
(2018) 07 UK CK 0172

In the Uttarakhand High Court

Case No : Criminal Appeal No. 398 Of 2003

Dhyan Singh And Others

APPELLANT

Vs

State Of Uttaranchal (Now Uttarakhand)

RESPONDENT

Date of Decision : 25-07-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 147, 149, 307, 323, 325, 452, 504, 506
Code Of Criminal Procedure, 1973 — Section 207, 313

Citation : (2018) 07 UK CK 0172

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : Shivanand Bhatt, Atul Kumar Shah

Final Decision : Party Allowed

Judgement

Lok Pal Singh, J

1. This appeal has been preferred against the judgment and order dated 12.12.2003, passed by the Sessions Judge, Pauri Garhwal, in S.T. No. 39 of 2002 State vs. Dhyan Singh and others whereby said court has convicted each of the appellants under section 452, 323 and 325/34 IPC and sentenced each one of them to rigorous imprisonment for period of one year under section 452 IPC with fine of Rs.1,000/-, rigorous imprisonment for a period of three years under section 325/34 IPC with fine of Rs.1500 and rigorous imprisonment for a period of six months under section 323 IPC.

2. Prosecution story in brief is that complainant Birbal Singh lodged a report (Ex. A1) stating therein that on 25.02.2002, he along with his wife, son and daughters-in-law were present in his house. All of sudden, Dhyan Singh came to the chowk and started abusing and threatened them of dire consequences then Beerval Singh came outside to explain him, then he saw that Surendra Singh and Gokul Singh were also at the chawlk, having wood stick (Danda) in their hands. Dhyan Singh gave blow on the head of the complaint of which his son, daughter-

in-law and wife intervene between them then Surendra Singh with intention to kill his son (Balbir Singh) assaulted him with stick, Dhyan Singh started beating the complainant and Gokul Singh committed marpeet with his wife and daughter-in-laws. On the basis of said report, chick report (Ex. A2) was prepared and case crime no. 8 of 2002 for the offences punishable under sections 307, 452, 147, 323, 504 and 506 IPC was registered. The investigation was conducted by Mohan Lal Sah, Patwari, who prepared site plan (Ex. A4), interrogated the witnesses, recorded the statement of the injured and after completion of investigation submitted charge sheet (Ex. A5) against the accused appellants for their trial in respect of offences punishable under section 307, 452, 147, 323, 504 and 506 IPC.

3. The Chief Judicial Magistrate, Pauri Garhwal on receipt of the charge sheet, after giving necessary copies to the accused appellants under section 207 Cr.P.C., appears to have committed the case to the court of Sessions Judge. The learned Session Judge, Pauri Garhwal, after hearing the parties, framed charge of offences punishable under sections 147, 452, 323 /149 and 307/149 IPC against all the appellants. Accused appellants pleaded not guilty and claimed to be tried. The prosecution, in order to substantiate the charge framed against the accused/appellants, examined Birbal Singh (P.W.1/complainant), Balbir Singh (P.W.2/injured), Smt. Sureshi Devi (P.W.3) Mohan Lal Sah (P.W.4), Dr. Arun Kumar (P.W.5), Dr. V.P. Kaushik (P.W.6).

4. After examining above six witnesses, prosecution proceeded to record the statement of the accused persons under section 313 of Cr.P.C., in which accused persons pleaded that they have been falsely implicated in the present case due to enmity. After hearing learned counsel for the parties and going through the material available on record, the trial court proceed to convict the accused appellants under section 452, 323, 325 read with section 34 of IPC and sentenced each one of them to rigorous imprisonment for period of one year under section 452 IPC with fine of Rs.1,000/-, rigorous imprisonment for a period of three years under section 325/34 IPC with fine of Rs.1500 and rigorous imprisonment for a period of six months under section 323 IPC. Feeling aggrieved the accused appellants have come up in appeal before this Court.

5. Before further discussion this Court thinks it just and proper to mention the injuries found on the person of Birbal Singh, Balbir Singh, Sureshi Devi and Saraswati Devi recorded by Dr. V.P. Kaushik (P.W.6). Same are extracted hereunder:-

Injuries of Birbal Singh (Ex. A9):-

(i) Lacerated wound 3.0 cm X 0.5 dm X muscle deep forward to backward present over Rt. side of head; 10 cm above and out from root of nose. Clot present.

