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## Subhash Chand Vs State of Uttaranchal (now Uttarakhand)

120 of 2004

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**Court:** Uttarakhand High Court

**Date of Decision:** Feb. 22, 2018

**Acts Referred:**

[Limitation Act, 1908](#), [Section 106](#) -#[Code of Criminal Procedure, 1973](#), [Section 313](#), [Section 207](#) - Power to examine the accused - Supply to the a

**Advocate:** Arvind Vashisth, K.R. Gazi, G.S. Sandhu, P.S. Bohara

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### Judgement

1. This appeal is directed against the judgment and order dated 18.03.2004 passed by Additional Sessions Judge/2nd F.T.C., Dehradun in

Sessions Trial No.160 of 2000, whereby said court has convicted the accusedappellant Subhash Chand under Section 218 and 222 of The Indian

Penal Code, 1860 (for short, IPC). He has been sentenced to one year"s rigorous imprisonment u/s 218 IPC and three years" rigorous

imprisonment u/s 222 IPC. Both the sentences were directed to run concurrently. However, the accused/appellant Subhash Chand was acquitted

by the trial court under Section 212 and 213 of IPC.

2. In brief, prosecution story is that on 25.4.2000 the appellant Subhash Chand was entrusted with the duty of escorting one undertrial Nadim,

accused in crime no.687/99 under Sections 302/201 IPC, in the court of 1st Additional District and Sessions Judge, Dehradun for hearing. While

returning from the court, instead of admitting the undertrial in jail, the accused/appellant Constable Subhash Chand took the undertrial to his

(Nadim) house and thereafter intentionally aided him to escape from his confinement. Accused/appellant then submitted a false report at Kotwali

stating therein that while he was returning from the court, the undertrial Nadim refused to go in the lock up, whereupon some quarrel took place

between them and taking advantage of the same, the undertrial fled away from the spot. On the basis of this report, case crime no.436 of 2000

was registered against the accused Nadim under Section 224 of IPC. Initially, investigation of the case was handed over to PW15 Jaswant Singh

and subsequently it was taken up by PW14 Parikshit Kumar. During the course of investigation, I.O. found that no such incident, as alleged, had

infact taken place. It is alleged that the appellant had aided the undertrial to escape from his confinement and had shown the negligence in

discharging the duty. The Investigating Officer, thus, sought permission from S.S.P. Udham Singh Nagar to initiate criminal proceedings against the

accused/appellant. By order dated 20.06.2000, S.S.P. Dehradun accorded sanction to the I.O., whereafter, the I.O. submitted charge sheet

against Const. Subhash Chand in the court for his trial in respect of offences punishable under Sections 212/213/218/222 IPC.

3. Chief Judicial Magistrate, Dehradun, on receipt of charge sheet, after giving necessary copies to the accused persons as required under section

207 Cr.P.C., committed the case to the court of Sessions for trial. On 5.12.2000, the Addl. Sessions Judge, Dehradun, framed charge of offence

punishable under Sections 212, 213, 218 and 222 of IPC against the accused/appellant Constable Subhash Chand. The charge was read over and

explained to the accused, to which he pleaded not guilty and claimed to be tried.

4. In order to bring home the guilty of the accused for the aforesaid offences, the prosecution got examined PW1 Indra Mohan (declared hostile),

PW2 Manmohan Lamba, PW3 Mayank Pandey, PW4 Smt. Gafuran, mother of accused Nadim (declared hostile), PW5 Smt. Begum (declared

hostile), PW6 Smt. Beena @ Meena (declared hostile), PW7 Const. Teg Singh, PW8 S.I. Nand Kishore Chamoli, PW9 Const. Vijay Lal, PW10

Sanjay Sankhayadhar, PW11 Const. Devendra Kumar, PW12 Harish Chand, PW13 Dr. S.K. Nautiyal, PW14 Parikshit Kumar, PW15 Jaswant

Singh and PW16 K.K. Saxena.

