
(2012) 12 UK CK 0024
In the Uttarakhand High Court
Case No : Criminal Appeal No. 41 of 2001

Mukesh

APPELLANT

Vs

State of Uttaranchal (Now State of Uttarakhand)

RESPONDENT

Date of Decision : 12-12-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 313, 374
Penal Code, 1860 (IPC) — Section 307, 504, 506

Citation : (2013) CriLJ 630

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : Pramod Chandra Tiwari, Amicus Curiae, for the Appellant; M.A. Khan, A.G.A., for the Respondent

Judgement

Prafulla C. Pant, J.—This appeal, preferred u/s 374 of Code of Criminal Procedure, 1973, (for short Cr.P.C.), is directed against the judgment and order dated 09.02.2001, passed by Learned IIIrd Additional Sessions Judge, Hardwar, in Sessions Trial No. 73 of 1996, whereby said court has convicted the accused/appellant Mukesh u/s 307 of I.P.C., and sentenced him to rigorous imprisonment for a period of five years and directed to pay fine of Rs. 1000/-. Heard learned Amicus Curiae for the appellant, and learned A.G.A., for the State, and perused the lower court record.

2. Prosecution story, in brief, is that on 24.07.1995, at about 7.00 a.m. PW 2 Govind Mohan was going to open his tea stall kiosk in Mohalla Ratan Ka Purva within the limits of Kotwali Roorkee, when accused Mukesh came there, and gave a knife blow on his chest. PW 1 Ranno Devi, who was also present at the place of incident immediately took her injured son to hospital for medical aid. Thereafter PW 1 Ranno Devi went to Police Station Roorkee and lodged First Information Report (Ex-A1) at about 5.10 p.m. She alleged that since the injured had made report to the police against the accused Mukesh (who used to molest the girls) he (accused) attempted to kill the injured (PW 2 Govind Mohan). On the basis of

the First Information Report, Crime No. 148 of 1995, was registered against the accused Mukesh in respect of offences punishable under sections 307, 504 and 506 of I.P.C. Crime was investigated by Sub-Inspector Manju Singh. She interrogated the witnesses, and inspected the place of incident. Meanwhile, PW 2 Govind Mohan underwent surgery in Civil Hospital Roorkee, and he remained there for about a fortnight. His injuries were recorded by Dr. Vinod Kumar Tyagi (since deceased) at the time of admission of PW 2 in the Hospital, who prepared injury report (Ex-A8). On completion of investigation charge-sheet (Ex-A7) was filed against accused Mukesh for his trial in respect of offences punishable under sections 307, 504 and 506 of I.P.C.

3. Additional Chief Judicial Magistrate, Roorkee, on receipt of charge-sheet (Ex-A7) after giving necessary copies to the accused as required u/s 207 of Cr.P.C., committed the case to the court of Session for trial. The trial court after hearing the parties framed charge of offence punishable u/s 307 of I.P.C., to which the accused Mukesh pleaded not guilty and claimed to be tried. On this prosecution got examined PW 1 Ranno Devi (informant and eye-witness), PW 2 Govind Mohan (injured eye-witness), PW 3 Sub-Inspector Manju Singh (Investigating Officer) and PW 4 Ajay Kumar (an employee of Civil Hospital Roorkee, who proved report of Medical Officer who prepared injury report). The oral and documentary evidence was put to the accused u/s 313 of Cr. P.C., in reply to which accused pleaded that false evidence has been adduced against him. He also stated that Govind Mohan (PW 2) and his colleague used to molest his sister Mamta regarding which a complaint was made by the accused. In defence DW 1 Ghasita Ram (father of the accused Mukesh) was got examined who stated that Govind Mohan (PW 2) used to molest his daughter Mamta in a drunken state and regarding said fact the complaint (Ex-B1) was sent by him (DW 1). The trial court after hearing the parties found that charge of attempt to commit murder of Govind Mohan as against accused Mukesh is proved and convicted him accordingly u/s 307 of I.P.C. After hearing on sentence, the convict was sentenced to rigorous imprisonment for a period of five years and directed to pay fine of Rs. 1000/- in default of payment to which the convict was directed to undergo further six months imprisonment. Aggrieved by said judgment and order dated 09.02.2001, passed by IIIrd Additional Sessions Judge, Hardwar, this appeal was filed by the convict.

