

KUNWARPAL @ SURAJPAL & ORS.

v.

STATE OF UTTARAKHAND AND ANR.

(Criminal Appeal No. 820 of 2010)

DECEMBER 09, 2014

[V. GOPALA GOWDA AND C. NAGAPPAN, JJ.]

Penal Code, 1860 – s. 302/34 – Prosecution case that on account of animosity between the parties, accused persons attacked the victim with weapons resulting in his death – Incident witnessed by the prosecution witnesses – Conviction and sentence u/s. 302/34, by courts below – Interference with – Held: Not called for – Order of conviction and sentence based on proper appreciation of evidence on record – Evidence of the prosecution witnesses is credible – Injuries sustained by the victim established by the oral testimony of the doctor who conducted autopsy and the post-mortem – Non-mentioning of the names of PW3 and PW4 in the FIR does not affect the prosecution case – Plea of false implication by the accused not established – Evidence shows that enmity led to the occurrence.

Dismissing the appeal, the Court

HELD: 1.1. Evidence on record discloses that there was no standing crop in between the lands and the view was clear enabling PW 3 and PW 4 to see the occurrence. PW3 and PW4 are independent witnesses and their testimonies corroborate each other and there is no reason for them to falsely depose against the accused persons and nothing is elicited in the cross-examination to discredit their testimonies and they are credible and merit acceptance. The victim died of injuries sustained by him in the occurrence is established by the doctor who

A conducted autopsy and the post-mortem report issued by him. [Paras 13, 14] [253-D, F-H]

1.2. The complaint was lodged by PW1 on the basis of information furnished by PW2 about the occurrence. There is no requirement of law for mentioning the names of all the witnesses in the FIR, the object of which is only to set the criminal law in motion. The statements of all witnesses were recorded by the Investigation Officer in the night of the occurrence day itself. Non-mention of the names of PW3 and PW4 in the FIR does not affect the prosecution case as rightly held by the courts below. [Para 12] [252-F-H; 253-A]

1.3. There is no foundation established for the plea of false implication advanced by the accused and on the other hand evidence shows that enmity has led to the occurrence. The conviction and sentence imposed on the appellants is based on proper appreciation of evidence on record and does not call for any interference. [Para 15] [254-C-D]

E *Nirpal Singh & Ors. Vs. State of Haryana* 1977 (2) SCR 901 : (1977) 2 SCC 131; *Bhagwan Singh & Ors. Vs. State of Madhya Pradesh* (2002) 4 SCC 85; *Raj Kishore Jha Vs. State of Bihar & Ors.* 2003 (4) Suppl. SCR 2008 : (2003) 11 SCC 519; *Ruli Ram & Anr. Vs. State of Haryana* 2002 (2) Suppl. SCR 426 : (2002) 7 SCC 691; *State of Punjab Vs. Sucha Singh & Ors.* (2003) 3 SCC 153 – referred to.

Case Law Reference:

G	1977 (2) SCR 901	referred to	Para 12
	(2002) 4 SCC 85	referred to	Para 12
	2003 (4) Suppl. SCR 2008	referred to	Para 12
	2002 (2) Suppl. SCR 426	referred to	Para 15

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(2003) 3 SCC 153

referred to

Para 15

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 820 of 2010.

From the Judgment & Order dated 18.08.2009 of the High
Court of Uttarakhand at Nainital in Criminal Appeal No. 1418
of 2001.

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K.T.S. Tulsı, Guru Krishna Kumar, Prafulla Kr. Behera,
Rakesh Kr. Tewari, Raj Kamal, S.S. Nehra for the Appellants.

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J.C. Gupta, Jatinder Kumar Bhatia, Mukesh Verma, Sanjay
Kumar Dubey, Krishna Kant Dubey, Karn Pal Singh, Pramod
Kumar, Upendra Narain Mishra, Rajiv Ranjan Dwivedi for the
Respondents.

The Judgment of the Court was delivered by

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C. NAGAPPAN, J. 1. This appeal is preferred against the
judgment dated 18.8.1991 passed by the High Court of
Uttarakhand at Nainital in Criminal Appeal No.1418 of 2001.

