
(2010) 07 UK CK 0181
In the Uttarakhand High Court
Case No : Criminal Appeal No. 809 of 2001

Iqbal	Vs	APPELLANT
State of of U.P. (Now Uttarakhand)		RESPONDENT

Date of Decision : 19-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 307, 308, 309, 310, 311

Citation : (2011) 1 NCC 504 : (2011) 2 UC 1570

Hon'ble Judges : Nirmal Yadav, J

Bench : Single Bench

Advocate : Deep Chand Joshi and J.S. Virk, for the Appellant; Nandan Arya, A.G.A., for the Respondent

Judgement

Nirmal Yadav, J.—Present appeal has been preferred by accused Appellant against the judgment and order dated 09.02.2000 passed by Illrd Additional Sessions Judge, Nainital in Sessions Trial No. 119 of 1996 whereby the accused Appellant was convicted by the trial court for the offences punishable u/s 307 read with Section 34 of the Indian Penal Code (in short IPC) and was sentenced to undergo rigorous imprisonment for seven years and a fine of Rs. 2000/-. In default of payment of fine, he has further been ordered to undergo rigorous imprisonment for six months.

2. The base facts of the matter are that Mohd. Javed (PW 1) submitted a written report (Ex. Ka-1) to S.H.O., Police Station, Haldwani on 23.03.1995 and on the basis of which chick F.I.R. was recorded at about 09.30 p.m. According to the complainant, on 23.03.1995 at about 06.00 p.m. he was returning from the market, when accused Iqbal contacted him and esked him not to fly kites on his roof. Javed told him that he was flying the kites from his own roof, so he should have no objection. On this, Iqbal gave two-three slaps to Javed and told him to run away otherwise he will kill him. Javed came back home and disclosed all the facts to his sister and brother-in-law Ilias @ Guddu. Thereafter his brother-in-law

Mohd. Ilias alongwith Vasim and Mohd. Sarif went to Iqbal and enquired that as to why he beat Javed. However, Iqbal gave caused injuries to Ilias with the rod due to which Ilias fell down and while he was lying down, Iqbal caused several knife injuries on the person of Ilias and ran away. This occurrence has taken place at about 07.00 p.m.

3. On completion of the investigation, challan was presented. The accused was charge sheeted for the offence u/s 307 read with Section 34 of the I.P.C. to which he pleaded not guilty and claimed trial.

4. In order to prove its case, prosecution examined (PW-1) Mohd. Javed, (PW-2) Mohd. Ilias the injured, (PW-3) Mohd. Sarif, (PW-4) Dr. S.C. Tamta and (PW-5) Inspector Surendra Singh, the Investigating Officer.

5. The accused when examined u/s 313 Code of Criminal Procedure, denied all the incriminating evidence put to him by the prosecution and pleaded innocence and false implication. In defence, accused produced DW1 Mohd. Wasi.

Dr. S.C. Tamta found the following injuries on the person of Ilias:

- (i) incised wound 2 cm x .3 cm x scalp deep, blood oozing from the back of head
- (ii) lacerated wound 2.5 cm x .5 cm x muscle deep on the upper lip.
- (iii) Incised wound 2cm x .3cm x muscle deep on the left side of the nose, blood oozing from the nose.
- (iv) Swelling from the both eyes, (v) blood oozing from both the Nostrils.
- (vi) Swelling on the entire nose.
- (vii) Blood oozing from the mouth.
- (viii) Swelling in the lower jaw, teeth gums and upper jaw.

7. As per the opinion of the Doctor, injuries No. 1 and 3 were caused by sharp edged weapon and rest of the injuries could have been caused by some blunt object. Injured was referred to ENT specialist and Dental Surgeon for further treatment. X-ray was advised. As per opinion of the Doctor incised wound could have been caused by knife and rest of injuries could have been caused by a baton. However, no X-ray plates or reports are available on the record. Injured was admitted in Dr. Ram Manohar Hospital, New Delhi where he remained admitted for 08 days. The maxilla and mandible bones have been found fractured.

8. Heard Sri J.S. Virk, Advocate and Sri Deep Chand Joshi, learned Counsel for the Appellant, Sri Nandan Arya, learned A. G.A. for the State/Respondent and perused the material available on record.

