

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1444 OF 2004

DEEP SINGH & ORS. APPELLANTS

VERSUS

STATE OF U.P. RESPONDENT

**WITH
CRIMINAL APPEAL NO. 186 OF 2005**

O R D E R

This judgment will dispose of Criminal Appeal No. 1444 of 2004 and 186 of 2005 as they arise out of the judgment of the High Court of Uttaranchal dated 12.08.2004.

The prosecution story is as under:-

At about 9:00p.m. on 21st May, 1989, the deceased Nazakat Ali along with P.W. 1 Fakhruddin & P.W. -3 Aatiq was moving along the Tanakpur Tiraha Road when they came across the four appellants, Deep Singh and Ganesh having knives in their hands while the other two appellants viz., Raju and Ram Singh were having an iron rod and a stick respectively in their hands. The appellants remarked that as the deceased had insulted Ganesh some time earlier, the insult would be avenged

at that very moment and saying so they assaulted the deceased with their respective weapons. Nazakat Ali fell to the ground after sustaining the injuries. The entire incident was witnessed by Fakhruddin - P.W. 1, Aatiq - P.W. 3 who were accompanying the deceased and Abdul Razak - P.W. 5 who reached the place of incident at the time of attack. The three witnesses attempted to apprehend the appellants but they made good their escape moving towards the Jam Factory premises. Nazakat Ali, in a precarious condition, was removed to the hospital by Fakhruddin and the others but he succumbed to his injuries within a short time. Fakhruddin thereupon made out a report which was transcribed by Aatiq and thereafter took the same to the police station and lodged the First Information Report at 9:50p.m. for an offence punishable under Section 302 of the Indian Penal Code. Sub Inspector Balbir Singh was deputed to the hospital to prepare the inquest report. The dead body was also subjected to a post-mortem at 11:00a.m. on the 22nd May, 1989, and Dr. B.D. Nariyal found six injuries on the dead body four being stabbed injuries and two being abrasions of small dimensions. The doctor opined that the cause of death was shock and haemorrhage and that the ante-mortem injuries were all on vital parts of the body. On the

completion of investigation, the accused were charged and tried under Section 302/34 of the IPC. As they denied the charge, they were brought on trial.

The prosecution in support of its case examined three eye witnesses Fakhruddin - P.W. 1, Atiq - P.W. 3 and P.W. 5 - Abdul Razak, Dr. B.D. Nariyal - P.W. 4 , the doctor who had performed the post mortem examination and Sub Inspector - Devender Singh, P.W. 7, the Investigating Officer. In their statements under Section 313 of the Code of Criminal Procedure, the appellants denied the prosecution allegations and pleaded false implication.

The Trial Judge on a consideration of the evidence on record convicted the accused for having committed an offence punishable under Section 302/34 of the IPC and sentenced them to undergo imprisonment for life and fine of Rs.1,000/- and in default of payment thereof to undergo further rigorous imprisonment of three months. This judgment had been confirmed by the High Court in appeal.

The matter is before us after the grant of special leave.

Three basic arguments have been raised by the learned counsel for the appellants during the course of the hearing. It has first been pointed out that the three eye witnesses P.Ws. 1, 3 and 5 were chance witnesses and their presence at that place had to be ruled out the more so as each of the witnesses had given different versions as to what had transpired during the incident. It has also been pleaded that there was no apparent motive for the assault as the vague allegations with regard to some insult which had been meted out to Ganesh had not been proved on record. It has finally been pleaded that the medical evidence did not support the ocular account inasmuch as that the incident could not have happened at 9:00p.m. and was more likely to have happened at about 12 mid night, which made the presence of the eye witnesses doubtful. In this connection, it has also been pointed out that out of the six injuries, four were as per doctor's evidence stab wounds which could have been caused with knives but there was some ambivalence with regard to the causing of the injuries by the iron road and the stick and for this reason as well, the appellants were entitled to succeed.

