
(2009) 10 UK CK 0004
In the Uttarakhand High Court

Parvez Miyan and Vishnu Chand Gautam	APPELLANT
Vs	
The State Sudhir Kumar Wason Vs The State	RESPONDENT

Date of Decision : 14-10-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 313, 323, 374, 397
Penal Code, 1860 (IPC) — Section 325, 34, 342, 377, 511

Citation : (2010) 1 NCC 292

Hon'ble Judges : Dharam Veer, J

Bench : Single Bench

Judgement

Dharam Veer, J.—All the above four cases i.e. two appeals and two revisions, have been preferred against the common judgment and order; the appeals have been preferred by the appellants-accused against the conviction and sentence passed against them by the trial court while the revisions have been preferred by the revisionist/ complainant with prayer to enhance the sentence. As the facts and issue involved in all the above cases is one and the same, hence all of them are being disposed of by this common judgment and order.

2. Criminal Appeal Nos. 453/01 & 454/01 preferred, u/s 374(2) of The Code of Criminal Procedure, 1973 (hereinafter to be referred as Cr.P.C.), are directed against the common judgment and order dated 29-10-1993 passed by the III Addl. Sessions Judge, Nainital in S.T. No. 126/1990, State v. I.C. Sharma and Ors., whereby the appellants-accused Parvez Mian and V.C. Gautam have been convicted u/s 342 and 325 of The Indian Penal Code, 1860 (hereinafter to be referred as the I.P.C.). Each of them was convicted and sentenced u/s 342 IPC for one year's R.I. with fine of Rs. 1,000/- each and in default, three months further R.I. was awarded. Each of the appellants-accused was further convicted and sentenced u/s 325 IPC for two years' R.I. with fine of Rs. 10,000/- each and in default, one year's further R.I. was awarded. It was also directed that both the sentences shall run concurrently. Co-accused I.C. Sharma was acquitted by the trial court for the offences under which he was charged.

3. Criminal Revisions No. 489/01 and 490/01, both have been preferred by the revisionist/ complainant under Sections 397/401 of the Cr.P.C. against the same judgment and order dated 29.10.1993 passed by the III Addl. Sessions Judge with the prayer to enhance the sentence awarded to the opposite party No. 2/ accused- V.C. Gautam & Parvez Mian respectively.

4. In brief the prosecution case is that injured/ complainant Sudhir Kumar Wasan (P.W.1) was taken from his shop Diamond Drycleaners, Rudrapur on 26.2.1987 by the appellants-accused S.I. V.C. Gautam & S.I. Parvez Mian at about 6:00 PM and was lodged in the lock up at P.S. Rudrapur. The above-said two police sub-inspectors asked him to pay Rs. 10,000/- as demanded by I.C. Sharma, In-charge of the same P.S. Rudrapur. Even on the complainant's asking, no intimation was sent to the members of his family. At about 10:00 AM on the next day i.e. on 27.2.1987, complainant's brother Yashpal(PW2) met him in the lock up where the complainant handed over the keys of shop to his brother. Even then S.I. V.C. Gautam & S.I. Parvez Mian (appellants-accused) demanded Rs. 10,000/- from the complainant's brother for releasing his brother. When the complainant was not released, his wife Smt. Saroj Wason sent a telegram (Ex.Ka-3) to the Superintendent of Police, Nainital on 27.2.1987 at 12:00 PM with the averments that her husband Sudhir Wason was illegally detained in the P.S. Rudrapur since 6 PM of the last day and prayed that her husband may be got released. When the demand was not met he was taken out from the lock up and he was beaten at about 6-6:30 P.M. on the same day i.e. on 27.2.1987 by S.I. V.C. Gautam & S.I. Parvez Mian (appellants-accused). Inspector I.C. Sharma also came there who too hit the complainant from the rope of the handcuff which hit on his left eye. When the complainant felt pain, he requested the police personnel to provide him the medical aid but no medical aid was provided to him rather S.I. V.C. Gautam himself applied some ointment into the complainant's eye and again lodged him into the lock up. On the morning of 28.2.1987, when the complainant Sudhir Wason was being taken in a Jeep towards Haldwani by the police then the appellant-accused S.I. Parvez Mian came on a motorcycle and got the jeep returned to Rudrapur saying that if the complainant is produced in jail or before a judge, it would require medical examination which will put them into trouble. Appellant-accused S.I. Parvez Mian also suggested for getting the complainant bailed out from the court of Munsif Magistrate, Rudrapur. Accordingly, the complainant was taken in a jeep to the court of Munsif Magistrate, Rudrapur and there while he was retained in the jeep itself, his orders for bail were obtained from the court of Munsif Magistrate, Rudrapur. It was then at about 6 PM of 28.2.1987, the complainant was released and then only he came to know that he was booked in the case crime No. 92/1987 u/s 377/511 IPC (in that case complainant Sudhir Wason was acquitted by the court of CJM, U.S, Nagar dated 18.10.2004 in CrI. Case No. 1032/2004). Immediately after his release he sent a telegram to S.P. Nainital with the averments that he was arrested by the police of Rudrapur on 26.2.1987 at about 6 PM where Marpit was committed with him by the police and he sustained injuries on his body and

