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2026:UHC:10196-DB

Judgment reserved on: 11.09.2026
Judgment delivered on: 04.11.2026

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No.292 of 2014

Ankit Alias Baba --Appellant

Versus

State Of Uttarakhand --Respondent

Presence:-

Mr. Ramji Shrivastava, Advocate with Mr. Gaurav Nagpal, Advocate for the appellant.

Mr. B.N. Maulekhi, D.A.G. along with Mr. Sunil Upadhyaya, Brief Holder for the State.

Coram :Hon'ble Manoj Kumar Tiwari, A.C.J.
Hon'ble Pankaj Purohit, J.

Per: Hon'ble Pankaj Purohit, J.

The present appeal is preferred by the appellant under Section 374 (2) of the Cr.P.C. against the judgment and order dated 06.09.2014, passed by learned IVth Additional Session Judge, Dehradun in Sessions Trial No.115 of 2011, State vs. Vishal and another (FIR No.498/2010 u/s 302/34, 307/34, 504/34 & 506/34 IPC, P.S. Kotwali-Dehradun), convicting the appellant u/s 302/34 IPC and sentencing him with life imprisonment along with a fine of Rs.10,000/- with default stipulation of six months simple imprisonment; further convicting u/s 307/34 IPC and sentencing him with 10 years rigorous imprisonment along with a fine of Rs.5,000/- with default stipulation of 3 months simple imprisonment; and further convicting u/s 506/34 IPC and sentencing with one year rigorous imprisonment and u/s 504/34 IPC with six months.

2. In brief, the prosecution case is that an FIR was lodged on 15.12.2010 at around 8:15 p.m. by Varun Joshi against Ranjeet, Ankit @ Baba, Vishal, wherein it

was alleged that around 5:30 p.m., the informant and his brother Tarun were playing cricket in S.G.R.R. Ground situated near Jhanda Pond. He alleged that Ranjeet, Ankit @ Baba (appellant) and Vishal approached them and asked them not to play cricket and on asking the reason, they started assaulting them with bat and stumps in which Tarun and the informant received injuries and both of them were taken to the hospital. Initially, the FIR was lodged under Section 325, 504 and 506 but Tarun died during the treatment and the Investigating Officer filed a charge-sheet under Sections 302, 307, 325, 504, 506 of IPC read with 34 of IPC. During investigation, the role of Channi @ Ankush also emerged and he was also charge-sheeted under the aforesaid sections.

3. Thereafter, learned Chief Judicial Magistrate committed the case to Additional Session Court which framed charges under Sections 302, 307, 504, 506 of IPC read with 34 of IPC. The charges were read over and explained to the accused, who pleaded not guilty and claimed to be tried. Since accused Ranjeet and Channi@ Ankush were minor, their case was sent to Juvenile Justice Board.

4. To prove its case, prosecution has examined PW1 Varun Joshi (the informant), PW2 Shrey, PW3 Shivam, PW4 Dr. S.K. Jha, PW5 Dr. Harish Kohli, PW6 Ravi Sharma, PW7 Dr. G.S. Rawat, PW8 Dr. Pankaj Arora, PW9 S.I. Dhirendra Pant, PW10 S.I. D.P. Bahuguna, PW11 Constable Anil Kumar, PW12 S.I. Ram Kumar Juyal.

5. After prosecution evidence, the statement of appellant was recorded under Section 313 Cr.P.C., in which, he denied the evidence of prosecution and stated

that he has been falsely implicated.

6. After hearing the public prosecutor as well as the appellant accused, the trial court found the charges proved against the appellant beyond all reasonable doubts and convicted and sentenced him, accordingly as stated above.

