
(2019) 11 UK CK 0097

In the Uttarakhand High Court

Case No : Criminal Revision No. 161 Of 2011

Ranjeet Singh Chauhan And Others

APPELLANT

Vs

State Of Uttarakhand

RESPONDENT

Date of Decision : 13-11-2019

Acts Referred:

Indian Penal Code, 1860 — Section 147, 323, 342, 426, 427, 452, 504, 506
Code Of Criminal Procedure, 1973 — Section 156(3), 313

Citation : (2019) 11 UK CK 0097

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : D.C.S. Rawat, P.S. Bohra

Final Decision : Allowed

Judgement

Sharad Kumar Sharma, J

1. An F.I.R., being F.I.R. No. 13/97 was registered under Sections 147, 452, 342, 506, 323, 427 and 504 IPC only on 19.08.1997 at Police Station Devprayag, District Tehri Garhwal for an incident, which is said to have occurred on 18th August, 1996 at about 12:30 p.m.. Apart from the fact that it was a highly belated F.I.R. with regard to an offence, lodged immediately after a lapse of one year of the incident which has occurred in 1996. As per the narration of the incident in the FIR, there were as many as seven person, who were accused of committing the offence as narrated above in the case Crime No. 13 of 1997.

2. The F.I.R. is shown to have been registered in pursuance to the order passed by the Magistrate, which was passed after invoking the powers under Section 156 (3) of the Cr.P.C. If the narration of the allegation levelled against the present revisionists is derived from the contents of the F.I.R., in fact, it was a mob attack, which is said to have been committed by the accused persons in the F.I.R., resulting into causing of the injuries on victim, complainant on his left thigh, which has resulted into the leveling of the offence as against the

revisionist under Section 323 of the I.P.C.

3. Having gone through the F.I.R., and as far as the allegation under Section 452 IPC is concerned, the entire incident is shown to have been occurred in front of the shop of the complainant, where the mob altercation has taken place resulting into the conflict between the accused persons due to which there have been injuries caused upon the victim as a consequence of the said offence.

4. In pursuance to the registration of the said F.I.R. on 19th August, 1997, the investigation was carried and, as a consequence of the culmination of the investigation by the Investigating Officer, a chargesheet has been submitted as against the present revisionists, being Chargesheet No. Nil dated 16th October, 1999, wherein, it was contended that after an examination of the 14 witnesses that the offence under Sections 323 and 452 IPC was levelled against the present revisionists alleging thereof that the offence under the aforesaid provisions is made out, because as per the medical examination report dated 22.08.1996, four injuries are shown to have been suffered by complainant, Buddhi Ram. The Medical Officer opined that injuries are simple in nature.

5. As a consequence of the submission of the chargesheet, the trial commenced with the registration of the Criminal Case, being Criminal Case No. 41 of 2000 before the Court of Chief Judicial Magistrate, Tehri Garhwal and the learned Magistrate, after finding that the implications made as against the present revisionists for commission of the offence under Sections 342, 504, 506 and 426 is not made out and, consequently, the Trial Court had acquitted the revisionists of the said charges. However, the conviction was confined in relation of the offence under Sections 452 and 323 of the IPC.

6. As a consequence thereto, the learned Trial Court after conducting the trial and recording the statement of the witnesses of the prosecution, who were produced as PW1 Gunduru, PW2 Mor Singh, PW3 Budhi Ram and PW4 Dr. Sandeep Kumar, who had conducted the medical and other witnesses and after recording the statement of the present revisionist under Section 313 Cr.P.C. had recorded a finding with regard to the incident of 18th August, 1996, which has occurred at 12:30 p.m, it is alleged that the present revisionist has reached the shop with other co-accused person of the complainant and had surrounded the same and after taking the victim in the adjoining room, they have assaulted them with lathi. It was also alleged that they had also committed an offence of a very brutal nature of inserting the paste of green chilly in the anus of the victim. However, if the statement of PW4 Sandeep Kumar, i.e. the Doctor, who conducted the medical on the victim is concerned, he has reported that four injuries were found on the body of the victim, those were the injuries, which were found on the right thigh and there were other minor injuries of scratches found near the private parts of the accused persons. It was further observed in the medical report that the period of injuries were 3 to 4 days old and as per the medical report Ex. Ka2, it was caused on account of the altercation, which took place on 18th August, 1996, and nature of injuries, which have been suffered by the

victim, they were reported not to be so vital and hence, the Court after considering the evidence has recorded the finding that so far as the commission of the offence under Section 323 IPC and also as per the statement of Dr. Sandeep Kumar PW4, the nature of the injuries could be brought within the ambit of offence under Section 323 and has made the present revisionists as accused for commission of offence under Section 323 IPC and on account of the fact that he has entered into the adjoining room of the shop for the commission of the said offence under Section 323 IPC, he has also been held out to be guilty for commission of offence under Section 452 IPC. Consequently, the Court of Chief Judicial Magistrate by the impugned judgment dated 25th March, 2010, has convicted the revisionist and thereby directed him to undergo a sentence of one year of rigorous imprisonment and a penalty of Rs.1,000/- for the offence under Section 452 IPC has been imposed and for the offence under Section 323, he has been convicted to undergo a simple imprisonment of six months.