left eye. It was further stated that the police by illegally detained him under custody for two days; produced him in the court of Munsif Rudrapur on 28.2.1987 from where he was released on bail. The telegram is Ex.Ka-1. Thereafter, the complainant/injured went to Haldwani for his medical treatment as well as for treatment of his left eye. The medical examination on the person of injured Sudhir Kumar Wason was conducted on 28.2.1987 at 8:30 PM by P.W.5 Dr. Virendra Kumar Dixit and the injury report prepared is Ex.Ka-5. The medical officer advised the injured/complainant for the treatment of his left eye from Ophthalmic Surgeon. Thereafter, the complainant went at the Sitapur Eye Hospital but the doctor was not available there. Thereafter, he had gone for the treatment of his eye to the All India Institute of Medical Sciences (AIIMS), New Delhi where his eye, which had been damaged in the aforesaid beating, had to be removed there, the medical report prepared by Dr. Rajpal at AIIMS is Ex. II. Thereafter, the complainant filed a writ petition in the Hon''ble Supreme Court of India mentioning the above-said incident therein with the prayer to issue writ of mandamus to direct the Central Bureau of Investigation to investigate into the matter and tender a report in accordance with law and further to issue writ order or direction directing that respondents No. 5-S.I. Sharma, P.S. Rudrapur, Nos. 6 & 7 -S.I. V.C. Gautam & S.I. Parvez respectively and/or respondent No. 4-S.P. Nainital or his or their agents or assigns in office be prohibited from harassing, threatening or intimidating the petitioner or members of his family and further to provide due and adequate protection to the petitioner and members of his family. On this writ petition, the Hon''ble Supreme Court on 7.9.1988 ordered as under:

The learned District Judge, Nainital will look into this apparent discrepancy and find out the correct position. He will also make a report on the aforesaid points after hearing the parties if he considers it proper and forward the same to this Court within four weeks from today

5. In compliance of the above-said order dated 7.9.1988, District Judge, Nainital vide his report dated 5.4.1989 submitted his report to the Hon''ble Supreme Court. After considering the report of District Judge, Nainital and hearing the counsel for the parties, Hon''ble the Supreme Court passed the following order on 8.1.1990:

An Order was passed by this Court on 7.2.1988. Pursuant to the order the learned District & Sessions Judge, Nainital has made a report. That report has been considered by us. In view of the observations and findings made in the said report, we direct that this report be considered as an information and proceedings on the basis of that information be tried in the District & Sessions Court by some other learned Judge being a Judge of the said Court instead of the same learned Judge who has entertained the matter previously, against respondents concerned and will dispose of the matter within a period of eight weeks from taking up the matter. Parties concerned are directed to appear before the Court of District & Sessions Judge with their respective counsel as soon as possible.

The Writ Petition is disposed of.

6. Thereafter, the learned Sessions Judge, Nainital has passed the order on 9.4.1990 and sent all the papers along with the report dated 5.4.1989 of District Judge, Nainital and the order of the Hon'ble Supreme Court dated 8.1.1990 for taking the cognizance in the matter on the basis of the report dated 5.4.1989 of D.J., Nainital and also for proceeding in accordance with law to Chief Judicial Magistrate, Nainital, as the Magistrate is empowered to take cognizance in the case u/s 190(1)(c) of Cr.P.C.

7. Learned CJM, Nainital has committed the case to the court of Sessions on 3.5.1990 as required u/s 323 Cr.P.C. Learned Sessions Judge has transferred the case to the Addl. Sessions Judge for disposal according to law vide order dated 14.5.1990.

8. Learned II Add. Sessions Judge, Nainital on 22.5.1990 framed the charge against the appellants- accused V.C. Gautam & Parvez Miyan and also against co-accused I.C. Sharma (acquitted by trial court) u/s 342 IPC. The charge was read over and explained to them who pleaded not guilty and claimed to be tried. Further on the same day against the co-accused I.C. Sharma, charge u/s 325 IPC was framed. This charge was also read over and explained to him who pleaded not guilty and claimed to be tried. Charge u/s 325 r/w Section 34 IPC was also framed against the appellants- accused V.C. Gautam & Parvez Miyan on the same day. The charge was also read over and explained to them who pleaded not guilty and claimed to be tried.

9. To prove its case the prosecution has examined P.W.1 Sudhir Kumar Wason, complainant and injured; P.W.2 Yashpal Singh, brother of the injured; P.W.3 Smt. Saroj Wasan, wife of injured Sudhir Wason: P.W.4 Dr. Raj Pal, who treated the injured at AIIMS, P.W.5 Dr. Virendra Kumar Dixit, who medically examined the injured in Govt. Hospital, Haldwani and P.W.6 Inder Pal, Adv. Oath Commissioner.

