

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

(Chapter VIII, Rule 32(2) (b))

Description of Case

Criminal Appeal No. 2052 of 2001

And

Criminal Appeal No. 495 of 2001

(Old No. 1919 of 1990)

Date of decision: 29th June, 2007

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date: 29.06.2007

Initials of Judge

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the judge for signature.

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

**(1) CRIMINAL APPEAL No. 2052 of 2001
(Old No. 1919 of 1990)**

Vimal Kumar, S/o Lala Ramwatar
Resident of Kaladhunghi, P.S. Kaladhunghi.
District, Nainital.

... Appellant

Versus

State

And

... Opposite Party

**(2) CRIMINAL APPEAL No. 495 of 2001
(Old No. 1920 of 1990)**

1. Rajendra Kumar @ Raju S/o Keshav Saran
2. Awatar Singh S/o Mahendra Singh
Both R/o Kaladhungi, P.S. Kaladhungi, Distt.Nainital

.... Appellants

Versus

State

... Opposite Party

Dated:29th June, 2007

Counsel for appellants- (1) Sri P.S. Danu, Amicus Curiae in CrI. Appeal No.2052/01
(2) Smt. Pushpa Joshi, learned counsel in CrI. Appeal No. 495/01
Counsel for respondent- Sri Amit Bhatt, Addl. GA and Sri M.A. Khan, learned brief holder for the State.

Coram: **Hon'ble J.C.S. RAWAT, J.**
 Hon'ble DHARAM VEER, J.

PER HON'BLE DHARAM VEER, J.

Both these appeals have been preferred against the common judgment and order dated 25.09.1990 and the appellants in both the appeals are related to the same incident, hence, both these appeals are disposed of by this common judgment and order.

2. These appeals, preferred under Section 374(2) of the Criminal Procedure Code 1973, (*hereinafter to be referred as Cr.P.C.*) are directed against the common judgment and order dated 25.09.1990 passed by Sessions Judge, Nainital in Session Trial No.180 of 1987, State Vs. Rajendra Kumar alias Raju and others, whereby, the learned Sessions Judge, has convicted the appellant Rajendra Kumar alias Raju for the offence punishable under Section 302 of Indian Penal Code, 1860 (*hereinafter to be*

referred as IPC) and sentenced him to undergo life imprisonment for the said offence. The appellants Awtar Singh and Vimal Kumar were convicted u/s 302/34 IPC and were awarded sentence to undergo life imprisonment for the said offence.

3. Appellant Awatar Singh (in Criminal Appeal No.495 of 2001) has died during the pendency of the appeal. The appeal against the appellant Awatar Singh was abated by the order of this Court dated 10.7.2006. Now, the appeals survive against the appellants Rajendra Kumar alias Raju and Vimal Kumar.

4. In brief, the prosecution story is that Harak Singh lodged a FIR in the P.S. Kaladhunghi, stating therein that his son namely Nandan Singh had gone to the Kaladhungi market. On 26.6.1987 in the night about 10:45 P.M., Ramesh Ram S/o Diwan Ram had informed him that the appellants Raju alias Rajendra Kumar, Avtar Singh and Vimal Kumar were beating Nandan Singh outside the house of Raju alias Rajendra Kumar Aggarwal. Then Harak Singh along with Ramesh Ram had reached on the spot and he saw that his son Nandan Singh was lying on the coat and the blood was oozing out from his body and he was in conscious state. Then he inquired from Nandan Singh that who had beaten him and then Nandan Singh told him that Raju, Vimal and Awat Singh had beaten him by knife. After leaving Ramesh Ram there, he had reached at Veterinary Hospital, Kaladhungi and from there, after taking his son-in-law Padam Singh Karki with him, he came to the police station for lodging of the FIR. He had also requested for early treatment of his son. He also alleged that the above said persons had caused the injuries to his son by knife with the intention to kill him. For the said allegations, he has lodged the FIR in the P.S. Kaladhungi at 11:10 P.M on 26.6.1987, that FIR is EX.Ka-1. On the basis of this FIR, a Chik FIR was prepared, i.e. Ex.Ka-7 The distance of the police station from the place of occurrence 1 1/2 furlongs, as shown in the Chik FIR. On the basis of this, the entry was made in the G.D., the copy of G.D. is Ex.Ka-8. From

