



IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 95 of 2009

Anil Appellant

Vs.

State of UttarakhandRespondent

Presence:

Mr. S.S. Bhandari, Advocate for the appellant.

Mr. Siddhartha Bisht, AGA for the State.

With

Criminal Appeal No. 97 of 2009

Mohammad Imaran Appellant

Vs.

State of UttarakhandRespondent

Presence:

Mr. R.S. Sammal, Senior Advocate assisted by Ms. Sarita Bisht,
learned counsel for the appellant.

Mr. Siddhartha Bisht, AGA for the State.

With

Criminal Appeal No. 98 of 2009

Wasif and Another Appellants

Vs.

State of UttarakhandRespondent

Presence:

Mr. M.S. Pal, Senior Advocate assisted by Ms. Amreen Bano,
learned counsel for the appellants.

Mr. Siddhartha Bisht, AGA for the State.

JUDGMENT

Coram: Hon'ble Ravindra Maithani, J.
Hon'ble Siddhartha Sah, J.

(Per: Hon'ble Siddhartha Sah, J.)

The present appeals have been received upon remand from the Hon'ble Supreme Court vide judgment dated 18.09.2025, passed in Criminal Appeal No. 736-738 of 2015. In the earlier round of litigation, the judgment dated 02.05.2013, passed by this Court was set-aside by the Hon'ble Supreme Court, and the matter was remanded for fresh consideration. Consequently, upon remand, the matter has been heard again and is being decided accordingly.

2. All these appeals are directed against the common judgment and order dated 04.06.2009 / 05.06.2009, passed by learned Additional District and Sessions Judge / 1st Fast Track Court, Haldwani, District Nainital in Sessions Trial No. 50 of 2003, "State vs. Anil and others", by means of which, the appellants Anil and Imran were convicted under Sections 120-B, 302 read with Section 34, 307 read with Section 34, 328, and 394 of the Indian Penal Code, 1860 (in short, "IPC"). Appellants Pappu *alias* Sarvar and Wasif were convicted under Section 411 of the IPC.

3. Appellants Anil and Imran were sentenced to undergo life imprisonment under Section 302 read with Section 34 and Section 120-B of the IPC, along with a fine of ₹10,000/- each. They were further sentenced to undergo 7 years' rigorous imprisonment under Section 307 read with Section 34 of the IPC and a fine of ₹5,000/- each; 5 years' imprisonment under Section 328 of the IPC; and 5 years' rigorous imprisonment under Section 394 of the IPC with a fine of ₹5,000/- each.

4. Appellants Pappu *alias* Sarvar and Wasif were sentenced to undergo 1 year's imprisonment and a fine of ₹5,000/- each under Section 411 of the IPC. In default of payment of fine, the appellants were to undergo additional rigorous imprisonment of six months.

5. The case emanates out of an FIR which was registered against appellants Anil and Imran at Police Station Haldwani, as Case Crime No. 2028 of 2002, under Section 307 of the IPC, based on the report (Exhibit A-1) lodged by informant Aditya Sharma with the allegations that on 30.06.2002, the informant, along with his friend Raj *alias* Raju, son of Suresh Pal, resident of Chirag Tola, Purana Gas Ghar, Brij Niwas, Moradabad, came to Haldwani. Raj deals in the supply of CDs. After alighting from the Roadways bus near Sargam Talkies, Haldwani, Raj took him to a nearby shop whose shopkeeper's name was Rawat. Raj gave him CDs and obtained a payment of ₹37,500/-, and along with Rawat came to Anil's shop on Railway Road. Raj made the informant sit there and went along with Anil to another shop for taking payment. In Anil's shop, his brother Sohan Lal was also present. Around 8:00 p.m., Anil returned and told Sohan Lal to take the informant to a shop and tell Raj that he would come after closing down the shop. Sohan Lal knew that shop and took the informant on a scooter to Raj. Raj obtained a payment of ₹10,000/- from that shop when Anil also reached there. Thereafter, Raj went on a scooter with Sohan Lal to a shopkeeper by the name of Kishori and told the informant to come along with Anil. After coming out of the *gali* (lane), the informant and Anil also left in the car. The Maruti car was being driven by Anil's friend, Imran. Anil dropped him at Kishori's shop. Anil told Raj that he had some work, and if his work ends and he does not return, then they should meet at Bharadwaj Hotel. When Anil did not return, both of them went to Bharadwaj Hotel and waited for a long time. When Anil did not come, Raj brought two

softies from a Softy kiosk. While Raj and the informant were eating softies, Anil and Imran came in their car and told Raj to keep his payment in the CD box. Raj kept ₹47,500/- in a black bag and packed inside the box. Anil then told Raj to call his owner. Raj stated that he would call after some time. But when Anil insisted again, then Raj called on his employer's mobile, but it was switched off. Raj then phoned at his residence and informed that he was not getting a bus, so he would return the next day. After that, Raj purchased a half liquor bottle from the neighborhood. All four—Raj, the informant, Anil, and Imran sat in the Maruti. Anil drove the car and took them to the highway, where he stopped the Maruti in a corner and made pegs and gave them to the informant and Raj. Two glasses, two Pepsi bottles and *namkeen* had been bought and kept in the car by Anil without telling them. Pepsi was mixed with the peg, and one was given to Raj and one to the informant. After drinking the peg, Raj asked Anil to also drink one peg. Anil replied that he had taken meals and he does not consume liquor after meals. Raj told him that he consumes whole bottle, so what would happen from one peg? Anil then said that he would drink the last peg.

6. After that, the informant asked Raj, "*Where are we going?*" Raj replied that they were being taken for a ride. After that, the informant became unconscious. When he regained a little consciousness, he saw that Anil was cutting his throat with a sharp-edged knife. He tried to save himself, when his fingers and thumb got cut, then he was thrown into a canal. When he tried to get up, a stone was thrown at his head. Then the police arrived, seeing them, Anil and Imran fled in the maroon car DDC 1066. The police personnel brought him in an unconscious and injured state and got him treated at the hospital. Till then, there are no whereabouts of his friend Raj. Anil and Imran were searched at their shops, but they were not found. It was

requested that report be registered and action be taken. The FIR was registered on 01.07.2002 at 14:30 hours at Police Station Haldwani, District Nainital as Case Crime No.2028/02 under Section 307 IPC (Exhibit A-16). The FIR was entered in Thana Haldwani, District Nainital vide GD entry No. 45 dated 01.07.02 at 14:30 hrs. (Exhibit A-17).

7. It is the case of the prosecution that the informant/injured, Aditya, underwent medical examination at S.S. Jeena Base Hospital, Haldwani on 01.07.02 at 1:45 a.m., brought by CP 171 Kanhai Singh. The injuries recorded in the Medical Examination Report (Exhibit A-2) are as follows:

- I. Incised wound of 6 cm x 0.3 cm. x skin deep over front of the neck horizontal over front of neck just over thyroid cartilage, wound is wider on the left side and narrow and superficial on Right side fresh blood seen over it.
- II. Lacerated wound of 3 cm x 0.3 cm x skin deep over top of the scalp; fresh blood present over it.
- III. Two incised wounds over the left palm:
 - 1st measuring 2 x 0.5 cm. skin deep over the inner aspect of the left thumb and
 - 2nd of 3 x 0.3 cm skin deep over left ring finger, inner aspect, fresh blood present over it.
- IV. Abrasion of 3 x 2 cm. over the left index finger.

Opinion: All injuries are simple in nature. Injury Nos. 1 and 3 are caused by a sharp object; No. 2 and 4 are caused by blunt, hard object fresh duration.

