

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

**COMPOUNDING APPLICATION NO.816 OF 2009  
IN  
CRIMINAL APPEAL No.24 of 2004**

Om Prakash

..... Appellant

**Versus**

The State

..... Respondent

**Dated: July 30, 2009**

**Sri M.A.Khan, learned counsel for the applicant/appellant  
Sri Atul Bhatt, learned counsel for the complainant  
Sri Tanuj Semwal, learned AGA for the State**

**HON. DHARAM VEER, J.**

This appeal, preferred by the appellant u/s 374(2) of The Code of Criminal Procedure, 1973 (*hereinafter to be referred as Cr.P.C.*), is directed against the judgment and order dated 19.1.2004 passed by Addl. Sessions Judge/II FTC, Nainital in S.T. No.64 of 2001, State Vs. Om Prakash, whereby the learned Addl. Sessions Judge has convicted the appellant/accused under Section 307 of The Indian Penal Code, 1860 (*hereinafter to be referred as I.P.C.*) and sentenced him to seven years' R.I. However, the appellant-accused was acquitted of the offence punishable u/s 3(2)(5) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities Act), 1989 and also u/s 25 of the Arms Act, 1959.

2. I have heard learned counsel for the parties and perused the entire material available on record.

3. In brief, the facts of the case of the prosecution is that P.W.3 Rama lodged an FIR at P.S. Gadarpur with

the averments that on 2.4.1998, she along with her sister in law Usha Rani (P.W.1) was working on the road, then at about 9 A.M., appellant-accused Om Prakash came, being armed with a pistol, and said to Usha that he would teach the lesson to her father for solemnizing her marriage with someone else. Meanwhile, Shakuntala (P.W.2) also came near Usha (P.W.1) and in the meantime, appellant-accused fired upon Usha with the intention to kill her, as a result of which Usha and Shakuntala both fell down due to receiving the injuries. On hearing the noise of fire, Kallu, Amar Singh and so many other people reached on the place of occurrence and on seeing them, appellant-accused ran away from there. From the spot, injured Usha and Shakuntala were taken to Gadarpur Hospital. With the same averments, the report was lodged by P.W.3 Rama on 2.04.1998 at 10.25 AM at P.S. Gadarpur, i.e. Ex.Ka-1. On the basis of this FIR, H.M. Rishipal Singh prepared the Chik FIR, i.e. Ex.Ka-4. The entry was also made in the G.D., the carbon copy of which is Ex.Ka-5. The investigation of this case was entrusted to S.I. Babu Ram (P.W.5). Injured Usha (P.W.1) was medically been examined on 2.4.1998 at 10:35 A.M. by P.W.6 Dr. S.P.S. Sandhu and her medical report Ex.Ka-15 and supplementary report Ex.Ka-16 was prepared. Likewise injured Km. Shakuntala was also medically been examined by the same medical officer and her medical report Ex.Ka-17 and supplementary report Ex.Ka-18 were prepared. The I.O. also took in his possession the blood stained clay and plain clay from the place of occurrence and prepared the Fard, i.e. Ex.Ka-2. The I.O. also inspected the place of occurrence and prepared the site plan, i.e. Ex.Ka-6. During the course of investigation, the I.O. recorded the statements of

witnesses and after completing the investigation, filed the charge sheet, i.e. Ex.Ka-14.

4. Learned Chief Judicial Magistrate, Nainital committed the case to the court of Sessions on 30.04.2001 after giving necessary copies to the appellant /accused as required under Section 207 Cr.P.C. The case was transferred by learned Sessions Judge to Addl. Sessions Judge for disposal according to law.

5. On 28.5.2001, learned Additional Sessions Judge/I FTC, Nainital framed the charges against the appellant/accused under Section 307 IPC and also u/s 3(2)(5) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities Act), 1989. The charges were read over and explained to the appellant/accused, who pleaded not guilty and claimed to be tried.

6. To prove its case, the prosecution has examined P.W.1 Smt. Usha, P.W.2 Smt. Shakuntala, who are injured eyewitness, P.W.3 Smt. Rama, complainant, P.W.4 Kamal Singh, who proved the Fards Ex.Ka-2 and Ka-3, P.W.5 Babu Ram Mehta (Retd. Inspector) who investigated the crime and P.W.6 Dr. S.P.S. Sindhu, who medically examined the injured.

7. Thereafter, the statement of the appellant/accused was recorded u/s 313 of Cr.P.C. The oral and documentary evidence was put to him in question form, who denied the allegations made against him and stated that he has been falsely implicated. However, he did not produce any oral or documentary evidence in defence.

8. After appreciating the evidence on record and hearing learned counsel for the parties, the learned Additional Sessions Judge/II FTC, Nainital vide judgment

and order dated 19.01.2004 convicted and sentenced the appellant/accused as discussed above. Feeling aggrieved with the aforesaid judgment and order, the appellant/accused has preferred the present appeal.