7. The sole foundation of the judgment of conviction as against the present revisionist is concerned, it was in view of the statement of the witnesses, which was recorded before the Court below, who supported the incident to the effect that the accused/revisionists forcefully entered into the adjoining room of the shop and has inflicted wounds on the person of the complainant, the Court has considered that as per the statement of PW1, he has partially supported the story of the prosecution and also as per the statement of PW2, he has only supported the occurrence of the incident and that the revisionist was indulged in beating the victim with the lathi. Even if the statement of PW2 is taken into consideration, it cannot be said to be a direct eyewitness of the incident because as per his statement, he has submitted that he has seen the occurrence of the incident through a window of the room, which might not give the time and correct portrayal of incident, which has chanced inside the room.

8. The Trial Court has held that in view of the statement of PW1 Gundura and PW2 Mor Singh, and particularly PW2 Mor Singh, who was an eyewitness of the incident and perusal of his statement, nothing has come in contradiction to the statement, particularly, the so called story as levelled in the F.I.R. pertaining to the second act of assault of inserting the paste of chilly in the anus of the victim that was not supported by any of the prosecution witnesses or even as per medical report submitted by the PW4, i.e. exhibit Ka-2.

9. The learned Trial Court while convicting the revisionist for the offence committed under Sections 452 and 323 has not rightly considered the impact of the statement of PW2 Mor Singh and PW4 Dr. Sandeep Kumar with regard to the gravity of an offence and the actual injuries suffered, which was narrated in the F.I.R., and that too, which was registered after one year of the incident in order to fortify the actual commission of offence by the revisionist on 19th August, 1996.

10. The said judgment of the learned Trial Court was based on probability and hypothesis about interpretation of the statements of the witnesses, which too

cannot strictly placed reliance, as to the manner in which PW1 Gundura and PW2 Mor Singh have asserted themselves to be eyewitness of the incident because the manner in which they have seen the incident through window, it could not be safe to convict a person, because it cannot be an exact narration of the assault with which, the revisionist has been alleged to have been convicted for committing the said offence.

11. Being aggrieved against the said judgment, Criminal Appeal No. 12 of 2010, was preferred by the revisionist No. 2 and Criminal Appeal No. 14 of 2010, was preferred by revisionist No. 3. As far as revisionist No. 1 is concerned, since he has died during the pendency of the proceedings, the Criminal Revision will stand abated as far as the revisionist No. 1 is concerned.

12. Having gone through the veracity of the appellate Court's judgment dated 30th June, 2011 too, the reason, which was assigned therein with regard to the commission of an offence of inserting the chilly paste in anus of the victim, has been attributed to be with the accused person No. 1, who is now deceased. Even the Appellate Court has considered that as far as the present revisionists are concerned, they have only attributed to have caused injuries by inflicting wound by lathi, which is reported by PW4 to have been caused by blunt object.

13. In view of the finding of the Appellate Court too, which has almost reiterated the finding of the Trial Court, this Court is of the view that since there was already a belated F.I.R. after one year of the incident and looking to the nature of injury, which has been suffered by the victim and as recorded in the statement of PW4 Dr. Sandeep Kumar, having been caused on the thighs of the victim and three abrasions thereon, this Court is of the view that in view of the appreciation of the evidence recorded by both the Courts below, the commission of the offence of 323 IPC by the revisionist is not proved to be beyond doubt because placing reliance on the evidence of PW2 Mor Singh cannot be a safe mode for convicting the revisionists because he cannot be said to be eyewitness of the incident having seen the incident through window and there is a possibility that PW2 Mor Singh might not have seen the exact entire incident in its absolute clarity.

14. In that view of the matter, this Court is of the view that since there is a probability of wrongful appreciation of the evidence and oral testimony of prosecution witnesses by both the Courts below, particularly, the statement of PW2 Mor Singh, and also considering the medical report of PW4 Dr. Sandeep Kumar, the revisionists are liable to be acquitted of the offence for which, they have been convicted by both the Courts by granting them benefit of doubt in the absence of there being any direct evidence of occurrence on record as against them placed before both the Court.

15. Consequently, the Revision is allowed. The impugned order of conviction dated 30.06.2011 passed by the learned Addl. Sessions Judge/F.T.C. Tehri Garhwal confirming the judgment and Order dated 25.03.2010, passed by the

learned Chief Judicial Magistrate, Tehri Garhwal, under Section 452 and 323 IPC are hereby quashed.