
(2020) 02 UK CK 0063
In the Uttarakhand High Court
Case No : Criminal Appeal No. 184 Of 2006

Kisan Ram

APPELLANT

Vs

State Of Uttarakhand

RESPONDENT

Date of Decision : 25-02-2020

Acts Referred:

Indian Penal Code, 1860 — Section 307, 323

Code Of Criminal Procedure, 1973 — Section 313, 437A

Citation : (2020) 02 UK CK 0063

Hon'ble Judges : Alok Kumar Verma, J

Bench : Single Bench

Advocate : Ramji Srivastava, A.K. Sah, Sachin Panwar

Final Decision : Partly Allowed

Judgement

Alok Kumar Verma, J

1. This Criminal Appeal is directed against the judgment and order dated 03.08.2006 passed by learned Sessions Judge, Chamoli in Sessions Trial No.8

of 2004, State vs. Kisan Ram, whereby the appellant has been convicted under Section 307 of the Indian Penal Code and has been sentenced

to undergo seven years rigorous imprisonment along with a fine of ₹ 5,000/- and in the event of default in payment of fine, he was directed to further

undergo additional imprisonment of one year.

2. Briefly stated the prosecution story as it emerges from re-appreciation of the evidences on record is that, on 07.06.2003 at 9 p.m. an F.I.R., Ex-Ka2

was lodged by Bhoop Singh, PW-1, through his written information, Ex-Ka1, with the allegations that on the same day i.e. 07.06.2003 at about 6 p.m.,

the appellant ran towards Surendra Singh, PW-2, and started beating him with the intention to take life of Surendra Singh and tried to throw him into

the river. Surendra Singh fainted on the spot. He sustained several injuries. He was rescued by the villagers. This incident was occurred in village

Purna, situated in the jurisdiction of Revenue Police Station Deval, District Chamoli. According to the injured Surendra Singh, PW-2, he was going

from Deval on 07.06.2003 at about 5.30-6 in the evening and when he reached near tourist bungalow, he witnessed that the appellant was beating

Mohan Prasad, PW-7. He asked the appellant not to beat Mohan Prasad, on which the appellant started beating him with stones. In this incident, he

received head injury. Doctor Prakash Kumar Thakur, PW-6, was posted as a Medical Officer in P.H.C., Tharali. He found 15 injuries on the body of

the injured. He examined the injuries on 07.06.2003 at about 10 p.m. According to the medical report, all the injuries were found simple in nature and

fresh.

3. After completion of investigation, the Investigating Officer submitted the charge sheet, Ex-Ka6. The case was committed to the Court of Session.

The charge under Section 307 of the I.P.C. was framed. The appellant pleaded not guilty and claimed to be tried. The prosecution, in order to

establish the charge against the appellant, examined seven witnesses. The appellant was examined under Section 313 of the Code of Criminal

Procedure, 1973. The learned trial court heard arguments, appreciated the evidences and held that the prosecution had successfully proved its case

against the appellant.

4. On 14.03.2019, Mr. Ramji Srivastava was appointed as Amicus Curiae on behalf of the appellant.

5. Heard Mr. Ramji Srivastava, learned Amicus Curiae for the appellant and Mr. A.K. Sah, learned A.G.A. with Mr. Sachin Panwar, learned Brief

Holder for the State and perused the records.

6. The learned Amicus Curiae submitted that the impugned judgment is against law and facts on record; the learned Sessions Judge erred in convicting

the appellant relying the wrong facts; there are material contradictions in the statements of the witnesses; the learned Sessions Judge did not rightly

consider the alleged injuries; all the injuries were found simple in nature; the prosecution had failed to prove the intention of the appellant; at the most,

the appellant can be convicted under Section 323 of the I.P.C.

7. On the other hand, learned counsel appearing for the respondent has

supported the impugned judgment.

8. Prosecution witness Bhoop Singh, PW-1, is informant in this case. He proved his written information. He deposed that the injured was taken to

Tharali Hospital on 07.06.2003.