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2. Appellants 1 to 4 stood charged for the offence under
Section 302/34 in Sessions Trial No.195 of 1991 on the file of
Additional Sessions Judge Roorkee and the Trial Court
convicted all and sentenced them each to undergo life
imprisonment and to pay a fine of Rs.500 in default, to undergo
rigorous imprisonment for one year each. Accused Nos. 1 to
4 preferred appeal in Criminal Appeal No.1418 of 2001 on the
file of High Court and the appeal came to be dismissed.
Challenging the conviction and sentence accused Nos. 1 to 4
preferred the present appeal. During the hearing the learned
senior counsel appearing for the appellants submitted that
appellant No.4 Atara Singh died during pendency of the appeal
and it was endorsed by the learned counsel appearing for the
respondent-State. Hence the appeal stands abated insofar as
he is concerned.

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A 3. Shorn of unnecessary details the case of the prosecution
 is as follows: PW1 Gajendra is the son of deceased Ranjit
 Singh. Accused Nos. 1 to 3 are real brothers. Accused No.4
 is their cousin. PW1 Gajendra owned plot No.180 in village
 B Mohammadpur Panda and the adjacent plot belonged to the
 accused persons and on account of the pending litigation
 between them there was enmity.

C 4. On 14.4.1991 at about 11.00 a.m. PW2 Suggan and
 Jai Ram were cutting wheat in the field of PW1 Gajendra and
 Ranjit Singh came to the field. Thereafter accused Nos.1 to 4
 armed with *lathies* and *tabbal* came there and threatened
 Ranjit Singh to withdraw the case against them and beat him
 with *lathies* and *tabbal* . PW 2 Suggan, PW3 Atmaram and
 D PW4 Chāman Lal and others saw the occurrence. Ranjit Singh
 became unconscious. PW2 Suggan informed PW1 Gajendra
 about the occurrence. PW1 Gajendra came and took his father
 injured Ranjit Singh to JNSM Hospital Roorkee. Dr. Jugal
 Kishore Mittal examined Ranjit Singh at 1.20 p.m. on 14.4.1991
 in the said hospital and admitted him as in-patient. At about
 E 5.30 p.m. on same day PW1 Gajendra lodged Ex.Ka-1 written
 complaint in the Police Station, Bhagwanpur and a case under
 Sections 323, 324, 506 and 307 IPC was registered against
 the accused persons. Exh. Ka-4 is the First Information Report,
 Exh. Ka-70 is the G.D. Report. PW9 Sub-Inspector R.S. Tiwari
 F took up the investigation and examined PWs 2 to 4 and some
 other witnesses. On 15.4.1991 Ranjit Singh succumbed to his
 injuries. The First Information Report was altered and the
 investigation was taken up by SHO Ajay Kumar and he visited
 the place of occurrence and prepared Exh.Ka-8 plan and
 seized the blood stained clothes under Exh.Ka-9 Memo. He
 G conducted inquest and prepared Exh.Ka-5 report. He gave
 Exh.Ka-11 requisition for conducting post mortem.

H 5. PW 6 Dr. K.P. Sarabhai conducted post-mortem on the
 body of Ranjit Singh at 4.30 p.m. on 15.4.1991 and found the
 following ante-mortem injuries:

- (i) Stitched wound 4 cm x 4 stitches on beam of head, 12 cm from left ear. A
- (ii) Traumatic swelling 10 cm x 7 cm on beam of right upper arm.
- (iii) Traumatic swelling 22 cm x 7 cm on beam of right forearm and hand and there was fracture on both bones of right forearm. B
- (iv) Stitched wound 2 cm x 2 stitches on beam of left upper arm 4 cm above left elbow. C
- (v) Abraded contusion with traumatic swelling 14 cm x 8 cm on beam of left elbow on upper arm, and fracture of shaft of humerus
- (vi) Traumatic swelling 6 cm x 4 cm on beam of left wrist joint and fracture of ulna lower end. D
- (vii) Abraded contusion 4 cm x 3 cm on lateral part of right side chest, 6 cm below right nipple.
- (viii) Contusion 10 cm x 8 cm on left side of chest, 6 cm below the nipple. E
- (ix) Contusion 20 cm x 10 cm on right thigh.
- (x) Abrasion 2 cm x 1 cm on right side of right knee joint F
- (xi) Stitched wound 4 cm x 4 stitches on front side of right leg.
- (xii) Stitched wound 3 cm x 2 stitches on front part left leg. G
- (xiii) Abraded contusion 10 cm x 5 cm on lower part of left leg

- A (xiv) Abrasion 2 cm x 1 cm on left side of iliac crest.
- (xv) Contusions of 28 cm x 18 cm on beam of left side chest and abdomen.