10. After that the statements of the appellants- accused V.C. Gautam & Parvez Mian and that of co-accused I.C. Sharma were recorded u/s 313 Cr.P.C. The oral and documentary evidence was put to each of them in question form who have denied the allegations made against each of them. In oral evidence the accused had got examined D.W.1 Mohd. Raza, D.W.2 H.C. Mohd. Tahir and D.W.3 Mahipal Singh Chauhan, Central Nazir. In documentary evidence, the accused had produced Ex.Kha-1 copy of complainant to Prime Minister of India, Ex.Kha-2 copy of report lodged by Yazdani and Ex.Kha-3 & Ex.Kha-4 which are the copies of Chik FIR and copy of G.D. registered against Sudhir Kumar Wason by Yazdani.

11. After hearing counsel for the parties and appreciating the material on record, learned III Addl. Sessions Judge, Nainital vide judgment and order dated 29.10.1993 has convicted and sentenced the appellants- accused as discussed above. Against the order, the present appeals and revisions have been preferred before this Court.

12. Before further discussion it is pertinent to mention the injuries found on the person of injured Sudhir Kumar Wason on 28.2.1987 at 8:30 P.M. by P.W.5 Dr. Virendra Kumar Dixit. The following injuries were found in the injury report (Ex.Ka-5):

1. "Contusion with abrasion on the left side of the periorbital area in an area of 6 cm x 5 cm. Both eyelids are swollen and blacken
2. Left eye congested. Pupils sluggishly reacting to light.
3. Contusion 2 cm x 1 cm with swelling present at bridge of nose
4. Contusion with abrasion left arm upper in an area 30 cm x 10 cm. Colour of contusion is bluish to black
5. Contusion 8 cm x 3 cm on the back, on the left scapular area (colour of contusion bluish to black)

Remark-All injuries are caused by some blunt object at about one day old. All injuries are simple except injury No. 2 which kept under observation and referred to ophthalmic surgeon for expert opinion.

13. To prove the above-said report, the prosecution has examined P.W.5 Dr. Virendra Kumar Dixit who stated that on 28.2.1987 he was posted as Medical Officer at Civil Hospital, Haldwani. At 8:30 P.M. of that day, he had medically examined the injured Sudhir Kumar and recorded the above-mentioned injuries. He stated that all the injuries seem to have been caused with some blunt object and about one day old and were also simple except injury No. 2. For injury No. 2, which was kept under observation, the patient was referred to Eye Surgeon for expert opinion. He also prepared the medical report after conducting the examination, i.e. Ex.Ka-5. All the injuries could have possibly be caused on 27.2.1987 in the evening at 6- 6:30 PM. He further stated that these injuries could be caused by beating with some stiff rope.

14. Thereafter, the left eye of injured Sudhir Wason was examined at Dr. Rajendra Prasad Centre for Ophthalmic Sciences, New Delhi (AIIMS) by P.W.4 Dr. Rajpal and he found in the report Ex. II as under:

Perforated sclero-corneal injury

C/o Sudden diminution of vision with bleeding from the left eye on the evening of 27.2.1987 after being hit on the left eye by a rope

O/E R/E 6/6 WNL

L/E V.A.: PL doubtful. Negative

Lids- marked swollen both eyelids

Blackish discoloration of both eyelids.

Conjunctival chemosis with conjunctival hage

Corneoscleral perforation, corneo involving horizontal 10 to 2 o'clock extending 3 mm of sclera

Cornea hazy whitish, insensitive to touch

Irish prolapse in same corneal perforation

Anterior chamber shallow

Hyphema lens could not be seen

Tn- Tenderness +ve

Fundus-could not be seen

Likewise, in the discharge slip (Ex.Ka-4) of injured Sudhir Kumar Wason, the medical officer found as under:

Diagnosis-WNL Corneoscleral perforation with ureal tissue prolapse

Vision on admission-Right Eye-6/6

Left Eye-PL negative

Fundus-WNL, No Glow

Operative procedure done-Evisceration L/E on 7/3/87 by Dr. Shanker

15. To prove the above-said medical report (Ex. II), the prosecution has examined P.W.4 Dr. Rajpal, Sr. Resident who stated that on 1.3.1987, Sudhir Kumar was admitted in the hospital at 2A bed No. 230 under Unit-1. On seeing the card Ex. II, he stated that this is card of Emergency Ward and as per that card, whoever Senior Resident was on duty, he had admitted the patient for removing his eye because it was itself decided in the Casualty that the eye would be removed. Whatever the patient had informed, that was written in that card. The patient had informed that on 27.2.1987 as a result of hitting of rope in his left eye, immediately his vision had lost and blood also oozed out from his eye. He has proved the above-said injuries noted in the report Ex. II. After the admission, the patient remained under his and Dr. Shankar Kumar's supervision. He also prepared the discharge slip of that patient, i.e. Ex.Ka-4. On the basis of the above-said report, he stated that in view of no useful gain of vision because eye was severally destroyed and by any surgical intervention, no mode of visual rehabilitation was possible. He further stated that in view of injury in the corneal scleral region with ureal prolapse there was more risk to the other eye to develop sympathetic ophthalmitis. Later on we decided to eviscerate the left eye on 7.3.1987. He also proved the card of Emergency Ward in respect of injured Sudhir Wason, i.e. Ex. II.