(ii) Contusion 6.0 cm X 5.0 cm, bluish red coloured over outer aspect of lower end of lt. arm; just above the elbow.

(iii) Contusion 5.00 cm X 2.0cm, redish in colour right over outer aspect of Rt. thigh, 22.0 cm above from the Rt. knee. Oblique.

(iv) Contusion 5.0 cm X 2.0 cm, redish coloured over front of Rt. knee; oblique

(v) Contusion 7.0 cm X 2.0 cm, redish blue coloured, oblique over front of Lt. leg; 20 cm below from Lt. knee.

(vi) Abrasion 0.5 c, X 0.5 cm, red colour, present over outer aspect of upper end Lt. leg; 7.0 cm below from Lt. knee.

(vii) contusion 5.0 cm X 3.0 cm, oblique, light bluish in colour over front of Lt. thigh, 20.0cm above from Lt. knee.

Opinion: all the injuries are simple in nature, caused by blunt object, duration 1/2 to 1 day (half to one day). Injuries of Balbir Singh (Ex. A10):-

(i) L.W. 5.0 cm X 0.5 cm X muscle deep forward to backwar present over Lt. side of head; 16.0 cm above and out from the root of nose; clot present in wound.

(ii) Diffuse, traumatic, tender swelling present over inner aspect and back of Lt. hand' buish in appearance; movements of fingers restricted.

(iii) Diffuse, traumatic, tender swelling present over back of upper end of Rt. forearm; light bluish in appearance, movements (supination & pronation) restricted.

(iv) Diffuse, traumeatic, tender swelling present over outer aspect and back of upper end of Lt. thigh light bluish in appearance.

(v) Diffuse, traumatic, tender swelling present over front, outer and back of lower end of Lt. thigh light bluish in colour, movements at knee joint restricted.

(vi) Contusion 7.0 cm X 1.0 cm, oblique, redish in colour present over outer aspect of upper end of Rt. leg. 10.0 cm below from the knee.

(vii) Multiple abrasion (05 in No.) over back of Rt. hand in an areas 6.0 cm X 6.0 cm below wrist, red colour scab present. Size of max. 1.5 X 1.0 cm, size of min. 1.0 cm. linear.

Opinion: Injuries No. (ii) (iii) (iv) and (v) kept under observation. Admit in MSW, Adv. X-ray-Lt hand , Rt. forearm, thigh. Caused by blunt object. Duration about 1/2 to 1 day. Injuries no. (i), (vi) and (vii) simple, caused by blunt object.

Injuries of Sureshi Devi, (Ex. A11):-

(i) Contusion 5.0 cm X 1.0 cm, bluish in colour, oblique over outer aspect of Lt. thigh, 12.0 cm above from Lt. knee.

Opinion:- Injury mentioned above is simple in nature, cause by blunt object, duration 1/2 to 1 (half and one)day.

Injuries of Saraswati Devi (Ex. A12) :-

(i) Abrasion 8.0 cm X 1.5 cm, oblique over lt. Side of fact, at prominence of cheek bone, red colour scab.

(ii) Abrasion 4.0 cm X 2.0 cm, vertical present over back of lt. fore arm red coloured scab, movement (supination & pronation) restricted.

(iii) contusion 10.0 cm X 6.0 cm over back of lower end of lt. thigh, just above the knee, bluish in colour

Opinion:- Injury No. (ii) kept under observation. Adv. X-ray fore arm; caused by blunt object, duration 1/2 and 1 (half and one) day. Injuries no. (i) to (iii) are simple in nature, caused by blunt object. Duration 1/2 and 1 (half and one) day

6. P.W. 6 Dr. V.P. Kaushik proved the injury report as Ex. A9, Ex. A10, Ex. A11 and Ex. A12. However, report on the record suggesting that the injuries are simple in nature.

7. Heard learned counsel for the appellants and also learned A.G.A. for the State.

8. Learned counsel for the appellants would submit the conviction and sentence record by the court below is bad in law.

9. Per contra, learned A.G.A. appearing for the State has supported the judgment of the lower court and submits that criminal appeal is misconceived and deserves dismissal.

