

**Sunit Gupta Vs. State**

**Sunit Gupta Vs. State**

**SooperKanoon Citation :** [sooperkanoon.com/513697](http://sooperkanoon.com/513697)

**Court :** Uttaranchal

**Decided On :** Jul-15-2003

**Reported in :** 2004CriLJ562

**Judge :** P.C. Verma, A.C.J. and; Irshad Hussain, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 300

**Appeal No. :** Criminal Appeal No. 151 of 2002

**Appellant :** Sunit Gupta

**Respondent :** State

**Disposition :** Appeal dismissed

**Judgement :**

**Irshad Hussain, J.**

1. This appeal has been directed against the judgment and order dated 06-05-2002 passed by Sessions Judge, Dehradun in sessions Trial No. 273 of 2000 convicting the appellant Under Sections 302, 324 I. P. C. and sentencing him to undergo imprisonment for life and to pay fine pf Rs. 5,000/- under the first count and to undergo R. I. for one year under the second count for having committed the murder of Piyush Karanwal and for causing hurt to his wife Smt. Kiran Karnwal at about 11.00 p.m. on 04-10-2000 in their house in the town of Dehradun.

2. Briefly stated the case of the prosecution was that Piyush Karnwal, deceased was running a guest-house in the first floor of his house No. 36 Dhamawala within police circle Kotwali, district Deharadun. Appellant Sunil Gupta was employed as household servant and he was also assigned the duties to upkeep the guest-house. Appellant raised demand of some money few days before the occurrence but the payment was deferred by the deceased on the pretext that his salary account will be finalized in the coming month of November and he will be permitted to go to his home town. According to prosecution the appellant got displeased by refusal to pay the money and out of this enmity committed the murder of his master Piyush Karanwal.

3. The actual occurrence took place at about 11.00 p.m. on 04-10-2000 when Piyush Karanwal was sleeping in the room adjacent to the office of the guest-house. Deceased's wife Smt. Kiran Karanwal (P. W. 8), daughter Km. Prerna (P. W. 1) aged about 10 years and a son were sleeping in the outer room. At about 11.00 p.m. in the night shrieks of the deceased were heard by his wife Smt. Kiran Karanwal who at once went into room of her husband. She found appellant assaulting her husband by a sword. There was electric tubelight in the room. Smt. Kiran Karanwal, in order to save her husband, caught sword of the appellant by her hand. Hearing noise, both the children also woke up besides a tenant Nishu (P. W. 5) who also reached there with one Narayan Das and others and appellant Sunil was arrested on the spot. Appellant had also poured some acid on the face of the deceased. Smt. Karanwal gave information to Ashok Karanwal (P.W. 2), one of her relative and others on telephone and with the help of these persons Piyush Karanwal was taken to hospital where he was declared dead by the doctors.

4. Appellant Sunil Gupta was, along with, his sword taken to the police station and written F. I. R., Ext. Ka-1, was lodged there at 1.00 a. m. (in the night) on 05-10-2000 by Smt. Kiran Karanwal. She was medically examined the same night at Doon hospital for her injuries.

5. Investigation of the case was taken up by S. I. Prem Pal Singh (P. W. 10) who completed necessary formalities relating to recording the evidence of the

witnesses and seizure of the sword, sample of the bloodstained and plain floor of the room etc. and on completion the investigation filed charge-sheet against the appellant on 12-10-2000. It is Ext. Ka-2 on the record. The inquest on the dead body of Piyush Karnwal was held in the Doon Hospital by S. I. Rajendra Singh and the postmortem on the dead-body was performed by Medical Officer Dr. A.K. Rastogi (P. W.3).

6. Appellant did not admit the accusations of the prosecution in regard to the motive and the role of assailant of the victims. He contended that he had been falsely implicated in the case. He had admitted that he was employed as a domestic servant in the house of the deceased but claimed that he never had any quarrel or dispute with his master.

