
(2008) 06 UK CK 0003
In the Uttarakhand High Court

Baldev Alias Balla and Damber Bahadur	APPELLANT
Vs	
State of Uttarakhand	RESPONDENT

Date of Decision : 18-06-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 320
Penal Code, 1860 (IPC) — Section 307, 326, 34

Citation : (2008) 3 UC 1833 : (2008) 2 UD 156 : (2006) 2 UD 156

Hon'ble Judges : J.C.S. Rawat, J

Bench : Single Bench

Judgement

J.C.S. Rawat, J.—Since both the above appeals have arisen out of the common judgment and order dated 24.12.2001 passed by the learned Additional District & Sessions Judge/IIIrd F.T.C., Dehradun in S.T. No. 148 of 1998, therefore, both the appeals are being disposed of together by this common judgment. These appeals have been preferred against the aforesaid impugned judgment and order whereby the appellants Baldev @ Balla and Damber Bahadur have been convicted & sentenced to undergo rigorous imprisonment for seven years and a fine of 5,000/- u/s 307 r/w 34 I.P.C. In default of payment of fine, the appellants shall further undergo R.I. for six months.

2. Brief facts of the prosecution case are that on 02.06.1998 at about 11:00 p.m. in the night, the appellant Damber Bahadur called the injured Raju Thapa S/o Dharamraj from his house. The appellant Baldev was standing outside his house. They took away Raju Thapa with them. When they reached near the Khokha of Mast Ram, they started beating Raju Thapa. The parents of the injured Raju Thapa also followed him. The appellant Baldev @ Balla struck on the head of the injured by the butt of the country made pistol whereas the appellant Damber Bahadur caught hold the injured. The appellant Baldev @ Balla shot upon the injured due to which he sustained the injuries on outer side of his chest. The incident was witnessed by the parents of the injured and other witnesses. Though in the evidence, it is stated that no other persons was present at the spot except parents of the injured. Thereafter, the injured Raju Thapa was taken

to Vikas Nagar Hospital from where he was referred to Doon Hospital where he remained admitted for nine days for his treatment. No injury report was prepared by any of the Medical Officers for the treatment of the injured. Tara Devi, mother of the injured submitted the report to the police station Dakpathar on 03/06/1998 at about 4:00 p.m. about the incident after admission and treatment of her son injured Raju Thapa in Doon Hospital.

3. After submission of chargesheet, the accused were committed to the court of Sessions for trial and the trial court framed charge u/s 307 r/w 34 I.P.C. against the accused/appellants. The accused denied the charge levelled against them and claimed their trial.

4. The prosecution in support of its case examined as many as nine witnesses. Raju Thapa PW1 is the injured witness who has sustained the injuries in the incident. Smt. Tara Devi PW2 and Dharamraj PW5 are the parents of the injured Raju Thapa and they are the eyewitnesses of the incident. Dr. K.S. Chauhan PW3 is the Medical Officer who has stated that the injured Raju Thapa was given first aid in the hospital. Kripal Singh PW4 is the constable who has arrested the accused/appellant on 03/06/1998. Dr. P.K. Nautiyal PW7 is the Medical Officer who has examined the injured. Dr. Radhey Shyam Gupta PW8 is the Medical Officer who has stated that the injured Raju Thapa was admitted in the Doon Hospital. S.I. B.D. Patiya PW9 is the Investigating Officer of this case and he has filed the chargesheet Ex.Ka.9 against the accused/appellants.

5. The accused-appellants were examined u/s 313 Cr.P.C. and they have pleaded not guilty to the offence. They have further stated that the police have implicated them falsely in this case.

6. The learned Addl. Sessions Judge, after appreciation of the evidence and hearing the parties convicted the appellants and sentenced them as indicated above. Whereas the accused Babu Ram was acquitted from the charge leveled against him.

7. I have heard Mr. Lokendra Dobhal, Advocate with Mr. D.C.S. Rawat, Advocate for the appellant-Baldev @ Balla; Mr. H.C. Pandey, Advocate for the appellant-Damber Bahadur; Mr. Amit Bhatt, learned Addl. G.A. for the respondent/State; and Mr. Pramod Belwal, Advocate for the complainant.

8. Learned Counsel for the appellants did not dispute the legality and propriety of the conviction passed by the learned trial court. They have only challenged the sentence imposed by the trial court. Learned Counsel for the parties have submitted before me that the parties have settled their dispute outside the court; they verify the contents of the compromise filed in the application; and further they have stated that there is no dispute in between the parties. It was further contended that the incident took place on 02/06/1998 and 10 years have elapsed from the date of the incident, and the further fact that the appellants have already undergone several months" in the jail, ends of justice would be met if the sentence of imprisonment would be reduced to the period already undergone

