

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

**CRIMINAL APPEAL NO.793 OF 2001
(Old No.1326/1991)**

1. Sri Kant S/o Shri Gyan Chand R/o Ajabpur Kalan,
Dehradun
2. Subhash S/o Sri Hukum Chand, R/o 25 Akhara
Mohalla, Dehradun

..... Appellants

Versus

The State

..... Respondent

Dated: December 31, 2008

**Smt. Beena Pandey, learned counsel for the appellant No.2
Sri M.A. Khan, learned brief holder for the State**

HON. DHARAM VEER, J.

This criminal appeal, preferred under section 374(2) of The Code of Criminal Procedure, 1973 (*hereinafter to be referred as Cr.P.C.*), is directed against the judgment and order dated 04.06.1991 passed by Ist Additional Sessions Judge, Dehradun in S.T. No.70/1989, State Vs. Sri Kant and another, S.T. No.71/1989, State Vs. Sri Kant and S.T. No.73/1989, State Vs. Subhash, whereby the learned Ist Addl. Sessions Judge has convicted the appellants/accused- Sri Kant and Subhash u/s 399 of The Indian Penal Code, 1860 (*hereinafter to be referred as I.P.C.*) and sentenced them to five years' R.I. each. They were further convicted u/s 402 IPC and sentenced to R.I. for five years' each. Both the appellants/accused were further convicted u/s 25 of The Arms Act, 1959 and sentenced to R.I. for one year each. All the sentences were directed to run concurrently.

2. I have heard Smt. Beena Pandey, learned counsel for the appellant and Sri M.A. Khan, learned brief

holder for the State and perused the entire material available on record.

3. In-charge CJM, Dehradun vide his report dated 24.12.2008, on the basis of report of the concerned police station, has informed that appellant/accused Sri Kant has died before one year. Hence, the appeal filed by appellant/accused Sri Kant stands abated.

4. In brief, the prosecution case is that on the intervening night of 30/31.10.1988, appellants/accused Sri Kant, Subhash along with three other persons had assembled in a Khandhar near village Mithi Beri at about 1:00 A.M. for the purpose of committing dacoity and they also made preparations for the same. The appellants/accused were planning to commit dacoity at the house of Panchu Ram who was resident of village Mithi Beri. Appellants/accused along with two other persons were apprehended by the police. On taking search, one country made pistol of 315 Bore and two live cartridges were recovered from the possession of appellant/accused Sri Kant and one country made pistol of 315 Bore and two live cartridges were also recovered from the possession of appellant/accused Subhash. The police personnel also recovered arms and ammunitions from the possession of other accused persons. Accordingly, the case was registered against the appellants/accused and other accused persons. The recovery memo of arrest and recovering illegal weapons was prepared on the spot, i.e. Ex.Ka-8. On the basis of this memo, the case was registered at RoP Vasant Vihar, P.S. Kotwali, Dehradun on 31.10.1988 at 4:00 A.M. and accordingly the Chik FIR was prepared by Constable Clerk Heera Singh, which is on record. The necessary entry was also made in the G.D., the carbon copy of G.D. is Ex.Ka.5. The

investigation of this case was entrusted to Mahendra Singh Verma (P.W.3). During the course of investigation, the I.O. inspected the place of occurrence and prepared the site plan, i.e. Ex.Ka-4. The I.O. also obtained the sanction for prosecution of the appellants/accused u/s 25 of the Arms Act from District Magistrate, Dehradun on 31.1.1989. Sanction for prosecution against appellant/accused Sri Kant is Ex.Ka-9 and sanction for prosecution against appellant/accused Subhash @ Titu is Ex.Ka.10. After completing the investigation, the I.O. filed the charge sheet against the appellants/accused and two other accused u/s 399/402 IPC, i.e. Ex.Ka-6. Charge sheet filed against appellant/accused Sri Kant u/s 25 of The Arms Act, 1959 is Ex.Ka-7. Against the appellant/accused Subhash @ Titu, charge sheet filed u/s 25 of The Arms Act, 1959 is Ex.Ka-7/A.

5. After receiving the charge sheet, learned ACJM, Dehradun has committed the case to the court of Sessions on 02.05.1989 after giving necessary copies to the appellants/accused as provided under Section 207 Cr.P.C.

6. The case was transferred to Addl. Sessions Judge, Dehradun by the Sessions Judge, Dehradun for disposal according to law.

