

Deepak and Others Vs. State of Uttaranchal

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Court : Uttaranchal

Decided On : Jan-01-2013

Judge : Prafulla C. Pant

Appeal No. : Criminal Appeal Nos. 1158 & 1261 of 2001

Appellant : Deepak and Others

Respondent : State of Uttaranchal

Judgement :

Prafulla C. Pant, J.

(1) Both these appeals, preferred under section 374 of Code of Criminal Procedure, 1973, (for short Cr.P.C), are directed against the judgment and order dated 10.07.2001, passed by Learned Additional Sessions Judge/IIIrd Fast Track Court, Dehradun, in Sessions Trial No.48 of 2000, whereby said court has convicted the accused/appellants Shyam (S/o Raj Kumar), Bunti (S/o Ram Kishore), Deepak (S/o Ram Kishore) and Banti (S/o Ramesh Kumar) under section 323 read with section 34 and under section 324 read with section 34 I.P.C. Each one of convicts has been sentenced to rigorous imprisonment for a period of six months under section 323/34 I.P.C, and rigorous imprisonment for a period of three years under section 324/34 of I.P.C.

(2) Heard learned Amicus Curiae for the appellants, and Learned Additional Government Advocate, for the State, and perused the lower court record.

(3) Prosecution story, in brief, is that on 23.04.1999, at about 7.30 p.m., PW1 Suraj Thapa was on his way back to his home, when near patharia peer accused/appellants Shyam (S/o Raj Kumar), Bunti (S/o Ram Kishore), Deepak (S/o Ram Kishore) and Banti (S/o Ramesh Kumar) surrounded him. Out of said accused/appellants, accused Shyam (S/o Raj Kumar) and accused Bunti (S/o Ram Kishore), were armed with KHUKRIES (sharp edged weapons). Accused Deepak was armed with DANDA (rode) and accused Banti (S/o Ramesh Kumar) was armed with a belt. All the four allegedly assaulted on person of Suraj Thapa, who suffered injuries. PW3 Meera Chhetri, aunt of the injured was accompanying him who rescued him. The accused/appellants ran away after causing injuries on person of Suraj Thapa. First Information Report (EX-A1) of the incident was lodged by PW2 Kishan Singh Thapa (uncle of the injured) at Police Station Kotwali Dehradun. On the very day (23.04.1999) at about 10.00 p.m., on the basis of said report Crime No. 281 of 1999, was registered relating to offence punishable under section 307 of I.P.C., by against accused/appellants namely Shyam (S/o Raj Kumar), Bunti (S/o Ram Kishore), Deepak (S/o Ram Kishore) and Banti (S/o Ramesh Kumar). The investigation was taken up by PW6 Sub Inspector Saran Singh Verma. The injuries were medically examined by PW2 Dr. Y.S.Thapliyal of Doon Hospital, on the very day (23.04.1999), at about 8.00 p.m., who prepared injury report (Ex- A2) observing injuries on the person of Suraj Thapa. The Investigating Officer after interrogating the witnesses, and on completion of investigation submitted charge sheet (Ex-A6) against all the four accused namely Shyam (S/o Raj Kumar), Bunti (S/o Ram Kishore), Deepak (S/o Ram Kishore) and Banti (S/o Ramesh Kumar) for their trial in respect of offence punishable under section 307 read with section 34 of I.P.C.

(4) The Chief Judicial Magistrate, on receipt of charge sheet after giving necessary copies to the accused as required under section 207 of Cr.P.C., committed the case to the court of Sessions for trial.

(5) On 04.09.2000, learned Additional Sessions Judge, Dehradun, after hearing the parties framed charge of offence punishable under section 307 read with section 34 I.P.C., against all the four accused namely Shyam (S/o Raj Kumar), Bunti (S/o Ram Kishore), Deepak (S/o Ram Kishore) and Banti (S/o Ramesh

Kumar) who pleaded not guilty and claimed to be tried. On this prosecution got examined PW1 Suraj Thapa, (injured eyewitness), PW2 Kishan Singh Thapa (informant), PW3 Meera Chhetri (eyewitness and aunt of the injured), PW4 Dr. Y.S.Thapliyal (who medically examined the injured), PW5 Constable Suresh Balodi (who prepared the check report of first F.I.R and made entry in General Diary), and PW6 Sub Inspector Saran Singh Verma (who investigated the crime). The oral and documentary evidence was put to the accused under section 313 of Cr.P.C., in reply to which they pleaded that evidence adduced against them was false. In defence on behalf of the accused DW1 Radhe, was got examined who has stated that accused Banti (S/o Ramesh Kumar) was not at the place of incident.

(6) The trial court after hearing the parties found that though the charge of offence punishable under section 307 I.P.C., is not proved against the accused, but the lesser offences punishable under section 323 read with section 34 and under section 324 read with section 34 I.P.C., are proved on record. After hearing on sentence, the trial court sentenced each one of the convicts to rigorous imprisonment for a period of six months under section 323/34 of I.P.C., and rigorous imprisonment for a period of two years under section 324/34 I.P.C. Aggrieved by said judgment and order dated 10.07.2001 passed by Additional Sessions Judge/IIIrd Fast Track Court, Dehradun, in Sessions Trial No. 48 of 2000, these two appeals are preferred by the two sets of convicts.