B On internal examination he found fracture of 4th to 7th ribs on right side and 3rd to 8th ribs on the left side. He expressed opinion that the death has occurred on account of shock and hemorrhage due to ante-mortem injuries.

C 6. During the trial prosecution examined PWs 1 to 9 and marked documents. The accused persons were examined under Section 313 Criminal Procedure Code and their answers were recorded. No witness was examined on their side. The Trial Court convicted all the accused and sentenced them as stated above. The appeal preferred by the accused came to be dismissed and hence they have filed the present appeal.

E 7. Mr. K.T.S. Tulsı, senior counsel appearing for some of the appellants, contended that the alleged eye witnesses to the occurrence PW3 Atmaram and PW4 Chaman Lal are chance witnesses and there is significant absence of their names in the FIR and the occurrence took place in a different village and even if they were present they could not have seen the occurrence and PW3 Atmaram had animosity against accused no.1 Kunwarpal @ Surajpal since marriage proposal of his sister's sister-in-law with A1 failed and the prosecution has not proved motive and it is unsafe to convict the appellants/accused and the impugned judgment is liable to be set aside.

G 8. Mr. Gurukrishna Kumar, senior counsel appearing for the other appellants, contended that PW3 Atmaram and PW4 Chaman Lal were not aware of the name of the village where the land they were harvesting is situated and they could not have witnessed the occurrence from a distance of about 450Ft. and the entire story is not narrated in the complaint and the said factors if taken individually may not be significant but taken

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cumulatively, the presence of the said witnesses in the occurrence place is doubtful and the conviction imposed on them cannot be sustained.

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9. Per contra, Mr. Jatinder Kumar Bhatia, counsel for the first respondent-State and Mr. J.C. Gupta, senior counsel appearing for the second respondent, contended that village Mohammedpur Panda and Almaspur are adjacent villages and the occurrence land lies in the border of both the villages and the occurrence took place during harvest season and PW3 Atmaram and PW4 Chaman Lal were harvesting crops in the nearby land and on hearing the hue and cry of Ranjit Singh they happened to see accused nos.1 to 4 attacking Ranjit Singh with tabbal and lathis and there is no requirement of mentioning the names of all the witnesses in the FIR and the statements of witnesses were recorded by the Investigation Officer on the occurrence night itself and relying on the testimonies of the eye witnesses, the courts below have convicted the accused and it is sustainable.

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10. The occurrence had taken place at 11.00 a.m. on 14.4.1991 in the field of Ranjit Singh when PW2 Suggan and Jai Ram were harvesting the wheat crop in the said field. PW2 Suggan informed PW1 Gajendra Singh, son of Ranjit Singh, about the occurrence, who rushed to the place of occurrence and took severely injured Ranjit Singh to Roorkee hospital and after admitting him there, lodged Exh.Ka-1 complaint at Police Station Bhagwanpur leading to registration of case against the accused persons. On the death of Ranjit Singh on 15.4.1991 in the hospital the offence was altered to one of murder. Though PW1 Gajendra Singh is the author of FIR, he has not witnessed the occurrence and he has lodged the complaint on the basis of information furnished by PW2 Suggan, in which he has mentioned about the attack with weapons made by all the four accused on his father Ranjit Singh during the occurrence. Though Suggan was examined as PW2, he did not support the prosecution case and was declared hostile.

