
(2011) 11 UK CK 0122

In the Uttarakhand High Court

Case No : Criminal Revision No. 190 of 2003

Mahender @ Pappu, Ramnath, Sunder and Prakash

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 04-11-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 324, 325, 34, 379

Probation of Offenders Act, 1958 — Section 11(4), 12, 3, 4, 5

Citation : (2011) 11 UK CK 0122

Hon'ble Judges : Umesh Chandra Dhyani, J

Bench : Single Bench

Judgement

Hon"ble U.C. Dhyani, J.—This criminal revision no. 190 of 2003 has been filed by the revisionists Mahender @ Pappu, Ramnath, Sunder and Prakash against the judgement and order dated 31.03.2003 passed by the Additional Sessions Judge/1st F.T.C. Dehradun in Criminal Appeal No. 1 of 2002 arising out of the judgement and order dated 14.12.2001 passed in Criminal Case no. 912 of 2001 State vs. Sunder Singh & others whereby the accused-revisionists have been convicted and sentenced under sections 323, 325/34 and Section 506 IPC by the court of learned C.J.M, Dehradun. The accused revisionists have been sentenced u/s 323 to undergo IPC six months? imprisonment, u/s 325/34 for one year?s imprisonment along with Rs. 1000/ as fine and u/s 506 IPC for one year?s simple imprisonment.

2. The facts in brief are that the complainant Banto Devi lodged a complaint at P.S. Dalanwala that on 22.07.1994 at about 3:00 p.m. when his brother Rakesh was coming then the revisionists Sunder, Pappu alias Mahender, Ram Nath and Prakash, who happen to be her neighbours have beaten her brother Rakesh with axe and saria and inflicted simple and grievous injuries on him. On raising alarm, Banti and Jai Bhagwan came and rescued him. Accused persons threatened him with dire consequences and fled away. Victim Rakesh sustained fracture in the bone. A criminal case was registered and thereafter, the investigating officer filed the charge-sheet in the court after investigation. Cognizance was taken against

them. Charges were framed for the offences punishable under sections 323, 325 read with section 34 IPC and 506 IPC, to which they pleaded not guilty and claimed trial. Witnesses Rakesh, Jai Bhagwan, Banti, Radheshyam, Vinod Nagpal, Doctor Suresh Khanduri and Sobaran Singh were presented on behalf of the Prosecution agency. Statement of the accused persons u/s 313 were taken. Accused Prakash appeared as D.W.1. After hearing the accused persons and considering the record of the case, the accused persons were found guilty and were sentenced to undergo imprisonment as mentioned in the inaugural paragraph of this judgment.

3. Aggrieved against the order dated 14.12.2001 of learned Magistrate, the accused-revisionists preferred an appeal before the learned Sessions Judge, which was decided by the learned Additional Sessions Judge/ 1st FTC, Dehradun. Learned Additional Sessions Judge considered the arguments advanced on behalf of the accused-revisionists that the FIR is ante-time and the Police was in collusion with the complainant. The site plan is against the facts on the spot. There is difference between the evidence and the site plan. The medical evidence does not corroborate the testimony of the prosecution witnesses. So the prosecution story is not to be believed. No independent witness has been produced. The sentence is too harsh. After considering all the arguments, learned Additional Sessions Judge did not find merit in the appeal of the accused-revisionists and consequently the same was dismissed.

4. Aggrieved against this order, the accused-revisionists have preferred the instant revision.

5. The occurrence is alleged to have taken place on 02.07.1994 at 3 p.m. and the report is lodged on the same day after two hours at 5 p.m. The distance between the place of occurrence and the police station is 4 k.m. Thus there appears to be no delay in lodging the FIR. Revisionists Mahender @ Pappu, Ramnath, Sunder and Prakash, all are named in the FIR lodged u/s 324, 325 and 506 IPC. The informant is Banto Devi. Her brother Rakesh was assaulted by the accused-revisionists. Charge-sheet has been filed. Charges for the offences punishable under sections 323, 325/34 & 506 IPC have been framed against the revisionists on 13.01.1995.

