

(2006) 06 UK CK 0020
In the Uttarakhand High Court
Case No : Criminal Appeal No. 314 of 2001

Nitya Nand and Others

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 16-06-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 395, 427, 504

Citation : (2007) 1 UC 126

Hon'ble Judges : J.C.S.Rawat, J

Bench : Single Bench

Advocate : Dharamvir Sharma, assisted by, B.S. Parihar, Nos. 1 and 2 and B.S. Parihar, Amicus Curiae No. 3, for the Appellant; Learned A.G.A., assisted by, M.A. Khan, for the Respondent

Final Decision : Partly Allowed

Judgement

J.C.S. Rawat, J.—This is an appeal against the judgment and order dated 31-07-1985 passed by Sri V.N. Mehrotra, the then learned Sessions Judge, Almora convicting and sentencing the Appellants u/s 427 IPC for one year rigorous imprisonment. Feeling aggrieved by the said order the Appellants had preferred this appeal.

2. Sri Mahesh Singh, Appellant No. 3 is absconding for the last 4-5 years. Sri B.S. Parihar, Amicus Curiae is representing as his counsel. Sri Basant Ballabh, Appellant No. 4 had died, hence the case against him stands abetted.

3. Brief facts for the disposal of this appeal are that Ram Prasad had a Halwai shop at Daniya market. The Appellants had their tea stalls and hotels at the same market. It was further alleged in the prosecution case that there was a business jealousy in between the Appellants and Ram Prasad (PW 1). It is also alleged that the Appellants had threatened him on earlier occasions and the FIR was lodged for the same. The Appellants came to the shop of Ram Prasad on 06-03-1985 and they demanded the contribution from him for the Holi festival.

When Ram Prasad did not pay the contribution and he refused to pay anything to them, the Appellants became annoyed. On the next day, i.e. 07-03-1985, which the day on which the colour festival of Holi was there. PW1 Ram Prasad alongwith his servant Shanker Dutt (PW3) were working at his shop, the Appellants came there and they started breaking and destroying the Bhattis, showcase, furnitures and other articles kept in their shop. Accused persons also broke of his case box and had taken away Rs. 300/-from it. During the course of the occurrence some persons reached at the spot including Kaustuva Nand (PW2) and Head constable Prem Ram (PW 4). The Appellants were stating that Ram Prasad had not given the contribution for the Holi festival so they had committed this offence. The Appellants also hurled abuses upon Ram Prasad. Thereafter Kaustuva Nand went to Patwari, Daniya for lodging the report but Patwari, Daniya refused to register the case by saying that he was ill and he would not be in a position to reach at the scene of occurrence. When his report of the incident was not recorded at Patti Patwari, Daniya, Ram Prasad proceeded for Almora on 08-03-1985 and submitted written application to the District Magistrate, Almora. The District Magistrate, Almora directed the Qanungo, Daniya to register the case. Pursuant to the order of the District Magistrate, Qanungo Daniya registered the case and lodged the FIR and reached at the spot immediately after the lodging of the report and he conducted the investigation which culminated into the submission of the charge sheet.

4. The accused were charged by the trial court and they denied the charges and claimed the trial.

5. The prosecution, in support of its case, examined Ram Prasad (PW1) who was the complainant of the case and he is the eye witness of the incident. Kustavanand (PW 2) who is also an eye witness of the incident. He reached immediately at the place of incident, Shanker Dutt (PW 3), servant of Ram Prasad who was working with Ram Prasad in his shop at the time of the incident. He is also an eyewitness of the incident. The head constable Prem Ram (PW 4) was a traffic constable who was posted at Daniya market and he was also present at the time of the incident at the spot. Girish Chandra Joshi (PW 5) is the Investigating Officer of this case.

6. The Appellants were examined u/s 313 of the Code of Criminal Procedure. They have denied all the averments made in the evidence and stated that they had been falsely implicated in the case. The defence also adduced the evidence of Bhupal Singh Bisht (DW 1), the then Patwari, Daniya who had stated that on 07-03-1985 he had not refused to lodge the report of the complainant.

7. After the appreciation of evidence the learned trial court acquitted the accused Devki Nandan from all the charges levelled against him. The Appellants were acquitted of the offences under Sections 395 and 504 IPC. The Appellants were found guilty and convicted u/s 427 IPC.

8. Now it has to be seen whether the prosecution has established beyond

reasonable doubt that the accused persons had committed the offence of mischief as provided u/s 427 IPC on 07-03-1985 at about 10.00 a.m. by breaking and demolishing the Bhattis, furnitures and other articles of the Halwai shop of the complainant Ram Prasad in the Daniya market.

9. PW 1 Ram Prasad, PW 2 Kaustava Nand, PW 3 Shanker Dutt and PW 4 Prem Ram had categorically stated in their statements that the Appellants reached at the spot and they started breaking and destroying the Bhattis, furnitures and other articles of the shop. The evidence of the witnesses are credible and cogent. Nothing has been elicited in the cross-examination which could lead an inference to me that the evidence is unreliable. The said fact was also proved by the evidence of the Investigating Officer who reached at the spot on the next day immediately after lodging the FIR. He found the broken Bhattis and furnitures at the spot. It is also the settled position of law that the evidence of the Investigating Officer is admissible to the effect what he had seen by his own eyes at the spot. It being the position of law the evidence of I.O. that he saw the broken Bhattis, furnitures and show-case is admissible which corroborates the factum of the incident. The learned Counsel for the Appellants did not challenge the propriety of the findings of the trial court.

10. learned Counsel for the defence has only contended that the Appellants had been convicted on 31st of July, 1985 and they have been found guilty u/s 427 IPC. The maximum punishment provided u/s 427 IPC is two years imprisonment or fine. The learned Counsel further contended that the sword of conviction was hanging on the head of the Appellants since 1985. The Appellants are under the stress of the conviction for so many years and they have suffered a lot. They further contended that the punishment awarded by the trial court is excessive. learned Counsel for the Appellants further contended that the sentence may be reduced and a lenient view may be taken. It is well settled position of law that the sentence should commensurate with the offence committed. It is also in the evidence that the Appellants went to take the contribution of Holi festival from Ram Prasad but on making the refusal to pay the contribution for the Holi festival they became annoyed and in retaliation they damaged the property of the complainant. It is not in the evidence that how much damage was caused to the complainant.

11. Considering the totality of the evidence and the circumstances of the case, I am of the view that ends of justice would be met if the sentence of one year is reduced to three months in this case. If the Appellants have already been in jail they need not to surrender before the trial court. The trial court while issuing the process first examine from the record as to how much period the Appellants were in jail during the trial or appeal. If the Court is satisfied that they had not served the sentence then the warrant for the remaining period could be issued.

12. The appeal is partly allowed. The conviction u/s 427 of the Indian Penal Code is maintained and the sentence is modified from one year to three months.

13. Let the record be sent back to the Court concerned for compliance.