8. It is the further case of the prosecution as borne out from statements of PW10 S.I. Shyam Singh that Anil and Imran were arrested on 03.07.2002. On 03.07.2002, Imran led the police team to the house of one Wasif, from where he handed over his share of money

and CDs concealed there. On questioning, Wasif, disclosed that Imran had given him money related to the offence and audio/video CDs, which were recovered from a box inside his room, amounting to Rs. 30,000/- and 150 audio/video CDs. Appellant Wasif was taken into custody, and the recovered money and CDs were seized.

9. On 03.07.2002 itself, Imran and Anil led the police team to the house of Pappu alias Sarvar, to whom they had given CDs and money. Rs.16,900/- and 304 CDs (74 audio/video CDs) were recovered from a *sandook* (trunk) inside the house of Pappu alias Sarvar. He was arrested and the recovered money and CDs were taken into police custody.

10. During the course of the investigation, a site plan (Exhibit A-11) of the place of the incident where the informant/injured Aditya was allegedly injured was prepared, as well as site plans (Exhibits A-12 & A-13) of the houses where the money and CDs were recovered from Pappu and Wasif were prepared.

11. It is the further case of the prosecution that on 05.07.2002, a dead body of a male was found in a canal at Anandpuri, Talli Bamori. An inquest/*Panchayatnama* (Exhibit A-4) was prepared at 8:30 a.m. In the opinion of the *Panch* witnesses, the dead body was lying in the canal at Anandpuri, Mohalla Talli Bamori, and the cause of death was unknown. The heading of the Inquest Report/*Panchayatnama* was stated to be *Panchayatnama* of deceased Raj *alias* Raju pertaining to Case Crime No. 2028 of 2002, under Sections 307, 364, 120-B, 201, 34, 411, and 326 of the IPC. The site plan (Exhibit A-14) of the place of incident where the dead body of Raju *alias* Raj was recovered was also prepared.

12. Post-mortem (Exhibit A-3) on the body of Raju *alias* Raj *alias* Rajpal was conducted on 06.07.2002 at 10:15 a.m. in which the cause of death could not be ascertained, however, the viscera was preserved.

13. During the course of investigation, the statements of the informant/injured, Aditya Sharma, were recorded under Section 164 of the CrPC on 29.07.2002 before the Additional Chief Judicial Magistrate, Haldwani, District Nainital. Upon completion of the investigation, a charge sheet dated 21.08.2002 (Exhibit A-15) was submitted against Anil, Imran, Wasif, and Pappu *alias* Sarvar under Sections 302, 307, 364, 394, 326, 328, 201, 120-B, 411, and 34 of the IPC.

14. The case was committed for trial and was registered as Sessions Trial No. 50 of 2003 against Anil and others. On 08.07.2003, the appellant Anil was charged under Sections 120B and 307 read with 34 IPC, the appellants Pappu *alias* Sarvar and Wasif were charged under Sections 120B, 411 IPC. Appellant Imran was charged under Section 120B, 302 read with 34, 307 read with 34 and 394 IPC, to which the appellants denied and claimed trial.

15. To prove its case, the prosecution examined Aditya Sharma, the informant as PW1. In his examination in chief, the PW1 reiterated the FIR version by and large and inter-alia deposed that when he regained consciousness, he saw that Anil was cutting his throat. He tried to save himself and sustained injuries on his palm, thumb, and fingers. Then he was thrown into the canal. When he tried to get up, a stone was thrown at his head. When the police came, seeing them, Anil and Imran fled in a car. The police personnel took him in an unconscious state to the hospital and got him treated. He

was beaten by Anil and Imran on the night of 30.06.2002, and on 01.07.2002, he gave a report of the incident to the Thana. He proved the report, which was marked as Exhibit A-1. He identified Anil and Imran in the court. He also identified the body of Raj alias Raju on 05.07.2002 from the purse and his visiting card. He signed the inquest and identified his signatures on the *Panchayatnama* (paper No. 4/27).

16. In his cross-examination, PW-1 admitted that he came to Haldwani for the first time with Raj, and he did not know prior to this where Raj used to supply material and from where he used to collect payments. He did not have any prior information and just had a friendship with Raj. Raj had told him 2–4 days ago that he supplies CDs and recovers payment. He did not know for how long Raj had been working with Raju Kalra. He did not know what Raju Kalra used to supply. He admitted that he had given a statement in the court.

17. In his further cross-examination, PW1 Aditya Sharma stated that he did not know the persons from before. He did not visit jail to identify the appellants. The statements in his examination-in-chief given before the District Judge, Nainital that when Anil and Imran came in their car and told Raj to keep his payment in the CD box then Raj kept Rs.47,500/- in a black bag in the box and packed in it. These statements after the incident were also given before the Magistrate, but he had told that there is no necessity to record these statements. He denied the suggestion that he had not made the statements before the Magistrate and after legal advice he stated the same in his examination-in-chief. He had told the Magistrate that Anil and Imran had made liquor peg, but said statement had not been recorded by the Magistrate, he cannot tell its reason. He does not remember that he and Raj had consumed liquor mixing Pepsi. He does not remember whether he had told Magistrate this or not.

18. According to PW1 Aditya Sharma, he does not remember that he had given the statement that Raj and himself consumed Pepsi mixed liquor. PW 1 Aditya Sharma denied the suggestion that Anil had not beaten him. He also denied the suggestion that the injury on his throat had been self-inflicted or by something. He also denied the suggestion that to show his presence at the place of incident, he has shown his fake presence. He also denied the suggestion that no incident was committed upon him on the night of 30.06.2002. He also denied the suggestion that he had made a false case on the pressure of police and father of the deceased and he has given false statements.

19. PW-2 Surajpal is the father of the deceased Raj. He deposed that his son Raj was working in the shop of Raju Kalra since 6-7 years. Raju Kalra had the business of audio, video and CD supply and his son used to supply this material in different cities and used to make recoveries from there. On 30.6.2002, his son Raj alias Raju told his sister Kiran that he is going to Haldwani to supply material and for taking payment. When till two days, Raj did not return, then inquiry was made from his employer. Then he told that Raj did not return from Haldwani and is missing from Haldwani. Then he came to Haldwani with Raju Kalra, but even then could not know about him. On 05.07.2002, Raju Kalra again told him for going to Haldwani, then he and Raju Kalra came to Haldwani Thana and came to know that the body of his son has been found, and then they went to the hospital and identified the body. Nothing material was there in the cross-examination of this witness.

20. Raju Kalra was examined as PW-3. He deposed like PW-2. Nothing material has come out in the cross-examination of this witness.

21. Dr. Nilambar Bhatt of Soban Singh Jeena Base Hospital, Haldwani, District Nainital, was examined as PW-4 and he deposed that on 01.07.2002, he was posted as Emergency Medical Officer in Soban Singh Jeena Base Hospital, Haldwani. On that day at around 01:45 a.m., he conducted medical examination of Aditya, who was brought to the hospital by CP 171 Kanhai Singh, Thana Haldwani. Age of the injured was 19 years. In his examination, injuries were found on his body which have already been mentioned hereinbefore. This witness has also proved injury report Exhibit A-2.

22. In his opinion, all the injuries were simple in nature. Injury nos. 1 and 3 were possible from sharp-edged weapon. Injury nos. 2 and 4 were possible from some hard blunt object. All the injuries were fresh. He proved the medical examination report, which was marked as Exhibit A-2.