there, Nandan Singh was sent for the medical treatment to the Kaladhungi Hospital, where due to non-availability of the doctor, he was referred to the Haldwani but in the way before reaching Haldwani, Nandan Singh had died. The investigation of the case was entrusted to the S.I. J.D. Arya, P.W.6. During the investigation on 27.6.1987, the I.O. has taken the bed and the other blood stained clothes in his possession and the memo was prepared, that memo is Ex.Ka-2. The inquest report was also prepared on 27.6.1987, that report is Ex.Ka-9. Form No.33 was also prepared at the time of preparation of inquest report, that is Ex.Ka-10. The other papers prepared at the time of inquest report are Ex.Ka-11 report of the police for sealing the clothes of the deceased, Ex.Ka-12 report for post-mortem, Ex.Ka-13 Form No.13, Ex.Ka-14 Photo Lash and Ex.Ka-15 is the specimen of seal. The post-mortem of the dead body was conducted on 27.6.1987 at 3:00 P.M. by Dr.V.P. Aggarwal, the post-mortem report is Ex.Ka-3. During the investigation, the I.O. has taken in his possession the undershirt of the appellant Rajendra Kumar alias Raju in which the spots of blood were there on 28.6.1987 and a Fard was prepared, that Fard is Ex.Ka-4. On the pointing out of the appellant Rajendra Kumar alias Raju, a knife was recovered by the police on 28.6.1987 and the recovery memo was prepared, that is Ex.Ka-5. The I.O. has also taken the blood stained clay and the plan clay and both the clay were packed in the separate boxes and a Fard was prepared, that Fard is Ex.Ka-6. The I.O. has also prepared a site plan of the place of occurrence on 27.6.1987, i.e. Ex.Ka-16. On 27.6.1987, witness Ramesh Ram has given a torch to the I.O. by which he had seen the incident and this torch was given in the Supurdgi of the Ramesh Ram and a Fard was prepared, that Fard is Ex.Ka-17. He has also prepared a map of the place of occurrence where the knife was recovered on the pointing out of the appellant Rajendra Kumar alias Raju i.e. Ex.Ka-18. He has also prepared a map where the appellant Rajendra Kumar alias Raju was arrested and blood spotted undershirt was recovered from him,

that map is Ex.Ka-19. The I.O. has also prepared a map showing the place of occurrence where the appellants Avtar Singh and Vimal Singh were arrested, that map is Ex.Ka-20. During the investigation, he has recorded the statements of the witnesses and after completing the investigation, he has submitted the charge sheet against the appellants u/s 307/302 IPC, that charge sheet is Ex.Ka-12. The blood stained clothes and the other articles also sent for chemical examination and the report was submitted by the Scientific Officer, that report is Ex.Ka-22 on record.

5. Chief Judicial Magistrate, Nainital has committed the case to the court of Sessions on 03.09.1987 u/s 209 Cr.P.C. after complying with the provisions of Section 207 Cr.P.C.

6. The Sessions Judge, Nainital has framed the charge against the appellants Raju alias Rajendra Kumar, Avatar Singh and Vimal Singh u/s 302 r/w 34 IPC on 18.9.1987. The charge was read over and explained to them who pleaded not guilty and claimed to be tried. Again on 07.03.1990, the charge against appellant Raju alias Rajendra Kumar was framed u/s 302 IPC. The charge was read over and explained to the appellant who pleaded not guilty and claimed to be tried.

7. To prove its case, prosecution has examined P.W.1 Harak Singh, who is complainant of the case, P.W.2 Ramesh Ram, who is eyewitness, P.W.3 Umed Singh before whom appellant Raju alias Rajendra Kumar was arrested and the discovery and recovery of the knife was made, P.W.4 S.I. Kewal Ram Kandpal, P.W.5 Constable Anup Singh who has filed the affidavit, P.W.6 S.I. J.D. Arya, I.O. of the case and P.W.7 Dr. V.P. Agarwal, who has conducted the post-mortem of the dead body of the deceased Nandan Singh.

