

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

**Criminal Revision No.200 of 2009**

Rakesh Kumar Bhandari

..... Revisionist

**Versus**

State of Uttarakhand

..... Respondent

*Mr. Raj Kumar Verma, learned Counsel for the revisionist..*

*Mr. A.K. Sah, learned A.G.A. along with Ms. Mamta Joshi, B.H. for the State*

**Hon'ble R.C. Khulbe, J.**

This criminal revision, preferred under Section 397/401 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.) is directed against the judgment and order dated 31.8.2009 passed by learned CJM, Uttarkashi in Criminal Case No.397 of 2008, State v. Dharam Singh and another, order dated 31.8.2009 passed in CrI. Case No.398 of 2008, State v. Dharam Singh & others, and order dated 31.8.2009 passed in CrI. Case No.491 of 2008, State v. Dharam Singh and others, whereby the learned CJM has convicted the revisionist Rakesh Kumar Bhandari u/s 411 IPC and sentenced him to undergo three years' S.I. with fine of Rs.1,000/-, in each of the criminal cases; the revisionist has also challenged the judgment and order dated 30.11.2009 passed by learned Sessions Judge, Uttarkashi in Criminal Appeal Nos.34/2009, 36/2009 and 38/2009, whereby the Appellate Court has, though, affirmed the conviction, but reduced the sentence to that of two years' S.I. instead of 3 years with fine of Rs.1,000/-.

2. Facts to limited extent are that in Criminal Case No.397 of 2008 an information was given by Poornanand Nautiyal and in Criminal Case No. 398 of 2008 an information was given by Smt. Suman Lata before Tehsildar Chinyalisaur and in Criminal Case No.491 of 2008 an FIR was lodged at Revenue Circle Sunargaon, as per the information given by the Village Pradhan Ravindra Singh. After investigation, separate charge-sheets were submitted against the revisionist.

3. C.J.M. Uttarkashi, on receipt of the charge-sheet and after giving necessary copies to the accused as required u/s 207 Cr.P.C., took the cognizance and, accordingly, framed the charges. The accused pleaded not guilty and claimed to be tried.

4. The prosecution adduced a number of witnesses to prove its case. Thereafter, the oral and documentary evidence was put to the accused u/s 313 Cr.P.C., in which he alleged the same to be false but no evidence was adduced.

5. After hearing the parties, the Trial Court found the prosecution, as successfully proved, for the charge of offence u/s 411 IPC and accordingly, the revisionist was convicted. After hearing him on sentence, the accused was sentenced as mentioned in paragraph no.1 of the judgment.

6. Aggrieved thereby, the revisionist Rakesh Kumar filed three separate appeals viz. Criminal Appeal Nos.34 of 2009, 36 of 2009 and 38 of 2009. Learned Sessions Judge, Uttarkashi after hearing appeals, passed the common judgment on 30.11.2009, thereby, affirmed the conviction part, as recorded by the CJM, Uttarkashi but reduced the sentence to two years' S.I. instead of 3 years' S.I. with fine of Rs.1,000/-. Feeling aggrieved, the revisionist Rakesh Kumar Bhandari has filed the present revision.

7. This Court has gone through the statements of all the witnesses. The testimony of all the witnesses is not only natural but also trustworthy. They have also been subjected to lengthy cross-examination but nothing has come out in their evidence which may create any reasonable doubt in their testimony.

8. The learned Counsel for the revisionist fairly argued that the Trial Court assessed the evidence properly

and the Appellate Court has affirmed the conviction legally and he has no objection to it; he fairly submitted that the Criminal Appeal Nos.34 of 2009, 36/2009 and 38/2009, were heard and decided by a common judgment by the learned Sessions Judge, Uttarakashi, however, he did not give the benefit to the revisionist-accused as laid down u/s 427 Cr.P.C.

9. Since all the three appeals were decided by a common judgment, accordingly, the sentence awarded by the Appellate Court should have been directed to run concurrently in both the criminal cases.

10. Section 427 Cr.P.C. which relates to 'sentencing', reads as follows: -

"427. Sentence on offender already sentenced for another offence.

(1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence: Provided that where a person who has been sentenced to imprisonment by an order under section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence."

11. Normally, if an accused is convicted in more than one penal provision he has to be sentenced separately for each and sentence in one must come to an end and only thereafter the sentence in the others would begin, unless

ordered by the sentencing court that they would all run concurrently.

12. A bare perusal of the content of Section 427 of Cr.P.C., read with powers of the appellate court provided under Section 386 of Cr.P.C., I am of the view that the sentences, which have been imposed against the appellants, even though in different trials, can be ordered to run concurrently with such previous sentence.

13. The learned Sessions Judge, though well within his powers under the Code, did not follow the procedure as laid down in Section 427 Cr.P.C.

14. From the perusal of the evidence collected during trial, I am also of the view that the Trial Court has rightly held that the prosecution has successfully proved the charge against the accused. The conviction part, as recorded by the Trial Court and affirmed by the Appellate Court, is also just and proper. As the learned Counsel appearing on behalf of the revisionist, as also learned State Counsel has no objection to it, accordingly, this revision is partly allowed. The order passed by learned Sessions Judge, Uttarkashi in Criminal Appeal Nos.34 of 2009, 36/2009 and 38 of 2009, is hereby affirmed but with a modification that all the sentences, as awarded by the Sessions Judge, Uttarkashi in Criminal Appeal Nos.34 of 2009, 36 of 2009 and 38 of 2009, will run concurrently against the revisionist

15. A copy of this judgment and order be sent to the Court concerned for compliance.

**(R.C. Khulbe, J.)**  
**31.07.2020**