9. P.W.1 is Smt. Usha, who is the injured eyewitness of the case, has supported the entire version of the FIR in her statement.

10. P.W.2 is Smt. Shakuntala, who too is the injured eyewitness of the case, has also supported the entire version of the FIR in her statement.

11. P.W.3 is Smt. Rama, complainant and eyewitness of the case, who too supported the version of FIR in her statement.

12. P.W.4 is Kamal Singh who proved the Fard Ex.Ka-2 prepared by I.O. for taking the blood stained clay and plain clay from the place of occurrence. He also proved the Fard Ex.Ka-3 prepared by Investigating Officer for recovering a pair of sandals, pellet, Tikli and Khokha cartridge from the place of occurrence.

13. P.W.5 Inspector (Retd.) Babu Ram Mehta, I.O. of the case, who stated that Chik FIR of the case was prepared by H.M. Rishipal Singh, i.e. Ex.Ka-4. The necessary entry was also made by him in the G.D., the copy of which is Ex.Ka-5. He inspected the place of occurrence and prepared the site plan, i.e. Ex.Ka-6. He also proved the Fards Ex.Ka-2 and Ka-3 prepared by him. During investigation, he recorded the statements of witnesses and on completion of investigation, he filed the charge sheet, i.e. Ex.Ka-14.

14. P.W.6 is Dr. S.P.S. Sandhu who has proved the medical report Ex.Ka-15 of injured Usha and also that of injured Shakuntala Ex.Ka-16. After receipt of x-ray

report, he prepared the supplementary reports of Usha and Shakuntala, which are Ex.Ka-16 and Ka-18 respectively.

15. Thereafter, the statement of the appellant/accused was recorded u/s 313 of Cr.P.C. The oral and documentary evidence was put to him in question form, who denied the allegations made against him and stated that he has been falsely implicated. However, he did not produce any oral or documentary evidence in defence.

16. Sri M.A. Khan, learned counsel for the appellant/accused submitted that on the basis of the evidence discussed above, no case u/s 307 IPC is made out against the appellant-accused and at the most, only the offence u/s 324 IPC is made out. I find substance in the argument put forth by counsel for the appellant due to the reason that the injuries shown in the injury reports of injured Usha and Shakuntala are simple in nature. Even P.W.6 Dr. S.P.S. Sandhu has stated in his cross-examination that injuries on the persons of both the injured were not dangerous to life and as they were not grievous in nature. Besides this, as per the evidence discussed above, the injuries were not caused by the appellant-accused with the intention to kill the injured Usha and Shakuntala. Thus, from the evidence of medical officer P.W.6 Dr. S.P.S. Sandhu and also from the injury reports and supplementary reports of both the injured persons, it is proved that the injuries caused to the injured persons were not dangerous to life as they were not grievous in nature. Therefore, as per the above-said discussion, the present case falls under Section 324 IPC and not under Section 307 IPC as has been held by the trial court.

17. Learned counsel for the complainant Rama and injured Smt. Usha and Smt. Shakuntala and the accused/appellant Om Prakash have moved a compounding application no.816/09 before this Court which is supported by the affidavits of appellant-accused Om

Prakash and that of complainant Rama and injured persons Smt. Usha and Smt. Shakuntala. Learned counsel for both the parties have submitted that both the parties have entered into compromise outside the Court and the relations between the parties have become cordial and now they are living peacefully having no dispute with each other. The complainant as well as injured are also present in person before the Court who too have stated that now there is no dispute between them and the appellant-accused and they have made this compromise without any pressure or force. It is, therefore, submitted by learned counsel for both the parties that the appeal may be decided in terms of the compromise arrived at in between the parties.

18. After considering all the facts and peculiar circumstances of the case, it is expedient in the interest of justice that the compounding application be allowed and the case may be decided in terms of the compromise arrived at in between the parties. Accordingly, the compounding application is allowed. The compromise arrived at in between the parties is accepted and the offence under Section 324 IPC is accordingly compounded in terms of the compromise arrived at in between the parties.

19. Thus, for the reasons as recorded above, The judgment and order dated 19.01.2004 passed by Additional Sessions Judge/II FTC, Nainital in Sessions Trial No.64/2001, State Vs. Om Prakash, convicting the accused/appellant u/s 307 IPC and sentencing him to seven years' R.I., is hereby set aside and he is found guilty of the offence punishable u/s 324 IPC. However, since both the parties have entered into compromise, the offence u/s 324 IPC is compounded and the accused/appellant is hereby acquitted of the charge of

offence punishable u/s 324 IPC. The appeal is liable to be disposed of accordingly.

20. For the reasons as recorded above, the appeal is disposed of.

21. Let the record of the case be sent back.

**(Dharam Veer, J.)**

**30.07.2009**

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