8. Thereafter the statements of the appellants were recorded u/s 313 Cr.P.C. who have denied the allegations made against them. However, in defency they have not produced any oral or documentary evidence.

9. After hearing learned counsel for the parties and after perusing the entire material available on record, the Sessions Judge, Nainital by his judgment and order dated 25.09.1990 has convicted the appellant Rajendra Kumar alias Raju for the offence punishable under Section 302 of IPC and sentenced him to undergo life imprisonment for the said offence. The appellants Awtar Singh and Vimal Kumar were convicted u/s 302/34 IPC and were awarded sentence to undergo life imprisonment for the said offence. Against the said judgment and order dated 25.9.1990, the appellants have preferred the present appeals before this Court.

10. We have heard Sri P.S. Danu, learned amicus curiae for the appellant in Appeal No.2052/01, Smt. Pushpa Joshi, learned counsel for the appellants in Appeal No.495 of 2001 and Sri Amit Bhatt, Addl. G.A. & Sri M.A. Khan, learned brief holder for the State and perused the entire material available on record.

11. To prove its case, prosecution has examined P.W.1 Harak Singh who has stated that the appellants Raju alias Rajendra Kumar, Avtar Singh and Vimal Kumar were known to him. The incident took place on 26.6.1987 and the time was about 10:45 P.M., when Ramesh Ram had come to his house and he had told him that the appellants Raju, Avatar Singh and Vimal were beating his son Nandan Singh with knife outside the house of Rajendra Kumar alias Raju. Then he along with Ramesh Ram had run on the spot and saw that his son Nandan was lying on a cot and the blood was oozing out from his body. Then he asked from Nandan Singh that who had beaten him and then Nandan replied him that Raju, Vimal and Avatar had beaten him by knife. Then he had dictated the report to his son-in-law Padam Singh Karki. After that he has submitted that report in the P.S. Kaladhungi, that report is Ex.Ka-1. After that Nandan Singh was sent to the Government Hospital, Kaladhungi but due to non-availability of the doctor, he was referred to Haldwani by the same Jeep and in the way, Nandan Singh had

died. On the next day in his presence, a blood stained bed, one bed sheet, Dari, Pankhi (a woolen cloth), Pillow and one pair of shoes were taken by the I.O. in his possession and a Fard was prepared on the spot, that Fard is Ex.Ka-2. Specimen of seal was also taken on the spot. This witness was cross-examined at length but nothing has come out which may create any doubt in his evidence. The evidence of this witness is trustworthy, reliable and believable.

12. P.W.2 Ramesh Ram, who is the eyewitness of the incident, has stated that appellants Raju, Avatar and Vimal were known to him and the deceased Nandan Singh was also known to him. On the date of the incident, he was working in the shop of the Kamal Tailors and he used to work in the late night. The incident was of 26.6.1987 and the time was about 10:30-10:45 P.M. After completing his work, he was going towards the market for walk and when he reached near the house of Raju, then he heard the noise of the quarrel. Then he had seen in the electric and torch light that the appellant Raju was causing injuries to Nandan Singh by knife and appellants Avatar Singh and Vimal were saying that he (Nandan Singh) considers himself as a Don, kill him. Then he immediately went to the house of Harak Singh and told him about the incident and then he along with Harak Singh came on the spot. At that time, Nandan Singh was lying there in a cot and blood was oozing out from his body and he was in senses at that time. On being asked by Harak Singh, Nandan Singh had informed that he was beaten by Raju, Avatar & Vimal. Then after leaving him on the spot, Harak Singh had gone to lodge the FIR. After sometime, he came there along with the police in a Jeep. At that time, Nandan had become unconscious. Then he was taken to the hospital in the jeep. This witness was cross-examined at length but nothing has come out which may create any doubt in his evidence. The evidence of this witness is trustworthy, reliable and believable.

