

NON REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1105 of 2015
(@ SLP(Cri.) No.7451 of 2014)

Fireman Ghulam Mustafa .. Appellant(s)

versus

State of Uttaranchal
(Now Uttarakhand) .. Respondent(s)

With

CRIMINAL APPEAL NO. 1106 of 2015
(@ SLP(Cri.) No.6249 of 2014)

J U D G M E N T

C. NAGAPPAN, J.

1. Leave granted.
2. These two appeals are preferred against the common judgment dated 2.4.2014 of the High Court of Uttarakhand at Nainital, in Criminal Appeal No. 68 of 2003 and Criminal Appeal No. 96 of 2003.

3. Both the appellants were accused nos. 1 and 2 in S. T. No. 80 of 1998 on the file of Additional Sessions Judge (Fast Track Court) Almora and they were tried for the offences under Section 307 and 452 of Indian Penal Code. The Trial Court found them guilty of both the charges and sentenced them each to undergo 7 years rigorous imprisonment and pay a fine of Rs. 5000/- and in default to undergo imprisonment for six months for the offence under Section 307 IPC and further sentenced them each to undergo rigorous imprisonment for period of 3 years and pay a fine of Rs. 1000/- with default sentence for the offence under Section 452 IPC.

4. Aggrieved by the conviction and sentence both the accused preferred independent criminal appeals and they were heard together and the High Court dismissed both the appeals by the impugned judgment. The said judgment is under challenge now.

5. When these appeals by way of special leave petitions came up for preliminary hearing before us on different dates, we issued notice to the Respondent-State limited to the extent that instead of conviction of the petitioners under Section 307 of IPC, whether the conviction would have been either under Section 323 or under Section 325 of the IPC. We have accordingly heard learned counsel for the parties on that limited extent.

6. Both the appellants and the deceased were employed as Firemen at the Fire Station Headquarter, Bageshwar. PW1 Munnu Lal, Fire Station Officer, resided at the distance of about 300 yards in a rented accommodation provided by his landlord PW2 Ratan Singh. On the occurrence night at about 1 a.m. three accused, who were Firemen, came to his residence, knocked his door and PW1 Munnu Lal switched on the light and opened the door and the accused barged in

with lathis and indiscriminately beat him with lathis. PW1 Munnu Lal screamed and on hearing the cry PW2 Ratan Singh and another tenant came and witnessed the occurrence and on their intervention the assailants left the spot. On the information given by PW2 Ratan Singh, the SHO of local police station rushed there and took PW1 Munnu Lal to the local government hospital. PW3 Dr. N. D. Punetha examined PW1 Munnu Lal and found 18 injuries including fractures of wrist bones in both the hands. He was shifted to District Headquarter Hospital and thereafter to the Medical College Hospital, Allahabad. On the complaint of landlord PW2 Ratan Singh, F.I.R. came to be registered and after investigation, charge sheet was filed against all the accused. The case was committed to sessions and during its pendency, one of the accused Hukam Singh died and the charges against him stood abated. The

remaining two were tried and convicted for the offences as stated supra.

7. The learned senior counsel appearing for the appellants contended that the overt acts of the appellants were committed not with the intention to cause death of the victim and it would not attract the offence under Section 307 IPC and it may fall under either Section 323 or Section 325 of the Indian Penal Code. Per contra, the learned counsel appearing for the respondent-State contended that the appellants as a revenge for recording their absence from duty by PW1 Munnu Lal at the Fire Station, entered his house in the midnight and attacked him with lathis with the intention to commit murder and the courts below have rightly convicted them for the offence under Section 307 IPC and the conviction and the sentence are sustainable.

8. To justify a conviction under Section 307 IPC the Court has to see whether the act was done with the

intention to commit murder and it would depend upon the facts and circumstances of the case. Although the nature of injuries caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be gathered from the circumstances like the nature of weapons used, parts of the body where the injuries were caused, severity of the blows given and motive, etc.

9. Just before the occurrence PW1 Munnu Lal came to the Fire Station for surprise check and recorded the absence of the accused in the general diary and returned home. Within few minutes the appellants/accused armed with lathis went to his house and indiscriminately beat him with lathis causing injuries in neck, chest, hands, buttocks and thighs. PW3 Dr. N.D. Punetha mentioned in her report that injury nos.11, 17 and 18 are grievous in nature. In fact the grievous injuries are the fractures of wrist bones in both the

hands. Though the injuries caused were 18 in number they were not on vital parts of the body. It is true that the appellants had acted in a state of fury but it cannot be said that they caused those injuries with the intention to cause death. The appellants are not liable to be convicted for the offence under Section 307 IPC and at the same time for having voluntarily caused grievous hurt they are liable to be punished under Section 325 of the Indian Penal Code.

10. Both the counsel appearing for the appellants submitted that the occurrence had taken place in the year 1998 when all the accused were in their mid 20s and they have been dismissed from service and both the appellants have undergone about 17 months rigorous imprisonment and the sentence may be reduced.

11. Considering the circumstances of the case and keeping in view the age of the appellants, their family strength, as also the fact the incident had taken place in

the year 1998, custodial sentence of 3 years rigorous imprisonment for the offence under Section 325 IPC would meet the ends of justice.

12. In the result, the conviction and sentence imposed on both the appellants for the offence under Section 307 IPC are set aside and instead they are convicted for the offence under Section 325 IPC and sentenced to undergo 3 years rigorous imprisonment each and to pay a fine of Rs.5000/- each and in default to undergo rigorous imprisonment for one month. The conviction and sentence awarded to the appellants under Section 452 of IPC shall remain unaltered. Both the sentences shall run concurrently. The appeals are allowed in part and to the extent indicated above.

.....**J.**
(M.Y. Eqbal)

.....**J.**
(C.Nagappan)

New Delhi;
August 25, 2015