

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Revision No.199 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.395 of 2008, State v. Dharam Singh and others and judgment and order dated 31.08.2009 passed in Criminal Case No. 396 of 2008, State v. Dharam Singh and others, whereby the learned CJM has convicted the revisionist Rakesh Kumar Bhandari u/s 411 IPC in each of the cases and sentenced him to undergo three years' S.I. each and to pay fine of Rs.1,000/- each; as also order dated 30.11.2009 passed by learned Sessions Judge, Uttarkashi in Criminal Appeal Nos.35/2009 and 37/2009, whereby the Appellate Court has confirmed the conviction but reduced the sentence to 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.395 of 2008, State Vs. Dharam Singh and others an information (Ex.Ka-2) was given by the informant Gajendra Parmar and Prem Singh Gusain with police Outpost Dunda on 12.8.2007 regarding the theft committed by unknown persons in Renuka Temple. On the basis of this information, FIR Ex.Ka-5 was lodged with P.S. Dunda (Uttarkashi) against unknown persons. After investigation,

charge-sheet Ex.Ka-4 was submitted against the revisionist as well as other persons u/s 380 and 411 IPC.

3. C.J.M. Uttarkashi, on receipt of the charge-sheet, after giving necessary copies to the accused as required u/s 207 Cr.P.C., took the cognizance and, accordingly, Charges were framed. The accused pleaded not guilty and claimed to be tried. From the prosecution got examined PW1 Dharmendra Singh, PW2 S.I. Rajendra Kumar Gaur, PW3 Gajendra Singh, PW4 Pradeep Bisht, PW5 Virendra Singh Negi.

4. 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 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. In criminal case no.396 of 2008, State Vs. Dharam Singh and others, the informant-Dharmendra Singh Negi submitted an information on 14.07.2017 at P.S. Dunda. After the investigation, charge-sheet was submitted and accordingly, charges were framed under Section 380,411 IPC and after adducing the evidence prosecution witnesses, statement under Section 313 was recorded and after hearing the parties and the accused was convicted and sentenced as mentioned in para no.1 of this judgment.

7. Aggrieved by the said judgments, the revisionist preferred two separate appeals before the Sessions Judge, Uttarkashi. The learned Sessions Judge, after hearing the parties, vide a common judgment, affirmed the conviction

but reduced the sentence to two years' S.I. instead of three years. Feeling aggrieved, the present revision has been preferred.

8. 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.

9. 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 since both the appeals no.35/2009 Rakesh Kumar Bhandari v. State and CRLA No.37/2009, Rakesh Kumar Bhandari v. State, were heard and decided by a common judgment by the learned Sessions Judge, Uttarakashi, however, learned Sessions Judge failed to give the benefit to the revisionist-accused as laid down u/s 427 Cr.P.C.

10. Since both the appeals 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.

11. 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

imprison- ment 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 con- currently with such previous sentence.”

12. 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.

13. 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., this Court is 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.

14. 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.

15. 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 and learned State Counsel has no objection to it, this revision is allowed in part. The order passed by learned Sessions Judge, Uttarkashi in Criminal Appeal Nos.35 of 2009 and 37/2009, *Rakesh Kr. Bhandari v. State*, is affirmed but with

the modification that both the sentences, as awarded in CRLA No.35/2009 and 37/2009, *Rakesh Kr. Bhandari v. State*, will run concurrently against the revisionist.

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

(R.C. Khulbe, J.)
31.07.2020

Rdang