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**(2011) 12 UK CK 0137**

**In the Uttarakhand High Court**

**Case No : Criminal Appeal No. 102 of 2002**

Smt. Munni Devi and three Others

APPELLANT

Vs

State of Uttaranchal

RESPONDENT

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**Date of Decision : 15-12-2011**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313  
Penal Code, 1860 (IPC) — Section 141, 146, 147, 149, 307

**Citation : (2011) 12 UK CK 0137**

**Hon'ble Judges :** Barin Ghosh, C.J; Umesh Chandra Dhyani, J

**Bench :** Division Bench

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## **Judgement**

U.C. Dhyani, J.—This Criminal Appeal is directed against the judgment and order dated 13.05.2002 passed by Addl. Sessions Judge / Special Judge (C.B.I.) Dehradun whereby accused / appellants Munni Devi, Virendra Singh Bhadoria, Satyendra Singh Bhadoria and Yogendra Kumar have been convicted u/s 307 IPC read with Section 149 IPC in sessions trial no. 22/1996 and sentenced to imprisonment of life. Accused / appellants have also been convicted u/s 147 IPC and sentenced to undergo rigorous imprisonment for a period of 2 years and were also directed to pay a fine of Rs. 1000/- each and in default of payment of fine they were directed to undergo three months further rigorous imprisonment. All the sentences were directed to run concurrently. The fifth accused Sanjeev Bhadoria was acquitted of the charges levelled against him. No State Appeal is reported to have been filed against his acquittal.

2. Prosecution story, in brief, is that P.W.1 Shanti Devi lodged a First Information Report (Ext. Ka-1) with Police Station Kotwali, District Dehradun with the allegation that on 15.04.1996 her husband demanded rent from the accused Virendra Singh Bhadoria, who promised to pay the same on 01.05.1996. It was also told by Virendra Singh Bhadoria that his wife will pay the rent in his absence. On 01.05.1996 Shanti Devi demanded the rent from the wife of Virendra Singh Bhadoria during day hours. At this, his wife Munni Devi along with her sons Satyendra, Sanjeev, Rajeev and Yogendra hurled abuses at her and

were about to commit marpeet. They said that they will not pay the rent and also threatened the landlady with dire consequences. When Shanti Devi's husband came back in the evening then she was apprised with the incident which took place during the day hours. Virendra Singh Bhadoria returned home around 8:00 p.m. Shanti Devi's husband demanded rent from him. At this, Virendra Singh Bhadoria, his wife Munni Devi and son Satyendra Bhadoria who was armed with iron rod, Sanjeev Bhadoria, who was armed with iron pipe and Yogendra who was having stick (lathi) in his hand, entered into the house of the informant and started beating her husband in the lawn. Her husband bled and became unconscious. She along with her son Dheerendra and R.S. OJha were successful in separating them otherwise accused persons would have killed her husband. Shiv Kumar sustained grievous injuries on his body and head. He was admitted to Doon Hospital. She could not send her son to lodge the report because her husband was serious. Shiv Kumar was referred to Medical College, Meerut but on way to Meerut his condition deteriorated and was forced to be admitted in Gautam Nursing Home, Clement Town where he was operated upon by Dr. Anil Manchanda.

3. On the basis of this complaint (Ext. Ka-1) chik FIR (Ext.Ka-4) was prepared and crime no. 218/96 was registered against the accused Munni Devi, Virendra Singh Bhadoria, Satyendra Singh Bhadoria, Sanjeev Bhadoria and Yogendra Kumar in respect of offences punishable under Sections 147, 323, 307, 504 and 506 of IPC.

4. Investigation of the case was taken up by P.W.7 S.I. S.D. Mishra. He inspected the spot, prepared site plan (Ext. Ka-6), took the statements of the witnesses and submitted charge-sheets (Ext.Ka-7 and Ka-8) against the accused persons.

5. The copies of the prosecution documents were provided to the accused persons and the case was committed to the Sessions Judge, Dehradun. The same was transferred to Addl. Sessions Judge / Special Judge (CBI) Dehradun for trial.

