IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Revision No.76 of 2012

Smt. Kaushalaya Malik and others .....Revisionists

Versus

State of Uttarakhand ..... Respondent

Mr. Kishore Kumar, learned Counsel for the revisionist.
Ms. Meena Bisht, learned H. for the State

Hon'ble R.C. Khulbe, J.

This criminal revision, preferred by the revisionists u/s 397/401 of Code of Criminal Procedure, 1973 (hereinafter to be referred as Cr.P.C.), is directed against the judgment and order dated 24.08.2011 passed by the Addl. Judicial Magistrate, Khatima, in Criminal Case No.670 of 2011, State vs. . Kaushalaya Malik and others, whereby the learned Magistrate convicted the revisionists under Section 323/149 IPC and sentenced them six months S.I. and with a fine of Rs.1000/- each and also convicted under Section 506/149 IPC and sentenced them one years R.I. and with a fine of Rs.1,000/- as well as the judgment and order dated 27.04.2012 passed by the Sessions Judge, U.S. Nagar in Criminal Appeal No.125 of 2011, Smt. Kaushalaya Malik and others v. State, whereby the learned Sessions Judge dismissed the appeal and affirmed the order passed by the Lower Court.

2. Brief facts of the present case are that PW2 Lila Rai submitted information Ex. Ka-1 reporting Police Chawki Sakti farm, Sitarganj on 02.06.2006, accordingly, chick FIR Ex. Ka-6 was lodged on the very same date at 16:15 against the revisionists. After the investigation, charge sheet Ex.Ka-5 was submitted against the revisionists; accordingly, cognizance was taken after giving necessary copies to the revisionists as provided

under Section 207 Cr.P.C., statements of revisionists were recorded, who pleaded not guilty and claimed to be tried.

3. On this prosecution got examined PW1 Reena Pal (injured), PW2 Lila Rai (informant), PW3 Rakhi Rai (eyewitness), PW4 Dr. Munna Lal (who conducted the medical test of Reena and Lila on 02.06.2006 and prepared medical report Ex.Ka-2 and Ex.Ka-3), PW5 Amar Singh and PW6 S.I. Danu (who investigated the matter and submitted the charge against the revisionists).

4. Oral and documentary evidence was put to the revisionists under Section 313 Cr.P.C. in reply to which they alleged the same to the false but no evidence in defense was adduced.

5. After hearing both the parties, learned trial Court found that prosecution has successfully proved the charges under Sections 323, 506 IPC read with 149 IPC against the revisionists and, accordingly, they were found guilty. On hearing the sentence each one of them were sentenced for the offences as mentioned in para no.1 of this judgment. Aggrieved by it, the revisionists preferred criminal appeal no.125/2011, Smt. Kaushalaya Malik Vs. State, before the learned Sessions Judge, Udham Singh Nagar. The learned Sessions Judge, after hearing both the parties, dismissed the appeal and affirmed the lower Court order. Hence this revision has been filed.

6. I have also gone through the statements of witnesses, namely, PW1 Reena Pal, PW2 Lila Rai, PW3 Rakhi Rai, PW4 Dr.Munna Lal, PW5 Amar Singh and PW6 S.I. Danu. The testimony of the above witnesses is not only natural but also trustworthy. They have been subjected to lengthy cross-examination but nothing has come out in their evidence which may create any reasonable doubt in their testimony. In the above

circumstances, the Trial Court has rightly held that the prosecution has successfully proved the charges against the revisionists beyond reasonable doubt. There is no illegality in the impugned judgment, since material and substantial evidence is available on record against the revisionists. The revisionists have rightly been convicted by the Trial Court u/s 323, 506 IPC read with 149 IPC and the order of conviction and sentence has also rightly been upheld by the Appellate Court.

7. Learned counsel for the revisionists fairly argued that he does not want to argue the case on merit, since the learned trial Court has rightly convicted the revisionists as per evidence produced by the prosecution but the matter relates to the year 2006; 14 years have elapsed; they are bread earner of their family; there is no criminal history against them; the injuries are minor in nature and a benefit of first offenders' act may be given to them in the light of the evidence.