9. Surendra Singh, PW-2, is injured person. He supported the prosecution case. He deposed that he was going from Deval on 07.06.2003 at about

5.30-6 in the evening and when he reached near tourist bungalow, he witnessed that Mohan Prasad, PW-7, was beaten by the appellant. He asked the

appellant not to beat Mohan Prasad, on which the appellant started beating him with stones. In this incident, he received head injury. He saved his life

and went to the house of Prem Ram. After that, he was taken to the Hospital, situated at Tharali.

10. Prosecution witness Prem Ram, PW3, corroborated the testimony of PW2. He deposed that on 07.06.2003, Surendra Singh came to his house and

informed him that he was beaten by Kisan Ram and at that time, he noted that Surendra Singh was injured.

11. Mahipal Singh, PW-4, is eye witness. He deposed that on 07.06.2003 at about 6 in the evening, he witnessed that Surendra Singh was beaten by

Kisan Ram.

12. Prosecution witness Govind Lal, PW-5, is Patwari. He was the scribe of the chick report. He started investigation. He proved the charge sheet,

which was submitted Virendra Singh, Investigating Officer, to whom the investigation was transferred from this witness.

13. Dr. Prakash Kumar Thakur, PW-6, is Medical Officer. He proved the medical report Ex-Ka7.

14. According to the prosecution, on 07.06.2003 at about 6 p.m., some disputes were arose between the appellant and Mohan Prasad, PW7 and when

Surendra Singh, PW2, came there, the appellant started beating him. Madan Mohan alias Mohan Prasad, PW7, supported the prosecution case and

deposed that on 07.06.2003, Surendra Singh came on the spot, where disputes were going on between the appellant and this witness. He further

deposed that the appellant and injured were remain on the spot, when he left the place of occurrence and he heard next day that the injured was

beaten by the appellant.

15. It is well settled that minor discrepancy does not go to the root of the matter.

Proof beyond reasonable doubt is a guideline, not a fetish and guilty

man cannot get away with crime because truth suffers some infirmity when presented through human processes. The evidences of the prosecution

witnesses are found reliable and true. Therefore, there is no reason to disbelieve testimony of these witnesses.

16. In this case, there is a charge of the offence punishable under Section 307 of the I.P.C., which deals with the offence of attempt to murder. The

relevant provision of Section 307 of the I.P.C. reads as under :-

â??Section 307. Attempt to murder.â??Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act

caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and

shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such

punishment as is hereinbefore mentioned.â??

17. In order that a person may be guilty of attempt to murder, two ingredients of the offence must be proved-(i) an intention or knowledge of

committing murder, and (ii) the doing of an act towards it. Therefore, for the purpose of Section 307, what is material is the intention or knowledge.

The offence of attempt to commit murder punishable under Section 307 of the I.P.C. is constituted by the concurrence of mens rea followed by an

actus reus. If a person causes hurt with the intention or knowledge that he may cause death, it would attract Section 307 of the I.P.C.

18. Though in this case, 15 injuries were found on the body of the injured, all the injuries were simple in nature not by the use of any deadly weapon

and without any pre-meditation. In the facts and circumstances of this case and in the light of evidences produced by the prosecution, it cannot be said

that at the time when the appellant threw the stone, he was aware that the stone would hit on any vital part of the body of the injured. Therefore, it is

difficult to hold that the intention of the appellant was to attempt to cause death. Thus, the prosecution has failed to prove that the appellant intended to

cause death of the injured. In these situations, the appellant can only be convicted under Section 323 of the I.P.C. and not under Section 307 of the

I.P.C.

19. The appeal is partly allowed. The judgment of conviction of the appellant for

an offence punishable under Section 307 of the I.P.C. is hereby set aside. The appellant is convicted for an offence punishable under Section 323 of the I.P.C.

20. This incident had occurred in June, 2003 and if the appellant is sentenced with imprisonment, it will cause great hardship to him. Having regard to the facts and circumstances of the case, it is just and proper to reduce the sentence to the period already undergone by the appellant. Ordered accordingly.

21. The appellant is on bail. His personal bond and surety bonds are discharged. The appellant is directed to make compliance of Section 437-A of the Code of Criminal Procedure, 1973 within 15 days from the date of this order by appearing before the court concerned and execute a personal bond and two reliable sureties each in the like amount to the satisfaction of the court concerned, which shall be effective for a period of six months.

22. Let a copy of this order be sent to the concerned court for intimation and compliance.