



2026:UHC:3930

Judgement Delivered on: 20.05.2026

Judgement Reserved on: 16.04.2026

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

Criminal Appeal No.185 of 2021

Vinod

.....Appellant

Vs.

State of Uttarakhand

.....Respondent

Presence:

Mr. Ankur Sharma, learned counsel for the Appellant.

Mr. Vikas Uniyal, learned counsel, for the State.

Hon'ble Ashish Naithani, J.

The present criminal appeal has been preferred under Section 374 of the Code of Criminal Procedure assailing the judgment and order dated 06.03.2020 passed by the learned Additional Sessions Judge, Dehradun in Session Trial No.108 of 2002, State vs. Sameem and others, whereby the present Appellant Vinod has been convicted under Section 308 IPC and sentenced to undergo five years' rigorous imprisonment.

2. The case, as emerges from the record, is that on the basis of a written report lodged by the injured informant Rama at Police Station Sahaspur, District Dehradun, Case Crime No.63 of 2002 came to be registered under Sections 147 and 308 IPC against the present Appellant and other co accused persons. The allegation in the FIR was that the accused persons, forming an unlawful



assembly, assaulted the injured persons by means of lathi and danda, resulting in injuries to the victims.

3. During the course of investigation, statements of witnesses under Section 161 CrPC were recorded and the injured persons were medically examined. Upon completion of investigation, charge sheet came to be submitted against the accused persons under Sections 147 and 308 IPC.

4. The record further reveals that the trial initially culminated into a judgment dated 19.05.2005, whereby the accused persons, including the present Appellant, were convicted under Sections 147 and 308 IPC. However, instead of imposing substantive sentence, the learned trial court extended to them the benefit of the provisions of the First Offenders Act.

5. The aforesaid judgment was thereafter subjected to challenge before this Court in Government Appeal No.78 of 2007, preferred by the State against the order extending benefit under the First Offenders Act. Pursuant to the proceedings before this Court, the matter again came up before the learned trial court for reconsideration on the aspect of sentence and ultimately the impugned judgment and order dated 06.03.2020 came to be passed, whereby the present Appellant was sentenced to undergo five years' rigorous imprisonment for the offence punishable under Section 308 IPC.

6. Learned counsel appearing for the Appellant submits that the impugned judgment suffers from serious legal as well as factual infirmities and the learned trial court has failed to independently reassess the evidence available on record while passing the



subsequent judgment imposing substantive sentence upon the Appellant.

7. Learned counsel submits that the prosecution story is not supported by any truly independent witness and the conviction rests substantially upon interested and partisan testimony. It is argued that despite the alleged incident having taken place in a locality where independent persons were available, no neutral witness has been examined by the prosecution to corroborate the allegations against the Appellant.

8. Learned counsel for the Appellant further submits that the learned trial court has failed to properly appreciate the contradictions and inconsistencies appearing in the statements of prosecution witnesses with regard to the manner of occurrence, participation of the accused persons, and the nature of assault allegedly inflicted.

9. It is argued that no specific and distinct role causing any life threatening injury has been attributed to the present Appellant and the prosecution evidence merely contains omnibus allegations against all accused persons collectively. Learned counsel submits that in absence of a clear overt act attributable to the present Appellant, the conviction under Section 308 IPC could not have been sustained.

10. Learned counsel further submits that the prosecution has failed to establish the essential ingredients necessary for attracting Section 308 IPC, particularly the existence of intention or knowledge that the act was likely to cause culpable homicide. It is argued that the nature of injuries allegedly sustained by the injured



persons does not by itself establish the requisite mens rea contemplated under Section 308 IPC.

11. Learned counsel for the Appellant also submits that the learned trial court, while passing the impugned judgment dated 06.03.2020, has substantially proceeded on the basis of observations made in Government Appeal No.78 of 2007 and has not independently re analysed the evidentiary material available on record in its proper perspective.

12. Learned counsel further submits that the earlier judgment dated 19.05.2005 itself reflected that the learned trial court at the relevant point of time did not consider the case to be of such gravity as to warrant substantive imprisonment and had therefore extended benefit under the provisions of the First Offenders Act. It is contended that the subsequent imposition of five years' rigorous imprisonment after considerable lapse of time, without any fresh evidentiary development, reflects improper exercise of judicial discretion.

13. Learned counsel also submits that there existed no established motive attributable to the present Appellant and the prosecution has failed to prove its case beyond reasonable doubt. It is argued that the impugned judgment is against the weight of evidence and is based upon conjectures and surmises rather than reliable and cogent evidence.

14. Per contra, learned Deputy Advocate General appearing for the State submits that the State has fully succeeded in establishing the guilt of the Appellant and the findings recorded by



the learned trial court are based upon proper appreciation of oral and documentary evidence available on record.

15. Learned State Counsel submits that the injured witnesses have consistently supported the version of the occurrence as well as participation of the accused persons, including the present Appellant. It is argued that the testimony of an injured witness carries great evidentiary value and ordinarily cannot be discarded merely for want of independent corroboration.