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A 11. PW3 Atmaram and PW4 Chaman Lal were examined
 by the prosecution as having witnessed the occurrence. The
 agricultural land of PW3 Atmaram in village Almaspur lay near
 the agricultural land of Ranjit Singh in village Mohammedpur
 Panda. According to the PW3 Atmaram the boundary of land
 B of both villages join at the place of occurrence. PW3 Atmaram
 and PW4 Chaman Lal have testified that they were harvesting
 the crop of wheat in the agricultural land of PW3 Atmaram in
 the morning on the occurrence day and at 11.00 a.m. they were
 eating breads sitting on tube-well and on hearing shrieks of
 C Ranjit Singh they stood up and saw accused no.1 Kunwarpal
 with pointed tabbal and the other three accused with lathis
 attacking Ranjit Singh with the said weapons and when they
 went near, the accused fled away. They have further testified
 that PW2 Suggan and Jai Ram were cutting wheat in the
 D occurrence land and they also witnessed the occurrence.

12. It cannot be denied that the occurrence took place
 during harvest season and PW3 Atmaram was harvesting the
 crop of wheat in his land with the help of PW4 Chaman Lal.
 E Their presence near the occurrence place is natural and they
 cannot be termed as chance witnesses as contended by the
 appellants. It is true that their names are not found mentioned
 in the FIR. As already seen, the complaint was lodged by PW1
 Gajendra Singh on the basis of information furnished by PW2
 F Suggan about the occurrence. There is no requirement of law
 for mentioning the names of all the witnesses in the FIR, the
 object of which is only to set the criminal law in motion [*Nirpal*
Singh & Ors. Vs. State of Haryana (1977) 2 SCC 131;
Bhagwan Singh & Ors. Vs. State of Madhya Pradesh (2002)
 4 SCC 85; *Raj Kishore Jha Vs. State of Bihar & Ors.* (2003)
 G 11 SCC 519]. In this context it is relevant to point out that the
 statements of all witnesses were recorded by the Investigation
 Officer in the night of the occurrence day itself. Non mention of
 the names of PW3 Atmaram and PW4 Chaman Lal in the FIR

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does not affect the prosecution case as rightly held by the courts below. A

13. The other contention raised by the learned counsel of the appellants is that PW3 Atmaram and PW4 Chaman Lal being at a distance of 450 Ft. from the occurrence place could not have seen the attack made on Ranjit Singh. The site plan prepared by the Investigation Officer is exhibited in the case and it shows the occurrence place as well as the land belonging to PW3 Atmaram. Harvesting of the wheat crop in the land of PW3 Atmaram commenced one day prior to the day of occurrence and got completed just before the occurrence. In their testimonies PW3 Atmaram and PW4 Chaman Lal have stated that they could view the occurrence from the place where they were standing and when they rushed near all the accused fled away. Evidence on record discloses that there was no standing crop in between the lands and the view was clear enabling them to see the occurrence and there is no doubt in it. It was argued on behalf of the appellants that PW3 Atmaram had animosity against accused no 1 Kunwarpal since marriage of his sister's sister-in-law with A1 failed. PW3 Atmaram in his cross-examination has admitted that there was marriage proposal of accused no.1 Kunwarpal with his sister's sister-in-law and that did not materialize and he was not the person who mediated it and he has also specifically denied the suggestion that he developed animosity against A1 in this regard. Hence this contention of the appellants is devoid of merit. As already seen PW3 Atmaram and PW4 Chaman Lal are independent witnesses and their testimonies corroborate each other and there is no reason for them to falsely depose against the accused persons and nothing is elicited in the cross-examination to discredit their testimonies and they are credible and merit acceptance. B
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14. Ranjit Singh died of injuries sustained by him in the occurrence is established by the oral testimony of PW6 Dr. K.P. H

A Sarabhai who conducted autopsy and the post-mortem report issued by him.

15. According to the complainant there was litigation between them and the accused persons leading to enmity. PW3 Atmaram has also stated that there was litigation between them and it culminated in the occurrence. Animosity is a double edged sword. While it can be a basis for false implication, it can also be a basis for the crime [*Ruli Ram & Anr. Vs. State of Haryana* (2002) 7 SCC 691; *State of Punjab Vs. Sucha Singh & Ors.* (2003) 3 SCC 153]. In the instant case there is no foundation established for the plea of false implication advanced by the accused and on the other hand evidence shows that enmity has led to the occurrence. The conviction and sentence imposed on the appellants is based on proper appreciation of evidence on record and does not call for any interference.

16. There are no merits in the appeal. The same is dismissed.

E Nidhi Jain

Appeal dismissed.