

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.202 OF 2008

RAMESH ..APPELLANT(S)

VERSUS

THE STATE OF UTTARANCHAL ..RESPONDENT(S)

O R D E R

1. This appeal is directed against the judgment and order passed by the High Court of Uttarakhand at Nainital in Criminal Appeal No.1228 of 2001, dated 18.11.2006.

2. The facts in brief are: Mohan Singh (PW-1) is the real brother of injured Kishan Singh (PW-2) and Suman Lata (DW-2). All the three are residents of Dehradun Road, Rishikesh. The accused/ appellant has friendly relations with the father of the above three. It is alleged that the accused/ appellant developed illicit relations with DW-2.

On 23.04.1986, the date of incident, at about 10.30

Signature Not Verified

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NEETU KHAJURIA

Date: 2015.09.14

17:59:33 IST

Reason:

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p.m., when PW-1 and PW-2 were returning from one Saklani's house, the accused/ appellant along with three associates, met the two brothers and started hurling abusing at them. In the quarrel, the accused/ appellant took out his revolver and fired twice at PW-2. Consequently, PW-2 got injured. He was taken to the hospital for treatment. Thereafter, the FIR was lodged with P.S. Rishikesh

and after completion of the investigation a charge sheet was filed against the all the accused including the appellant for the offence punishable under Sections 307/ 326 read with Section 34 of the Indian Penal Code, 1860.

3. The Trial Court after examining the evidence on record framed a charge under Section 307 of the IPC against the accused/ appellant and a charge under Section 307 read with Section 34 of the IPC was framed against the rest of the accused. All the accused/ appellant pleaded not guilty. The

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Trial Court after considering the entire evidence and the circumstances came to the conclusion that the charge for the offence punishable under Section 307 of the IPC as against the appellant/ accused was fully approved and the rest of the accused were not found guilty. Accordingly, convicted the accused/ appellant for the offence punishable under Section 307 of the IPC and sentenced him to rigorous imprisonment for a period of three years and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for one year.

4. Aggrieved by the said judgment and order the accused/ appellant preferred appeal before the High Court. The High Court after hearing the appeal came to the conclusion that the appellant/ accused exceeded the right to self defense and accordingly convicted him under Section 308 of the IPC by modifying the offence under Section 307 of the IPC as awarded by the Trial Court.

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5. Aggrieved by the judgment and order so passed by the High Court, the appellant is before us in this appeal.

6. We have heard Shri K.K. Mohan, learned counsel for the appellant and Shri Atif Suhrawardy, learned counsel for the respondent-State.

7. At the time of hearing of this appeal, we are informed by the learned counsel appearing for the appellant that the appellant/accused has served in the army under the Army Medical Corp and reached to the position of Major. It is also informed that the incident is of the year 1986 and more than 29 years have elapsed from the date of the incident. The appellant is now aged about 94 years and is suffering from various ailments.

8. We have gone through the judgment and order passed by the High Court as well as the Courts below. After going through the records and in view

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the fact that the appellant is now aged 94 years, we are of the considered opinion that the ends of justice would be met if we reduce the sentence to the period already undergone by him.

9. Accordingly, while confirming the conviction, we modify the sentence of the accused/appellant to the period already undergone by him.

10. We make it clear that the order passed by us shall not be treated as a precedent.

11. The appeal is disposed of accordingly.

.....CJI.
(H.L. DATTU)

