

(2018) 07 UK CK 0171

In the Uttarakhand High Court

Case No : Criminal Appeal No. 22 Of 2003, Criminal Appeal No. 326 Of 2002

Gangadhar And Others

APPELLANT

Vs

State Of Uttaranchal (Now Uttarakhand)

RESPONDENT

Date of Decision : 24-07-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 307, 325

Code Of Criminal Procedure, 1973 — Section 207, 313

Citation : (2018) 07 UK CK 0171

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : Pushpa Joshi, Chetna Latwal, Sandeep Tandon

Final Decision : Party Allowed

Judgement

Lok Pal Singh, J

1. Both the criminal appeals are directed against the judgment and order dated 18.12.2002 passed by the Sessions Judge, Rudrapur, District Udham Singh Nagar whereby the learned Judge has convicted the appellants under section 307 r/w section 34 IPC and sentenced each one of them to rigorous imprisonment for a period of four years.

2. Brief facts, of the case, are that complainant (Narayan Singh/P.W.1) gave a written report (Ex. A1) stating therein all the three accused/appellants caught hold of Suraj and inflicted knife injury on his abdomen as a result of which the intestines came out of the stomach. Complainant and his wife were at the spot and life of injured (Suraj) could save due to their intervention. On the basis of the said report, police prepared chick FIR (Ex. A3) and registered case crime no. 1396 of 2000 for the offence punishable under section 307 IPC. The Investigating Officer Ram Lakhan Pathak (P.W.5) prepared the site plan (Ex. A5) and after interrogating the witnesses submitted charge sheet (Ex.A6) against Gangadhar and Mohan Lal. Sub-Inspector Lata Joshi has submitted the charge sheet (Ex.

A7) against Naubat Ram separately.

3. The Chief Judicial Magistrate, Udham Singh Nagar, 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, Udham Singh Nagar, after hearing the parties, framed charge of offence punishable under section 307 read with 34 of 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 Narayan Singh (P.W.1), Suraj P.W.2/(injured), Dr. Lalit Mohan Upreti (P.W.3), Ram Kumar (P.W.4) and S.I. Ram Lakhan (P.W.5).

4. After examining above five 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 307 read with section 34 of IPC and sentenced for a period of 4 years. 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 Suraj (inured) recorded by Dr. Lalit Mohan Upreti. Same are extracted hereunder:-

(i) Stab incised wound of 2.5 cm X 1/2 cm on left side of abdomen 6 cm from umbilicus at 1 O' clock position. Omeutum is coming out from the wound. Oozing of blood present

(ii) Incised wound of 1 cm X 1/4 cm X muscle deep on palmer aspect of the right hand, near the base of the thumb. Oozing of fresh blood present.

No other external injury seen. Patient is conscious, pulse is weak. Hospitalized. Opinion: Cause by sharp edge object and fresh. Kept U.O.

6. P.W. 3 Dr. Lalit Mohan Upreti proved the injury report as Ex. A2. However, there is no report on the record suggesting grievous injury or dangerous for life.

7. Heard learned counsel for the appellants and also learned Deputy Advocate General 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, Mr. Sandeep Tandon learned Dy. Advocate General 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 Narayan Singh (eye witness) in his statement has corroborated the version of FIR. It is further submitted that Mohan Lal and Naubat Singh caught

hold of Suraj (injured) and Gangadhar stabbed him. He also proved report which is Ex. A1. He further submitted that talks of marriage of his daughter and Gangadhar (one of accused) was going on but his brother in law (Suraj/injured) interfered in the said talk due to which accused Gangadhar and his family members were keeping animosity with him.

11. P.W.2 Suraj (injured) also corroborated the version of P.W.1.

12. Statement of P.W. 3 Dr. Lalit Mohan Upreti has already been adverted to. However, there is no report on record suggesting grievous injury, which is dangerous for life.

13. P.W. 4 Ramkumar has proved report (Ex. A1) and also chik FIR (Ex.A2). P.W. 5 S.I. Ram Laxhan Pathak, Investigating Officer after preparing the site plan (Ex. A5) and after interrogating the witnesses submitted the charge sheet (Ex. A6) .

14. Having re-appreciated the entire evidence on record, and after considering the submissions of learned counsel for the appellant, this Court is of the view that the prosecution could not successfully proved charge of offence punishable under section 307 read with section 34 IPC against the appellants. However, from the nature of injury sustained to Suraj (P.W.2) the charge under section 325 read with section 34 IPC are proved. Therefore, the appellants are liable to be convicted for the offence punishable under section 325 read with section 34 of IPC.

15. The appellants have spent more than two years in jail. The incident is of the year 2000 and since then more than 17 years have been elapsed. No useful purpose would serve by sending the appellants to jail. Hence, the sentence awarded to the appellants liable to be reduced to the period already undergone by them.

16. 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 more than two years during the period of trial. As such, in my view, after more than

17 years of the incident, no useful purpose would be served by sending the appellants to jail, and the sentence deserves to be reduced to the period already undergone.

18. Accordingly, both the criminal appeals are partly allowed. The conviction of the appellants under section 307 read with section 34 of IPC is set aside. However, appellants are convicted under section 325 read with section 34 of IPC, as observed above. The offence under section 325 of IPC is cognizable, bailable and triable by Magistrate and compoundable by the person to whom hurt is caused with the permission of the court. Maximum punishment under section 325 IPC is 7 years. However, the sentence awarded to the accused/appellants is reduced to the period already undergone by them. Accused appellants are on bail, they need not surrender.

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