4. Before further discussion, this Court thinks it just and proper to mention the injuries mentioned in the injury report (Ex-A2) by Medical Officer Dr. Vinod Kumar Tyagi (since deceased) on 24.07.1995, in Civil Hospital Roorkee. The injury suffered by PW 2 Govind Mohan recorded in injury report (Ex-A8) are reproduced below:--

1. An incised wound 4.5 cm x 1 cm x peritoneum deep present on the left side of epigastria region of abdomen omentum is coming out of the wound, soft red clot present.
2. An incised wound 1.5 cm x 0.3 cm muscle deep on the back of right index

finger, soft red clot present.

The Medical Officer as mentioned in the injury report opined that the injuries were caused by sharp object. In respect of injury No. 1, it is mentioned that the same was kept under observation and case referred to the surgeon. Injury No. 2 was reported to be simple, duration fresh.

5. Learned Amicus Curiae submitted that the above report relating to PW 2 Govind Mohan cannot be read in evidence as Medical Officer was not examined by the prosecution. However, this Court is unable to accept the contention of learned Amicus Curiae for the reason that PW 4 Ajay Kumar an employee of Civil Hospital, Roorkee, who has proved the report, has stated that Dr. Vinod Kumar Tyagi, who prepared the report had died. As such there was no question of examination of the Medical Officer who had already died before his evidence could be recorded.

6. PW 2 Govind Mohan has stated on oath that 24.07.1995, at 7.00 a.m. he was going to open his tea stall kiosk when accused Mukesh S/o Ghasita Ram armed with the knife came there and assaulted him. The witness further told that his mother took him to hospital. PW 2 Govind Mohan further stated that he was assaulted by accused Mukesh in an attempt to kill him. Statement of this witness is fully corroborated from the medical injury report (Ex-A8) already discussed above.

7. The statement of PW 2 Govind Mohan (injured eye-witness) is fully further corroborated from the statement of PW 1 Smt. Ranno Devi, who witnessed the incident and took her son Govind Mohan to Civil Hospital, Roorkee, for medical treatment. She also proved the First Information Report (Ex-A1) lodged by her at Police Station Kotwali, Roorkee. The statement of the injured eyewitness and that of the informant are natural and trustworthy.

8. Learned Amicus Curiae argued that since Govind Mohan (PW 2) used to molest sister of the accused Mukesh, and DW 1 Ghasita Ram (father of the accused) had complained to the police, due to that enmity the accused has been falsely implicated in the case. Had there been no knife injury on the vital part of Govind Mohan (PW 2) what is argued on behalf of the accused could have been accepted. Considering the nature of injuries suffered by the witness (PW 2), it is hard to believe that he would spare the real culprits and implicate the accused Mukesh due to enmity. Had there been many accused named then also it could have been argued that with the real culprit, other persons with whom complainant had enmity are implicate, but in the present case there is sole accused Mukesh who said to have assaulted with the knife. In such circumstances, it could not be accepted that accused Mukesh has been falsely implicated.

9. For the reasons as discussed above, so far as the conviction is recorded by the trial court in respect of offence punishable u/s 307 of I.P.C., against the accused Mukesh is concerned, this Court finds no illegality. To that extent appeal is liable

to be dismissed. However, considering the facts and circumstances of the case, and the fact as narrated by DW 1 Ghasita Ram that his daughter Mamta was molested by PW 2 Govind Mohan regarding which complaint was made against him to police, this Court is of the view that sentencing the accused Mukesh to rigorous imprisonment for a period of three years would meet the ends of justice. Accordingly, the appeal is disposed of affirming the conviction of accused/appellant Mukesh u/s 307 of I.P.C., but the sentence awarded by the trial court is reduced to rigorous imprisonment for a period of three years without disturbing the direction to pay fine of Rs. 1000/-. With this modification in the sentence the appeal stands disposed of. The accused/appellant Mukesh S/o Ghasita Ram is on bail. His bail is cancelled. He shall surrender before the court concerned to serve out the remaining part of the sentence as modified by this Court. Lower court record be sent back.