13. P.W.3 is Umed Singh who has stated that appellants Raju, Avatar and Vimal were known to him. On 28.6.1987 before him, police has arrested Raju. At the time of his arrest, the I.O. has taken the undershirt with the blood stained spots of the appellant Raju in his possession. At that time, Rajendra Kumar alias Raju had told that these blood spots in the undershirt he had received at the time of causing the injuries to Nandan Singh. A fard for taking the undershirt was prepared by the I.O. and the Baniyan was sealed on the spot, i.e. Ex.Ka-4. A bundle was opened in the court and he had identified the said undershirt in the court, i.e. Ex.1. After that, an enquiry was made from Raju and he has confessed his guilt and has also stated that the knife with which he has caused the injuries, he had concealed that in the bushes near the mosque. Thereafter, the appellant Rajendra Kumar alias Raju gave the knife from the bushes, that knife was sealed on the spot and a recovery memo was prepared, that memo is Ex.Ka-5. The said knife was opened in the court and he has identified the same in the court, i.e. Ex.II. This witness was cross-examined at length but nothing has come out which may create any doubt in his evidence. The evidence of this witness is trustworthy, reliable and believable.

14. P.W.4 is S.I. Kewal Ram Kandpal, who has stated that on 26.6.1987, he was posted as S.I. in the P.S. Kaladhungi. After registration of the FIR in the police station, he has gone on the spot along with S.O. and other police employees. On the spot at 11:50 P.M., the S.O. has taken the blood stained clay and the plain clay in which cement was there and that was sealed in two separate bundles and specimen of seal was also prepared and a memo was prepared on the spot, i.e. Ex.Ka-6. The blood stained clay box was exhibited as Ex.III and the plain clay box was exhibited as Ex.IV in the court. On 28.6.1987, appellant Raju was arrested from the Kaladhungi and his undershirt in which the blood stained spots were there, was taken into possession and specimen of seal and a Fard was prepared, that Fard is Ex.Ka4 and undershirt is Ex.1. After the arrest, appellant Raju

had confessed his guilt and stated that he had concealed the knife in the bushes near the mosque by which he has caused the injuries to the Nandan Singh. After that, he had given the knife from the bushes , i.e. Ex.2 and a memo was prepared on the spot, that memo is Ex.Ka.5.

15. P.W.5 is Constable Anup Singh who has filed an affidavit. He has stated in the affidavit that he has taken the case property in six sealed bundles for chemical examination in the Agra on 30.7.1987 and for that, the entry was made in the G.D. at Report No.17 at 10:30. Those bundles in sealed condition were given in Agra Laboratory. Up to when the said property was in his custody, it was remained in sealed condition and nobody was allowed to touch it.

16. P.W.6 is S.I. J.D. Arya, who is I.O. of the case. He has stated that from 26.6.1987 to 1.7.1987, he was posted in P.S. Kaladhungi as S.I. On 26.6.1987, case was registered in the police station in his presence. Harak Singh had filed the report on 26.6.1987 at 11:10 P.M. in the police station, that is Ex.Ka-1, on the basis of which a Chik FIR was prepared on the spot by Devki Nandan Sharma and the entry was made in the G.D. at Report No.31 at 11:10 P.M. and the case was registered against the appellants, that Chik FIR is Ex.Ka-7 and copy of G.D. is Ex.Ka.8. During the investigation, he has taken the statements of Harak Singh, Ramesh Ram, Umed Singh and other witnesses. On 26.6.1987, he has inspected the place of occurrence and he has taken in his possession the blood stained clay and the plain clay and sealed them and specimen of seal was taken and a Fard was prepared on the spot, i.e. Ex.Ka-6. At that time, S.I. Kewal Ram was also with him. At that time, Nandan Singh was alive and he was referred to the Kaladhungi Hospital for treatment and on the same night, Nandan Singh had died and his dead body was taken in the police station on 27.6.1987. The inquest of the dead body was prepared, i.e. Ex.Ka-9. For post-mortem of dead body, some papers were prepared i.e. Police Form No.33