9. The trial court after taking into consideration the facts and circumstances of the case, came to the conclusion that the accused Appellant is guilty for the offence punishable u/s 307 IPC and sentenced him as mentioned in earlier part

of the judgment. Being aggrieved, the Appellant has filed present appeal. However during the pendency of the appeal both the parties submitted a joint Misc. application bearing No. 1366 of 2009 praying that during the pendency of the appeal, the relation between injured and accused has become cordial and they are living peacefully. Now they have no dispute between them. They are maintaining family relation with each other, thus, they have no grievance against each other. It is, therefore, prayed that the appeal be disposed of in view of the amicable settlement between them.

10. Learned Counsel for the Appellant submitted that a bare perusal of the entire evidence on record, no case u/s 307 IPC is made out. At the most, the case would fall u/s 324 I.P.C. He referred to the medical report (Ex. Ka-2) of injured Ilias @ Guddu showing that none of the injury on the person of Ilias is dangerous to life. He referred to the statement of PW-4 Dr. S.C. Tamta who has not stated that any of the injury on the person of injured is dangerous to life or grievous in nature. He further argued that even from the evidence on record, it is apparent that it is sudden a fight and accused did not have any intention to kill the injured. The occurrence took place more than fifteen years ago and now both the parties have no dispute and they are living amicably. They are living in neighbourhood and are maintaining harmonious relationship.

11. Learned Counsel for the Appellant further argued that the offence may be converted from u/s 307 to Section 324 IPC and sentence may be also reduced to the period already undergone. Appellant has already undergone more than two months sentence. In support of his argument, learned Counsel for the Appellant referred the following judgments of the Apex court:

(1) Ramesh v. State of M.P. and Ors. in Criminal Appeal No. 1725 of 2008 (Arising out of SLP(Crl. No. 3874 of 2007)).

(2) Dhananjay @ Dhananjay Kumar Singh Vs. State of Bihar and Another, .

(3) Badrilal v. State of M.P. (2005) 7 SCC 55

12. On the other hand, learned A.G.A submitted that from the perusal of the Statement of Dr. S.C. Tamta, it is clear that injured Ilias suffered fracture of maxilla and mandible bones however, no other injuries is declared to be grievous in nature. It is also argued that offence u/s 307 IPC is not compoundable, therefore compromise even with the permission of the Court is not permissible. He further argued that prosecution case is fully corroborated and supported by the eye witnesses, thus, no ground for interference is made out.

13. It is true that Court has no power to allow the compromise when the same is not permissible in terms of Section 320 of the Code of Criminal Procedure. Sub-section (9) of the Section 320 of the Code of Criminal Procedure specifically provides that no offence shall be compounded except as provided by this section, the offence which find mention in table 1 or table 2, can only be compounded and rest of the offences punishable under the Indian Penal Code can not be

compounded. Section 307 IPC is also one of the offences which can not be compounded even with the permission of the Court.

14. In the instant case after scrutinizing the entire evidence on record, this Court is of the view that offence u/s 307 is not made out against the Appellant. There is no opinion on the record having been given by medical expert that any of the injuries on the person of injured was dangerous to life or even grievous in nature. There are two incised wounds and one lacerated wound on the person of the injured and rest of the injuries are either swelling or bleeding from the nose and mouth of the injured. Even X-ray report has not been placed on the record. However, on the basis of treatment given to the injured in Dr. Ram Manohar Lohia Hospital, New Delhi, it is seen that injured Ilias had suffered fracture of maxilla and mandible bones.

15. Thus, from the entire evidence and from the facts and circumstances of the case, I am of the opinion that no case u/s 307 IPC is made out. The offence against accused would only fall u/s 324 I.P.C.

16. Keeping in view the above discussion, the offence u/s 324 IPC is compoundable with the permission of the Court if person to whom hurt is caused, has entered into a compromise with the accused after settling his dispute. In the instant case, both complainant as well as accused have filed Misc. application bearing No. 1366 of 2009 stating therein that they have settled this dispute and are living peacefully. In the instant case, the incident took place more than fifteen years ago and both the parties are residing in the close vicinity. Therefore, in order to maintain harmonious relationship between the parties the ends of the justice would be met if the sentence awarded to the Accused is reduced to the period already undergone by him. However, keeping in view that the injured had remained admitted in Dr. Ram Manohar Lohia Hospital, New Delhi for sometime and he suffered fracture of maxilla and mandible bones, fine awarded by the trial court is enhanced from Rs. 2,000/- to Rs. 12,000/-. Out of the total amount so awarded and deposited by the Appellant, Rs. 10,000/- shall be paid to the injured Ilias within a period of two months from today. On failure to deposit the amount, Appellant shall undergo rigorous imprisonment of one year.