23. In his cross-examination, PW-4 stated that the injured was brought by the Sepoy of the Thana, but whether they had brought any memo or not, he does not remember. Memo is not in the file at this time. He had not made any examination of the mental status of the injured. Therefore, he cannot tell whether at that time the injured was in an unconscious stage or in an intoxicated state, but the injured had come before him walking. The injured had told his name and address. He does not remember whether the mouth of the injured was smelling of liquor or any other intoxication. If any person is in the condition of excess intoxication or wavering or staggering, then its mention is normally made in the medical examination report. He did not ask the injured as to how he got the injuries on his body, nor he told him about the cause of injuries. The injured was brought around 01:45 in the night and immediately thereafter he had conducted his examination. He does not remember whether at that time, the clothes

of the injured were wet or not. According to PW 4 Dr. Nilambar Bhatt, in the medical examination report nothing is noted about the clothes or body being wet. Injuries upto 3 hours are deemed to be fresh. The depth of the skin can be upto 0.50 cm. Injury no. 1 was about skin-deep and had not reached upto fat. If any person deliberately makes injury on his neck, then this injury can be made by hand. Injury no.2 can be caused, if any person falls on any hard object. Injury nos.3 and 4 are possible to be self-inflicted. If with force attempt is made to slit throat, then the injury would be deep. If someone slits the throat with knife many times, then both the ends of the said injury, depth, etc., would be same. But if at one time the injury is caused, then in that situation, the injury of both the ends and the depth would be different. At the time of examination of the injured, blood was flowing. If external injuries are not cured, then ordinarily the blood can flow upto 6 hours. From these injuries, there is no possibility of death.

24. Dr. K.D. Pandey, Soban Singh Jeena Base Hospital, Haldwani, District Nainital, was examined as PW-5. In his examination, he deposed that on 06.07.2002, he was posted as Medical Officer in the aforesaid hospital, and on that day at 10:15 hours, he had conducted the post-mortem on the body of deceased Raju @ Rajpal, son of Surajpal. On the external examination of the body, he found that the deceased was of normal height and build. There was no rigor mortis in the body. There were decomposition marks on the dead body. The skin had peeled off. The nails and teeth were easily detachable. Hair was coming out easily. On some parts of the body, maggots were crawling. There was no ante-mortem injury on the body.

25. The cause of death was not clear; therefore, the viscera was preserved and was given in the custody of the concerned

constables along with the post-mortem report, police papers, and the clothes found on the body of the deceased. In his opinion, the death of the deceased was possible at any time after 9 o'clock in the evening of 30.06.2002. He proved the post-mortem report, which was marked as Exhibit A-3.

26. At the time of the post-mortem examination, PW5 did not find any signs of liquor or poison. On referring to Modi's Jurisprudence, the witness stated that if a body is submerged in water, decomposition takes twice as long as it does in a body lying outside.

27. Gajendra Rastogi was examined as PW-6. He was a *panch* witness to the *panchnama*, and he proved the *panchnama*, which was marked as Exhibit A-4.

28. Constable Kanhai Singh was examined as PW-7. He deposed that on 30.06.2002, he was posted as a Constable at Thana Haldwani. On that day, he and Home Guard Kamal Kishore went on patrol duty towards Bhotiya Parao vide GD No. 51 at 23:30 hours. While they were on patrol and crossed Tikonia Chauraha, reaching Barsati Nala at Workshop Line, opposite the Forest Office, there were lights outside the houses and shops. In that light, they saw a maroon-coloured car, and near that car, they saw three persons, out of whom one was tall and two were short. On being questioned, they stated that they were urinating. When they proceeded towards them, all three of them fled towards the Roadways Bus Station in their vehicle. When they reached the place where the car was earlier parked, they noticed that one person was trying to come out of the canal. They pulled him out of the canal, and his neck and hands were cut, and there was an

injury on his head. He stated that Anil, Imran, and one other person had cut his throat, thrown him into the canal, administered some poisonous substance to him, and had murdered his friend, or had done something to him which he did not know. The boy who was pulled out of the canal identified himself as Aditya Sharma @ Bittu, resident of Moradabad. The boy was then taken towards the Roadways Bus Station to search for the vehicle and the persons, but they could not find them. Aditya would sometimes fall unconscious and sometimes murmur. He was taken to the Thana, an injured letter (*Majrubi Chhiti*) was prepared, and he was brought to the hospital. At the hospital, his medical examination was conducted. When he recovered, he was brought back to the Thana, and a case was registered against the persons in which Anil and Imran were named. After some time, he went to his room. On 03.07.2002, the *Daroga Ji* arrested Anil and Imran and brought them to the Thana. PW-7 was present at the Thana and identified both persons as the ones standing near the canal on the night of 30.06.2002. They admitted their guilt and led the police team with Imran to *Najakat Ka Bagicha*, where Wasif's house was situated. Wasif was arrested from his house, and from his possession, looted cash of Rs.30,000/- and 150 CDs were recovered.

29. The recovery and arrest memo was prepared. Thereafter, they took Imran to Lane No. 17, to the house of Pappu @ Sarwar. He was arrested from his house, and Rs.16,900/- along with 304 CD cassettes were recovered from his house, and a recovery memo was prepared, on which PW-7 signed and identified his signatures. There, he saw Sarwar and identified him as the person who was standing near the car on the night of 30.06.2002 and had stated that they were urinating.

30. In his cross-examination, PW-7 stated that on 30.06.2002, his duty was from 11:30 PM till 4:00 AM. His departure (*rawangi*) was entered in the GD dated 30.06.2002 at 23:30 hours. According to him, he does not remember whether he had stated to *Daroga Ji* in his statement that a bulb was lit near the place of the incident. If *Daroga Ji* had not shown any light at or near the place of the incident, he cannot assign any reason for the same. *Daroga Ji* had not prepared any memo on the spot nor taken any bulb into possession. He denied the suggestion that there was no light at the time of the incident. They had remained at the place of the incident for 10-15 minutes. When they took Aditya to the Thana, he was not totally unconscious. About 2-2½ hours thereafter, he regained full consciousness, and at about 2:30 AM, he had become conscious. He had taken him to the hospital at 1:45 AM in an unconscious state. He denied the suggestion that by that time he had received any letter from the Thana, they had not chased the vehicle, nor had they noted its registration number. He also denied the suggestion that at the time of the incident, there was no car and no persons. He had not told *Daroga Ji* in his statement that Pappu @ Sarwar was of similar height and built as Anil, on that day, Pappu @ Sarwar had cut the throat of Aditya. He denied the suggestion that he had made the aforesaid statement and that today, under the pressure of the officers and on legal advice, he was stating that Anil had cut Aditya's throat.

31. According to PW 7 Const. Kanhai Singh, there was no blood of Aditya on their clothes. He denied the suggestion that Aditya had not told them about the incident. PW 7 Const. Kanhai Singh further stated that when he saw the appellants, it was noon. He admitted that neither the appellants were "*ba parda*" (masked) nor

were they identified by him in jail. He had seen Anil and Imran when they were brought to the Thana without handcuffs. He denied the suggestion that he had seen and recognized them on legal advice and to falsely support the prosecution case. He denied the suggestion that he had not seen any person or car at the place of the alleged incident, nor had he seen any at the Thana, and that he was deposing under legal advice and the pressure of officials. In his statement to *Daroga Ji*, he had not given the physical description of the appellants whom he had seen at *Barsati Nahar*, for which he could not assign any reason.

32. SHO Mohd. Zaheer Khan was examined as PW-8. He deposed that on 05.07.2002, he was posted as In-charge, Chauki Mukhani, Thana Haldwani, on the post of Sub-Inspector. On that day, on the directions of the Investigating Officer, he had prepared the *panchnama* (inquest report) of the body of deceased Raju @ Raj @ Rajpal. He had also prepared the relevant documents, namely, photonash, challannash, sample seal, and the letter to the CMS, and identified his signatures thereon, which were marked as Exhibits A-5 to A-8. In his cross-examination, he stated that the body was taken out from the canal by two constables, and he had assisted them. In the presence of the panch witnesses, a search of the dead body was conducted, during which one mobile number was found. On contacting that mobile number, the family members from Moradabad were informed. They came to the spot and identified the deceased as Raju @ Rajpal. After identification of the dead body, it was sealed.