6. Charges for the offences punishable under Sections 147, 307 read with Section 149, Section 504 read with Section 149 and Section 506 read with Section 149 IPC were framed against all the accused persons, who pleaded not guilty and claimed trial.

7. Prosecution examined P.W.1 Smt. Shanti Devi, P.W.2 Shiv Kumar Singh, P.W.3 Ranjeet Singh Tomar, P.W.4 Dr. Rakesh Singh, P.W.5 Dr. S.K. Nautiyal, P.W.6 Balwant Singh, P.W.7 S.I. S.D. Mishra and P.W.8 Dr. G.P. Painuli.

8. In defence, D.W.1 Dr. S.K. Nautiyal, D.W.2 H.M. Ganga Prasad, D.W.3 Satyendra Singh Bhadoria (accused himself), D.W.4 Dr. Gyanendra Singh Rawat and D.W.5 Dr. R.K. Jain were examined.

9. The oral and documentary evidence was put to the accused persons u/s 313 Cr.P.C., in reply to which they have alleged that the evidence adduced against them is false. Accused Satyendra Singh has also said that the marpeet took place

between him and Shiv Kumar, in which he (Satyendra) sustained injuries on his head. A cross NCR was lodged by him. He remained admitted in the hospital for 05 days.

10. Learned trial court found the accused persons Munni Devi, Virendra Singh Bhadoria, Satyendra Singh Bhadoria and Yogendra Kumar guilty of the offences punishable under Sections 147 and Section 307 read with Section 149 IPC and convicted them accordingly. Sentences were also passed against them, a brief reference of which has been given in the inaugural paragraph of this judgment. Co-accused Sanjeev Bhadoria was however, acquitted of the charges framed against him.

11. Aggrieved by said judgment and order dated 13.05.2002, present Criminal Appeal has been filed by the convicts.

12. We have heard learned counsel for the appellants and learned Addl. Government Advocate and perused the lower court record.

13. P.W.1 Shanti Devi in her examination-in-chief has said that her house is situated at Vijay Colony, where her family resides. Virendra Singh was tenant in her house where he used to live with his family. Virendra Singh had not deposited the rent due against him. When she demanded the rent from his wife, she asked for the time to pay the same. On 01.05.1996 at 1:30 p.m. when P.W.1 Shanti Devi demanded rent from Munni Devi, she along with her sons Satyendra and Yogendra hurled abuses at her and started quarrelling. When her husband came, he was apprised with the whole incident. Accused persons Virendra Singh, Satyendra Singh, Yogendra, Munni Devi and Sanjeev came on 01.05.1996 at 8:00 p.m. They had iron rod, pipes and sticks in their hands. The accused persons inflicted a blow of iron rod on the head of her husband, who became unconscious. The accused persons wanted to kill her husband and they inflicted blow on his husband with the intention of killing him. There was a tube light in the room. She took her husband to the hospital. The doctor referred him to the higher centre (Meerut). When his condition deteriorated on way to Meerut, her husband was admitted to a nursing home at Clement Town. This witness has proved the complaint (paper Ext. Ka-1) which was given to the police.

14. P.W.1 Smt. Shanti Devi has also said that police took blood stained clothes of her husband and prepared memo (Ext. Ka-2) to this effect. This memo bears her signatures. The blood stained kurta-pajama (Material Ext. 1 and Material Ext. 2) were placed before the trial court.

15. P.W.2 Shiv Kumar Singh has said in his oral testimony that he knew accused Virendra Singh Bhadoria who was a tenant in his house. The rent was due against Virendra Singh. Her wife used to demand rent from the tenants. On 01.05.1996 at around 8:00 p.m., when he came back from the office, his wife apprised her husband (this witness) that she demanded the rent from the accused persons and they threatened her with dire consequences. P.W.2 Shiv Kumar Singh asked Virendra Singh as to why did he do so? At this, the accused

persons, who were having iron rod, iron pipe and sticks started beating P.W.2 Shiv Kumar Singh with fists and feet. It was clarified that accused Sanjeev was not there. Instead, Rajeev s/o Virendra Singh was there. The accused persons dragged Shiv Kumar Singh to the gate and committed marpeet with him. Satyendra inflicted a blow of iron rod on his head. Other accused persons also started beating him. His wife and son Ranjeet came on the spot. His tenant Radhey Shyam also reached there. This witness became unconscious. He was taken to a private hospital. He has proved his blood stained kurta-pajama (Material Ext. 1 & 2) before the Court.