5. PW2 Mayank Pandey has stated that on 25.4.2000 he was sitting in the Chamber of Mr. Raturi. On that day, he saw that one accused

attacked upon a constable and thereafter flew away. The accused had torn shirt of the constable and was having brick in his hand.

In cross-examination, this witness has stated that he does not know accused Nadim, thereafter, he stated that he knows Nadim. This witness also

stated that earlier he was counsel for the accused Subhash Chand.

6. PW3 Manmohan Lamba has denied any fight in the court compound and had also denied the fact that any undertrial had escaped from the

custody of the appellant Subhash Chand.

7. PW7 Constable Teg Singh has stated that on 25.4.2000 he was assigned duty in the lock-up. At 2 pm, accused/appellant Subhash Chand had

taken the undertrial for hearing in the court of 1st Addl. Sessions Judge, but when he did not return upto 4 pm, then Constable Vijay Pal and

Bhusan went for his search.

In cross-examination, this witness has stated that at about 5 pm he came to know about the fact that the accused Nadim has run away.

8. PW8 Sub Inspector Nand Kishore has stated that on 25.4.2000 he was posted as Head Mohirror. On that day, on the basis of report

submitted by the accused/appellant Subhash Chand, he had prepared the Chik F.I.R. and had made entry in the G.D.

9. PW9 Constable Vijay Lal has stated that upto pm when the Constable Subhash Chand did not bring the accused Nadim in the custody, then he

made their search, but to no avail.

10. PW10 Sanjay Sankhayadhar has stated that on 25.4.2000 he was in the court compound. This witness has stated that neither any accused had

fled away from the police custody nor he heard such news. This witness has also stated that if such report regarding absconding of accused has

been lodged by any Constable, the same is false.

11. PW11 Constable Devendra Kumar is a formal witness. On the relevant date, he was posted as Constable Clerk in Police Line. He has proved

Ext.Ka-4 &

12. PW12 Harish Chand has stated that on the relevant date and time, he was working as Typist in the court compound. He stated that before him

no accused had fled away from the police custody nor he heard such news.

13. PW13 Dr. S.K. Nautiyal is the medical officer who has conducted medical examination of the accused/appellant Subhash Chand. He has

proved the medical report Ext.A6.

14. PW14 Parikshit Kumar has stated that on 26.5.2000 he was posted as Inspector at Kotwali Dehradun. On that day, he was entrusted with

the investigation of the case. He perused the case diary prepared by first Investigating Officer and thereafter recorded the statement of witnesses.

On 15.6.2000, he had sought permission from S.S.P. for prosecution of the accused/appellant Subhash Chand. After obtaining the permission,

vide order dated 20.06.2000, he submitted charge sheet against the accused/appellant Subhash Chand in the court.

15. PW15 Jaswant Singh has stated that on 25.4.2000 he was posted as Incharge Inspector at Kotwali Dehradun. He had taken the investigation

of the case. During the course of investigation, he recorded the statement of witnesses. On 26.4.2000, he again recorded the statement of

accused/appellant Subhash Chand. He arrested the accused Subhash Chand and prepared the arrest memo and information memo, which are

Ext.A8 and Ext.A9.

16. PW16 K.K. Saxena has proved the sanction order Ext.A10.

17. Thereafter, oral and documentary evidence was put to the accused under section 313 Cr.P.C in the form of questions, in reply to which he

stated that when he was escorting the accused Nadim, some quarrel was taking place and there was crowd. Accused Nadim lost his hand and fled

away. However, the accused did not lead any evidence in his defence.

18. The trial court, after hearing the parties and appraisal of evidence, by the impugned judgment and order, convicted and sentenced the

accused/appellant Subhash Chand, as above.

19. Learned counsel for the appellant has argued that the prosecution has not proved the case beyond reasonable doubt against the

accused/appellant. He submitted that the appellant was discharging his official duty and, while doing so, the accused scuffled with him and fled

away from the spot. He contended that the trial court has misread the evidence and has passed its judgment on the basis of conjecture and

surmises and the same is liable to be set aside.