33. SI K. P. Singh was examined as PW-9. He deposed that on 03.07.2002, he was posted in Thana Haldwani as Sub-Inspector and on that day, he along with police party had taken the arrested Imran for the purpose of the expectation of recovery of case material. He led

them to the house of Wasif and stated that there he has given the cash and CD etc. to Wasif to conceal them. Wasif got recovered cash and 150 Video CDs of different films from a box inside his house and Imran told that this material was given by him to Wasif. The recovered CDs and money was taken into police possession and was kept inside different clothes and it was sealed and sample seal was prepared and Wasif was arrested. Memo was prepared in his handwriting and signed by him, which he identified and was marked as Exhibit A-9. Thereafter, on 03.07.2002 itself, along with the arrested persons Wasif and Imran, in expectation of arrest and recovery of case material, went to the house of Pappu *alias* Sarvar and the Wasif knocked at the door of Pappu *alias* Sarvar, who opened the door, who tried to flee on seeing the police, but he was caught and he revealed his name as Pappu *alias* Sarvar, who got recovered Rs.16,900/- from inside a *sandook* (box) of his house and 304 CDs from a cardboard box and the Imran, on seeing the recovered CDs and money, told that these are CDs and money which have come in the share of Pappu, so, the Pappu *alias* Sarvar was arrested. The recovered money and CDs were placed in different cloth pieces and they were sealed and sample seal was prepared. The memo was prepared at the spot, which was written by him. The memo was in his handwriting, on which he identified his signature and it was marked as Exhibit A-10. This witness has also proved currency notes as Material Exhibits 1-300; black bag as Material Exhibit 301; white cloth as Material Exhibit 302; 150 CDs as Material Exhibits 303-452; sealed cloth as Material Exhibit 453; 172 currency notes of Rs. 50/- denomination as Material Exhibits 454-625; 6 currency notes of Rs. 500/- denomination as Material Exhibits 626-631; 53 currency notes of Rs. 100/- denomination as Material Exhibits 632-684; black polythene as Material Exhibit 685, cloth as

Material Exhibit 686, 304 CDs as Material Exhibits 687-990; sealed cloth as Material Exhibit 991.

34. S.I. Shyam Singh was examined as PW-10. In his examination-in-chief, he stated that on 01.07.2002, he was posted at Thana Haldwani as S.I. On that date, Crime No. 28/02 under Section 307 was registered, whose investigation was handed over to him on that date, he had started his investigation. During his investigation, he prepared site plan (*Naksha nazari*) of the place of incident, which he proved as Exhibit A-11. PW10 has also stated about the step taken by him during investigation, recoveries, etc. He proved the site plans of the recovery of the recovered money and CDs from Pappu @ Sarvar and Wasif, Exhibit A-12 and A-13 respectively.

35. PW 10 SI Shyam Singh has further stated that on 05.07.2002, after recovery of the dead body of Raj alias Raju on his direction, S.I. Mohammad Zaheer Khan prepared the Panchayatnama of the deceased and he prepared the site plan of the place of recovery, Exhibit A-14.

36. Rajendra Singh Hyanki was examined as PW-11, who deposed that on 03.08.2002, and prior thereto, he was posted at Thana Haldwani as In-charge Second. On that day, he had taken over the investigation of the case & recorded statements of several witnesses. Thereafter, he submitted the charge-sheet against the appellants under Sections 302, 307, 364, 394, 326, 328, 201, 120-B, and 34 IPC, and Section 411 IPC before the Court. He proved the charge-sheet, which was marked as Exhibit A-15. He identified the signatures of H.M. Mahesh Pal Singh on the FIR, which was marked as Exhibit A-16. The entry of this offence was also made by the aforesaid

H.M. in the GD at *Rapat* No. 45 at 14:30 hours. He identified the signatures of H.M. on the carbon copy of the GD, which was marked as Exhibit A-17.

37. PW 11 Rajendra Singh Hyanki in his cross-examination stated that regarding the reporting of the incident in the newspaper Amar Ujala, he could not say whether it was correctly or incorrectly reported. He does not have any information whether Husnara, wife of Imran, had sent a telegram to the DIG, SSP, and DM, Nainital, stating that her husband had been taken away by the police from Munna Market, Haldwani. He also does not have the information that on 02.07.2002, Tafazul Hussain had sent a telegram to the DM, DIG, and SSP, Nainital, stating that his son had been apprehended by the police on 01.07.2002 and was committing marpeet with him, and whether aforesaid telegram had come to him for inquiry; he does not remember. Car No.DDC1066 was taken into possession from near Taj Chauraha. He denied the suggestion that the car had been taken into possession at 6:00 pm on 01.07.2002 by the Haldwani Police from the Kumaon Mandal Vikas Nigam car parking at Kaladhungi Chauraha.

38. Govind Prasad, Chief Pharmacist, Soban Singh Jeena Base Hospital, Haldwani, was examined as PW-12, and he deposed that Imran and Sarvar were medically examined in the hospital on 04.07.2002 and proved their medical examination reports which were marked as Exhibits A-18 and A-19, respectively.

39. S.I. Mohammad Zaheer Khan was examined as PW-13, who deposed that he had prepared the Panchayatnama of deceased Raju @ Rajpal on 05.07.2002. From the pant pocket of the deceased, one black purse was recovered, which was sealed by him on the spot.

The purse, in its sealed condition, was opened in Court, from which one Rs.50 note and two Rs.2 notes (total Rs.54), one pocket diary on the outside of which "Singapore" was written, "Raju Electronics", 14 visiting cards, and one "Times Chingari" card were recovered. The witness stated that the purse and the aforesaid articles were recovered from the pant pocket of the deceased at the time of preparing the Panchayatnama, and the memo was prepared by him at the spot in the presence of the public and witnesses Rajender Pal Kalra and Suresh Pal, whose signatures were obtained on it. He proved the said memo, which was marked as Exhibit A-20.

40. Prem Babu Rawat was examined as PW14. He stated that he has a shop dealing in audio and video by the name of Rawat Audios opposite Sargam Cinema Hall inside the street in which he sells audio and video cassettes. He buys audio video CDs from a person by the name of Raju Kalra Moradabad. The said CDs would be bought by him by going himself and taking from Raju Kalra and sometimes Raju Kalra's servant would deliver at the shop. The payment of the aforesaid CDs would sometimes be paid by him by going to Moradabad and sometimes Raju Kalra's servant Raj would take from the shop and sometimes Anil used to take it. Raju Kalra's servant Raj has taken the payment from his shop many times earlier. He knew the deceased Raj from prior to the incident.

41. According to PW 14 Prem Babu Rawat, on 30.06.2022 Raju Kalra's servant Raj had come to his shop to take payment along with his friend. Raj introduced him as Aditya Sharma who had come to my shop for the first time. I paid a sum of Rs. 37,500/- to Raj in his shop. In his cross-examination, he could not state how many CDs and cassettes had been supplied to him by Raj. On that day, Raj had not

given him any cash memo of cassettes and CDs. He had not taken any receipt from Raj for the payment given to him. He does not maintain any cash book.

42. The appellants were examined under section 313 of the CrPC. in which they denied all the allegations made against them and contended that they have been falsely implicated.

