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NARESH & ORS.

v.

THE STATE OF UTTARAKHAND & ORS.

(Criminal Appeal Nos. 394-395 of 2018)

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APRIL 25, 2018

[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

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Penal Code, 1860 – ss.307/34, 323/34, 324/34 and 504 – Four accused – Prosecution case was that the accused persons attacked the victim with axe and caused injuries to him on his body – The injuries were abrasion, contusion and one lacerated wound – Sessions court acquitted all the accused – However, High Court set aside acquittal and ordered conviction – Appeal against conviction – Held: In view of finding of facts, interference with the order of High Court is not called for in case of accused no.1, 3 and 4 – However, sentence awarded by High Court is reduced to what they have already undergone for the reason that the appellants were first offender, the injuries inflicted on the victim were not serious in nature and victim survived leaving no disability due to causing of the injuries – The fine of Rs.7000 awarded by High Court is enhanced to Rs.75000 – In case of appellant no.2, role attributed to him was not established beyond reasonable doubt and, therefore, he is acquitted of charges leveled against him.

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Disposing of the appeals, the Court

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HELD: So far as the involvement of appellant Nos.1, 3 and 4, in commission of offence in question, is concerned, no case for interference is made out on findings of fact. As regards the sentence of appellant Nos.1, 3 and 4, their respective jail sentences awarded by the High Court are modified and reduced to what they have already undergone and the fine amount awarded by the High Court enhanced from Rs.7000/- to Rs.75,000/- to each appellant for the following reasons. First, the incident is of 1998. In other words, it is now almost 20 years have passed that this litigation is pending in various Courts. Second, there were seven injuries noticed by the doctor on the body of injured but the injuries noticed were not very serious in nature. Third, the

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victim survived leaving no disability much less permanent on his body due to causing of the injuries and lived for twenty years after the date of alleged incident and died recently. Fourth, appellant Nos.1, 3 and 4 have undergone almost one year of jail sentence including remission out of the total jail sentence awarded by the High Court. Fifth, the appellants were first offender and were not found involved in any criminal activity in the last 20 years, though remained on bail throughout. [Paras 14-21][944-F-H; 945-A-D]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 394-395 of 2018.

From the Judgment and Order dated 10.07.2017/17.07.2017 of the High Court of Uttarakhand at Nainital in Criminal Appeal No. 91 of 2011 and Government Appeal No. 42 of 2011.

WITH

CrI. A. No. 396 of 2018.

Sushil Kumar Jain, Sr. Adv., Ajay Veer Singh Jain, Mrs. Mamta Jain, Uday Ram Bokadia, Atul Agarwal, Ms. Divya Garg, Rakesh Kumar Khare, Sonal Jain, Advs. for the Appellants.

Ashutosh Kumar Sharma, Jatinder Kumar Bhatia, Pankaj Kumar Singh, Mukesh Verma, Pawan Kumar Shukla, Yash Pal Dhingra, Advs. for the Respondent.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J.

Criminal Appeal Nos.394-395 of 2018

1. These appeals are filed by the accused persons against the common final judgment and order dated 10.07.2017/17.07.2017 passed by the High Court of Uttarakhand at Nainital in Criminal Appeal No.91 of 2011 (filed by the complainant) and Government Appeal No.42 of 2011 whereby the High Court allowed the appeals of the State and the Complainant and set aside the order dated 16.03.2011 passed by the Additional Judge, Haridwar in Sessions Trial Nos.286 of 1999 and found the accused persons, Naresh, Suresh, Ashish@Sheshraj and Rajendra guilty for commission of the offences punishable under Sections 307/34,

A 323/34, 324/34 and 504 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”) and accordingly sentenced each of them as under:

	Accused	Trial Court	High Court
B	Naresh (A-1)	Acquitted under Sections 307/34, 323/34, 324/34 and 504 IPC	Convicted under Sections 307/34, 323/34, 324/34 and 504 IPC 5 years R.I. and Rs.5000/- under Section 307 IPC 6 months R.I. and Rs.500/- under Section 323/34 IPC 2 years R.I. and Rs.500/- under Section 324/34 IPC 1 year R.I. and Rs.1000/- under Section 504 IPC
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D	Suresh (A-2)	Acquitted u/s 307/34, 323/34, 324/34 and 504 IPC	Convicted under Section 307/34, 323/34, 324/34 and 504 IPC 6 months R.I. and Rs.500/- under Section 323/34 IPC 2 years R.I. and Rs.500/- under Section 324/34 IPC 1 year R.I. and Rs.1000/- under Section 504 IPC (However, on account of the advance stage of lung cancer, 2 years R.I. u/s 307 IPC)
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F	Ashish@ Shesh Raj (A-3)	Acquitted u/s 307/34, 323/34, 324/34 and 504 IPC	Convicted under Sections 307/34, 323/34, 324/34 and 504 IPC 5 years R.I. and Rs.5000/- under Section 307 IPC 6 months R.I. and Rs.500/- under Section 323/34 IPC 2 years R.I. and Rs.500/- under Section 324/34 IPC 1 year R.I. and Rs.1000/- under Section 504 IPC
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Rajendra (A-4)	Acquitted u/s 307/34, 323/34, 324/34 and 504 IPC	Convicted under Sections 307/34, 323/34, 324/34 and 504 IPC 5 years R.I. and Rs.5000/- under Section 307 IPC
		6 months R.I. and Rs.500/- under Section 323/34 IPC
		2 years R.I. and Rs.500/- under Section 324/34 IPC
		1 year R.I. and Rs.1000/- under Section 504 IPC

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2. In order to appreciate the issue involved in the appeals, few relevant facts need to be mentioned hereinbelow.

3. The appellants herein are the accused. They are Naresh (A-1), Suresh (A-2), Ashish (A-3) and Rajendra (A-4).

4. These four accused faced prosecution for commission of offences punishable under Sections 307/34, 323/34, 324/34 and 504 of the IPC.

5. In short, the prosecution case against these four appellants was that on 26.05.1998, they attacked one person by name "Tej Singh" with axe and caused injuries to him on his body. The injuries were abrasion, contusion, and one lacerated wound (see page 86 of appeal paper book-Annexure- P/2 doctor's opinion).

6. It is this incident which led to filing of FIR (No.83/1998) on 27.05.1998 by PW-4 Jaswir Singh against four accused in PS Haridwar-Laksar. The four appellants were accordingly apprehended and put to trial. The Additional Sessions Judge, Haridwar, by order dated 16.03.2011, acquitted all the four appellants (accused).

7. The State and the Complainant felt aggrieved and filed leave to file appeals before the High Court seeking permission to question the legality and correctness of the order of the appellants' acquittal. Leave was granted. Naresh Kumar(A-1) also filed Criminal Appeal No.126 of 2011 before the High Court.

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- A 8. By impugned judgment, the High Court allowed the appeals filed by the Complainant and the State and set aside the order passed by the Additional Sessions Judge, Haridwar and sentenced all the accused persons for the offences punishable under various sections mentioned supra.
- B 9. However, taking into consideration the disease suffered by Suresh(A-2), i.e., advanced stage of lung cancer, he was sentenced to undergo two years rigorous imprisonment under Section 307 IPC. The Court directed the State to admit him at Civil hospital, Roorkee for medical treatment.
- C 10. The appellants (accused) felt aggrieved by the judgment of the High Court and filed these appeals by way of special leave in this Court.
- D 11. The short question, which arises for consideration in these appeals, is whether the High Court was justified in reversing the order of acquittal passed by the Additional Sessions Judge and convicting the appellants.
- E 12. Heard Mr. Sushil Kr. Jain, learned senior counsel for the appellants and Mr. Ashutosh Kumar Sharma, learned counsel for the respondents.
- F 13. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeals in part insofar as Suresh-Accused No.2 (appellant No. 2 herein) is concerned and acquit him of the charges by restoring the order of the Additional Sessions Judge.
- G 14. So far as the remaining three accused- appellants are concerned, namely, the appellant Nos.1, 3 and 4, we modify their respective jail sentences awarded by the High Court mentioned above and reduced to what they have already undergone and enhance the fine amount awarded by the High Court, i.e., from Rs.7000/- to Rs.75,000/- to each appellant.
- H 15. This we are inclined to do for the following reasons.
16. First, the incident is of 1998 and we are in 2018. In other words, it is now almost 20 years have passed that this litigation is pending in various Courts.