7. From the side of the prosecution 10 witnesses were examined in the trial. Of these, Km. Purna (P. W.1), Nishu (P. W. 5) and Smt. Kiran Karnwal (P. W.8) are the eyewitnesses of the occurrence and they supported the prosecution version as narrated above. Ashok Kumar (P.W.2) and his son Sachin Karnwal (P. W. 9) reached the house of the victims on receiving information of the incident on telephone of Smt. Karnwal. On reaching the house they saw the deceased Piyush Karnwal lying injured on the floor and appellant Sunil was kept in the custody of Nishu and Narain Das and his sword was stained with blood. Constable Hakam Singh (P. W. 6) formally proved Chick F.I.R. and copy of G, D. of registration of the case, Ext. Ka-5 and Ext. Ka-6 respectively. Satya Prakash Karnwal (P.W. 7) is the witness of seizure of various articles and samples of the blood stained and plain floor of the room where the occurrence took place and the bed -sheet etc. from the room of the deceased. S. I. Prem Pal Singh (P.W. 10) has investigated the crime and he proved various steps and relevant documents prepared by him for and in connection with the investigation and also the charge-sheet filed against the appellant. He also formally proved inquest report and relevant documents, which were prepared by S. I. Rajendra Singh. The post-mortem on the deadbody of Piyush Karnwal deceased was performed by Dr. A.K. Rastogi (P. W. 3) who has prepared post-mortem report, Ext. Ka-2. The postmortem was conducted at 2.00 p.m. on 05-10-2000. Three antemortem incised wounds were detected out of which incised wound at Sl. No. 2 was found to have caused shock and

haemorrhage resulting in the death of the deceased. The fatal injury referred to as such was as below :--

'Incised penetrating wound 2 cm x 1 cm cavity deep situated 3 cms, below left of injury No. 1, 9 cms. above and at 11 O' Clock position from left nipple. It is directed outwards and towards right side and on dissection underlying sub-cutaneous tissues were found lacerated and blood was present in chest wall. It is communicating to upper part of right ventricle (of the heart)'.

8. In the opinion of the Medical Officer this injury like other Injuries, could also be caused by a sword, which can give elliptical shape to the injury like the Injury No. 2 of the deceased, and the antemortem injuries were probably caused at about 11.00 at night on 04-10-2000.

9. Dr. S.K. Nautiyal (P.W.4) Medical Officer of the Doon Hospital has examined injured Smt. Kiran Karnwal at 2.50 a.m. on 05-10-2000 and prepared her injury report, Ext. Ka-3. Besides one contusion and one linear abrasion, an incised wound 2 cm. x 1 cm. x palmer fascia deep on palmer part and on second phalanx of index finger of left hand was sustained by this injured eye-witness. Medical Officer opined that this injury could be caused by a sharp edged object, such as, sword at about 11.30 a.m. in the night between 4/5-10-2000 as it was found fresh at the time of medical examination.

10. No evidence was adduced in defence.

11. Heard Sri Pankaj Purohit, Amicus Curiae for the appellant and learned A. G. A. and have carefully perused the evidence on record.

12. Learned Amicus Curiae did not dispute claim of the prosecution that the death of Piyush Karnwal was homicidal and further that there was nothing to entertain any doubt in the claim of the prosecution that the occurrence took place at about 11.00 in the night on 04-10-2000 at the place of the occurrence i.e. the house of the victim in the town of Dehardun within the circle of Kotwali Police, Dehardun. Learned Amicus Curiae however, drew attention to the evidence of Km. Prerna (P. W. 1) and submitted that evidence of the child witness was not-trustworthy and

learned Sessions Judge should not have placed reliance on her evidence. It was submitted that this child witness, aged about 10 years, was probably tutored to corroborate the prosecution version and it was not safe to place reliance on her evidence. Having gone through the evidence of this witness we feel forced to dismiss the argument as there is even no inkling of any tutoring of this child witness in regard to the sequence of the events and the actual occurrence in which her father sustained fatal injuries and her mother was also caused injuries by the appellant Sunil Gupta who wielded a sword against the victims. It is of significance to mention that the witness gave a categorical statement that she had followed her mother into room in which her father was sleeping and when she entered the room she found that her mother had taken hold of the sword wielded by the appellant Sunil Gupta and her father was lying on the floor with bleeding injuries. The witness has neither made any exaggeration about the incident nor made any attempt to falsely claim that the appellant before her eyes gave the sword blows to her father. The witness has given an honest and straightforward statement about the incident and there was no reason, at all, to doubt truthfulness of her evidence. In other words, the relevant version of the prosecution was fully proved and supported by her evidence.

13. The other witness of the fact Nishu (P. W. 5) was also relied upon in support of the prosecution claim by the learned Sessions Judge and his evidence has also been adversely commented upon by the learned Amicus Curiae on the ground that the witness being the tenant of the house in the ground floor would have had no opportunity to reach the scene of the incident so soon as to find the appellant wielding the sword and the said weapon then being seized by hand by Smt. Kiran Karnwal, the injured eye-witness of the case. It has come in the evidence of the witness that he and his father have heard the alarm raised by the said lady and they at once reached the place of the occurrence where Piyush Karnwal was found lying injured on the floor and the sword of the appellant was seized by its other end by the said lady. This witness caught hold of the appellant and at the same time the said lady was able to snatch the sword from the hand of the appellant. There is nothing in the cross-examination of the witness, which may assail his testimony. In regard to this witness it may also be said that he gave truthful version of the incident as was witnessed by him and his evidence also

support prosecution version like the evidence of P. W. 1.