and report for sealing the clothes, report for post-mortem, Form No.13, Chalan Lash and Photo Lash, these papers are Ex.Ka-10 to Ex.Ka-14 and dead body was sent for post-mortem and Constable Ramesh Lal and Gyan Chand were deputed for this duty. Specimen of seal was prepare at that time, i.e. Ex.Ka-15. He has also inspected the place of occurrence on 27.6.1987 and prepared a site plan, i.e. Ex.Ka-16. He has also taken the blood stained bed and prepared a Fard, i.e. Ex.Ka-2. On 27.6.1987, he has recovered a Torch from Ramesh Ram. By the help of this Torch, Ramesh Ram had seen the incident and the torch was in working condition. After that, torch was handed over in the supurdgi of Ramesh Ram and a Fard was prepared, i.e. Ex.Ka-17. On 28.6.1987, he had arrested appellant Raju and from his possession, blood spotted undershirt was recovered and a Fard was prepared, i.e. Ex.Ka-4. After the arrest, appellant Rajendra Kumar alias Raju has confessed his guilt and he had told that he could give the knife with which he has caused injuries to the deceased Narendra Singh. Then, he has given the Knife from the bushes. The knife was blood stained, that knife is Ex.II and recovery memo was prepared on the spot, i.e. Ex.Ka-5. He has also prepared a map of the place where the knife was recovered i.e. Ex.Ka-18. He has also prepared a map where appellant Raju was arrested and his was taken into possession, that is Ex.Ka-19. He has also arrested other two appellants Avatar Singh and Vimal on 27.6.1987 near the garden of Bhola Bux and a map was prepared where they were arrested, i.e. Ex.Ka-20. After completing the investigation on 1.7.1987, he has filed the charge sheet i.e. Ex.Ka-21. The blood stained undershirt is Ex.I, blood stained clay is Ex.III, plain clay is Ex.IV. He has also taken into possession the blood stained bed, pillow, Dari, Bed Sheets and thereafter these articles were sent for chemical examination, these are Exs.V to Ex.VIII. The blood stained clothes of the deceased, shirt, white pant, socks, shoes and ring were also taken into possession and he has received these items after the post-mortem from the hospital

which were also sent for the chemical examination, that are Exs.IX to XIV. After the chemical examination, the report was received, i.e. Ex.Ka-22.

17. P.W.7 is Dr.V.P. Aggarwal, who has stated that on 27.6.1987, he was posted as Physician in Civil Hospital, Haldwani. On that day at 3:00 P.M., he has conducted post-mortem of the dead body of deceased Nandan Singh. The dead body of the Nandan Singh was brought to him from P.S. Kaladhungi by Constable Ramesh Lal and Gyan Chand in a sealed condition. The deceased was 19 years old and he had died about half-day before. He has found following ante-mortem injuries on the person of the deceased:-

1. *Punctured wound 3cm x 1cm x abdomen thoracic cavity deep on the left side front of chest close to mid line just going above from xiphoid process omentum leg protruding through it on exploration on left cupola of diaphragm was clean cut.*
2. *Incised wound 3cm x 0.75cm on left side front of chest at 7 o'clock position, 8 cm below nipple.*
3. *Incised wound 2.5cm x 0.5 cm on left side front of chest at sub costal margin both ends of wound tapering.*
4. *Incised wound 3cm x 0.5cm x muscle in front of left fore arm upper third.*
5. *Incised wound 2.5 x 0.5cm on the outer aspect of left forearm in middle.*
6. *incised wound 1.5cm x 0.5 on the back aspect of left forearm lower two third.*
7. *Contusion 1.5cm x 0.3cm on the front of left forearm upper two third.*
8. *Incised wound 3cm x 0.75cm on the back of chest right side.*
9. *Incised wound 2.5cm x 0.75 cm x thoracic cavity deep on the back of chest right side 4cm internal to injury no.8.*
10. *Incised wound 2 cm x 0.75 cm on the right side back of chest 4cm below injury no.9.*
11. *Incised wound 3cm x 1cm on the right side back lower part.*