7. Learned III Addl. Sessions Judge, Dehradun has framed the charge against the appellants/accused Sri Kant and Subhash u/s 399/402 IPC on 16.5.1989. The charge was read over and explained to each of them who pleaded not guilty and claimed to be tried. On the same day i.e. on 16.5.1989, charge against appellants/accused Sri Kant and Subhash @ Titu was also framed by III Addl. Sessions Judge, Dehradun u/s 25 of The Arms Act, 1959. The

charge was also read over and explained to the appellants/accused who pleaded not guilty and claimed to be tried.

8. To prove its case, the prosecution has examined P.W.1 S.I. Om Veer Singh, P.W.2 S.I. Yogendra Pal Singh and P.W.3 S.I. Mahendra Singh Verma, I.O. of the case.

9. After that the statements of the appellant/accused 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. They have not produced any oral evidence but in documentary evidence, they have filed some documents viz. copies of statements of Constable Virendra Singh and S.I. Sat Pal Singh recorded in Case Crime No.305/1988 in the court of Special Magistrate, CBI, Dehradun and photocopy of newspaper 'Dainik Vishva Manav' dated 25.10.1989.

10. After hearing learned counsel for the parties and appreciating the entire material available on record, the learned Ist Additional Sessions Judge, Dehradun vide his judgment and order dated 04.06.1991 convicted and sentenced the appellant/accused as discussed above. Feeling aggrieved by the aforesaid judgment and order, the appellants/accused have preferred the present appeal.

11. To prove its case, the prosecution has examined P.W.1 S.I. Om Vir Singh who has stated that in the night of 30/31.10.1988, he was posted as In-charge of Police Out Post Vasant Vihar. On that day, he along with S.I. R.S. Toliya, H.C. Rajvir Singh, Constable

Nanak Chand, Constable Ashok Kumar, Constable Om Prakash, Constable Virendra Singh and with other police force reached at Chowki Basant Vihar during patrolling at about 11:00 P.M. and also in search of the appellant/accused. There they met S.I. Y.P. Singh and H.C. Raj Kumar. Meanwhile, they received information through an informer that the gang of appellant/accused Sri Kant had assembled in the Khandhar near village Mithi Beri for committing dacoity at the house of Panchu Ram of Mithi Beri. On receiving this information, he sent constables Rajendra Singh and Atar Singh to the house of Panchu Ram in the village Mithi Beri for security after issuing necessary instructions and then made attempts to pick up the public witnesses. However, none was available. Then he explained to the police force the purpose of the raid and took search of each other to ensure that nothing illegal was in their possession. Then he divided the police force into three parties. He himself was the in-charge of the first party which comprised of H.C. Raj Vir Singh, Constables Ashok Kumar and Nanak Chand who were carrying rifles. The other party was headed by S.I. R.S. Toliya which comprised of Constables Prem Singh, Om Prakash and Virendra Singh and each of them were carrying rifles. The third party was headed by S.I. Y.P. Singh and it comprised of H.C. Raj Kumar and Constables Virendra Singh and Ram Pal Singh. The three Sub-Inspectors were carrying revolvers. After issuing necessary instructions to the three parties, they reached near the Khandhar along with the force. The informer went away after pointing out the spot. The first party took the position near the eastern side of Khandhar in the bushes. The second party took position in the southern side of the khandhar in the bushes. The third party took position in the western side

of the khandhar. Then he heard some sound of whispering (GUNGUNAHAT) and also saw some light of smoking Bidi in the Khandhar and one of the dacoits said that their companion Kishan Bahadur had not arrived as yet, although it had become time for committing dacoity. He also said that it is useless to wait for Kishan Bahadur and that they are five persons and have enough arms and ammunition in their possession. He stated that let us proceed to commit the dacoity. Hearing the talks of the dacoits, he was convinced that these persons were going to commit dacoity. Hence he flashed his torch and tried to arrest the dacoits and told them to surrender as they were in the circle of the police. Hearing this, the dacoits tried to escape and they also shot three fires on the police party. He narrowly escaped by one of the shots and he also fired shots from his revolver in self-defence. Then the police party was able to catch hold of four of the accused persons at about 1:00 A.M. However, one of the dacoits escaped taking advantage of the dark. He was followed by H.C. Raj Kumar and Constable Ram Pal Singh. On interrogation, one of the dacoits told his name as Sri Kant (appellant) and on taking his search, one country made pistol 315 bore was recovered from his possession. There was one used empty cartridge in the barrel of the pistol. Two live cartridges 315 bore were also recovered from the pocket of the appellant/accused Sri Kant along with Biri and matchbox, which are Pistol (Ex.1), empty cartridge (Ex.2), live cartridges (Exs.3 & 4), Biri and match box Exs.5 and 6. On taking search of appellant/accused Subhash @ Titu, one country made pistol (Ex.7) was recovered from his right hand and there was one empty khokha in its barrel (Ex.8). Two live cartridges Exts.9 and 10 were also recovered from his pocket. There was smell of recently fire explosive from