20. Per contra, learned Government Advocate for the State has supported the impugned judgment and order passed by the trial court and has

submitted that the trial court has passed the judgment, after proper appraisal of evidence, leaving no scope of interference for this Court.

21. I have heard learned counsel for the parties and have perused the entire record.

22. In the present case, the incident alleged by the accused/appellant was happened in a broad daylight in crowded court compound, but none of

the prosecution witness has seen such incident, nor did anyone hear about it. All the prosecution witnesses viz. PW3 Mannohan Lamba, PW10

Sanjay Sankhyadhar and PW12 Harish Chand, who are the independent witness and were present in the court compound on the relevant date and

time, have categorically stated that they did not see any undertrial fleeing away from the custody of any Constable nor they heard any such news in

the court compound. Even PW10 Sanjay Sankhayadhar has stated that if such report regarding absconding of accused has been lodged by any

Constable, the same is false. Only PW2 Mayank Pandey has supported the version of accused/appellant Subhash Chand that accused attacked

upon him and thereafter fled away from his custody, but from the cross-examination of this witness, it would reveal that earlier he was the counsel

for the accused/appellant Subhash, as such, there leaves no room for doubt that this witness is interested witness and has given statement in favour

of the accused/appellant Subhash Chand, when not a single prosecution witness, have supported the version of accused/appellant Subhash Chand.

That apart, the accused/appellant Subhash Chand in the First Information Report submitted by him at the Kotwali concerned, had stated that while

he was taking the undertrial from the court of Ist Addl. Sessions Judge, the undertrial Nadim refused to go in the lock-up, whereupon some quarrel

took place between them and taking advantage of the same, the undertrial fled away from the spot. Contrary to it, in the statement recorded u/s

313 of Cr.P.C., the accused/appellant has stated that when he was taking the accused Nadim, some quarrel was taking place on the road and

there was crowd. Accused Nadim lost his hand and fled away from the spot. There is contradiction in the version of the accused/appellant which

creates doubt in the conduct of accused/appellant and strengthens the prosecution story that the accused/appellant himself allowed the undertrial to

escape from his custody. The conduct of the appellant clearly indicates that the appellant intentionally allowed the undertrial to escape from his

lawful custody and thereafter by concealing correct facts, developed a story that when he was taking back the undertrial Nadim to the lock up

room, the undertrial Nadim scuffled with him and fled away. This fact was in the personal knowledge of the appellant as to under what

circumstances and in what manner the undertrial escaped from his lawful custody. In view of Section 106 of the Indian Evidence Act, burden was

upon the appellant to prove this fact, but the appellant did not adduce any evidence in this regard, despite opportunity provided to him. For

convenience, Section 106 of the Indian Evidence Act, 1872 is quoted hereunder:

106. Burden of proving fact especially within knowledge.- When any fact is especially within the knowledge of any person, the burden of proving

that fact is upon him.

23. In the light of aforesaid, I am of the considered view that the prosecution has successfully proved its case beyond reasonable doubt against the

accused/appellant that while the appellant was escorting the undertrial after producing him before the Court, he allowed the undertrial to go to his

house from where he fled away and thereafter the appellant set up a story that while returning from the court, some scuffling took place between

the undertrial and the appellant and the undertrial fled away from his confinement. The prosecution has been able to prove that the appellant

intentionally allowed the undertrial to escape from his lawful custody. As such, the trial is justified in convicting and sentencing the

accused/appellant Subhash Chand under Sections 218 and 222 of IPC.

24. Accordingly, the appeal is dismissed. Impugned judgment and order dated 18.03.2004 passed by Additional Sessions Judge/2nd F.T.C.,

Dehradun in Sessions Trial No.160 of 2000, is affirmed. Accused Subhash Chand is on bail. His bail bonds are cancelled and sureties are

discharged. Let him be taken into custody forthwith to serve out the sentence awarded by the trial court and thereafter affirmed by this Court.

25. Lower court record be sent back.