16. P.W.1 Sudhir Kumar Wason, injured witness who stated that co-accused I.C. Sharma (acquitted by trial court) and appellants-accused V.C. Gautam & Parvez Mian were posted as Inspector & Sub-Inspectors respectively at P.S. Rudrapur in

the year 1987. He was having his shop of dry cleaning at Gandhi Park Road, Rudrapur. On 26.2.1987 at about 6 PM, appellants- accused V.C. Gautam & Parvez Mian came at his Dry- cleaning shop and informed him that he was called upon by Inspector I.C. Sharma. He asked as to why he was called upon on which the appellants-accused stated that the matter would be disclosed at the police station. On this he went along with the appellant-accused V.C. Gautam on his motorcycle at the police station after closing his shop. While he was being taken to the police station, his brother Yashpal met him on the way. On enquiring by his brother, S.I. V.C. Gautam told that Mr. I.C. Sharma had called him (this witness) at the police station and the matter would be disclosed there. After reaching at the police station, he was put behind the bars. When he enquired about the reason of his being locked up, it was disclosed to him that there is order of Mr. I.C. Sharma and he would be free only on paying Rs. 10,000/-. He asked them to give intimation to his family members in this regard but no intimation was given. On the next day i.e. on 27.2.1987 at about 10 A.M. in the morning, his brother Yashpal came to the police station and met with the appellants-accused. His brother also met him and he also delivered the keys of the shop to him. He asked his brother to get him released, however he directed his brother not give Rs. 10,000/- to the police. His wife Saroj Wasan also informed to the S.P. Nainital through Telegram about his illegal detention, copy of which is Ex.1. On 27.2.1987 at about 6-6:30 PM, he was taken out in the verandah from the lock up where he was beaten by the appellants-accused V.C. Gautam and Parvez Mian by fists and kicks and they also threatened him to face dire consequences for not fulfilling the demand of Rs. 10,000/-. Meanwhile, I.C. Sharma, Inspector also came there. He enquired as to why he was beaten on which I.C. Sharma also started beating him with the rope of the handcuff due to which one rope hit on his left eye as a result of which he received injuries on his left eye. He fell down being unconscious and again he was locked up. When he felt more pain in his eye then he requested the police personnel to provide medical aid for his eye but they did not agree to it. Rather Inspector I.C. Sharma with the help of appellant-accused V.C. Gautam applied some ointment on his eye and made dressing on his eye. On 28.2.1987 at about 9:30 AM he was taken to the court of Munsif Magistrate, Rudrapur from where he was being taken to Haldwani in the police jeep. When they reached near Haldwani, appellant-accused S.I. Parvez Mian came on his motorcycle and asked the police personnel to take him back to Rudrapur because if he would be taken to Haldwani before a Judge or in the jail, then his medical examination would be conducted and in that case they would be in trouble. He further stated that Inspector I.C. Sharma have also settled the things at Rudrapur from where he would be released on bail. Thereafter he was taken to the court of Munsif Rudrapur however he was not produced in the court. At about 5 PM in the evening, the police personnel got his signatures on some papers and thereafter released him. Soon after his release he informed to SP Nainital for his illegal detention and receiving injuries on his eye, i.e. Ex.Ka-1. Thereafter his injuries were medically been examined at Civil Hospital, Haldwani. Since his injuries were serious in nature, therefore, he was

advised to consult some eye-specialist. He went to Sitapur Eye Hospital but the doctor was not available there. On the next day he went to Delhi and admitted at All India Institute on 1.3.1987 where medical examination of his eye was done and he was informed that the vision in his left eye had lost. His eye was removed after operation. He further stated that he got his eye lost as a result of the injuries caused to him in the police station. Intimation to this effect he also gave to Delhi Police. Thereafter, he wrote to the higher officials about the atrocities committed with him but when no action was taken, he filed a writ before the Hon"ble Supreme Court. The Hon"ble Supreme Court directed for judicial enquiry which was done by the District Judge. On the basis of report of District Judge, this case was directed to be registered by the orders of the Hon"ble Supreme Court. This witness was cross-examined at length by the defence counsel but nothing has come out in his statement which may create any doubt in his statement. The statement of this witness is reliable and believable and inspires confidence.