6. When PW 1 Rakesh entered into the witness box, he has supported the prosecution story in its entirety and has stated that the accused persons are his neighbours. Accused Sunder, Pappu and Ramnath are real brothers. On 22.07.1994 at 3 p.m. when he went to take water near his residence, accused-revisionists objected to it but he maintained cool. After 10 minutes when he came out of his house, all of them had beaten him. Accused Sunder had axe in his hand. Accused Pappu was having saria and rest of the accused-revisionists had lathi in their hands. All of them committed mar peet with him. He received injuries in his body and the bones of his leg got fractured. On raising alarm his brother Banti Sarma and neighbour Jai Bhagwan reached on the spot and saved him. The accused-revisionists threatened him with dire consequences. Banti and

Jai Bhagwan arranged a vehicle and took him to police station, where Banto Devi lodged the first information report and referred the injured to the Coronation Hospital. He remained in the hospital for 22 days. He was confined to bed for six months after getting discharged from the hospital. This witness was subjected to cross-examination, but nothing has come out in favour of the accused-revisionists. No fact has come out in the cross-examination suggesting that the injured witness is telling a lie. Minor discrepancies here and there do not affect the prosecution story adversely.

7. P.W.2 Jai Bhagwan Tyagi has supported the prosecution story and corroborated the story of PW 1 Rakesh. This witness has also proved the written complaint exbt. Ka-1 which was given to the Police. This witness too was subjected to a lengthy cross-examination but here too no fact has emerged which would suggest that this witness is telling a lie or is not to be believed. Minor variations here and there do not indicate that this witness is not to be believed.

8. PW 3 Banti is another witness and he too has supported the prosecution story. He is brother of injured Rakesh. He too accompanied the injured to the police station and then to Coronation Hospital. Nothing has come out in the cross-examination of this witness which tends to favour the accused-revisionists. The evidence of these three prosecution witnesses is trustworthy, credible, intact & lends support to the prosecution story.

9. PW 4 Radhe Shyam Gupta, Senior Medical Officer has stated that Rakesh Kumar, injured remained in Doon Hospital from 22.07.1994 to 05.08.1994. The bones of legs of Rakesh Kumar got fractured. He has proved certificate ka-2. PW 5 Doctor Vinod Nagpal was posted in Coronation Hospital as Emergency Medical Officer. He examined the injured and found 4 lacerated wounds on different parts of his body. The Doctor has opined that all the injuries were fresh. Injury no. 1 and 2 can be inflicted with the blunt object. Injury no. 3 & 4 were referred to Orthopaedics specialist. These injuries are possible on 22.07.1994 at 3:00 p.m. The injured was present when the Doctor was examined. He has stated in the cross-examination that all the injuries can be inflicted by a blunt object and has admitted that the injured appeared to be under the influence of liquor. PW 6 Doctor Suresh Khanduri, Radiologist conducted the X-ray of Rakesh and has proved the X-ray films exbt. 1 to 3. Rakesh sustained fracture in both of his legs. PW 7 Sobaran Singh is the Investigating Officer. The oral testimony of all these witnesses is worth believing.

10. DW 1 Prakash is the informant (and witness) of cross-version of marpeet. He has however, admitted that Police did not initiate any action on his report. The evidence which has been adduced on behalf of the prosecution has proved the case under sections 323/34, 325/34 IPC against the accused-revisionists but the learned trial court has committed an error to believe that the offence punishable u/s 506 IPC is proved against the accused-revisionists. This court is slow to accept the prosecution version so far as it relates to offence punishable u/s 506 IPC. The prosecution story is proved to the extent that the offences punishable

under sections 323/34 and 325 IPC have been committed by the accused-revisionists but not u/s 506 IPC.

11. Learned counsel for the accused-revisionists has grievously admitted that since this Court is sitting in revisional jurisdiction, therefore, it will not enter into the factual aspects of the case. Only the law point is to be seen. Learned counsel has contended that no case u/s 506 IPC is made out against the accused-revisionists and therefore the conviction for the said offence is bad in law. He has also argued that it is not clear whether any threatening was given by the revisionist or not and if yes, who threatened whom - there is no specific allegations regarding the same. Learned counsel has also contended that there is no injury of lathi or axe. No contusion is there. There are all lacerated wounds and therefore, the story of the prosecution becomes doubtful.

12. Learned counsel for the accused-revisionists has contested the revision on merits for namesake. His principal submission was that a lenient view may be taken against the accused-revisionists so far as their sentence is concerned. He has submitted that scuffle did take place over water. They are neighbours. The accused-revisionists have not been convicted earlier. The complainant and the accused-revisionists belong to the same class and strata of the society and therefore, the benefit of the Probation of Offenders Act, 1958 may be given to them.

13. Shri Prabhakar Joshi, learned Brief Holder for the State has submitted that the revision is liable to be dismissed. He was in agreement with the scheme of law advanced on behalf of the accused-revisionists that if the they are granted benefit of the Probation of Offenders Act, 1958 that will serve the ends of justice, as both the sides belong to the same strata of the society and the scuffle took place over a small thing. He has admitted that the accused-revisionists have not been convicted earlier.