43. Taffazul Husain was examined as DW1. In his examination-in-chief he stated that , Imran, is his son, runs a shop under the name of Shahji Enterprises in Munna market in which deals in handloom garments. At the relevant time, Imran used to run the said shop. He did not use to come to home for meals and at around 12:00 in the afternoon he used to deliver his meal. On 01.07.2002 he went to Imran's shop to deliver his meal then Imran was not found and he had inquired from the nearby shop keepers who informed that two policemen from Thana Haldwani had taken him for inquiry to the Thana. He waited for him in the shop, when Imran did not return for a long time then he went to Thana Haldwani for inquiry. He tried to meet Imran in the Thana but he was not permitted to meet Imran and he was told that Imran was being interrogated and he will be set free after interrogation. Then he met *Daroga Ji* who on inquiry told him to go. Then he left after closing the shop. He waited at home till 7 - 7.15 p.m. in the evening. Then he along with Imran's wife Husan Ara went to Telegraph office, Roadways and Husan Ara sent telegram informing District Magistrate Nainital, DIG Police Nainital, S.S.P. Nainital and Chief Minister Dehradun. The certified copy of the telegrams have been filed which contain signature of Husan Ara which he proved and which were marked as Exhibit B-1 and in the telegrams to District Magistrate Nainital, DIG Police Nainital, S.S.P. Nainital, identified signatures of Husan Ara which were marked as Exhibit B-2. On 01.07.2002 the

Thana personnel did not set his son free. On 02.07.2002 also he went to the Thana to inquire about his son but the Thana personnel did not tell him anything, then he inquired that the police personnel are committing Maarpeet with his son.

44. After that on 02.07.2002 he sent telegrams to District Magistrate Nainital, DIG Police Nainital, S.S.P. Nainital and Chief Minister Dehradun and Human Rights Commission whose certified copies were marked as Exhibit B-3. The certified copies of the telegrams to District Magistrate Nainital, DIG Police Nainital, S.S.P. Nainital contained his signatures which were marked as Exhibit B-4. In the telegram sent to the Human Rights Commission contained his signatures which were marked as Exhibit B-5. He has also placed on record the receipts of the telegrams and newspaper clipping of the report is paper no. 174 kha/13. His daughter in law Husan Ara had sent Fax to S.S.P. Nainital on 03.07.2002 whose receipt is at paper no. 174 kha/14. In the said fax there is signature of his daughter in law Husan Ara which he proved and marked as Exhibit B-6. On 04.07.2002 also his daughter in law had sent a Fax to S.S.P.Nainital, which is copy on record as paper no. 174 kha/15 which is marked as Exhibit B-7. Regarding the Maruti car No. 1066 he had tried to inquire. He saw the said car stationed at Thana in the evening of 01.07.2002 then he tried to inquire and found that the said car had been brought by the police from parking of Kumaun Mandal Vikas Nigam. He also came to know that this car had been parked in the car parking of Kumaun Mandal on 01.07.2002 in which regard he had sought information under the RTI Act from the In charge of the car parking. This information he has filed which is paper no. 174 kha/3-174 kha/5. His son has no concern with the said case. The police have falsely implicated. His cross-examination is not significant.

45. Thereafter, the matter was finally heard and vide judgment and order dated 04.06.2009/05.06.2009, the appellants have been convicted and sentenced as stated hereinbefore. Aggrieved by it, the appellants have preferred these appeals.

46. Heard learned Senior Advocate, Mr. R.S. Sammal, assisted by Ms. Sarita Bisht, learned counsel for the appellant in CRLA No. 97 of 2009; Mr. M.S. Pal, learned Senior Advocate, assisted by Ms. Amreen Bano, learned counsel for the appellant in CRLA No. 98 of 2009; Mr. Sunder Singh Bhandari, learned counsel for the appellant in CRLA No. 95 of 2009; and Mr. Siddhartha Bisht, learned AGA for the State.

47. With regard to the instant case, it needs to be stated that the cardinal principle in criminal matters is that the prosecution has to prove the guilt beyond reasonable doubt. In this context, certain judgments of the Hon'ble Supreme Court are relevant.

48. Reference needs to be made to judgment of Hon'ble Supreme Court in the case of Rang Bahadur Singh v. State of U.P., reported in (2000) 3 SCC 454, wherein the Hon'ble Supreme Court has held in para 22 as follows :-

“22. The amount of doubt which the Court would entertain regarding the complicity of the appellants in this case is much more than the level of reasonable doubt. We are aware that acquitting the in a case of this nature is not a matter of satisfaction for all concerned. At the same time we remind ourselves of the time-tested rule that acquittal of a guilty person should be preferred to conviction of an innocent person. Unless the prosecution establishes the guilt of the beyond reasonable doubt a conviction cannot be passed on the . A criminal court cannot afford to deprive liberty of the appellants, lifelong liberty, without having at least a

reasonable level of certainty that the appellants were the real culprits. We really entertain doubt about the involvement of the appellants in the crime.”

49. In the case of State of U.P. v. Krishna Gopal, reported in (1988) 4 SCC 302, the Hon'ble Supreme Court has held in para 25 as follows :

“25. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt.”

50. Assailing the impugned judgment and order, the learned Senior Advocate, Mr. R.S. Sammal, submits that the prosecution case is false and that the appellants have been falsely implicated in the case. There is inordinate delay in lodging the FIR which remains unexplained. He submits that, except for P.W.-1 and P.W.-7, there is absolutely no other evidence against the appellant Imran and even the statements of P.W.-1 are untrustworthy and unbelievable and cannot be relied upon for any purpose whatsoever. The statements of P.W.-7 contain many contradictions, and it is unsafe to rely upon his testimony. Hence, the trial court erred in convicting the persons.

51. He further submits that the FIR, on the face of it, is a post-investigation narration dictated by the police. The informant, Aditya Sharma, had come to Haldwani for the first time, and the description of the names of the places in Haldwani and the shopkeepers in the manner stated in the FIR is not possible for a person who was admittedly visiting Haldwani for the first time. It is further submitted by the learned Senior Advocate that no Test Identification Parade (TIP) of the was conducted. The statements of P.W.-1 were recorded by the police after one week.

52. The learned Senior Counsel for the appellant Imran further submits that P.W.-1 has been improving his statement at every stage. His statements under Section 164 of the Cr.P.C. is an improvement over the FIR version, and his examination-in-chief contains further improvements. In his statements under Section 164 of the Cr.P.C., P.W.-1 stated that the facts were stated by himself. He further submits that when P.W.-1 admits that he had fallen unconscious and it is so, it is inconceivable how he could narrate the acts allegedly committed by the appellants.

53. He further submits that it was dark and night-time, and in the absence of any light, it was not possible for P.W.-1 to see from a height/distance of 12 feet, nor was it possible for him to see the police personnel. He further submits that the story regarding the shops and the policemen was developed later by P.W.-1. He further submits that it is the case of P.W.-7, Constable Kanhai Singh, that there were two police personnel on patrol duty who had spotted the injured informant (P.W.-1); however, the other police personnel was never examined as a witness during the trial. He further submits that the prosecution has developed a concocted story, which is evident from the statements of P.W.-1 and P.W.-7.

54. The next submission made by the learned Senior Counsel is that there is a complete absence of motive in the entire case. He further submits that Imran was detained at the Thana, which is evident from the telegrams sent by his wife, Husnara, on 01.07.2002 to different authorities, stating that Imran had been illegally detained at the Thana. However, even according to the prosecution case, Imran was arrested only on 03.07.2002. He further submits that the entire incident of poisoning/drugging P.W.-1 is alleged to have taken place in

Car No. DDC 1066, however, this aspect was never investigated by the Investigating Officer during the entire investigation. Hence, one of the key aspects of the case has remained unexplored during the investigation, which creates serious doubt about the prosecution case. He further submits that, in the entire case, Imran had no specific role except that he was accompanying Anil. There is no evidence as to where he went or what role he played.