17. P.W.2 Yashpal Singh stated that Sudhir Kumar Wason is his elder brother. He also identified the Inspector I.C. Sharma as well as the appellants-accused V.C. Gautam & Parvez Mian who were known to him earlier. I.C. Sharma was the In-charge of P.S. Rudrapur while the appellants-accused were posted as Sub-Inspectors. On 26.2.1987 at about 6 PM, he was standing on the road beneath his house near the spirit shop. He saw that appellant-accused V.C. Gautam while taking his brother Sudhir Wason by sitting behind him on his motorcycle while the appellant-accused Parvez Mian was coming behind on his own motorcycle. He enquired where they were taking his brother Sudhir then appellant-accused V.C. Gautam informed that Inspector Sharma has called him at Police Station where everything would be disclosed. The appellants-accused took his brother at police station. After some time he went to the police station where appellants-accused V.C. Gautam & Parvez Mian met him. He enquired from them for taking his brother at the police station on which he was told that Inspector Sharma has directed that only on paying Rs. 10,000/-, his brother would be released. Then he came back to his house. On 27.2.1987 he again went to P.S. Rudrapur where the appellants-accused again met him and again asked him about the arrangement of money. He requested them to meet his brother. He also asked his brother that the appellants-accused were demanding Rs. 10,000/- on the orders of Inspector Sharma. His brother also told him that the same fact has been told to him by the appellants-accused. His brother refused him to pay the money and said that why he would pay money when he has not committed any crime. His brother handed over the keys of shop to him and then he came back. On 27.2.1987 he came at Munsif Court Rudrapur where he met with his Advocate and informed the entire incident who assured him that his brother would be released on bail. Some papers were prepared by the Advocate and his affidavit was also been prepared which he proved the same i.e. Ex.Ka-2. That affidavit was prepared on 27.2.1987 at about 11 AM. His brother was not produced till 11-11:30 AM. Thereafter he went his home and informed the matter to his sister

in law Saroj Wasan that the police persons have neither released his brother nor they are producing him in the court. His sister in law said that the matter should be informed to some higher officials. Then he prepared a telegram on behalf of Saroj Wason, i.e. Ex.1. This telegram was sent by Saroj Wasan on 27.2.1987 at 12 PM. On 28.2.1987 he went at Munsif Court Rudrapur and met with the Advocate and informed him about the telegram. Then the Advocate moved an application for bail in which he also mentioned about the telegram. In the evening at 5 PM police persons got signatures of Sudhir on some papers in the Jeep itself and then released him. When he met with his brother Sudhir then he saw that there was injury on his left eye which was swollen and that was also blackish. Thereafter he along with his brother went at post-office from where his brother informed about the matter to SP Nainital through telegram. Then he took his brother at Haldwani Civil Hospital where medical examination on body of his brother was conducted. The doctor advised to consult some eye specialist. Thereafter he took his brother at Sitapur eye hospital but the doctor was not available. On the next day he took his brother at Delhi All India Medical Institute and got his brother admitted. The left eye of his brother was examined and that eye was removed after operation. This witness was cross-examined at length by the defence counsel but nothing has come out in his statement which may create any doubt in his statement. The statement of this witness is reliable and believable.

18. P.W.3 Smt. Saroj Wasan stated that usually her husband Sudhir Wason come back to home at about 8-8:15 P.M. On 26.2.1987 when her husband did not come back till 9:00 PM, then she went at the shop Diamond Drycleaners after locking the house along with her children. On seeing the shop locked, she became worried. Then she went to the elder brother of her husband Yashpal. On making enquiry by her about her husband, Yashpal informed him that her husband Sudhir Kumar Wason had been taken to the police station, Rudrapur. Her husband did not come back on that night. On the next day she gave a telegram to S.P. Nainital after scribing it by her brother in law in which she stated that on 26.2.1987 at about 6 PM, her husband was illegally been detained and he may be got released. She also proved that telegram, i.e. Ex.Ka-3. This witness was cross-examined at length by the defence counsel but nothing has come out in her statement which may create any doubt in her statement. The statement of this witness is reliable and believable.

19. P.W.6 Indrapal Singh, Advocate & Oath Commissioner stated that on 27.2.1987 he was the Oath Commissioner in Munsif Magistrate court, Rudrapur. The affidavits on paper No. 6/6 and paper No. 6/7, both were prepared by him on 27.2.87 at 10-11 AM. In the affidavit (paper No. 6/6), Yashpal Singh had made his signatures before him which were identified by Paramjeet Singh, Advocate, i.e. Ex.Ka-2. Likewise paper No. 6/7 was also signed by Gyan Chandra in his presence and that too was identified by Paramjeet Singh, Advocate.

20. After that the statements of the appellants- accused V.C. Gautam & Parvez

Mian and that of co-accused I.C. Sharma were recorded u/s 313 Cr.P.C. The oral and documentary evidence was put to each of them in question form who denied the allegations made against each of them and stated as under.

21. S.I. V.C. Gautam stated that he has been falsely implicated due to enmity and stated that on the complainant of Nanhe against Sudhir Wason, Sudhir Wason & Nanhe were called on 27.2.1987 in the Police Chowki Bazaar. During investigation, Sudhir Wason & Nanhe entered into compromise and at about 12:30 in the day, Sudhir Wason & Nanhe had gone from the Police Chowki and on the same day night, Yazdani lodged a report against the complainant Sudhir Wason u/s 377/511 IPC and the case was registered. The public had caught hold the complainant Sudhir Wason on the spot and brought him into the police station while beating him. The Pairokar of Sudhir Wason was creating pressure to close the case as a result of which the false case has been lodged against him.

22. Likewise, appellant-accused Parvez Mian also denied the allegations made against him and stated that he was the I.O. in the case of 377/511 IPC and the accused Sudhir Wason wanted undue favour from him. Because he refused for the same due to which the false case was lodged against him.

