
(2010) 07 UK CK 0155
In the Uttarakhand High Court

Pooran Singh Adhikari

APPELLANT

Vs

State of U.P. (now State of Uttarakhand)

RESPONDENT

Date of Decision : 22-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 313, 374

Penal Code, 1860 (IPC) — Section 332, 333, 506

Uttar Pradesh Reorganisation Act, 2000 — Section 35

Citation : (2010) 07 UK CK 0155

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

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 20.07.1999, passed by Additional Sessions Judge, Haldwani, in Sessions Trial No. 181 of 1995 whereby said court has convicted the appellant Pooran Singh Adhikari u/s 333 of Indian Penal Code, 1860, (for short IPC). The trial court has sentenced the convict to rigorous imprisonment for a period of 3 years and directed to pay fine of Rs. 1,000/-, in defaults of payment of which convict is directed to undergo simple imprisonment for a period of two months.

2. Heard learned Counsel for the parties and perused the lower court record.

3. Prosecution story in brief is that on 25.05.1993, P.W. 1 Joga Singh Jalal, was posted as Manager with the Khatima Gas Service, Khatima. On said date at about 1:00 P.M., when the aforesaid complainant (P.W.1) was discharging his public duties accused/appellant Pooran Singh Adhikari entered in his office and asked for a LPG gas cylinder without any LPG cylinder card. P.W.1 Joga Singh Jalal (complainant) refused to obliged the accused/appellant. On this accused/appellant Pooran Singh got agitated and gave fist blows on the face of Joga Singh Jalal (P.W.1). He had suffered injury on his face. The act on the part of the accused/appellant caused obstruction in discharging of functions by P.W.1 Joga Singh Jalal. P.W.2 Girish Chander Arya, Store Keeper, was present in the office

and he too witnessed the incident. After the incident, FIR (Ex. A1) was lodged by P.W.1 Joga Singh Jalal with P.S. Khatima, on 25.05.1993, at about 15:35 P.M. On the basis of said report, the police registered crime No. 373 of 1999, relating to offence punishable u/s 333 IPC against the accused/appellant Pooran Singh Adhikari, and prepared check report (Ex. A5). Necessary entry was made in general diary copy of which is Ex. A6. P.W.1 Joga Singh Jalal, was taken for medical examination on 25.05.1993 at about 2:00 P.M. P.W.3 Dr. A.K. Singh, examined the medical injuries on the person of the injured and prepared injury report (Ex. A2). The crime was investigated by P.W.5 Sub-Inspector S.P. Singh. After interrogation of the witness, and completion of the investigation, charge sheet (Ex. A8) was filed by the Investigating Officer against the accused Pooran Singh Adhikari for his trial in respect of offences punishable u/s 332, 333, 506 IPC.

4. The Magistrate, on receipt of charge sheet, after giving necessary copies to the accused as required u/s 207 of Cr.P.C., committed the case to the court of sessions for trial. Learned Additional Sessions Judge, Nainital, on 15.06.1995, after hearing the parties framed charge of offence punishable u/s 333 I.P.C., only against the accused Pooran Singh Adhikari who pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W.1 Joga Singh Jalal (complainant/injured), P.W.2 Girish Chander Arya, P.W.3 A.K. Singh, who recorded the injury on the person of the injured, P.W. 4 Dr. A.K. Sharma, Radiologist and P.W.5 Sub-Inspector S.P. Singh, Investigation Officer. The oral and documentary evidence was put to the accused u/s 313 of Cr.P.C., in reply to which accused alleged same to be false. However, no evidence in defence was adduced. The trial court after hearing the parties, found accused Pooran Singh Adhikari guilty of charge of offence punishable u/s 333 IPC. After hearing on sentence, the trial court sentenced the convict to rigorous imprisonment for a period of three years and also directed him to pay fine of Rs. 1,000/- in default of payment of which the convict was further directed to undergo two months imprisonment. Aggrieved by said order dated 20.07.1999, passed by Additional Sessions Judge, Haldwani, this appeal was filed before Allahabad High Court, by the convict on 28.07.1999 (Earlier Khatima was part of District Nainital). The appeal was admitted by the Allahabad High Court on 29.07.1999. The appeal is received by this Court u/s 35 of U.P. Reorganization Act, 2000 (Central Act 29 of 2000) for its disposal.