55. Learned Senior Counsel for the appellant Imran would rely upon the judgment of the Hon'ble Supreme Court in the case of Allarakha vs. Habib Memon and Others vs. State of Gujarat, reported in (2024) 9 SCC 546, and has submitted that even an eyewitness may not be believable in certain circumstances.

56. In the case of Allarakha (*supra*), the Hon'ble Supreme Court discussed the statement of a witness and held that he was not eye witness as portrayed by the prosecution. In paragraph 38, the Hon'ble Supreme Court held as follows:-

“38. So far as Mustaq (PW 13) is concerned, who was treated to be an eyewitness of the incident and whose testimony was relied upon by the trial court as well as the High Court, suffice it to say that there are ample circumstances on record which deny the claim of the eyewitness that he had seen the alleged assault been made on the deceased. Firstly, the name of Mustaq (PW 13) does not figure in the FIR (Ext. P-79) as an eyewitness to the incident. Furthermore, when he was examined under Section 161CrPC, he categorically stated that he was at his house and that the information of the incident was given to him by the father of the deceased, Mohammad Iqbal Memon (PW 14). In this background, when the witness was confronted during cross-examination, he could not explain the grave improvement. Thus, we have no hesitation in holding that, Mustaq (PW 13) was falsely portrayed to be an eyewitness of the incident, and his testimony cannot be relied upon.”

57. Learned Senior Counsel for the appellant Imran would further submit that there is no source of light shown in the site plan. The place of the incident is alleged to be near a commercial complex; however, at the time of the incident, which was night-time, the shops remained closed, and there was no possibility of any light in which the injured could have either seen the accused or called the policemen for help. He would further submit that PW 7 Kanhai Singh was the only police personnel who took the injured out of the canal and brought him to the hospital. However, the doctor says that he came walking to the hospital. He would further submit that there is no *majroobi chitti* (injury letter). He would further submit that there is suppression on the part of the police in conducting the investigation, which creates doubt about the timing. The police have either been highly negligent or have deliberately suppressed the true facts. He would further submit that the material exhibits, CDs, and the GD entries were not exhibited by the police, nor was any document identification carried out. He would further submit that there is no evidence against Imran, and he deserves to be acquitted.

58. These submissions made by learned Senior Advocate Mr. R.S. Sammal were also adopted by learned Senior Advocate Mr. M.S. Pal. However, he supplemented the arguments made by learned Senior Counsel Mr. R.S. Sammal and submitted that there are major defects in the investigation. He would further submit that there is no reason why PW-1 Aditya Sharma had come to Haldwani. The police did not make any effort to trace the Pepsi bottles. There is no evidence regarding the recovery of the car which, as per the prosecution case, was involved in the entire incident. He would further submit that Raj had himself gone to buy liquor and had himself consumed it. Regarding the recoveries from Sarwar and Wasif, a concocted story has

been developed by the prosecution only to falsely implicate these appellants. Thus, he would submit that the prosecution has utterly failed to prove the case beyond reasonable doubt, against the appellants Wasif and Sarvar alias Pappu, therefore, they deserve to be acquitted, and the appeal deserves to be allowed.

59. Mr. Sundar Singh Bhandari, learned counsel for the appellant Anil, would submit that the entire story starts from the shop of Anil. He would submit that Anil never purchased the liquor. The *Barsati Nahar* (canal) had water up to waist height, and in that current, it was not possible to stand. He would further submit that even Dr. Nilambar Bhatt, who had conducted the medical examination of PW-1, had stated that all the injuries were simple in nature. He would further submit that Dr. Nilambar Bhatt deposed that the injured came walking and told him his name. He would further submit that if a person is under intoxication, it is normally mentioned in the medical examination report. He would further submit that the entire investigation is unfair. He would further submit that there was no investigation vis-à-vis the car, which assumes great significance in the peculiar background of the instant case. He would further submit that the looted material was not distributed, and nothing was recovered from appellant Anil. He would submit that against the appellant Anil the charge is only under Section 120-B of the IPC and Section 34 read with Section 307 of the IPC, and there is no charge under Section 302 of the IPC; hence, there could not have been any conviction under Section 302/34 of the IPC. He would rely upon the judgment of the Hon'ble Supreme Court in the case of Avtar Singh and others vs. State of Punjab, reported in (2002) 7 SCC 419.

60. In the case of Avtar Singh (*supra*), the Hon'ble Supreme Court, in paragraph 7, observed as follows:-

“7. Coming to the case of the third appellant who was driving the vehicle, there is one more infirmity in the prosecution case. He would have been charged alternatively for transporting the offensive goods without permit or authorization as required by law; but such a charge was not laid. There was not even a reference to Section 8 of the Act. The result is, he too goes scot-free.”

61. *Per contra*, learned counsel for the State, Mr. Siddharth Bisht, learned AGA, would submit that the FIR was lodged, and it was the first step. He would rely upon the recovery and the arrest memos of Wasif and Sarwar. He would further submit that the prosecution case is in two segments. The first segment under Section 302 is based on circumstantial evidence. However, the second segment under Section 307 is based on direct evidence. PW-1 is an eyewitness. His deposition is duly supported by the depositions of PW-7 and PW-4. Their statements are aligned, and there are no contradictions. Though the injuries are simple in nature, Anil was trying to cut his throat, but he immediately rescued himself. He would further submit that there was a source of light.

62. Learned State Counsel would point to the testimony of PW-7 and submit that there were lights glowing outside the houses. Regarding how PW-1 came to know about all the places in Haldwani when he had visited Haldwani for the first time, he would submit that the deceased and PW-1 had got down from the bus and remained together up to 10:30 PM, by which time he came to know about the places in Haldwani and the persons whom the deceased had met. He would refer to the testimony of PW-10 and submit that, in the site plan, the source of light has been shown in dark ink. He would further refer to the FSL report and submit that alcohol and organochloro

insecticide were found in the viscera report. Anil and Imran had administered poison to the deceased, due to which he died. As to the motive, he would submit that there was a motive to snatch money from the deceased.

63. Having heard the learned Counsel for the appellants and the learned AGA for the State, the major issues as deliberated and canvassed by the respective Counsel for the parties are being analysed hereinunder :-

64. One of the major grounds being agitated on behalf of the appellants is that the FIR is highly delayed, and in the facts and circumstances of the case points out to the false implication of the appellants. From a perusal of the FIR, it is evident that the FIR has been lodged at Police Station Haldwani on 01.07.2002 at 14:30 hours. However, even as per the FIR itself, the incident has occurred at around night time of 30.06.2002, and as per the chik FIR, the time is recorded as 8:00 in the night. Though the exact time of the incident is not borne out from the record, however, the medical examination report of the injured Mr. Aditya reveals that his medical examination was conducted at S.S. Jeena Base Hospital, Haldwani at 01:45 AM on 01.07.2002. Thus, it is clear that the incident occurred somewhere in the night time of 30.06.2002 but before 1:45 a.m. of 01.07.2002. However, what is striking in the present case is that the FIR only came to be lodged at 14:30 hours on 01.07.2002, thus even from the time of the medical examination of the injured Aditya, the delay in lodging the FIR is more than 12 hours. The delay has not been explained anywhere by the prosecution. The said delay raises doubt about the prosecution case on account of multiple factors, namely:-

- (i) As per the prosecution, it was a case of alleged attempt to murder after administering some substance to PW1. The informant had narrated entire story to police.
- (ii) The informant had been medically examined at 01:45 a.m.
- (iii) One of the persons in the case Raj was missing, which would have required immediate search of that person.

65. The question then arises as to what prevented the police from lodging the FIR promptly in the early hours of 01.07.2002 or night of 30.06.2002 ?