On internal examination, Dr.V.P. Aggarwal has found left pleura cut on lower part and about 175 CC of blood was present in left pleural cavity. Right pleura was also cut in lower part and about 200 CC blood was present in pleural cavity. Right lung was cut clean underneath the injury no.9 in lower lobe. Left lung was also cut clean in lower lobe. There was a clean cut in pericardium underneath injury no.1. About 300 CC of blood was present in pericardium cavity. There was clean cut in heart 0.75 cm x 0.3 cm in inferior and posterior part. There was a cut in peritoneum under injury no.1 over lying omentum leg protruding through this injury. About 400CC of blood in peritoneum cavity. Undigested food about 150 gram (Potato Chapati) was found in stomach.

18. The doctor has also stated that in his opinion that deceased has died due to shock and hemorrhage. He has also proved post-mortem report, i.e. Ex.Ka-3. He has also stated that injuries, which were caused to the deceased before his death, were sufficient for his death in the ordinary course. The death is possible due to the injuries caused to the deceased on 26.6.1987 at 10:30-10:45 P.M. He has further stated that except injury No. 7, all the injuries could be possible by a sharp edged weapon like knife.

19. Thereafter the statements of the appellants were recorded u/s 313 Cr.P.C. who have denied the allegations made against them. However, in defence they have not produced any oral or documentary evidence.

20. Learned counsel for the appellants have argued that PW.2 Ramesh Ram is a chance witness and his presence on the spot is doubtful. Learned counsel for the appellants has further submitted that this PW.2 Ramesh Ram has stated in para 6 of his statement that he was going for a walk after completing his work and that is not natural in such a late night. Learned counsel for the appellants has further submitted that there is no source of light mentioned in the F.I.R. and it was not possible for him to see the assailants. The argument advanced by learned counsel for the appellants has no force. From the statement of PW.2 Ramesh Ram, it is clear that he has seen the incident in the torch and electric light. In para 2 of his statement, he has stated that on 26.6.1987 at about 10:30-10:45 P.M., after completing his work, he was going towards the market and when he reached near the house of Rajendra Kumar alias Raju then he heard the noise of the quarrel. Then, he had seen the electric and torch light that appellant Raju was causing injuries to Nandan Singh by knife and appellants Avatar Singh and Vimal were saying that he (Nandan Singh) considers himself as a Don, kill him. From that statement, it is clear that his presence on the place of occurrence is very natural and he has seen the incident

in the torch and electric light and his torch was taken by the I.O. in his custody on 27.06.987. Thus, from this statement, it cannot be said that PW.2 Ramesh Ram was not present on the spot and he has not seen the incident. After reading his statement and examining his conduct, it is proved that this witness was present on the spot and he has seen the incident and his presence on the place of occurrence is natural. Further, there is no evidence to prove that the PW.2 Ramesh Ram have got any enmity with the appellants. He has got no friendship with the complainant. In this Way, Ramesh Ram is an independent, reliable and trustworthy witness. There is nothing in the evidence which may challenge his testimony and may create any doubt in his evidence. Hence, his evidence is trustworthy and reliable.

21. Learned counsel for the appellants have further argued that the statement given by the deceased Nandan Singh to his father Harak Singh before his death that the appellants have caused the injury to him, is not correct as per the circumstances of the case. In support of this, he has submitted that Dr. V.P. Agarwal P.W.7 has stated in his cross examination that as the lungs and the heart of the deceased was punctured, the death could be possible after two to four minutes and hence, he was not in a position to give any statement to his father . This argument of learned counsel have also got no force for the reason that it depends upon person to person of his resistance power and his body built that up to when, he may be in conscious after receiving such injuries. Hence, it cannot be definitely observed that after receiving these injuries, each and every person may not be in a condition to give statement.

22. Learned counsel or the appellants has further submitted that no motive was proved by the prosecution, hence, the prosecution story is doubtful. In the judgment rendered by Hon'ble Apex Court in the case of *Yunis Alias Kaniya vs State of M.P. Reported in (2003) 1S.C.C. 425*, it has been observed in para 7 of the judgment as under:-

“7. The prosecution in the present case has failed to prove the motive. Failure to prove motive for crime in our view is of no consequence. The role of the accused persons in the crime stands clearly established. The ocular evidence is very clear and convincing in this case. The illegal acts of the accused persons have resulted in the death of a young boy of 18 years. It is settled law that establishment of motive is not a sine qua non for proving the prosecution case. For all these reasons, we find no merits in these appeals.”