16. P.W.3 Ranjeet Singh Tomar has said that he had written complaint dated 01.05.1996 on the dictation of his mother Shanti Devi. Ext Ka-1 was written at the instance of his mother. He himself had not seen the occurrence.

17. P.W.4 Dr. Rakesh Singh has proved memo (Ext. Ka-2) regarding taking of blood stained kurta-pajama of Shiv Kumar Tomar by the police. Dr. Rakesh Singh has also proved that kurta-pajama (Material Ext. 1 & 2) sealed by the police.

18. P.W.5 Dr. S.K. Nautiyal, Medical Officer, Doon Hospital was posted on 01.05.1996 in the same capacity in the same hospital. On 01.05.1996 at 8:30 p.m. he had examined Shiv Kumar Tomar who was brought by his wife. He found the following injuries on the person on Shiv Kumar Tomar:

1. Lacerated Wound 0.25cm x 0.5 cm x scalp deep on left side head 5 cm above left ear upper part fresh blood oozing Injury.
2. Abraded contusion 6cm x 2cm left side chest 2cm below lateral Y3 of left clavicle red in colour.
3. Contusion 6 cm x 2 cm back of left upper arm 11 cm above left elbow joint.
4. c/o pain found on right thigh. No mark of external injury.

18. Injury no. 1 was kept under observation. He was advised x-ray of skull injury. Injury no. 2 & 3 were simple in nature which could be caused by some hard blunt object. Duration of the injuries was fresh. The injuries were entered in the injury register. He obtained the thumb impression of injured. This witness has brought the original injury register. A carbon copy of the injury register was prepared. The photocopy of the injury register was produced by the doctor which, according to him, was as per the original. It was proved as Ext. Ka-3. According to the doctor these injuries could be possible on 01.05.1996 at 8:00 p.m. with iron rod, iron pipe and sticks. Since injury no.1 was in the vital part (skull) therefore, it was kept under observation. The same was grievous in nature.

19. P.W.6 Balwant Singh was posted as Constable Clerk at Police Station Kotwali on 04.05.1996 and has proved chik FIR (Ext. Ka-4) and copy of G.D. (Ext. Ka-5)

20. P.W.7 S.I. Hari Dutt Mishra was posted as Sub-inspector at P.S. Kotwali, Dehradun on 04.05.1996. The investigation of the case was handed over to him.

He took the statement of FIR writer constable Balwant Singh; affected arrest of accused Munni Devi; took the statement of informant Shanti Devi; inspected the place of occurrence and proved site plan (Ext. Ka-6). P.W.7 S.I. Mishra has also said that he took the statement of witness Radhey Shyam; prepared Memo (Ext. Ka-2) regarding blood stained kurta-pajama; took the statements of Ranjeet Tomar, Shiv Singh Tomar, Virendra Kumar and submitted charge-sheets (Ext. Ka-7 & Ext. Ka-8) after completing the investigation.

21. P.W.8 Dr. G.P. Painuli was posted as surgeon in Doon Hospital in the year 1996. According to him, Shiv Kumar Tomar was admitted in the emergency ward of the hospital on 01.05.1996 at 8:30 p.m. He was advised C.T. Scan. He has proved the bed-head ticket (Ext. Ka-9) and opined that the head injury sustained by Shiv Kumar Tomar was serious in nature. There was fracture on the left temporal bone. The patient was referred to Meerut Medical College for Neuro Surgical Management. In the cross-examination Dr. G.P. Painuli has pleaded ignorance on many aspects of CT Scan of the patient in his cross-examination.