The learned counsel for the State has, however, emphasized that the incident had happened at about 9:00p.m. and the FIR had been lodged at the police station within about 45 minutes and it appeared from the record that the special report had been delivered to the Magistrate at Tanakpur itself within a very short time and as such the allegations of a belated FIR which had been ante-time did not arise. It has also been pointed out that the two courts, the trial court as well as the High Court, had on a concurrent finding of fact arrived at a conclusion that the appellants were guilty of murder.

We have heard the learned counsel for the parties and gone through the records on the issues raised by them. We find absolutely no reason to differ with the findings of the courts below with regard to the evidence of the three eye witnesses. It is true, as contended by the learned counsel, that the names of the accused do not find mention in the inquest report but we find that no adverse inference can be drawn from this omission as there is no requirement of law that the names of the accused must be mentioned in the inquest report, although, this observation should not be held to mean that the non-mentioning of the names in

the inquest report can always be ignored as the mention of the names strengthens the prosecution story and gives the Investigating Agency little opportunity in tampering with the evidence. In the present matter, however, we find that the fact that the FIR had been lodged within a very short time and special report also having been delivered within a few hours, the possibility that the FIR had been written later and then ante-time cannot be accepted.

In this view of the matter, the FIR having been lodged within 45 minutes of the incident giving a detailed account of the incident including the names of the accused and the weapons that they were carrying, we are clearly of the opinion that it rules out any suspicion about the absence of the witnesses. It must also be borne in mind that the evidence of several witnesses is bound to differ on several aspects and that a parrot like deposition would, as a matter of fact, smack of tutoring. We find from the record that the three witnesses have been clearly in accordance with each other in respect of the major issues raised in the evidence. In this view of the matter and the fact that there was no motive or the motive was vague, loses all significance.

We have also considered the argument of the learned counsel with respect to the discrepancies between the medical and the ocular evidence. The learned counsel has relied on a stray sentence in the cross examination of P.W. 4, the doctor, who stated that on account of the state of the dead body the possibility that the incident could have happened at 12 midnight also could not be ruled out. It is also significant that no question was put to the doctor whether the death having taken place at about 9:00p.m. was also to be ruled out. In the background of the fact that the FIR had been lodged within a very short time, it must also be taken that the incident had happened at 9:00p.m.

It has finally been submitted by the learned counsel that Raju was armed with an iron rod and Ram Singh with a stick and as only two abrasions had been attributed to them, there was some suspicion about their involvement. The injuries found on the dead body are reproduced below:-

"1. An oval stab wound 1 ½ cm X ½ cm chest deep. Left side chest 8cm below and medial to left nipple over 5th & 6th inter costal oozing of blood present.

2. Stabbed wound 1cm X 1 ½ cm front of the abdomen 21cm below the right nipple 5cm to cavity, upwardly direction oval in

shape.

3. Stabbed wound 2cm X 1 ½ cm front of the abdomen 21 cm below the right nipple 5cm to cavity, upwardly direction oval in shape.

4. Stabbed wound 2 ½ cm X 2 cm cavity deep, 5 cm below to injury no. 3.

5. Abrasion 1 ½ cm X ½ cm in the middle of back.

6. Abrasion ½ cm X 1 cm over right buttock."

Injuries 5 and 6 have been attributed to Raju and Ram Singh. We notice that the dimensions of the injuries are so miniscule that the possibility that they could have been caused by fall during the fracas is a possibility. We have also examined the statement of the eye witnesses. We observe that Fakhruddin - P.W. 1 and Aatiq - P.W. 3 did not attribute any injury to these two appellants and Abdul Rahman - P.W. 5 too does not specifically single them out for having caused injuries nos. 5 and 6. We are, therefore, of the opinion that they would be entitled to benefit of doubt.

Criminal Appeal No. 186 of 2005 is dismissed in toto whereas Criminal Appeal No. 1444 of 2004 is allowed qua Raju and Ram Singh appellant Nos. 2 and 3 and dismissed qua appellant No. 1 Deep Singh.

In view of the above, Raju and Ram Singh,

appellant Nos. 2 and 3 shall be released forthwith if
not required in connection with any other case.

.....J
[HARJIT SINGH BEDI]

.....J
[J.M. PANCHAL]

NEW DELHI
SEPTEMBER 16, 2009.

