
(2009) 12 UK CK 0033
In the Uttarakhand High Court

Nona Rastogi and Bulva and Another	APPELLANT
Vs	
State of Uttrakhand	RESPONDENT

Date of Decision : 02-12-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 313, 320, 374
Penal Code, 1860 (IPC) — Section 307, 324, 34

Citation : (2009) 12 UK CK 0033

Hon'ble Judges : Dharam Veer, J

Bench : Single Bench

Judgement

Dharam Veer, J.—Both these appeals, preferred by the appellants u/s 374(2) of The Code of Criminal Procedure, 1973 (hereinafter to be referred as "Cr.P.C."), are directed against the judgment and order dated 13.12.1996 passed by the Sessions Judge, Dehradun in Sessions Trial No. 62 of 1995 State v. Nona Rastogi and two Ors. whereby the accused appellant Nona Rastogi has been convicted u/s 307 of Indian Penal Code, 1860 (for short, I.P.C.) and two other accused appellants Bulva and Dharamvir have been convicted u/s 307 read with Section 34 IPC and sentenced each of them to undergo R.I. for six years and also fine of Rs. 1000/-each. In default of fine, they were directed to undergo R.I. for additional term of six months.

2. Since both these appeals have been preferred against the same judgment and order dated 13.12.1996 and pertain to the same trial and the same incident, hence these are being decided by this common judgment and order.

3. In brief, the case of prosecution is that an FIR Ex. Ka-2 was lodged by PW4 Jay Prakash, father of the victim with the PS Kotwali, Dehradun on 12.6.1993 at 6.45 pm with the averments that on that day i.e. 12.6.1993 at about 8.40 am when his son Rajesh Kumar (PW1) had reached in the lane of City Board School within the circle of PS Kotwali, the accused appellants came from behind and caused injuries to him. Two police personnel, a Head Constable Vedpal Singh Malik (PW5) and Constable Khacheru Singh who were performing VIP duty at

Saharanpur Chowk which was about 200 yards from the place of occurrence. Someone informed them of the incident. They reached at the place of occurrence. The victim was rushed to Doon Hospital by the aforesaid police personnel. There he was medically examined and admitted. With these averments, FIR Ex. Ka-2 was subsequently lodged by PW4 Jay Prakash.

4. On the basis of the FIR Ex. Ka-2, the chick FIR Ex. Ka-5 was prepared on the same day by Head Constable Suresh Kumar. Necessary entries were also made by him in the GD. Copy of GD is Ex. Ka-6. Injured Rajesh Kumar was medically examined by PW3 Dr. H.G.S. Manral on 12.6.1993 at 9.05 am, who also prepared the medical examination report Ex. Ka-1.

5. Investigation of this case was entrusted to S.I. Sudhir Kumar Tyagi (PW6), who during the course of investigation inspected the place of occurrence and prepared the site plan Ex. Ka-3 on the pointing out of the victim Rajesh Kumar (PW1). He recorded the statements of the witnesses during the course of investigation and after completing the investigation filed the chargesheet Ex. Ka-4 against the accused appellants.

6. Learned CJM, Dehradun after giving the necessary copies of the documents to the accused appellants as prescribed u/s 207 Cr.P.C. committed the case to the Court of Sessions on 2.3.1995.

7. On 22.3.1996, learned Sessions Judge, Dehradun framed the charge against each of the accused appellants u/s 307 IPC. The charge was read over and explained to each of the accused appellants, who pleaded not guilty and claimed to be tried.

8. To prove its case, the prosecution has examined PW1 Rajesh Kumar, the victim; PW2 Lajwanti, mother of the victim; PW3 Dr. H.G.S. Manral, who medically examined the victim and prepared the medical examination report Ex. Ka-1; PW4 Jay Prakash, the complainant and father of the victim; PW5 Head Constable Vedpal Singh Malik and PW6 S.I. Sudhir Kumar Tyagi, the I.O. of the case.

9. Thereafter, statements of each of the accused appellants were recorded u/s 313 of Cr.P.C. The oral and documentary evidence were put to them in question form, who denied the allegations made against them and stated that they were falsely implicated in the case. No oral evidence was adduced by the accused appellants in their defence although they filed a copy of some complaint (paper No. 37 Kha) sent by Pushpa Rani, the mother of the accused appellant Nona Rastogi to S.P., City, Dehradun against the victim of this case.