22. Statement of the accused persons were taken. They have said that they have been falsely implicated in the case. Accused Sanjeev has said that he was not present at the relevant time at the relevant place. Accused Virendra has said that Shiv Kumar had taken Rs. 60,000/- from him in lieu of price of a land which, in fact, belonged to another. Injured Shiv Kumar had pretended that the land belonged to him, whereas, in fact, it was not. When he asked him to return the money he harboured grudge against him.

23. Accused Satyendra appears to have come with clean hands. He has said that marpeet took place between him and Shiv Kumar. He sustained injuries on his head. He also lodged (cross) FIR. He remained admitted in Doon Hospital for five days.

24. As many as five defence witnesses were examined on behalf of the accused persons.

25. D.W.1 Dr. S.K. Nautiyal has proved the discharge slip issued by Dr. G.S. Rawat of Doon Hospital as Ext. Kha-1. D.W.1 Dr. Nautiyal had examined Satyendra Bhadoria on 01.05.1996 at 8:20 p.m.

26. D.W.2 Ganga Prasad has proved the NCR dated 01.05.1996. He was posted as Head Moharrir at P.S. Kotwali on 01.05.1996.

27. D.W.3 Satyendra Singh Bhadoria (accused) has said that on 01.05.1996, when his younger brother Yogendra Singh and mother Munni Devi were sitting in her room, complainant's husband Shiv Kumar, his son Dheeraj and his friends came to their residence and started committing marpeet at 6:00 p.m. They dragged him out of the house and started marpeet. Shanti Devi wife of Shiv Kumar and Rupesh daughter of Shiv Kumar started throwing stones, which hit upon his head. D.W.3 Satyendra Singh became unconscious. He was taken to police station whereupon he was asked to go to hospital. He was admitted to

hospital for five days. In the meantime he had left an application in the police station. This witness has said that his father Virendra Singh was on duty on that day and when he returned from his duty the next day, then only he could know about the incident. Police did not lodge FIR on the basis of complaint given by him. Virendra Singh used to come to his residence once in a week.

28. D.W.3 Satyendra Singh has offered the explanation to the injuries to the Shiv Kumar Tomar and has said that the stones hurled upon by his wife and daughter on Satyendra Singh must have hit his (Shiv Kumar's) head.

29. D.W.3 Satyendra Singh Bhadoria has given the reasons for his false implications in the case. According to him, he has been falsely implicated in the case because he had some dispute with Shiv Kumar over a piece of land. He had purchased a piece of land from Shiv Kumar and paid him the money. Shiv Kumar also got a room constructed over the same for this witness. Later on it was found that the said land did not belong to Shiv Kumar but belonged to someone else. The actual owner asserted his right (claim) over this piece of land. Then D.W.3 Satyendra Singh enquired the same (ownership of land) from Shiv Kumar. Shiv Kumar got annoyed (over raising the issue of ownership of land) and has falsely implicated him in the case. He was the tenant of Shiv Kumar who wanted to evict him. This witness asked Shiv Kumar to settle the account. Instead of settling the amount, Shiv Kumar picked up quarrel with them.

30. D.W.4 Dr. Gyanendra Singh Rawat has said that Satyendra Singh Bhadoria was under his treatment. He got admitted in his hospital on 01.05.1996 and was relieved on 05.05.1996. He has proved discharge slip (Ext. Kha-1) of Satyendra Singh Bhadoria.

31. D.W.5 R.K. Jain knew accused Virendra Singh who was working as security guard/supervisor in Lily Chemical Pvt. Ltd., Laltappar on 01.05.1996. Ext. Kha-4 was produced to show that Virendra Singh remained on duty on 01.05.1996 and 02.05.1996.