besides imposing of fine on each of the accused/appellants. Learned Counsel for the appellants further relied upon catena of decisions of the Hon''ble Apex Court on this point. The Hon''ble Apex Court in the case of Surendra Nath Mohanty and Anr Vs. State of Orissa, has held that the Criminal Procedure Code contemplates a complete scheme in itself u/s 320 of the Cr.P.C. and it also provides that the offences mentioned in the said section can only be compounded either with the permission of the court or with the parties. In the said provision, it has specifically been provided that no offence shall be compounded except as provided u/s 320 Cr.P.C. Thus, there is a legislative mandate that only the offences which are covered under table 1 or Table 2 can be compounded and rest of the offences punishable under the I.P.C. could not be compounded. Thus the compromise filed by the parties cannot be accepted and the appellants cannot get benefit of acquittal on that ground of compromise. In the case of Surendra Nath Mohanty (Supra), the Hon''ble Apex Court while rejecting the compromise has further held that the said compromise can only be taken into account while reducing the sentence to already undergone. The Hon''ble Apex Court in the case of Bankat and Another Vs. State of Maharashtra, had held in para 16 as under:

16. However, considering the fact that the parties have settled their dispute outside the court, the fact that 10 years have elapsed from the date of the incident, and the further fact that the appellants have already undergone several months'' imprisonment, ends of justice would be met if the sentence of imprisonment is reduced to the period already undergone besides imposing a fine of Rs. 5000/- on each of the accused u/s 326 read with Section 34 IPC. In default of payment of fine, the appellants concerned shall undergo imprisonment for a further period of six months. We also refrain from imposing any separate sentence on the other counts of offences. Out of fine amount, if realized, a sum of Rs. 4000/- also be paid to each of the injured as compensation.

9. The Hon''ble Apex Court in the case of Jetha Ram and Ors. v. State of Rajasthan reported in (2006) 2 SCC 561 has held in para 4 as under:

4. Before this Court the parties have filed a compromise petition. The offence u/s 326 IPC is not compoundable, as such it is not possible to record the compromise, but it is well settled that though compromise cannot be recorded for a non-compoundable offence, but the effect of compromise can be taken into consideration while awarding the sentence. The appellants have remained in custody for a period of about five months. In our view, the ends of justice would be met if the sentence of imprisonment awarded against the appellants is reduced to the period already undergone.

10. The Hon''ble Apex Court in the case of Hasi Mohan Barman and Anr. v. State of Assam and Anr (2008) 1 SCC 161, has held in para 10 as under:

10. The first decision on this point was rendered by this Court in Ram Pujan and Others Vs. State of Uttar Pradesh, wherein the trial court had convicted the accused u/s 326 IPC which is a non- compoundable offence and had sentenced

the accused to four years" RI. The High Court took into consideration the compromise between the appellant-accused and the injured and reduced the sentence to two years" RI. This Court, after observing that the fact of compromise can be taken into account for determining the quantum of sentence, reduced the sentence to the period already undergone which was little more than four months and further imposed a fine of Rs. 1500 on each of the appellants. Surendra Nath Mohanty v. State of Orissa is a decision of a Bench of three learned Judges. It was observed that in view of the legislative mandate contained in Section 320 CrPC an offence can be compounded only in accordance with the provisions of the said section. The Court followed the view taken in Ram Pujan and Others Vs. State of Uttar Pradesh, and having regard to the fact that the parties had compromised and a period of ten years had elapsed from the date of the incident reduced the sentence of five years RI imposed u/s 307 and 326 IPC to the period of sentence already undergone which was three months and also imposed fine of Rs. 5000/-.

11. The parties have settled their dispute outside the court, the fact that ten years have elapsed from the date of the incident, and the further fact that the report has not been prepared by the doctors by which the actual nature of injuries could be ascertained from the evidence. The parties have settled the matter outside the court and now they are living peacefully. If further punishment of imprisonment is imposed, the bickering of the parties would further reoccur. Considering the above catena of decisions of the Hon'ble Apex Court, I find that the sentence of the accused/appellants be reduced to already undergone. Mr. Amit Bhatt, learned Addl. G.A. was called upon to give the statement as to how many days the appellants remained in jail. The learned Addl. G.A. after going through the entire record stated that the appellant Baldev @ Balla remained in jail for eight months during the trial and about one month after conviction whereas the appellant Damber Bahadur remained in jail about 21/2 months in the trial and after conviction. Following the view taken in the above cases, I am of the opinion that the ends of justice would be met if the sentence of imprisonment is reduced to the period already undergone besides imposing a fine of Rs. 5000/- on each of the accused/appellant u/s 307 r/w 34 I.P.C. The fine shall be deposited within two months from the date of the receipt of the copy of the judgment to the trial court. If any amount is already deposited by the appellants towards the fine, the same amount shall be adjusted towards the amount of fine of Rs. 5000/-. In default of payment of fine, the appellants shall undergo simple imprisonment of two months.

12. In view of the above, the appeals are partly allowed to the above extent. However, the conviction of the appellants is maintained. Let the copy of the order be placed on Criminal Appeal No. 11 of 2002.

13. Let the lower court record be sent back to the court concerned for compliance.