14. The evidence of injured eye-witness Smt. Kiran Karnwal (P.W.8) was also made subject-matter of criticism by submitting that the minor injuries found on her person belie her claim because if she had really caught hold of the sword wielded by the appellant she would have sustained grievous injuries in her hand and that absence of such an injury create grave suspicion in the claim that she reached there to witness the actual occurrence of assault on her husband by the appellant. This witness has unequivocally stated that on hearing the shrieks of her husband she rushed to the room of her husband where she found the appellant giving sword blow on the chest on her husband and then took out the sword from the wound. At that point of time she tried to catch-hold of the appellant and his sword and in the process, the appellant wanted to assault her also but she seized by her hand the other end of the sword.

15. In a situation like this it was quite usual and normal for the appellant to have caught up in a state of confusion and, therefore, could not give forceful blow of sword on the person of the witness who was successful in averting the blow and seize the other end of the sword by her hand. She was, thus, lucky to sustain only minor incised wound on the palmer aspect of her hand. In the meanwhile other witnesses have also arrived there and caught hold of the appellant who could not further make any assault on this witness. This was the reason that no serious injury was sustained by this witness and in the totality of the circumstances of the case and her evidence, argument of the learned Amicus Curiae could safely be said to be of no significance and any impact. This witness being injured guaranteed her presence at the scene of the occurrence and there is absolutely nothing in her cross-examination which may be taken to disbelieve her testimony and the learned Sessions Judge was justified in placing implicit reliance on her evidence and to draw a conclusion that the prosecution version stands fully established even by the evidence of this witness alone. We found absolutely no cause to disagree with the conclusion of the learned Sessions Judge.

16. It was then submitted that the medical evidence of the case does not corroborate the prosecution version because the fatal incised wound, which was of

elliptical shape could not have been sustained by a sword. The submission in this regard also carry no conviction because ocular evidence of the case is totally convincing and proves the manner in which the appellant inflicted sword injuries to the victim Piyush Karnwal deceased and also because Medical Officer (P. W. 3) categorically stated that elliptical shaped wound as found on the person of the deceased could very well be sustained by a sword which also cause clean margins in the wound. In a situation like this it is obvious that the medical evidence corroborate the ocular testimony and there is nothing to show that the medical evidence rule out the possibility of sustaining of the injuries by the deceased in the manner as alleged by the prosecution.

17. Learned Amicus Curiae also argued against the credibility of the F. I. R., Ext. Ka-1, by submitting that it was not prompt despite the fact that the place of the occurrence was situated only at a distance of two furlongs from the police station. The F. I. R. was lodged after two hours of the occurrence, which in the face of the situation and the time of the occurrence was quite usual and normal. The victim Piyush Karnwal has sustained sword injuries and the injured eyewitness and others naturally had anxiety to provide the victim medical aid first of all and in the process there was bound to be some delay in lodging the K. I. R. at the police station. The delay is not so much as may introduce an element of deliberation or consultation about the prosecution story and, therefore, there is nothing to doubt the genuineness of the F. I. R. In other words the F. I. R. of the case fully corroborate the prosecution version and evidence produced in the case on its behalf.

18. Lastly, it was submitted that the motive, as alleged, is weak and this aspect of the matter tell upon the veracity of the prosecution case. The submission in this regard too is of no significance because firstly, the evidence of injured eye-witness (P. W. 8) is to the effect that the appellant was entertaining grudge and enmity on account of refusal by the deceased to pay him money for his services and secondly, it is well settled that where ocular testimony is cogent and reliable, the question of motive loses its significance. With reference to the said reason it will be advantageous to refer to the observation of the Apex Court in the case of Amar Jeet Singh v. State of Punjab (1995)32 All Cri C 573 : (1995 Cri LJ 3984). It was

observed that where positive evidence against the date matter proof thereof pale into insignificance. Considering the well settled principle of law in this regard, even if the motive alleged is weak, trustworthy prosecution evidence will prevail in regard to the proof of charges against the culprit, the appellant in this case. The learned Sessions Judge has also adverted to this aspect of the case and rightly placed no undue importance on the motive part of the case.

19. For the foregoing discussion we did not find any substance and merit in this appeal and we, therefore, uphold the conviction and sentence as awarded against the appellant by the learned Sessions Judge per judgment and order dated 06-05-2002. The appeal is accordingly dismissed. The appellant is in jail. He shall serve out the sentence awarded against him.

20. Let the record of the case be sent back to the Court concerned for compliance of the order.

21. The Amicus Curiae be paid his fee as prescribed.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**