32. Learned trial court had acquitted accused Sanjeev Bhadoria. Rest of the accused persons were held guilty of the offences punishable u/s 147 and Section 307 read with Section 149 IPC. Section 147 IPC provides the punishment for "rioting". "Rioting" is defined in Section 146 IPC and relates to force or violence by a member of unlawful assembly in prosecution of the common object of such assembly. The word "unlawful assembly" is defined in Section 141 IPC to mean an assembly of 5 or more persons with the common object. In the instant case when the trial court has acquitted accused Sanjeev Bhadoria on the grounds, inter alia, that he was not present on the place of occurrence, then only four accused are left in the crime, as the case against the fifth accused has not been proved. There is no State Appeal against his acquittal. So there cannot be "unlawful assembly" of four persons and therefore, offence punishable u/s 147 IPC is vanished in the thin air. Section 149 IPC provides that every member of "unlawful assembly" is guilty of offence committed in prosecution of common

object. Since there was no "unlawful assembly" of the accused persons therefore, Section 149 IPC also disappears. It is also not established from the prosecution evidence as to which of the accused had inflicted blows on Shiv Kumar? And with which weapon? So this court is of the opinion that offences punishable u/s 147 and Section 149 IPC are not made out.

33. So far as the offence punishable u/s 307 IPC is concerned, it does not appear from the evidence on record that the accused persons have done any act with such intention or knowledge and under circumstances that if by that act caused death, they would be guilty of murder. The reasons are not far to seek. One such reason is the nature (and proof) of injuries sustained by Shiv Kumar Tomar. P.W.5 Dr. S.K. Nautiyal has, in his evidence, said that Shiv Kumar Tomar sustained lacerated wound and three contusions. The lacerated wound and one contusion were on the head of the injured. Injury no. 2 & 3 were simple in nature. Injury no. 1 was kept under observation. All the injuries were inflicted by a hard blunt object. Besides the same, the injuries sustained by Shiv Kumar Tomar have not been proved according to the Indian Evidence Act. The original register, no doubt, was produced before the court. A carbon of the original injury register was also prepared but it is ironical that a photocopy was tendered in evidence. How xerox copy can be tendered in evidence? Why the same was not objected during trial?

34. No explanation has been given by the prosecution for the injuries caused to Satyendra Singh Bhadoria. To the contrary, D.W.3 Satyendra Singh Bhadoria has not only proved his injuries but has also given the explanation of the injuries of Shiv Kumar Tomar. The first part of D.W.3 Satyendra Singh Bhadoria's evidence is acceptable that he too received injuries on the date and time of incident. But the second part of his statement that Shiv Kumar Tomar might have received injuries of the stones thrown by his wife and daughter has to be taken with a pinch of salt. In any case, it is proved that D.W.3 Satyendra Singh Bhadoria too was injured on the date and time of incident, to which the prosecution has not offered any explanation. It is not that the prosecution has to explain the injury of accused in every case, but it is one such case in which the same was required.

35. The object of defence evidence is to create suspicion in the mind of the court about the prosecution story. To this extent they have achieved the desired object. It is not necessary for the defence to prove their case beyond reasonable doubt. But the converse is true in case of prosecution, who has to prove its case against the accused persons beyond reasonable doubt.

36. It has come on record that a NCR was lodged by Satyendra Singh Bhadoria against the complainant's side. In other words, there is a cross version. But the Investigating Officer of the case did not acknowledge this fact and pleaded ignorance on many a vital questions on which he should have acquired knowledge. Those questions are enumerated at page no. 60 of the paper book.

37. When there are cross versions, it ought to have been established by the

prosecution as to who was the aggressor? If the accused persons were aggressor, they would certainly have been held guilty of the offence under appropriate Sections. But unfortunately, the prosecution has not been able to establish the same in this case.

38. Since the prosecution has not been able to establish its case against the accused persons beyond reasonable doubt, therefore, this court is not commenting upon the plea of alibi of accused Virendra Singh, as no useful purpose will be served by expanding the discussion further.

39. Consequently the Criminal Appeal deserves to be allowed.

40. Criminal Appeal no. 102 of 2002 Smt. Munni Devi vs. State is therefore, allowed. The judgment and order rendered by the trial court as also such conviction and sentence passed on 13.05.2002 is hereby set aside. Appellants Munni Devi, Virendra Singh Bhadoria, Satyendra Singh Bhadoria and Virendra Kumar are on bail. They need not surrender.

41. Let Lower Court Record be sent back.