5. Before further discussion, this Court thinks it just and proper to mention the injuries found on person of the complainant Joga Singh Jalal by P.W.2 Dr. A.K. Singh on 25.05.1993 at 2:00 P.M., which are recorded in Ex. A2 prepared by him. The injuries are being reproduced below:

(i) An abraded contusion with swelling on bridge of nose. Colour red. Bridge of nose (bony part) is tender. Advised X-ray face. There is fresh bleeding from the nose.

(ii) A lacerated wound 1cm. x 1/2cm. x muscled deep on posterior aspect of right index finger. Fresh clotted blood present.

6. P.W.4 Dr. A.K. Sharma, Radiologist, has stated that on 27.05.1993, he got X-rayed the face of the injured and prepared X-ray report (Ex. A4). In Ex. A4 the injury No. 1 quoted above is shown as grievous, and injury No. 2 is shown as simple.

7. P.W.1 Joga Singh Jalal, the then Manager of Khatima Gas Service, has stated that on 25.05.1993, he was discharging his duties in his office when accused Pooran Singh entered in the office and asked for LPG cylinder, without LPG gas card. According to the witness (P.W.1) when he refused to obliged the accused, he gave blows with fist on his nose due to which bone of his nose fractured. The witness has further stated that Girish Chander Arya (P.W.2) was the witness of the incident. P.W.1 Joga Singh Jalal has further stated that he lodged FIR (Ex. A1), and his medical examination was done on the same day.

8. The testimony of the complainant P.W.1 Joga Singh Jalal has corroborated by the statement of P.W.2 Girish Chander Arya, an eye witness. Apart from this, the statement of the these two witnesses gets corroboration from the medical evidence already discussed above. In the circumstances, this Court finds that the trial court has committed no error of law in holding that accused/appellant Pooran Sing Adhikari guilty of charge of offence punishable u/s 333 IPC.

9. The impugned judgment and order passed by trial court is challenged on three grounds in this appeal. The first ground in the memorandum of appeal is that the conviction recorded by the trial court is against the weight of evidence on record. The second ground is that conviction as against the appellant is bad in law. The last ground mentioned in the appeal is that the sentence awarded is severe. As far as the first two grounds are concerned, this Court finds no force in this appeal for the reasons already discussed above in appreciating the evidence on record. It cannot be said that the trial court has recorded the conviction against the weight of the evidence on record nor can the conviction be said to be bad in law. However, so far as sentence is concerned, learned Counsel for the appellant pleaded that the incident is now 11 years old. It is further pleaded that the sentence awarded to appellant may be reduced to the period already undergone.

10. Having considered submissions of learned Counsel for the appellant, and after going through the papers on record, this Court finds that there is no weapon used in the crime. It is only a fist blow given by the accused to the complainant. There are only two injuries. Considering the nature of injury and the facts and circumstances of the case, this Court is of the view that it would meet ends of justice if convict/appellant is sentenced to the imprisonment already undergone by him during investigation/trial and to pay fine of Rs. 10,000/-. Accordingly, this appeal is partly allowed. The appeal on the point of conviction is dismissed but on the point of sentence allowed to the extent that the sentence is reduced to the period already undergone provided that the appellant deposits fine of Rs. 10,000/- within a period of one month from today. In case of default, in depositing the fine of Rs. 10,000/-, as directed by this Court within one month, the appeal on point of sentence shall also stand

dismissed and the convict would be liable to undergo the punishment awarded by the trial court. With the direction, this appeal stands disposed of.

11. Lower court record be sent back alongwith copy of this judgment to the trial court for compliance of this order. Registry is directed to send back the lower court record.