125 of 1997, whereby the accused/ Appellants Dheeraj Kalra, Saurabh, Rishi Kumar, Nitin @ Vippu, Bhagat @ Bharat, Sanjeev @ Happy and Som Prakash are convicted and sentenced u/s 302 read with Section 149 and u/s 148 I.P.C is hereby affirmed. The accused/Appellants are on bail. Their bail is cancelled. The lower court record be sent back to make the accused/Appellants serve out the sentence awarded to them by the trial court.