7. During trial, PW1 reiterated the facts of prosecution story and supported it. He on oath deposed that the alleged incident was of 15.12.2020. On that day, he along with his brother Tarun were playing Cricket on SGRR, Talab Ground. Ankit, Ranjeet and Vishal approached them and offered to play matches for prize money of Rs.30/-. When they lost two matches instead of giving Rs.60/- they started arguing with them and assaulted them by saying that they dare not play cricket over here. He further stated that Ankit and Ranjeet hit him with a bat and Vishal hit him with a stump. He further stated that when he tried to save himself from blow of the bat, his elbow broke. When his brother Tarun came to him to save him, Ranjeet attacked him with the bat on his head. Because of this hit, Tarun got unconscious and seeing this incident, their cousins Shivam and Shrey came to save them. Thereafter, he (PW1) and his brother Tarun were taken to the hospital. Tarun died on 20.12.2010.

8. PW2 Shrey in his examination in chief deposed that the alleged incident is of evening of 15.12.2010. He reiterated the statement made by PW1 and stated that Ankit and Ankush attacked Varun with bat and stump and when Tarun came to save Varun, Ranjeet attacked him with a bat. He further stated that after hitting his brothers the accused persons ran towards the stairs and left.

9. PW3 Shivam, in his examination in chief reiterated the prosecution story and on oath deposed that when he reached Jhanda Talab at around 5:00 pm on the alleged date of incident, he saw that Varun, Tarun and Shrey were having altercation with Ranjeet, Ankush and Ankit. He further stated that thereafter Ankush and Ankit started beating Varun with bat and stump. He stated that Ranjeet was carrying a bat and Ankush was carrying a stump. He further deposed that when Ankit tried to hit Varun on his head, he tried to save himself and his hand got fractured. On seeing this, when Tarun tried to save Varun, Ranjeet hit him with a bat on his head. On his cross examination, he stated that he did not see Vishal on the alleged place of incident.

10. PW4-Dr. S.K. Jha on his examination-in-chief deposed that he conducted the medical examination of Varun on 15.12.2010 and found bruises on his left elbow which could have been caused by some blunt object. He referred the injured Varun to orthopedic doctor and advised him for X-ray. He proved medical injury report as Ex.Ka-2. On the same, he examined Tarun (injured who later on died of the injuries sustained by him). He also found injury marks contusion 3X2 cm on his head, which also could have been caused by some blunt object. He advised him for X-ray and CT-Scan & referred him to Neurosurgeon. He proved his medical report as Ex.Ka-3.

11. PW5-Dr. Harish Kohli conducted medical examination of Varun and conducted his X-ray, by which it was found that his left elbow had broken. He proved Ex. Ka-4 and Ex.KA-5.

12. PW6- Ravi Sharma, in his Examination-in-Chief deposed that on the alleged date of fateful incident, he was at his home. He was informed by phone around

5:30 pm that Tarun and Varun have suffered some injuries. He further deposed that when he reached Jhanda Talab, crowd had gathered over there. He saw that Varun along with few people was taking Tarun to the hospital. He further deposed that on 20.12.2010, Tarun died in Mahant Indresh Hospital, Dehradun. He proved his signature on the inquest report Ex.Ka-6.

13. PW7 Dr. G.S. Rawat, in his examination-in-chief stated that on 20.12.2010, he conducted the post mortem of Tarun Joshi, who was aged around 27 years. On his examination, he found 55 stitches on his head and also found bruises on his stomach, He opined that the death might have been caused due to coma induced because of a head injury. He proved post mortem report Ex.KA-7.

14. PW8 Dr. Pankaj Arora, in his examination-in-chief deposed that he conducted treatment and operation of Tarun Joshi, but he could not be saved.

15. PW9 Dhirendra Kumar Pant stated that he did the primary investigation of the incident and he also prepared the site map. Thereafter, the investigation was transferred from him.

16. PW10 S.I. D.P. Bahuguna, in his examination-in-chief deposed that he conducted the investigation of the alleged incident and after the death of Tarun, increased the charges of 307 and 302 IPC. He further deposed that on his investigation, it was found that Ankush alias Chunni was also involved in the alleged incident. He further deposed that he arrested Vishal and Ranjeet near Railway Station on 23.12.2010.