8. Learned State Counsel although opposed for granting the benefit of first offender but fairly submitted that as per the evidence the injuries are simple in nature; the matter relates to the year 2006; 14 years have elapsed; he did not receive any information regarding the criminal history of the revisionists and the Court has a right to release the revisionists on probation.

9. In this regard, the Hon'ble Apex Court in the case of "*Commandant, 20th Battalion, ITB Police Vs. Sanjay Binjola*" reported in 2001 SCC (Cri.) 2, 897, in paragraph no.7, has held as under:

> "7. Probation of Offenders Act has been enacted in view of the increasing emphasis on the reformation and rehabilitation of the offenders as a useful and self-reliant members of society without subjecting them to deleterious effect of jail life. The Act empowers the Court to release on probation, in all suitable cases, an offender found guilty of having

committed an offence not punishable with death or imprisonment for life or for the description mentioned in Sections 3 and 4 of the said Act."

10. Section 4 of the Probation of Offenders Act, 1958 read as under:

"4. Power of court to release certain offenders on probation of good conduct

1. When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour: "Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if 5 any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

2. Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

3. When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order, impose such conditions as it deems necessary for the due supervision of the offender.

4. The Court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to

residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender. 5. The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned."

11. Section 4 of the Act would demonstrate that if a person is found guilty of having committed an offence not punishable with death or imprisonment for life, in that event, considering the nature of the offence and the character of the offender, the Court, instead of sentencing him at once to any punishment, may release such person on probation of good conduct, on his entering into a bond, with or without sureties, for a period not exceeding three years. Before releasing the offender, on probation, the Court must satisfy itself that offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the Court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond. The Court before passing the order of release on probation may also call report of the Probation Officer. The Court while releasing on probation may also direct that accused shall remain under the supervision of Probation Officer for a period not less than one year.

12/13. A careful reading of Section 4 of the Act would reveal that if the offence is punishable for a period more than 2 years, but not punishable with death or imprisonment for life, admonition of sentence shall not be required and if person, released on probation, is found involved in any offence during the period of probation or otherwise, is found behaving in violation of condition of bond, he shall be directed to serve out the sentence

awarded by the court. In other words, while on probation, such person should not involve himself in subsequent offence or must honour the condition of his bond / surety bond and if he breaches the same, he has to serve out the sentence awarded by the Court.

14. In the present case the revisionists are the first-time offender. The incident seems to have taken place 14 years ago.

15. Therefore, considering the provisions of the Probation of Offenders Act, 1958, no useful purpose would be served to send the revisionist to jail to serve out the remaining sentence. Rather, in the opinion of the Court, he should be released on probation in order to reform himself.

16. The impugned judgments and orders passed by the trial court and the appellate Court below are hereby affirmed and the present revision, thus, stands partly allowed. The conviction part of the revisionists, under Section 323, 506 IPC read with 149 IPC, are left intact. However, as far the sentence part is concerned, it is directed that the revisionists shall be released on probation for a period of one year on furnishing a personal bond to the satisfaction of the concerned Trial Court with one surety. The fine, as imposed by the Trial Court, shall be deposited by the revisionists within a period of one month, if not already deposited, from the date of receipt of this order, to the court concerned. The concerned Magistrate shall be at liberty to impose such conditions while executing the bond which he feels fit in accordance with the law. It goes without saying that if accused/revisionists fail to observe good conduct and behaviour during probation or is found violating any condition, to be imposed; the Court concerned shall be at liberty to cancel the bonds calling the accused-

revisionists to serve out the remaining sentence. The revisionist shall appear before the Trial Court on or before 29.09.2020 for compliance.

17. Let a copy of this judgment be sent forthwith to the learned Trial Court for information/compliance.

(R.C. Khulbe, J.)
20.08.2020

Balwant/Sukhbant