16. Learned State Counsel further submits that the medical evidence available on record sufficiently corroborates the allegations regarding assault by lathi and danda and the injuries sustained by the victims clearly establish the violent nature of the occurrence.

17. It is further submitted on behalf of the State that the learned trial court has rightly appreciated the material available on record and has assigned cogent reasons while recording conviction against the Appellant. Learned State Counsel accordingly submits that no interference is warranted in exercise of appellate jurisdiction and the present appeal deserves to be dismissed.

18. This Court has heard learned counsel for the parties and perused the records.

19. The present matter arises out of an occurrence of the year 2002. The record reflects that the Appellant along with other accused persons faced trial for the offences punishable under Sections 147 and 308 IPC in relation to allegations of assault by means of lathi and danda upon the injured persons.



20. It further emerges from the record that the learned trial court, while initially deciding the matter vide judgment dated 19.05.2005, had indeed recorded conviction under Sections 147 and 308 IPC, however, instead of imposing substantive sentence, extended to the accused persons benefit under the provisions of the First Offenders Act. Such circumstance itself indicates that at the relevant point of time the learned trial court did not find the matter to be of such aggravated nature warranting immediate substantive incarceration.

21. Subsequently, pursuant to proceedings before this Court in Government Appeal No.78 of 2007, the matter again came to be considered by the learned trial court and vide the impugned judgment dated 06.03.2020, the present Appellant was sentenced to undergo five years' rigorous imprisonment under Section 308 IPC.

22. Upon careful examination of the impugned judgment and the grounds urged before this Court, this Court finds substance in the contention raised on behalf of the Appellant that the learned trial court, while passing the subsequent judgment imposing substantive sentence, has not independently undertaken a deeper evidentiary analysis regarding the precise role, intention, and criminal culpability attributable specifically to the present Appellant.

23. The allegations levelled in the FIR as well as the prosecution version, as emerging from the record, primarily attribute a collective assault by multiple accused persons using lathi and danda. However, the material available before this Court does not clearly demonstrate any distinct overt act attributable



exclusively to the present Appellant from which the ingredients necessary for attracting Section 308 IPC can safely and conclusively be inferred.

24. In order to sustain conviction under Section 308 IPC, the prosecution is required to establish not merely the factum of assault, but also the existence of intention or knowledge contemplated under the provision, namely that the act was committed under such circumstances that, if death had been caused, the offence would have amounted to culpable homicide not amounting to murder.

25. Mere presence at the spot or participation in a scuffle would not ipso facto attract Section 308 IPC unless the surrounding circumstances, nature of injuries, weapon used, and manner of assault collectively establish the requisite mens rea contemplated under law.

26. In the present matter, the prosecution case appears to rest substantially upon omnibus allegations against the accused persons collectively. No clear and specific role causing any injury of such gravity as would prima facie indicate intention or knowledge contemplated under Section 308 IPC has been satisfactorily brought forth against the present Appellant.

27. This Court further finds that the prosecution has not examined any truly independent witness to the occurrence despite the incident allegedly having taken place in a populated locality. Though conviction can undoubtedly be based upon testimony of injured witnesses alone, the Court is nevertheless required to scrutinize such testimony with greater care where allegations are



omnibus in nature and specific attribution of criminal intent becomes material.

28. The learned trial court, while passing the impugned judgment, appears to have substantially proceeded in consequence of the earlier proceedings before this Court in Government Appeal No.78 of 2007, however, the impugned judgment does not reflect sufficiently detailed independent reassessment of the evidentiary material qua the precise ingredients of Section 308 IPC against the present Appellant.

28. Another circumstance which cannot be ignored by this Court is the extraordinary lapse of time involved in the matter. The occurrence pertains to the year 2002. The Appellant initially received benefit under the provisions of the First Offenders Act in the year 2005 and substantive sentence came to be imposed only in the year 2020 after prolonged proceedings extending over nearly two decades.

29. Having considered the totality of circumstances, nature of allegations, absence of clear individual attribution, omnibus nature of evidence, prolonged passage of time, and the earlier extension of benefit under the provisions of the First Offenders Act, this Court is of the considered opinion that the prosecution has not succeeded in establishing the charge against the present Appellant under Section 308 IPC beyond reasonable doubt.

30. Consequently, the impugned judgment and order dated 06.03.2020 passed by the learned Additional Sessions Judge, Dehradun in Session Trial No.108 of 2002, insofar as it relates to the present Appellant Vinod, cannot be sustained in the eyes of law.



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ORDER

The criminal appeal is allowed.

The judgment and order dated 06.03.2020 passed by the learned Additional Sessions Judge, Dehradun in Session Trial No.108 of 2002, State vs. Sameem and others, convicting and sentencing the present Appellant Vinod under Section 308 IPC, is hereby set aside.

The Appellant is acquitted of the charge under Section 308 IPC.

The Appellant be released forthwith, if not required in any other case.

(Ashish Naithani J.)

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