23. Co-accused I.C. Sharma stated that case u/s 377/511 IPC was registered on the basis of the report lodged by Yazdani at P.S. Rudrapur. Accused Sudhir Wason was also brought to the police station by the public who had injuries on his person which were caused by the public during his arrest. Due to this incident there was tension in the town between the two communities whereas the police was being pressurized by Sudhir Wason and his associates not to take action against him which he refused. On 28.2.1987, Sudhir Wason was produced in the court. The telegram dated 27.2.1987 sent by Saroj Wason was sent in Peshbandi. He further stated that no injury was caused by the police during custody to the injured Sudhir Wason and the injuries, if any, were caused by the public. He also denied of being demanded any money from Sudhir Wason.

24. In oral evidence the accused had got examined D.W.1 Mohd. Raza, D.W.2 H.C. Mohd. Tahir and D.W.3 Mahipal Singh Chauhan, Central Nazir.

25. In documentary evidence, the accused had produced Ex.Kha-1 copy of complainant to Prime Minister of India by Sudhir Kumar Wason, Ex.Kha-2 copy of report lodged by Yazdani and Ex.Kha-3 & Ex.Kha-4 are the copies of Chik FIR and copy of G.D. registered against Sudhir Kumar Wason by Yazdani.

26. D.W.1 Mohd. Raza stated that on 27.2.1987 at about 8-8:30 PM he was coming after taking a walk. As soon as he reached in front of shop of Sudhir Wasan, he heard hue and cry and saw that Yazdani was coming out of his shop and behind him Sudhir Kumar Wasan also came. Yazdani was weeping and on being asked he narrated to him that Sudhir Kumar attempted to commit carnal intercourse against the order of nature with him. Sudhir Wasan was apprehended on the spot and was beaten. Yazdani also beaten him and thereafter they went to the police station. He wrote the report at the instance of Yazdani, i.e. Ex. Kha-II.

That report was given in the police station by Yazdani and Sudhir Wasan was given in the police custody. In cross-examination he stated that on the date of incident he was working in the workshop of Green Head Workers which is at the distance of about 1/2 - 3/4 kilometer distance. The shop of Sudhir Wason is in front of Gandhi Park and nearby his shops, some other shops are also there and that place is a busy place.

27. D.W.2 H.C. Mohd. Tahir stated that on 26.2.1987 and 27.2.1987 he was posted as Head Moharrir at P.S. Rudrapur. On 26.2.87, Inspector I.C. Sharma had noted down his departure from the police station vide report No. 6 in connection with the duty of Shivratri. S.I. V.C. Gautam, Parvez Mian and other police persons had also reported their departure on that day vide G.D. No. 5. On 27.2.1987 at 10:30 AM, Inspector I.C. Sharma had gone to attend the meeting of SSP at Haldwani vide G.D. No. 24. He has also proved the Chik FIR and copy of the G.D. of the case u/s 377/511 IPC registered against Sudhir Kumar Wason which has been proved as Ex.Kha-3 and Ex.Kha-4 respectively.

28. D.W.3 Mahipal Singh Chauhan, Central Nazir stated that he has brought the register of issuing coupons to the Oath Commissioners, which is regularly being maintained in the office. On 4.9.1986, 200 coupons were issued to the court of Munsif Magistrate, Rudrapur and on 2.1.1987, 1000 coupons and on 4.9.1987, 500 coupons were issued. These coupons are issued according to the demands of the courts concerned.

29. Sri Sandeep Tandon, learned Counsel for the appellants-accused argued that the prosecution has not proved its case against the appellants-accused beyond reasonable doubt. I do not find any force in this argument as P.W.1 Sudhir Kumar Wason, injured witness of the case, has stated that co-accused I.C. Sharma (acquitted by trial court) and appellants- accused V.C. Gautam & Parvez Mian were posted as Inspector & Sub-Inspectors respectively at P.S. Rudrapur in the year 1987. He was having his shop of dry cleaning at Gandhi Park Road, Rudrapur. On 26.2.1987 at about 6 PM, appellants-accused V.C. Gautam & Parvez Mian came at his Dry-cleaning shop and informed him that he was called upon by Inspector I.C. Sharma. He asked as to why he was called upon on which the appellants-accused stated that the matter would be disclosed at the police station. On this he went along with appellant-accused V.C. Gautam on his motorcycle at the police station after closing his shop. While he was being taken to the police station, his brother Yashpal met him on the way. On enquiring by his brother, S.I. V.C. Gautam told that Mr. I.C. Sharma had called him (this witness) at the police station and the matter would be disclosed there. After reaching at the police station, he was put behind the bars. When he enquired about the reason of his being locked up, it was disclosed to him that there is order of Mr. I.C. Sharma and he would be free only paying Rs. 10,000/-. He asked them to give intimation to his family members in this regard but no intimation was given. On the next day i.e. on 27.2.1987 at about 10 A.M. in the morning, his brother Yashpal came to the police station and met with the