(7) Before further discussion, this Court thinks it just and proper to mention the injuries said to have been suffered by PW1 Suraj Thapa, as observed by PW4 Dr. Y.S.Thapliyal in the injury report (Ex-A2) on the day of the incident at about 8.00 p.m. The same are being reproduced below:- 1. An incised wound of size 3.5 cm x 0.5 cm muscle deep over the mid of occipital region of scalp of head. The wound is 11 cm from the left ear. Margins of the wound sharp with fresh bleeding from the wound. 2. An incised wound of size 3.5 cm x 1 cm over the occipital region of scalp of head. The wound is muscle deep. There is fresh bleeding from the wound. The wound is 7 cm from the right ear. The second wound is 6 cm below wound no.1. 3. Lacerated wound of size 7 cm x 0.5 cm over the dorsum of fourth finger of the left hand 2 cm from the anterior joint fresh bleeding from the wound, margins

irregular. The wound is skin deep.

(8) PW4 Dr. Y.S. Thapliyal has stated that above mentioned injuries no.1 and 2 could have been caused by a sharp edged weapon while the injury no.3, could have been caused by hard blunt object. From the above medical evidence on record is established that PW1 Suraj Thapa did suffer injuries on his person of 23.04.1999. Now this Court has to see as to who has caused injuries on the person of PW1 Suraj Thapa. It is further required to be examined whether all the four accused had common intention in causing hurt with deadly weapon on the person of the injured.

(9) PW1 Suraj Thapa who suffered injuries is the best eyewitness of the case. He has stated on oath on 23.04.1999, at 7.30 p.m., he was on his way to his home when near Patharia Peer accused/appellants Shyam, Bunti, Deepak and another Banti armed with KHUKRI, DANDA and belt surrounded and assaulted him. He further told that accused Shyam (S/o Raj Kumar) and Bunti (S/o Ram Kishore) were armed with KHUKRI, and accused Deepak was armed with DANDA and another accused Banti (S/o Ramesh Kumar) was armed with a belt. As to the motive of commission of crime, the witness has further stated that on earlier occasion accused used to tease him due to which he had given a slap on the face of accused Shyam, where after the accused persons had threatened him of dire consequences. This witness (PW1) Suraj Thapa further told that his aunt (FUPI) and two others saved him. He further told that he was taken to hospital for treatment.

(10) The statement of PW1 Suraj Thapa is fully corroborated by PW3 Meera Chhetri (aunt of the injured). She has stated that since the accused used to tease to Suraj Thapa, she was accompanying her nephew on the date of incident, (It has come on the record that PW1 Suraj Thapa was a student). PW3 Meera Chhetri further told that all the four accused assaulted Suraj Thapa. She identified the accused correctly in the court and told that what was the arm possessed by whom.

(11) On re-appreciation oral testimony of the two eyewitnesses which gets fully corroborated from the medical evidence on record already discussed above, this Court is in agreement with the trial court that accused/appellants namely (S/o Raj

Kumar), Bunti (S/o Ram Kishore), Deepak (S/o Ram Kishore) and Banti (S/o Ramesh Kumar) with common intention on 23.04.1999, at about 7.30 p.m., voluntarily caused hurt on the hand of the PW1 Suraj Thapa. It is further established on record that with common intention, they armed with deadly weapons (KHUKRI) caused hurt on the person of said injured (PW2). That being so, in the opinion of this Court, the trial court has rightly convicted the four accused under section 323/34 and under section 324/34 I.P.C., and the appeal on the point of conviction is liable to be dismissed.

(12) However, on the point of sentence both learned Amicus Curiae appearing on behalf of the appellants submitted that the sentence of imprisonment awarded by the trial court may be reduced to the period already undergone. Considering the facts and circumstances of the case, this Court is of the view that reducing the sentence awarded to the accused/convicts by the trial court to the period already undergone under section 323/34 I.P.C with further direction to pay Rs.2,500/- as fine, and period of imprisonment already undergone under section 324/34 I.P.C., with further direction to pay Rs.5000/- as against each of the convicts would meet the ends of justice. All the four accused had been in jail for more than a fortnight during investigation/trial.

(13) Accordingly, both the appeals are disposed of affirming the conviction recorded by the trial court offence punishable under section 323/34 and 324/34 I.P.C., against the accused/appellants (S/o Raj Kumar), Bunti (S/o Ram Kishore), Deepak (S/o Ram Kishore) and Banti (S/o Ramesh Kumar). However, the sentence of imprisonment awarded to the accused/appellants is reduced to the period already undergone under section 323/34 I.P.C., with further direction to pay fine of Rs.2,500/-, and period of imprisonment already undergo with further direction to pay fine of Rs.5,000/- under section 324/34 I.P.C., as against each of the above accused/appellants. It is further directed that in case of default of fine directed to be paid under section 323/34 I.P.C., the defaulter shall undergo rigorous imprisonment for a period of three months, and in case of payment of fine under section 324/34 I.P.C., the defaulter shall undergo rigorous imprisonment for a further period of six months. With this modification in the sentence the appeals stand disposed of. Lower court record be sent back for compliance of the order.