17. Second, there were seven injuries noticed by the doctor on the body of injured-Tej Singh but the injuries noticed were not very serious in nature as would be clear from the Doctor's report mentioned above. A

18. Third, Tej Singh survived leaving no disability much less permanent on his body due to causing of the injuries and lived for twenty years after the date of alleged incident and died recently in last week as was stated by learned counsel for the appellants. B

19. Fourth, all the appellants(accused) have undergone almost one year of jail sentence including remission out of the total jail sentence awarded by the High Court except appellant No.2 – Suresh(A-2), who underwent around three months. C

20. Fifth, all the appellants were first offender and were not found involved in any criminal activity in the last 20 years, though remained on bail throughout and lastly, appellant Nos. 2 and 3 are reported to be in Government Service.

21. However, so far as the involvement of appellant Nos.1, 3 and 4, in commission of offence in question, is concerned, we have perused the findings of the High Court *qua* each and find that no case for interference on such findings of fact though of reversal is called for by this Court. In our view, it is just and proper and, therefore, we uphold the finding of conviction of appellant Nos. 1, 3, and 4. D E

22. For all these aforementioned reasons, which are relevant in the facts of this case, we are inclined to interfere only in the quantum of jail sentence awarded by the High Court and reduce their jail sentence to the sentence already undergone and at the same time consider it just and proper to enhance the fine amount imposed by the High Court on appellant Nos.1, 3 and 4. F

23. So far as the case of appellant No.2 – Suresh(A-2) is concerned, we have perused the finding of the Additional Sessions Judge, which resulted in his acquittal, and also perused the finding of the High Court which resulted in his conviction. G

24. Having perused both the findings for deciding the role and involvement of appellant No.2 – Suresh in the incident in question, we are inclined to restore the finding of the Sessions Judge rather than that of the High Court. In other words, we find that the role and involvement of appellant No.2 - Suresh is not established beyond reasonable doubt H

A while inflicting the injuries to Tej Singh and hence, in our view, appellant No.2-Suresh deserves to be acquitted of the charges leveled against him. He is on bail because he is reported to be suffering from lung cancer.

B 25. In the light of the foregoing discussion, the appeals succeed and are allowed in part and the impugned judgment is modified as under:

26. The jail sentence awarded to appellant Nos.1, 3 and 4 stands modified and is accordingly reduced to already undergone. In other words, the appellant Nos.1, 3 and 4 are not now required to undergo any more jail sentence in connection with the offences in question.

C 27. However, as held above, appellant Nos.1, 3 and 4 each of them shall pay a sum of Rs.75,000/- by way of fine amount to the legal representatives of late Tej Singh (victim) (total Rs.2,25,000/-) or deposit the said sum (Rs.2,25,000/-) in the Court for being paid to the legal representatives of late Tej Singh. The amount of Rs.2,25,000/- be
D deposited by appellant Nos.1, 3 and 4 within three months from the date of the order.

E 28. Failure to deposit the amount by anyone of the appellants (Nos.1, 3 & 4) will revive the impugned judgment and in such event, the defaulting appellant(s) will be taken into custody to undergo remaining jail sentence awarded by the High Court in the impugned judgment.

29. So far as appeal the appeal in respect of appellant No.2-Suresh is concerned, it is allowed and the conviction of appellant No.2 stands set aside. He is accordingly set free. His bail bonds are cancelled.

Criminal Appeal No. 396 of 2018

F In view of the judgment passed in Criminal Appeal Nos. 394-395 of 2018, the appeal is disposed of.