10. After hearing learned Counsel for the parties and after appreciating the evidence available on record, learned Sessions Judge, Dehradun vide his judgment and order dated 13.12.1996 convicted and sentenced to each of the accused appellants as discussed above. Against the aforesaid judgment and order dated 13.12.1996, the accused appellants have preferred the present

appeal.

11. I have heard learned Counsel for the parties and have carefully perused the entire material available on the record.

12. Before any further discussion, it would be pertinent to mention here that the victim Rajesh Kumar (PW1) died on 21.5.2007 and averment to this effect has been made in the affidavit filed by PW4 Jay Prakash, father of the victim, who is also the complainant of the case.

13. Learned Counsel for the accused appellants submitted that on the basis of the evidence adduced on behalf of the prosecution, no case u/s 307 IPC is made out against the accused appellants and at the most, only the offence u/s 324 IPC is made out.

14. I find substance in the submission of learned Counsel for the accused appellants due to the reason that only two injuries have been shown to be sustained by the victim Rajesh Kumar, which were simple in nature and were not dangerous to life. Besides this, the evidence adduced on record by the prosecution shows that the accused appellants did not cause the injuries with intention to kill the injured Rajesh Kumar (PW1). Therefore, the present case falls u/s 324 IPC and not u/s 307 IPC as has been held by the trial court.

15. Parties have filed the compounding application. Compounding application is signed by all the parties and is duly supported by the affidavits of the complainant Jay Prakash (PW4) and the accused appellant Nona Rastogi. The accused persons as well as the victim and complainant, all belong to Mohalla Lakhbagh, Dehradun and they are well known to each other from before. As has been stated earlier, injured Rajesh Kumar (PW1) has died and his father Jay Prakash, also the complainant of the case, has filed his affidavit on his behalf stating therein that he is the sole legal heir of injured Rajesh Kumar. It has been further stated by the parties that now they are living peacefully and have cordial relation with each other. Therefore, learned Counsel for the parties have submitted that the appeal may be decided in terms of the compromise.

16. Offence u/s 324 IPC is compoundable. Section 320 of CrPC provides that u/s 324 IPC, the offence can be compounded by the person to whom the hurt is caused and Sub-clause (b) of Clause (4) of this section prescribes as under:

When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, 1908 (5 of 1908) of such person may, with the consent of the Court, compound such offence.

17. PW4 Jay Prakash is father and sole legal heir of injured Rajesh Kumar (now deceased). It has been stated in the compromise application that he on behalf of the deceased Rajesh Kumar is entitled to file the compromise. Compromise application is duly accompanied by the affidavits of the parties.

18. Therefore, in view of the facts and circumstances of the case and the legal proposition, the compounding application deserves to be allowed and the appeal is liable to be decided in terms of the compromise arrived at between the parties. Accordingly, the compromise to compound the offence is accepted by this Court. Compounding application is allowed accordingly and the compromise arrived at between the parties is accepted. The offence u/s 324 IPC is accordingly compounded on the basis of the compromise filed by the parties and accepted by this Court.

19. Resultantly, the judgment and order dated 13.12.1996 passed by the Sessions Judge, Dehradun in Sessions Trial No. 62 of 1995 State v. Nona Rastogi convicting the accused appellant Nona Rastogi u/s 307 IPC and two other accused appellants Bulva and Dharamvir u/s 307 read with Section 34 IPC is hereby set aside and sentence awarded to each of them to undergo R.I. for six years and fine of Rs. 1000/-each, in default, to undergo R.I. for additional term of six months is hereby also quashed. The appellants have been found guilty only for the offence punishable u/s 324 IPC. Since the parties have entered into compromise which has been accepted by this Court and the said offence u/s 324 IPC is compounded, therefore, the accused appellants Nona Rastogi, Bulva and Dharamvir are acquitted of the charge of offence punishable u/s 324 IPC. Both these appeals are accordingly disposed of in terms of the compromise arrived at between the parties. Appellant are on bail. Their bail bonds are cancelled. They need not surrender unless required in any other case.

20. A copy of this order be sent to the trial court for its compliance. Let the lower court record be sent back.