10. P.W. 1 Birbal Singh in his statement stated that he knows the accused persons and they belong to his village. It is further stated that house of the complainant and accused persons have a common chawk (aangan/open space). On 25.02.2002 at about 8:30-9:00 pm., Birbal Singh (complainant) was in his house. His son Balbir Singh, complainant's wife Saraswati Devi and wife of Balbir Singh Sureshi Devi and Meena Devi (daughter-in-law) were also present in the house. On that day, Dhyan Singh came, and started hurling abuses, he was accompanied by Gokul Singh and Surendra Singh and when Birbal Singh shouted, then Dhyan Singh gave him blow with wood stick, Gokul Singh and Surendra Singh with intention to kill his son started beating him with wood stick. It is further stated that apart from us, they also committed marpeet with complainant's wife and daughter-in-law.

11. P.W. 2 Balbir Singh has corroborated the version of P.W.1.

12. P.W. 3 Sureshi Devi has stated that on 25.02.2002 at about 8-8:30 p.m., Gokul Singh came and dragged her outside. Her husband came outside to save her, then Gokul Singh and Surendra Singh started beating her husband. Thereafter, Dhyan Singh, Gokul Singh and Surendra Singh committed marpeet with her mother-in-law, father-in-law.

13. P.W. 4 Mohan Lal Sah (Patwari) has proved report (Ex. A1) and also chik FIR (Ex.A2) who after preparing the site plan (Ex. A4) and after interrogating the witnesses submitted the charge sheet (Ex. A5) .

14. P.W. 5 Dr. Arun Kumar (Radiologist) stated that on 1.03.2002 he has conducted x-ray of injured Saraswati Devi and on 27.02.2002 he has conducted x-ray of injured Balbir Singh and stated that no bone injury seen in the x-ray of Saraswati Devi, however, there is fracture over the filling bone of Balbir Singh.

15. Statement of P.W. 6 Dr. V.P. Kaushik has already been adverted to. However, there is no report on record suggesting grievous injury, which is dangerous for life.

16. I have heard learned counsel for the parties and perused the entire evidence on record. P.W. 1 Birbal Singh, P.W. 2 Balbir Singh and P.W. 3 Sureshi Devi have clearly stated that on the day of incident they were in the house and accused persons have committed marpeet with them due to which they sustained injuries and thereafter medically examined. The statements of these witnesses are supported by the medical report, which are Ex. A9, Ex.A10 and Ex. A11. To prove the medical report, Dr. V.P. Kaushik was examined, who has proved the medical reports. Thus, statements of P.W. 1 Birbal Singh, P.W. 2 Balbir Singh and P.W. 3 Sureshi Devi seem to be trustworthy.

17. Having re-appreciated the entire evidence on record, and after considering the submissions of learned counsel for the appellants, this Court is of the view that the prosecution has successfully proved charge of offences punishable under sections 452, 323 and 325/34 IPC against accused persons. The trial court has rightly convicted the accused/appellants Dhyan Singh, Gokul Singh and Surendra Singh under the aforesaid section. However, on the point of sentence, it is submitted by learned counsel for the appellant that the incident is of the year 2002 and since then 16 years have been elapsed, and now sending the appellants to jail would cause great hardship to him, hence, the sentence awarded to the appellants may be reduced to the period already undergone by him.

18. Having considered the submission of learned counsel for the appellants, on the point of sentence, this Court finds that the appellants have already undergone imprisonment for a period of about four months during the period of trial. As such, in my view, after more than 16 years of the incident, no useful purpose would be served by sending the appellant to jail, and the sentence deserves to be reduced to the period already undergone.

19. Accordingly, the criminal appeal is partly allowed affirming the conviction recorded by the trial court against the appellants under section 452, 323 and 325/34 IPC. Considering the fact that this occurrence took place on 12.02.2002 and one year sentence has been awarded to the appellants and for a considerable period, the appellants were in jail, no purpose would be served to sent them behind the bar after elapse of 16 years, therefore the sentence awarded to the accused/appellants is reduced to the period already undergone by them, without disturbing the sentence of fine. Accused/ appellants are on bail, they need not surrender.

20. Let a copy of this judgment along with the lower court record be sent back to the court below for ensuring compliance.