the barrel of the pistol. Pistols and knives were also recovered from the possession of the other accused. The property of each accused person was sealed in separate bundles and Fard recovery was prepared on the spot in the torchlight. Sample of seal was also taken which are Exts.Ka-1 and Ka-2. Two empty cartridges which were shot by him from his revolver were also sealed in a separate bundle which are Exts.11 and 12 and its sample seal is Ex.Ka-3. After that he searched the Khandhar and then found some half burnt pieces of Biris and burnt pieces of matchsticks, which were also sealed. The appellants/accused and other accused were made *Bapardah* on the spot and brought to the Police Chowki Basant Vihar where a case was registered against them.

12. P.W.2 S.I. Y.P. Singh has corroborated the statement of P.W.1 S.I. Om Veer Singh regarding the arrest of the appellants/accused and other accused and the recovery of arms and ammunition from their possession.

13. P.W.3 is Mahendra Singh Verma, I.O. of the case, who has stated that the investigation of this case was entrusted to him on 31.10.1988. He recorded the statement of Constable Clerk Heera Singh and also of accused persons. The subsequent investigation was done by S.I. Uday Veer Singh who recorded the statements of witnesses, prepared the site plan (Ex.Ka-4) and after completing the investigation, submitted charge sheet i.e. Ex.Ka-6 and Ex.Ka-7. He also filed the copy of Recovery Fard, i.e. Ex.Ka-8 from the Case Diary as the original Fard of recovery was not available.

14. After that the statements of the appellant/accused were recorded u/s 313 Cr.P.C. The oral and

documentary evidence was put to each them in question form, who denied the allegations made against each them. They have not produced any oral evidence but in documentary evidence, they have filed some documents viz. copies of statements of Constable Virendra Singh and S.I. Sat Pal Singh recorded in Case Crime No.305/1988 in the court of Special Magistrate, CBI, Dehradun and photocopy of newspaper 'Dainik Vishva Manav' dated 25.10.1989.

15. Smt. Beena Pandey, learned counsel for the appellant/accused-Subhash has submitted that on the basis of the evidence discussed above, the case against the appellant/accused is not proved beyond reasonable doubt. I do not find any force in the argument advanced by counsel for the appellant/accused-Subhash as P.W.1 S.I. Omveer Singh has stated that in the night of 30/31.10.1988, he was posted as In-charge of Police Out Post Vasant Vihar. On that day, he along with S.I. R.S. Toliya, H.C. Rajvir Singh, Constable Nanak Chand, Constable Ashok Kumar, Constable Om Prakash and Constable Virendra Singh and with other police force reached at Chowki Basant Vihar during patrolling at about 11:00 P.M. and also in search of the appellant/accused. There they met S.I. Y.P. Singh and H.C. Raj Kumar. Meanwhile, they received information through an informer that the gang of appellant/accused Sri Kant had assembled in the Khandhar near village Mithi Beri for committing dacoity at the house of Panchu Ram of Mithi Beri. On receiving this information, he sent constables Rajendra Singh and Atar Singh to the house of Panchu Ram in the village Mithi Beri for security after issuing necessary instructions and then made attempts to pick up the public witnesses. However, none was

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corroboration from the evidence of P.W.2 S.I. Yogendra Pal Singh. Thus, as per the evidence as discussed above, the case against the appellant/accused is proved beyond reasonable doubt by the prosecution for the offences punishable u/s 399/402 IPC and also u/s 25 of The Arms Act, 1959 and I concur with the view taken by the trial court in convicting and sentencing the appellant/accused as discussed above.

16. For the reasons recorded above, the appeal is devoid of merits and is accordingly dismissed. The judgment and order dated 4.6.1991 passed by Ist Addl. Sessions Judge, Dehradun by which the appellant/accused-Subhash was convicted and sentenced, as discussed above, is hereby confirmed.

17. Superintendent, District Jail, Dehradun vide his report dated 4.12.2008 has informed that appellant/accused No.2-Subhash @ Titu has released from jail on 1.4.1993 after serving out the sentence as awarded against him by the trial court.

18. Since the appellant/accused Sri Kant has died, hence, the appeal filed by appellant/accused Sri Kant stands abated.

(Dharam Veer, J.)
December 31, 2008