23. In the present case also, from the statement of PW.1 Harak Singh to whom before the death the deceased had given his statement that these are the appellants who caused the injuries by knife to deceased. Ramesh Ram PW.2 who is the eyewitness has specifically stated that he has seen that appellant Rajendra Kumar alias Raju while causing the injuries to deceased by knife and other appellants Vimal and Avatar Singh were saying that he (Nandan Singh) considers himself as a Don, kill him. In this way, from the evidence of PW.1 Harak Singh and PW.2 Ramesh Ram as discussed above in detail, it is clear that there is direct evidence against the appellants. Appellant Raju have caused the injuries to the deceased Nandan Singh by knife and appellants Avatar Singh and Vimal Singh, who were with the pre-meeting and with pre-planning of mind, have told appellant Rajendra Kumar alias Raju to cause injuries to deceased and then he has caused the injuries to deceased by knife. Thus, there is a direct evidence against the appellants and hence, the argument of learned counsel for the appellants is not acceptable.

24. Learned counsel for the appellants has further submitted that Umed Singh Pw.3 before whom the appellants were arrested and recovery of knife was made, is an interested witness and he related to the deceased Nandan Singh. This witness has stated in his evidence that on 28.6.1987 before him, police had arrested Raju. AT the time of his arrest, the I.O. has taken the blood spotted undershirt of the appellant Raju in his possession. At that time, Rajendra Kumar alias Raju had told that these blood spots in the undershirt he had received at the

time of causing the injuries to Nandan Singh. He had also identified the said undershirt in the court, i.e. Ex.1. Thereafter, appellant Rajendra Kumar alias Raju gave the knife from the bushes near the mosque in his presence and a recovery memo was prepared on the spot, i.e. Ex.Ka-5. He had also identified said knife in the court, i.e. Ex.II. After scrutinizing the statement of Umed Singh with due caution, there is nothing to show that this witness was not present on the spot and he has given the statement due to the reason he was in relation of the deceased Nandan Singh. The statement of this witness is very natural and his presence on the spot as per the circumstances is also natural. As per the judgment of the Hon'ble Apex Court in the case of *Ashok kumar pandey vs. State of Delhi* reported in (2002)4 SCC 76, it has been observed that **“evidence of the witness cannot be discarded merely on the ground that he is either partisan or interested or both, if otherwise the same is found to be credible”**. There is nothing to prove that the Umed Singh has given the evidence against the appellants due to enmity or due to the reason that he is related to the deceased. In the cross-examination also, nothing has come out which may prove his statement doubtful or which may prove any doubt in his statement. The statement of this witness is trustworthy, reliable and natural.

25. Learned counsel for the appellants has further argued that the knife was recovered from the bushes near the mosque which is a common place and he has further stated that the appellant Rajendra Kumar has not stated a single word about this discovery, hence the discovery and recovery is doubtful. We again do not find any force in the argument advanced by learned counsel for the appellants. The discovery of the knife was pursuant to the disclosure statement made by appellant Raju and the knife was recovered by the appellant Raju which was concealed by him from the bushes near the mosque. This view is supported by the judgment of Hon'ble Apex Court in the case of ***Nisar Khan alias Guddu & Guddu & others Vs. State of Uttarachal***

reported in (2006) 9 S.C.C. 386, Hence, the discovery and recovery of knife is as per the law and the same is legal and justified.