66. The statement of PW7, Constable Kanhai Singh, very clearly states that when he and Homeguard Kamal Kishore were on night patrol at 23:30 hours in the evening, they had reached the place of incident and had seen three persons near a car, and after seeing them, they fled in that car. When they reached near the car, they saw a person trying to come out of the canal, and they took him out of the canal. He disclosed about Anil having cut his throat and three persons had thrown him in the canal, and they had also administered some poisonous substance to him, and his friend Raju was either murdered or done something, which he did not know.

67. It is further narrated by PW7, Constable Kanhai Singh that the injured Aditya Sharma was brought to the Thana and a *chitti majrubi* was prepared and he was taken to the hospital and after his medical examination, when he was brought to the Thana, the report was lodged. The report is lodged at 14:30 hours on 01.07.2002. Thus,

when PW7 himself states in his examination-in-chief that after having recovered the injured and he having narrated about the injury caused to his throat by the appellant and Anil, and thrown by the three , and a doubt was raised about the murder of Raju, hence, it was incumbent upon the Constable PW7, to have first of all caused the FIR to have been registered at the Thana. The FIR has neither been registered at the first available instance nor thereafter when the medical examination was conducted at 01:45 AM. Hence, the delay remains unexplained.

68. In this regard, reference needs to be made to certain judgments of the Hon'ble Supreme Court.

In the case of "Thulia Kali v. State of Tamil Nadu", reported in (1972) 3 SCC 393, wherein at paragraph 12, the Hon'ble Supreme Court had the occasion to deal with the delay in lodging the First Information Report, which is extracted hereunder :-

"12. First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the : The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as names of eye witnesses present at the scene of occurrence. **Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story As a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained. In the present case, Kopia, daughter-in-law of Madhandi deceased, according to the prosecution case, was present**

when the made murderous assault on the deceased. Valanjiaraju, stepson of the deceased, is also alleged to have arrived near the scene of occurrence on being told by Kopia. Neither of them, nor any other villager, who is stated to have been told about the occurrence by Valanjiaraju and Kopia, made any report at the police station for more than 20 hours after the occurrence, even though the police station is only two miles from the place of occurrence. The said circumstance, in our opinion, would raise considerable doubt regarding the veracity of the evidence of those two witnesses and point to an infirmity in that evidence as would render it unsafe to base the conviction of the -appellant upon it."

(emphasis supplied)

69. Also, in the case of "Rajeevan v. State of Kerala", reported in (2003) 3 SCC 355, the Hon'ble Supreme Court, on the aspect of delay of 12 hours in filing the FIR, came to the conclusion that it is not safe to rely upon the FIR. Relevant paragraph 14 is extracted hereunder :-

"14. As feared by the learned counsel for the appellants, the possibility of subsequent implication of the appellants as a result of afterthought, may be due to political bitterness, cannot be ruled out. This fact is further buttressed by the delayed placing of FIR before the Magistrate, non-satisfactory explanation given by the Police Officer regarding the blank sheets in the Ex. P30 counter foil of the FIR and also by the closely written bottom part of Ex.P1 statement by PW 1. All these factual circumstances read with the aforementioned decisions of this Court lead to the conclusion that it is not safe to rely upon the FIR in the instant case. The delay of 12 hours in filing FIR in the instant case irrespective of the fact the Police Station is situated only at a distance of 100 meters from the spot of incident is another factor sufficient to doubt the genuineness of FIR. Moreover, the Prosecution did not satisfactorily explain the delayed lodging of FIR with the Magistrate."

70. Also, in the case of Meharaj Singh v. State of U.P., reported in (1994) 5 SCC 188, regarding the delay in lodging the FIR, the Hon'ble Supreme Court inter alia, on account of delay in lodging the FIR, had come to the conclusion that on account of

delay and infirmities, the FIR has lost its value and authenticity.

Relevant paragraph 12 is extracted hereunder :-

“12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 CrPC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been 'ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW 8.”

71. In this regard, the learned Senior Counsel for the appellant, Mr. R.S. Sammal, has vehemently argued that the FIR is the post-investigation dictation of police. He has argued that the

informant, Aditya Sharma, had admittedly come to Haldwani for the first time. However, he has given the names of the places and the persons he met in Haldwani with detail and elaboration, which would not be possible for a person who had come to Haldwani for the very first time.

72. PW1 Aditya Sharma, is the informant in the case and has been examined as PW1 by the prosecution. The prosecution case rests on the credibility or otherwise of the testimony of PW1. As PW1, Aditya Sharma has unfolded the prosecution case, he has stated that on 30.06.2002, he had come to Haldwani with his friend Raju from Moradabad, and he had visited various shopkeepers in Haldwani where Raju had delivered CDs and had received payments from the shopkeepers with his friend Raju. He had also given detailed account of shops where he had visited and details of the payment received by his friend Raju. However, in his statements under Section 164 of the Cr.P.C., Aditya Sharma has clearly stated that after they sat in the car, purchased liquor on the way and Raj and himself had consumed liquor by mixing pepsi, however, in his examination-in-chief as PW1, he had a different version that Raj had bought a bottle of liquor from the neighbourhood of Bharadwaj Hotel and Anil was driving the car and Raj, Anil, Imran, and he himself were in the car. They were taken to the highway, and the car was stopped at many places and pegs were made and given to him and Raj. Pepsi was mixed in the liquor, and one peg was given to PW1 and one peg was given to Raj. PW1 was confronted regarding the said contradiction in his statement under Section 164 and the examination-in-chief in his cross-examination regarding the mixing of Pepsi in liquor. A suggestion was given that the statements made in the examination-in-chief regarding the Pepsi being mixed in liquor by Anil and Imran was wrong and made on legal advice.

73. In fact, FIR in the instant case is quite in detail. It is pictorial discussion as to what has happened on 30.06.2002 to PW 1 Aditya Sharma. According to PW 1 Aditya Sharma, he had come to Haldwani for the first time. How a person could give such a description of places and persons at Haldwani when he never met those persons earlier and never visited the city before that date? It also doubts the genuineness of the FIR.

74. After considering the overall facts and circumstances with respect to the delay of more than 12 hours in lodging the FIR, it is apparent that the delay in lodging the FIR is nowhere explained by the prosecution. From the record, it is clear that there was every time an opportunity to lodge the report anytime after 01:45 a.m. on 01.07.2002, but the FIR was not registered in that particular time period. Further, it is also much in doubt as to how a stranger in Haldwani like PW 1 could give FIR with such detailed names, etc. The FIR has lost the advantage of spontaneity. It doubts the credibility of the FIR and the prosecution case.

75. According to PW 1 Aditya Sharma, he was thrown in the canal. Where was his friend Raj then? Why PW 1 Aditya Sharma immediately not reported the matter? According to PW 1 Aditya Sharma, he was administered some substance, due to which he became unconscious, but the doctor, who conducted the medical examination of PW 1 Aditya Sharma at 01:45 in the midnight records that the PW 1 Aditya Sharam had come walking. As per PW 1 Aditya Sharma, when he was thrown in the canal, Anil and Imran were stoning him, whereas according to PW 7 Constable Kanhai Singh, he saw three persons near the canal. How many persons were there, two or three? Contradiction on this aspect is material and it creates doubts in the testimony of PW1 and PW7. The

contradiction in the statements of PW1 and PW7 makes the prosecution case inconsistent inasmuch as the PW4 Dr. Nilambar Bhatt has conducted the medical examination of injured without the *majrubi chitti* whereas it was a police case and before reaching the hospital, the injured was admittedly taken to the Police Station Haldwani.

76. The learned Counsel for the appellants would submit that the entire prosecution case is a concocted story just to falsely implicate the /appellants. Since PW7 has not satisfactorily explained the source of light and how he could have recognized the colour of the car, seen three persons fleeing away in the car, or seen the injured PW1, Aditya Sharma, in the absence of any source of light.

