
(2011) 12 UK CK 0047

In the Uttarakhand High Court

Case No : Criminal Revision No. 285 of 2011

Jagdish Gusain and Others

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 21-12-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 313
Penal Code, 1860 (IPC) — Section 149, 34, 380, 411, 457

Citation : (2011) 12 UK CK 0047

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Judgement

Hon"ble Prafulla C. Pant, J.—Heard.

2. This revision is directed against the judgment and order dated 16.11.2011, passed by Sessions Judge, Haridwar, in appeal No. 78 of 2011, whereby the said court has dismissed the appeal and affirmed the conviction and sentence of the accused/revisionists Jagdish Gusain, Pawan Gusain, Veeru Gusain, Premi Gusain and Sitaram u/s 380 and 457 read with Section 34 of I.P.C.

3. Prosecution story in brief is that the First Information Report was lodged on 06.09.2010, at Police Station Laksar, by Ravish Kumar (PW-4) stating that in the shop of M/s Shivani Trading Company, in the intervening night of 5/6 of September, 2010, some thieves have entered, after breaking, opened the shutter and taken away cash box. In the same night shutters were broken of other two shops of M/s Raju Electricals and M/s Sarmeet Tractor Parts. On receiving the information, Crime No. 207 of 2010, was registered and police went to the spot. In search of the thieves combing operation was made by the police, in which, accused/revisionists Jagdish Gusain, Pawan Gusain, Veeru Gusain and Premi Gusain (residents of Village Ram Pura, District Lakhimpur Khiri) and one Sitaram resident of District Kasganj (near Etah) were arrested and the stolen cash boxes were recovered. After completion of investigation charge sheet was filed against the five accused/revisionists in the court of Judicial Magistrate.

4. After giving necessary copies to the accused, as required u/s 207 Cr.P.C., and after hearing the parties, the charge of offences punishable u/s 149, 457, 380 read with Section 34 and Section 411 were framed by the Magistrate against all the five accused/revisionists namely Jagdish Gusain, Pawan Gusain, Veeru Gusain, Premi Gusain and Sitaram. They pleaded not guilty and claimed to be tried. On this prosecution got examined PW-1 Arun Kumar, PW-2 Praveen Kumar, PW-3 Chandra Pal Singh, PW-4 Ravish Kumar (complainant), PW-5 Sub-Inspector Jalil Ahmad, PW-6 Constable Gopal Krishna, PW-7 Sub-Inspector Dharmendra Singh Rautela, PW-8 Constable Sandeep Kumar, PW-9 Sunil Rawat, PW-10 Head Constable Vivekanand Uniyal, PW-11 Sandeep Kumar, PW-12 Sub-Inspector Mohd. Yunus (Investigating Officer) and PW-13 Rasheed. Oral and documentary evidence was put to the accused u/s 313 of Cr.P.C., in reply to which, they alleged the same to be false.

5. The trial court, after hearing the parties, found that as against all the five accused/revisionists charge of offences punishable u/s 380 and that of 457 read with Section 34 is proved. Accordingly, they were convicted on said two counts. In respect of other offences, they stood acquitted. After hearing the parties Judicial Magistrate, Laksar, vide her impugned order dated 23.03.2011, sentenced each of the convict to rigorous imprisonment for a period of three years and directed to pay fine of Rs. 10,000/- u/s 380 of I.P.C. She further sentenced each of the convicts to under go rigorous imprisonment for a period of two years and directed to pay fine of Rs. 5000/- u/s 457 of I.P.C. Aggrieved by the said judgment and order dated 23.03.2011, passed in Criminal Case No. 692 of 2010, the convicts preferred appeal before the Sessions Judge, Haridwar, which was registered as Appeal No. 78 of 2011. The appellate court, after hearing the parties, found no force in the appeal and dismissed the same. Hence this revision.

6. This Court summoned the record and perused the affidavits on record.

7. Shri Pradeep Kumar Chauhan, learned counsel for the revisionists submitted before this Court that he does not want to press the revision on the point of conviction. He pleaded for reduction in the sentence awarded by the trial court, which is affirmed by the appellate court. It is pointed out on behalf of the revisionists that they are in jail for more than one year. (Precisely one year and three months).

8. Having regard to the facts and circumstances of the case and after considering the submissions of learned counsel for the parties, this Court finds that reduction in sentence of imprisonment to the period already undergone would meet the ends of justice.

9. Accordingly, the revision is dismissed, so far as, the same relates to the conviction of the revisionists u/s 380 and 457 read with Section 34 I.P.C. However, the sentence awarded by the trial court (affirmed by the appellate court) is set aside and each one of the revisionists namely Jagdish Gusain, Pawan

Gusain, Veeru Gusain, Premi Gusain and Sitaram is sentenced to the period of imprisonment of one year and three months, which they have already undergone. They are in jail. They shall be set at liberty, if not required in connection with other crime.

10. The revision accordingly, stands disposed of.