

IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL

Government Appeal No. 48 of 2014

State of Uttarakhand ... Appellant

Versus

Jayendra Kalan @ Titu & Ors. ... Respondents

Mr. K.S. Bora, Deputy Advocate General, with
Mr. J.P. Kandpal, Brief Holder for the
State/appellant.
Mr. Anil Kumar Joshi, Advocate, for the
respondents.

Judgment reserved on: 25.11.2024
Judgment pronounced on: 05.12.2024

Hon'ble Manoj Kumar Tiwari, A.C.J.
Hon'ble Vivek Bharti Sharma, J.

(Per: Hon'ble Manoj Kumar Tiwari, A.C.J.)

State has filed this appeal, by leave, challenging the judgment and order dated 30.1.2014, passed by Sessions Judge, Uttarkashi in Sessions Trial No. 15 of 2010, whereby respondents have been acquitted of the charges punishable under Section 307 read with 34, 324 read with 34, 323 read with 34, 504 and 506 IPC.

2. Prosecution story, in nutshell, is that complainant Chaman Lal moved an application under Section 156(3) CrPC alleging that on 23.4.2010 at 4 PM, when he and one Kamleshwar were grazing livestock in the forest, accused respondents came there in intoxicated condition and asked them as to why they are grazing their livestock there. Complainant and his companion replied that it is the government land and they are grazing livestock there since many years. On this,

accused respondents assaulted the complainant with fists and blows. When Kamleshwar tried to intervene, accused respondents tore his T-shirt and accused Jay Inder Kalan @ Titu pushed the complainant down the hill with intention to kill him. Complainant became unconscious and fell down the hill and sustained injuries. When Kamleshwar alerted the villagers through his mobile phone, many villagers came at the spot and rescued the complainant. Complainant was taken to Primary Health Centre at Purola, where he was medically examined and after providing first aid, he was referred to higher centre.

3. On the basis of aforesaid complaint, FIR was registered. Police investigated the matter and thereafter submitted chargesheet against the accused respondents.

4. To bring home the guilt, prosecution examined as many as eight witnesses. PW1 Shobha Das, who is father of complainant, was amongst those persons who rescued the complainant. He also shifted the complainant to Primary Health Centre at Purola. PW2 Dr. D.C. Arya medically examined the complainant and prepared the medical examination report. Complainant Chaman Lal has been examined as PW3. Another victim Kamleshwar has been examined as PW4. PW5 Jayveer is brother of complainant. PW6 S.I. Dinesh Kumar is the Investigation Officer, who took over the investigation from PW7 S.I. Chandra Mohan

Kala. PW8 is Constable Vishambher Datt, who registered the FIR and made necessary entries in the GD. In their statement under Section 313 CrPC, accused respondents categorically claimed their innocence.

5. After appreciating the evidence, learned trial court held the accused not guilty and acquitted them of all the charges framed against them.

6. We have heard learned Counsel for the parties and carefully examined the material on record.

7. Learned State Counsel submitted that the trial court has committed material illegality in acquitting the accused/respondents from the charges. He further submitted there were injured witness as well as eyewitness account of the occurrence and there was consistency in prosecution evidence, however, the trial court did not appreciate the evidence in accordance with the legal principles.

8. Referring to the findings of trial court, learned Counsel for the accused respondents submitted that the prosecution witnesses were not reliable. There were serious discrepancies in the deposition of witnesses. Motive of the occurrence has also not been proved.

9. In holding the accused respondents not guilty, the trial court appears to have been prompted by the following considerations

which Mr. Anil Kumar Joshi, learned Counsel for the accused respondents, has also highlighted:

(i) PW1 Shobha Das and PW3 Chaman Lal (complainant) deposed that complainant was taken to PHC, Purola on 23.4.2010 itself, while PW2 Dr. D.C. Arya, who medically examined the injured/complainant, has deposed that complainant was brought at 9 AM on 24.4.2010.

(ii) PW3 was referred to higher centre and it is also the case of prosecution that he received further treatment in higher centre, but no evidence in this regard was placed on the record.

(iii) In all, six injuries were found on the person of injured Chaman Lal. All injuries, except injury no. (1) and (4) were found to be simple and to ascertain the gravity of injury no. (1) and (4), injured/complainant was advised CT scan and x-ray and thus referred to higher centre. However, no CT scan report/x-ray plate was brought on record and no evidence of receiving treatment at higher centre was adduced and thus the trial court held that chargesheet has been submitted without ascertaining the gravity of injuries.

(iv) PW4 Kamleshwar, who was allegedly with complainant at the time of incident, deposed that 15-20 villagers came at the spot after he alerted the villagers, but he could not name any of those villagers despite acknowledging that he identified all of them.

(v) PW4 further deposed that complainant/injured remained unconscious for two hours and he regained consciousness when he fed water to him, while complainant (PW3) deposed that he remained unconscious for half an hour only. Thus trial court held that presence of PW4 at the spot is doubtful.

(vi) PW4 Kamleshwar was not medically examined.

(vii) PW1 and PW5 are hearsay witnesses.

(viii) Prosecution failed to produce bloodstained clothes of complainant/injured.

(ix) I.O. has not shown in the site plan as to in which direction, from place 'A' in the site plan, the complainant was pushed. Thus the trial court disbelieved the site plan prepared by I.O. (PW6).

10. Thus the trial court noted serious discrepancies in the evidence adduced by the prosecution, regarding the manner in which the alleged occurrence took place, about the presence of accused and victim at the place of occurrence and the manner in which the investigation was carried out, and concluded that PW3, PW4 and PW6 are not witness for the truth. We find that the trial court has given valid and cogent reasons for discarding the testimony of the injured and other witnesses. Having perused the evidence on record, we see no reason to disagree with the view taken by the trial court. It is settled law that if upon appreciation of the evidence adduced in the

case, whether by the prosecution or by the accused, a reasonable doubt is created in the mind of the Court as regards the ingredients of the offence including mens rea of the accused, he would be entitled to be acquitted. Thus we are in general agreement with the conclusions arrived at by the trial court.

11. Consequently, the government appeal fails and is dismissed. Let the trial court record be sent back.

(Vivek Bharti Sharma, J.)

(Manoj Kumar Tiwari, A.C.J.)

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