77. Exhibit A-11 is the site plan. In it, as such in the index nothing has been shown with regard to the source of light as to whether it was a tubelight, it was a bulb light or it was a street light? Shops have been shown at the West of the road and on the Eastern side of the road there is a canal where according to the site plan, PW 1 was recovered.

78. PW 10 SI Shyam Singh is the Investigating Officer of the case. In para 1 of his examination-in-chief recorded on 24.05.2007, he tells that he prepared the site plan at the instance of PW 1 Aditya Sharma. PW 1 Aditya Sharma has not stated so in his examination-in-chief. At page 4 of his examination-in-chief recorded on 11.12.2007, PW 10 SI Shyam Singh, the Investigating Officer, in para 8, has stated that the site plan, Exhibit A-11 was prepared by him at the instance of PW 7 Constable Kanhai Singh. He admits that he has not shown the source of light in this, but according to him,

with the dark ink, he has reflected those places. This statement of dark ink as stated by PW 7 is not supported by contemporary documents prepared by him, which is Exhibit A-11. In the index of it, it is not recorded that as at which place there was light at the time of incident. PW 7 Constable Kanhai Singh, in fact, in the first paragraph, bottom line, in his cross-examination expresses ignorance as to whether he had shown the source of light to the Investigating Officer or not.

79. It is an incident of midnight. Source of light is not shown in the site plan. What was that light, it has also not been disclosed by the prosecution. Therefore, non-establishment of source of light doubts the credibility of the statements of PW 1 Aditya Sharma and PW 7 Constable Kanhai Singh.

80. There is no G.D. entry of bringing the injured PW1 after the incident to the Thana whereas it is the case of prosecution as narrated by PW1 & PW7 that after the PW1 was rescued by the PW7 and his colleague they had proceeded to the Thana whereafter the injured PW1 was taken to the hospital. Absence of any G.D. entry of bringing the injured PW1 to the Thana immediately after the incident coupled with the inordinate & unexplained delay in lodging the FIR further dent the prosecution story.

81. Mr. S.S. Bhandari, learned counsel for the appellant Anil, has made a submission that the Appellant Anil, was charged only under Section 120B and under Section 304 read with Section 307, and charge was not framed against him under Section 302 of the IPC. Hence, his conviction, inter alia, under Section 302 of the IPC was bad and unsustainable.

82. Undoubtedly, if charge under Section 302 IPC is not framed, merely based on charge under Section 307 IPC, conviction under Section 302 IPC cannot be recorded. This goes into the root of the matter.

83. PW9, in cross-examination, admitted that the sample seal was not produced before the Court along with the material, i.e., CDs and cash allegedly recovered from Wasif and Sarvar @ Pappu, hence, vitiating the alleged recovery from them. PW10 has admitted in his cross-examination that the CDs recovered from Sarvar were not identified by the supplier or any other person. Hence, it is doubtful whether they were the same CDs, which were supplied by Raj Kalra through deceased Raj.

84. PW9 and PW10 have both admitted that before conducting the search, no written document was prepared, making the alleged recoveries from Wasif and Sarvar doubtful. At the time of inspection, there was no witness of the neighbourhood. PW10 stated in cross-examination that he had not got the case material identified before any Magistrate nor from any order of the court.

85. In cross-examination, PW10 admitted that Imran was arrested from Taj Transport, Lal Chawraha, at about 20:30 hours on 03.07.2002. The arrest memo was not prepared at the spot, which creates serious doubt regarding the arrest of Imran. Therefore, if the arrest memo was not prepared at the spot, then the only inference would be that the arrest of Imran on 03.07.2002 becomes doubtful.

86. From cross-examination of PW11, it is evident that all those persons who had stated about making payment to Raju Kalra had not shown any receipt regarding such payment. He did not

obtain the bills and payment receipts from Prem Babu Rawat and Dinesh Rawat regarding the purchase of the CDs. He did not inquire from them in what denomination of notes the payments had been made. He also did not get the CDs and money identified by witness Aditya Sharma. Thus, the prosecution story of supply of CDs by deceased Raj and recovery from shopkeepers is also not believable.

87. In his cross-examination the PW14 could not state how many CDs and cassettes had been supplied to him by Raj. On that day Raj had not given him any cash memo of cassettes and CDs. He had not told the name of Rudrapur's businessman to *Daroga Ji*. Also in his statement he has not told the name of Rudrapur's businessman. He had not taken any receipt of Rs. 10,000/- from Raj of Rudrapur's businessman.

88. Though the car in which the incident has occurred namely Maruti bearing number DDC 1066 had been clearly stated in the FIR itself and DW1 had categorically stated in his examination-in-chief about seeing car No. 1066 parked in Thana at 6:00 in the evening of 1-7-02 and also that this car was standing in Kumaon Mandal Car parking on 1-7-02. DW1 has also deposed having sought information under R.T.I. Act about the said car from Incharge Car Parking & placed it on record. However there is an utter failure on behalf of Police about investigating this aspect of the case as the Police failed to investigate about the car wherein the offence was allegedly committed. Thus in the background facts it is amply clear that the prosecution has failed in investigating the angle of Car DDC 1066 involved in the incident though it was in its knowledge right from day one. Moreover PW11 in his cross-examination admits taking possession of car No. DDC 1066 from Taj Chowraha on 3/7/2002 but what was done with car or found in car

is withheld by the prosecution. Hence on this count too an adverse inference needs to be drawn against the Prosecution.

89. Another very vital aspect of the case which weakens the prosecution case is failure on the part of the police to attempt to obtain gastric lavage (stomach contents) of the injured / informant PW1. It is the prosecution case right from the inception that when the informant / injured consumed liquor & pepsi offered by Anil & Imran he fell unconscious. Hence the very first endeavour of the prosecution ought to have been to obtain gastric lavage of the injured / informant PW1. However from the Medical Examination report dated 1-7-2002 at 1:45 a.m. read with statements of PW4 Dr. Nilambar Bhatt it is clear that no efforts were made to obtain gastric lavage of injured / informant PW1. Secondly there is absolutely nothing on record as to whether after the incident the police tried to search & locate the Pepsi bottle or the liquor half bottle which allegedly contained poisonous substance which made the injured / informant PW1 to fall unconscious. Moreover the Police having failed to investigate the Maruti Car bearing No DDC 1066; leaves many questions unanswered which further weaken the edifice of the prosecution.

90. Another aspect of the case which stands out from the FIR is about trying to find Anil & Imran in their shops after treatment of injured / informant PW1. There was absolutely no occasion to search for Imran & Anil, more so when Haldwani Police having already picked up Imran from his shop in the morning of 1-7-2002 there was no occasion to go & seek him at his shop on the said day. This further doubts the prosecution case.

91. Thus, in view of the entire facts and circumstances of the case and the case law on the subject, it is clear that the prosecution case is full of major contradictions and inconsistencies right from the very inception and even the eye-witness account of PW1 is not reliable, thus, the prosecution has failed to prove its case at each and every stage, hence, the prosecution has not been able to prove its case beyond reasonable doubt. Therefore, the appeals deserve to be allowed. The impugned judgment and order dated 04.06.2009/05.06.2009, passed by Additional District and Sessions Judge / 1st Fast Track Court Haldwani, District Nainital is set-aside. The appellants are acquitted of their charges.

92. The appellants are on bail. Their bail bonds are cancelled & the sureties are discharged. However, the appellants are directed to comply Section 437A of Cr.P.C. and furnish fresh bail bonds within a month of this judgment.

93. The original record be transmitted to the Trial Court.

(Siddhartha Sah, J.)
31.08.2026

(Ravindra Maithani, J.)
31.08.2026