17. PW11 Constable Anil Kumar is a formal witness. He proved police papers Ex.Ka-16, Ex.Ka-17,

Ex.Ka-18, Ex.Ka-19 & Ex.Ka-20.

18. PW12 S.I. Rajkumar Juyal in his examination-in-chief deposed that he arrested accused Vishal and Ranjeet near Railway Station and the accused Ankit from S.G.R.R. School, Khurbura, and thereafter, after completion of the investigation submitted charge-sheet.

19. It is vehemently argued by learned counsel for appellant that learned court below committed grave irregularity by convicting the appellant as the prosecution failed to prove its case beyond all reasonable doubts. He further stated that the prosecution story is highly improbable and unbelievable as the prosecution failed to prove any motive against the accused appellant. He further stated that no recovery of weapon of assault either from the possession of the appellant or on the pointing of the appellant was recovered. He further submitted that it is apparent from the evidences of PW-1, PW-2 and PW-3 that the appellant did not assault the deceased. He further argues that as the other accused Vishal has been acquitted by the learned trial Court, the conviction under Section 34 could not sustain. He also placed reliance on the judgment of Juvenile Justice Board dated 21.12.2016 wherein the other juvenile accused were convicted under section 304 part II of IPC,1860. He further stated that common intention hasn't been sufficiently proved by the prosecution and also submitted that prosecution has failed to prove guilt the of the accused- appeallant beyond reasonable doubts. He relied upon the following judgments of Hon'ble Apex Court in the case of ***Shanker vs. State of Madhya Pradesh (2018) 15 SCC 725*** and ***Badruddin vs. State of U.P. (1998) 7 SCC 300***.

20. Per contra, learned State Counsel supported the case of prosecution and the impugned judgment contending that the eye witness account of injured PW1 injured witness Varun, PW2 and PW3 remained consistent and unshaken throughout the trial and no material contradiction could be elicited even on lengthy cross examination of the injured witness as well as other prosecution witnesses.

21. Having heard the learned counsel for the parties and on perusal of the record, this Court is of the considered opinion that the conviction of the appellant is based upon direct evidence and the conviction is based upon the testimony of the star witness PW-1, who was himself injured during the alleged incident. It is a settled principle of law that great credence is given to the testimony of injured witness as it is more probable that he will not lie and will want that the actual accused persons get punished. Moreover, in this case as he has lost his real brother. It is all the more certain that he will depose to ensure that the actual culprits get punished and it will be highly unlikely that he will try to frame innocent persons. The evidentiary value of injured eye-witnesses were appreciated by Hon'ble Apex Court in the judgment of ***Tahsildar Singh versus State of U.P. AIR***, ***1959 SC 1012***, wherein following guidelines were enunciated:-

> *"When the evidence of an injured eye-witness is to be appreciated, the undernoted legal principles enunciated by the Courts are required to be kept in mind:*
>
> *(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.*
>
> *(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.*
>
> *(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.*
>
> *(d) The evidence of injured witness cannot be doubted on*

account of some embellishment in natural conduct or minor contradictions.
(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.
(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded".

22. The argument of the learned counsel for the appellant regarding the fact that PW-2 and PW-3 turned hostile also does not hold any water as the law has been settled by Hon'ble Apex Court that there is no legal bar to base a conviction upon a hostile witness testimony, if it is corroborated by other reliable evidence, it has been held that the fact that a witness has been declared hostile does not result in an automatic rejection of his evidence. My above view is based upon the judgment in ***Sat Pal versus Delhi Administration (1976) 1 SCC 727***, wherein, the Hon'ble Apex Court stated *"This Court cautioned that even if a witness is treated as 'hostile' and is cross-examined, his evidence cannot be written off altogether but must be considered with due care and circumspection and that part of the testimony which is creditworthy must be considered and acted upon. It is for the judge as a matter of prudence to consider the extent of evidence which is creditworthy for the purpose of proof of the case. In other words, the fact that a witness has been declared 'hostile' does not result in an automatic rejection of his evidence. Even, the evidence of a 'hostile witness' if it finds corroboration from the facts of the case may be taken into account while judging the guilt of the accused. Thus, there is no legal bar to raise a conviction upon a 'hostile witness' testimony if corroborated by other reliable evidence."*