26. Learned counsel for the appellants lastly argued that the FIR is ante-timed and it was lodged in the next day. This argument of learned counsel is also misconceived. The incident is said to be taken place at 10:30-10:45 P.M. and the FIR was lodged at 11:10 P.M and the distance of the police station from the place of occurrence is 1 ½ furlongs. The entry was made in the G.D. on the same day at 11:10 P.M. which is proved by the evidence of P.W.6 S.I. J.D. Arya who has stated that Harak Singh had filed the report on 26.6.1987 at 11:10 P.M in the police station on the basis of which a Chik FIR was prepared by Devki Nandan Sharma and the entry was made in the G.D. at Report No.31 at 11:10 P.M. Even this fact is proved by the evidence of P.W.1 Harak Singh and P.W.2 Ramesh Ram who have stated that Harak Singh after leaving Nandan Singh on the spot, had gone to lodge the FIR on 26.06.1987 after the incident. Hence, it cannot be said that the FIR is ante-timed.

27. The case property was sent for chemical examination to Chemical Laboratory, Agra. The items sent for chemical examination are mentioned in Ex.Ka-22 as item No.1 to Item No.13 viz. (1) cement plaster in a sealed box from the spot, (2) pillow (3) Darri (4) & (5) Bed sheets (6) Pair of Shoes (7) Shirt (8) White Pant, (9) Grey Pant (10) Pair of socks (11) Ring (12) Knife and (13) Under Shirt. From a perusal of the report, it reveals that on Items No.1 to 5, 7 to 10 and 12, human blood was found. On Items No.6 and 13, disintegrated spots of blood were found. On Items No.2 to 5 and 7 to 9, spots of 'A' group blood were found. On a perusal of this report, it is also proved that human blood on the above said items was found.

28. From the evidence discussed above, it is proved that on 26.6.1987 at 10:30-10:45 P.M., when the Ramesh Ram P.W.2 was going after completing his work, then he heard the noise of

quarrel. Then he had seen the electric and torch light that the appellant Raju was causing injuries to Nandan Singh by knife and appellants Avatar Singh and Vimal were saying that he (Nandan Singh) considers himself as a Don, Kill. Then he immediately went to the house of Harak Singh and told him about the incident and then he along with Harak Singh came on the spot. At that time, Nandan Singh was lying there in a cot and blood was oozing out from his body and he was unconscious at that time. On being asked by Harak Singh, Nandan Singh had informed that he was beaten by Raju, Avatar & Vimal by knife. After that he has dictated the FIR to his son-in-law Padam Singh Karki and that FIR was lodged in the Police Station, Kaladhungi at 11:10 P.M. on 26.06.1987. Then after leaving him on the spot, Harak Singh had gone to lodge the FIR, that report is Ex.Ka-1. After that Nandan Singh was sent to the Government Hospital, Kaladhungi but due to non-availability of the doctor, he was referred to Haldwani by the same Jeep and in the way, Nandan Singh had died. Deceased Nandan Singh had given his statement to the Harak Singh, which is his dying declaration u/s 32 of the Indian Evidence Act, 1872. Thereafter, on 28.6.1987, just after two days, appellant Raju was arrested from the Kaladhungi and the knife with which the injury was caused to the deceased Nandan Singh was given by him to the Investigating Officer S.I. J.D. Arya from the bushes in the presence of the public witness P.W.3 Umed Singh.

29. Thus, in this way, the prosecution has been able to prove its case against the appellants beyond reasonable doubt. The learned Sessions Judge, Nainital has rightly convicted the appellant Rajendra Kumar alias Raju for the offence punishable under Section 302 of IPC and rightly sentenced him to undergo life imprisonment for the said offence. The appellants Avatar Singh and Vimal Kumar were also rightly convicted u/s 302/34 IPC and were rightly awarded sentence to undergo life imprisonment for the said offence.

30. For the reason recorded above, the appeals are devoid of merit and are hereby dismissed. The judgment and order dated 25.09.1990 passed by Sessions Judge, Nainital is hereby confirmed.

31. Since the appellant Awatar Singh (in Criminal Appeal No.495 of 2001) has died during the pendency of the appeal, hence, the appeal against appellant Awatar Singh stands abated.

32. Let the record of the case be sent back to the trial court concerned for compliance of the order.

(Dharam Veer, J.)

(J.C.S. Rawat, J.)

June 29,2007

Rajeev Dang