appellants-accused. His brother also met him and he also delivered the keys of the shop to him. He asked his brother to get him released, however he directed his brother not to give Rs. 10,000/- to the police. His wife Saroj Wasan also informed to the S.P. Nainital through Telegram about his illegal detention, copy of which is Ex.1. On 27.2.1987 at about 6-6:30 PM, he was taken out in the verandah from the lock up where he was beaten by the appellants-accused V.C. Gautam and Parvez Mian by fists and kicks and they also threatened him to face dire consequences for not fulfilling the demand of Rs. 10,000/-. Meanwhile, I.C. Sharma, Inspector also came there. He asked as to why he was beaten on which I.C. Sharma started beating him with the rope attached to the handcuff due to which one rope hit on his left eye as a result of which he received injuries on his left eye. He fell down being unconscious and again he was locked up. When he felt more pain in his eye then he requested the police personnel to provide medical aid for his eye but they did not agree to it. Rather Inspector I.C. Sharma with the help of appellant-accused V.C. Gautam applied some ointment on his eye and made dressing on his eye. On 28.2.1987 at about 9:30 AM he was taken to the court of Munsif Magistrate, Rudrapur from where he was being taken to Haldwani in the police jeep. When they reached near Haldwani, appellant-accused S.I. Parvez Mian came on his motorcycle and asked the police personnel to take him back to Rudrapur because if he would be taken to Haldwani before a Judge or in the jail, then his medical examination would be conducted and in that case they would be in trouble. He further stated that Inspector I.C. Sharma have also settled the things at Rudrapur from where he would be released on bail. Thereafter he was taken to the court of Munsif Rudrapur however he was not produced in the court. At about 5 PM in the evening, the police personnel got his signatures on some papers and thereafter released him. Soon after his release he informed to SP Nainital for his illegal detention and receiving injuries on his eye, i.e. Ex.Ka-1. Thereafter his injuries were medically been by beating with some stiff rope examined at Civil Hospital, Haldwani. Since his injuries were serious in nature, therefore, he was advised to consult some eye-specialist. He went to Sitapur Eye Hospital but the doctor was not available there. On the next day he went to Delhi and admitted at All India Institute on 1.3.1987 where medical examination of his eye was done and he was informed that the vision in his left eye had lost. His eye was removed after operation. He further stated that he got his eye lost as a result of the injuries caused to him in the police station. Thereafter, he wrote to the higher officials about the atrocities committed with him but when no action was taken, he filed a writ petition before the Hon''ble Supreme Court. The Hon''ble Supreme Court directed for judicial enquiry which was done by the District Judge. On the basis of report of District Judge, this case was directed to be registered by the orders of the Hon''ble the Supreme Court. The statement of this witness is reliable and believable and inspires implicit confidence. The same also gets corroboration from the oral evidence of P.W.2 Yashpal and P.W.3 Saroj Wasan. Evidence of P.W.1 Sudhir Kumar Wason also gets corroboration from the medical evidence of P.W.5 Dr. Virendra Kumar Dixit and medical report Ex.Ka-5 and further from the medical evidence of Dr. Raj Pal,

Senior Resident at AIIMS, New Delhi as well as from the medical reports Ex. II and discharge slip Ex.Ka-4, which also goes to prove that in the above -said incident, the left eye of the injured had to be eviscerated. P.W.5 Dr. V.K. Dixit also stated that the injuries on the eye of injured could be caused Even the defence witnesses examined by the accused in defence are also not at helpful for them. D.W.1 Mohd. Raza, who has proved the FIR lodged against the complainant Sudhir Wason u/s 377/511 IPC. Likewise, D.W.2 H.C. Mohd. Tahir has been examined who also proved the FIR and entry in the G.D. of the above case. However, in that case the complainant has been acquitted by the court of CJM, U.S. Nagar on 18.10.2004, therefore, their evidence is of no help for the appellants-accused. Therefore, the prosecution has been fully successful in proving its case against the appellants-accused beyond reasonable doubt for the offence punishable u/s 342 and 325 IPC.

30. It was further argued by learned Counsel for the appellants-accused that the shop of the complainant was also found opened on 27.2.1987, hence his presence should be presumed on that day on the shop. I again do not find any force in this argument because on 26.2.1987 at about 6 PM, complainant Sudhir Kumar Wason was taken from his shop. He went with the police persons after closing his shop. It has come in the evidence of P.W.1 Sudhir Kumar Wason that he had handed over the keys of shop to his brother Yashpal on 27.2.1987 at 10 AM when his brother came to meet him at P.S. Rudrapur. Likewise P.W.2 Yashpal also stated in his evidence that on 27.2.1987 when he went to meet his brother, then his brother Sudhir Wason had handed over the keys of shop to him. Even P.W.2 Yashpal has stated in his cross-examination that on 27.2.1987 his brother in law Chandra Mohan sat in the shop, however he did not sit in the shop on that day. Therefore, only due to the reason that the shop of complainant was opened on 27.2.1987, it cannot be presumed in any manner that the complainant Sudhir Kumar was present in his shop on that day as there is ample evidence on record which proves beyond reasonable doubt that he was taken by the appellants-accused S.I. Parvez Mian and V.C. Gautam on 26.2.1987 at about 6 PM and they released him on 28.2.1987 at about 5 PM.