23. Appellant's counsel also relies upon some

contradiction between the statements of PW1, PW2 and PW3, but these contradictions are not of a grave nature. It cannot be expected by the witnesses that they remember the exact weapon and exact part of the body, where the deceased person and the injured person were hit. This Court is of the firm view that the prosecution witnesses have supported the prosecution story and these minor contradictions can be ignored.

24. The contention of the learned counsel for the appellant that he should be convicted under Section 304 Part-II of IPC, 1860 as the other co-accused juveniles were convicted under the said section also does not hold any water, as the learned Juvenile Justice Board convicted the accused juveniles under Section 304 Part-II after taking into account exception 4 to Section 300 IPC. This Court does not find the reasoning appropriate, as the bare perusal of Section 300 IPC, it makes amply clear that any of the exceptions will only come into play if the prosecution is able to prove that there is a causal connection of the act of accused persons with any of the of the essentials of Section 300 IPC, which is quoted hereinbelow:-

> "**300.Murder-** Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—
>
> *(Secondly)*— If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—
>
> *(Thirdly)*— If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—
>
> *(Fourthly)*— If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid."

25. This Court is of the considered view that the

conduct of appellant shows that he did not intend to cause death of the deceased or he also did not intend to cause such bodily injury which may result into death. His conduct at the most shows that he had the knowledge that he is likely, by his act, to cause death. Therefore, his conduct will fall under Section 299 IPC and would not attract the provisions of Section 300IPC. Thus, this Court is of the considered opinion that the appellant's conviction be modified to such extent. This Court deems it fit to convict the appellant under Section 304 Part-II/34, 308/34, 504/34 and 506/34 of IPC.

26. As far as the argument of learned counsel for the appellant that appellant cannot be convicted for the offence with the help of Section 34 of Indian Penal Code, 1872 is concerned, we are of the view that as the other two accused persons *namely* Ankush and Ranjeet were eventually held guilty and were convicted by the Juvenile Justice Board, it can be safely assumed that the appellant had developed the common intention to cause such bodily injuries, which in the knowledge of appellant would cause death of the deceased at the spot which is very clear from the conduct of the accused persons, therefore the learned trial Court committed no irregularity in convicting the accused appellant with the help of common intention enshrined under Section 34 IPC.

27. We have also gone through the judgments relied upon by appellant. They are of no use to appellant in factual background of this case.

28. The upshot of the aforesaid discussions is that the appeal deserves to be partly allowed. The conviction and sentence is modified to the extent that appellant is now convicted under Section 304(II)/34 IPC instead of

Section 302/34 IPC and under Section 308/34 IPC instead of Section 307/34 IPC. The conviction and sentence under Section 506/34 and 504/34 are not disturbed. The impugned judgment and order dated 06.09.2014 passed by the learned Additional Sessions Judge, Dehradun, is accordingly modified. Appellant is sentenced under Section 304-II/34 IPC with 10 years rigorous imprisonment and a fine of Rs. 5,000/- with default stipulation of 6 months additional simple imprisonment and is convicted under Section 308/34 IPC and sentenced with seven years' rigorous imprisonment and a fine of Rs.2000/- with default stipulation of three months additional simple imprisonment. The sentence awarded shall run concurrently. As the accused appellant is on bail he shall surrender before the learned trial court. His bail-bonds are cancelled and sureties are discharged.

29. Let Trial Court Record be immediately sent back to the trial court for necessary action.

(Pankaj Purohit, J.) **(Manoj Kumar Tiwari, A.C. J.)**

04.11.2026

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