14. This court is in complete agreement with the submissions of learned counsel for the accused-revisionists and learned Brief Holder representing the State that it is a fit case in which the benefit of section 4 of the Provision of Offenders Act, 1958 should be granted to the accused-revisionists in the interest of justice.

15. Hence, this Court is of the view that the revision is liable to be dismissed on merits.

16. The next question arises as to whether, the accused persons/revisionists should be granted benefit of the Probation of Offenders Act, 1958 ?

17. In the Statement of Objects and Reasons (SOR) to the Probation of Offenders Act, 1958 it was proposed to empower courts to release the offenders after admonition in respect of certain specified offences. It was also proposed to empower courts to release on probation, in all suitable cases the offenders found guilty of having committed an offence, not punishable with the death or imprisonment for life. During the period of probation the offenders are supposed

to remain under the supervision of the probation officers in order that they may reform themselves and become useful members of the society.

18. Section 3 of the said Act empowers the courts to release offenders who are found guilty of having committed an offence punishable u/s 379, section 380 or section 381 or section 404 or section 420 of IPC or any offence punishable with imprisonment for not more than 2 years or with fine or with both, under the Indian Penal Code or any other law, and if no previous conviction is proved against him and court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence, and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct u/s 4, release him after due admonition.

19. Section 4 of the said Act gives the power to the courts to release certain offenders on probation of good conduct. The scheme is reproduced here under:

(1) When any persons is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having record to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour :

Provided that the court shall no direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the Probation Officer concerned in relation to the case.

(3)...

(4)...

(5)...

20. Section 5 of the Act of 1958 grants the power to courts to require released offenders to pay compensation and costs to say that the Court while directing the release of offender u/s 3 or 4, may if it thinks fit, make at the same time a

further order directing him to pay such compensation as the court thinks reasonable for loss and injury caused to any person by the commission of the offence. The amount ordered to be paid under this sub section (1) of section 5 may be recovered as a fine.

21. Sub section (4) of Section 11 of the Probation of Offenders Act, 1958 provides that when an order has been made u/s 3 or section 4 in respect of an offender, the Appellate Court or the High Court in the exercise of its power of revision may set aside such order and in lieu thereof pass sentence on such offender according to law:

Provided that the Appellate Court or the High Court in revision shall not inflict a greater punishment that might have been inflicted by the court by which the offender was found guilty.

22. Needless to say that by virtue of Section 12 of the Probation of Offenders Act, 1958 a person found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law notwithstanding anything contained in any other law.

23. The maximum sentence provided u/s 323 is imprisonment which may extend to one year or fine which may extend to 1000/- or with both. The punishment provided u/s 325 is imprisonment of either description for a term which may extend to 7 years and also fine. So far as section 34 IPC is concerned, when a criminal act is done by several persons in furtherance of common intention of all, each of such persons is liable for that act in the same manner as if it was done by him alone.

24. The punishment prescribed u/s 506 IPC (first part) is two years, or fine, or both but if the threat be to cause death or grievous hurt etc. the same shall be punished for imprisonment of either description for a term which may extend to 7 years or with fine or with both. It may be pointed out here that this offence has not been proved against the revisionists.

25. Since the revisionists are not the previous convicts, the complainant along with the revisionists are neighbours and belong to the same strata of the society, therefore, having regard to the circumstances of the case including the nature of the offence and the character of the offenders, it will be expedient to release them on probation of good conduct.

26. The revision is accordingly dismissed but the sentence imposed on the revisionists is modified to say that having regard to the circumstances of the case including nature of the offence and the character of the offenders it is expedient to release them on probation of good conduct u/s 4 of the Probation of Offenders Act, 1958. It is directed that instead of the sentencing them at once to such punishment the revisionists Mahender @ Pappu, Ramnath, Sunder and Prakash be released on probation on their entering into a bond of the amount to

the satisfaction of the Magistrate concerned with proper sureties, to appear and receive sentences when called upon during a period of one year and in the meantime, to keep the peace and be of good behaviour. Since it is expedient so to do in the interest of the offender and of the public, therefore, it is also directed that the offenders shall remain under the supervision of District Probation Officer, Dehradun. Learned C.J.M, /Magistrate having jurisdiction may grant the revisionists such time, as he may consider appropriate, to execute bonds as is required u/s 4 of the Probation of Offenders Act, 1958.

27. If fine or part of it has been paid by the accused-revisionists, the same shall be paid to the injured persons as compensation u/s 5(1)(a) of the Probation of Offenders Act, 1958.

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