31. It was further argued on behalf of the appellants-accused that the allegations leveled against the appellants-accused are after thought, however the specific allegations were not made in the application moved by the complainant to the Prime Minister. I am again not convinced with this argument as Sudhir Wasan has categorically stated before the trial court that the appellants-accused had taken him from his shop on 26.2.1987 at about 6 PM and put him behind the bars and demanded Rs. 10,000/- and on non-fulfillment of this demand he was beaten severely in the evening of 27.2.1987 at 6-6:30 PM with fists and kicks and with the rope of the handcuff and he remained detained in the police custody till 28.2.1987. Even in order to justify his arrest, the police lodged a false case against Sudhir Wason in which he was acquitted by the CJM, U.S. Nagar on 18.10.2004. Further in the application moved to the Prime Minister, the allegations were also made against the appellants-accused by the complainant in

his application and also in his statement recorded before the trial court.

32. It was further pointed out by counsel for the appellants-accused that in the telegram given by Sudhir Wason on 27.2.1987, he has not named the appellants-accused. This argument is not at all helpful to the appellants-accused in any way because in the writ petition filed before the Hon''ble Supreme Court of India, the appellants-accused were named by the complainant and even in the enquiry conducted by the District Judge, it was found proved that the appellants-accused were equally involved in commission of the above-said crime. Even otherwise as per the detailed discussion made above, the case against them is proved beyond reasonable doubt for the offence punishable u/s 325 and 342 IPC and therefore this argument has no help to the appellants-accused.

33. It is also pertinent to mention here that the appellants-accused during the pendency of appeal filed the Compounding Application Nos. 732 of 2009 and No. 734 of 2009. During pendency of those compounding applications, an application i.e Misc. Crl. Appln. No. 746/2009 was sent by P.W.2 Yashpal Singh, brother of the injured/ Sudhir Kumar Wasan through post in which it was stated that the accused/appellants Parvez Miyan & Vishnu Chand Gautam had threatened the brother of the applicant and in alliance with the brother in law of Sudhir Kumar namely Kishan Kumar @ Kukki, they also put illegal force upon him and thereby compelled him to enter into compromise forcefully. It was further stated that the applicant's brother Sudhir Kumar informed the complainant that appellants-accused Parvez Mian & Vishnu Chandra Gautam & Kishan Kumar (brother in law of complainant) have forcefully got the compromise prepared, however he does not want compromise. It was further stated that when Kishan Kumar (brother in law of injured/complainant) came to know that Sudhir Kumar had informed the entire matter to the applicant, then Kishan Kumar beaten the complainant Sudhir with hockey as a result of which his hip bone got fractured. Thereafter, the applicant took his brother for the medical examination of his brother on 17.9.2009 where his x-ray was conducted and on 19.9.2009, the applicant took his brother at Jwahr Lal Nehru Hospital, U.S. Nagar. Along with the application, x-ray plate and x-ray report have also been annexed. On 19.9.2009 itself, the applicant took his brother Sudhir Kumar at Rudrapur court where he got prepared an affidavit and also signed on the Vakalatnama. Thereafter, on 20.9.2009, when Kishan Kumar came to know about the preparation of the affidavit by the complainant, then Kishan Kumar @ Kukki beaten Sudhir Kumar and on 20.9.2009 forcibly took the complainant at Nanakmatta and since 20.9.2009, complainant is in illegal custody of Kishan Kumar. This Court vide disposing of the above-said applications came to the conclusion that the complainant/injured Sudhir Kumar entered into compromise with the accused under the threat, coercion and illegal pressure created by the accused persons. Therefore considering the entire facts and circumstances of the case and looking to the gravity of the matter, this Court rejected the compounding applications No. 732/2009 and 734/2009 filed in Crl. Appeals No. 453/01 and 454/01 vide a detailed order dated 8.10.2009. Thus, this conduct itself shows the high

handedness of the appellants-accused in getting the matter settled.

34. Therefore, in view of the above detailed discussion, the prosecution has been fully successful in proving its case against the appellants-accused beyond reasonable doubt for the offence punishable under Sections 342 and 325 IPC and the trial court was correct and justified in convicting and sentencing the appellants-accused as discussed above.

35. Sri J.S. Virk, learned Counsel for the revisionist by pressing his revisions has argued that the trial court has awarded lesser sentence to the appellants-accused. I do not find any force in this argument. The trial court after considering the entire facts and circumstances of the case and looking to the totality of the circumstances, has awarded the sentence which, in my view, is reasonable, justified and has met the ends of justice. Therefore, the sentence awarded by the trial court is not required any interference by this Court.

36. Therefore, in view of the above-said discussion, both the appeals as well as criminal revisions are dismissed. The judgment and order dated 29.10.1993 passed by III Addl. Sessions Judge, Nainital in S.T. 126 of 1990, State v. I.C. Sharma, convicting and sentencing the appellants-accused as discussed above, is hereby affirmed. The appellants are on bail. Let them be taken into custody forthwith in order to serve out the sentence as awarded against each of them. Their bail bonds are cancelled.

37. A copy of this order be sent to the trial court concerned for compliance forthwith.