

Reserved Judgment

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

**Criminal Appeal No. 136 of 2019**

Kishan Lal Arora @ Khairati & another ..... Appellants

versus

State of Uttarakhand ..... Respondent

Mr. Aditya Singh, Advocate for the petitioners.

Ms. Shivangi Gangwar and Mr. B.S. Thind, Brief Holders for the respondent State.

Mr. D.K. Sharma, Senior Advocate assisted by Mr. Vipul Sharma, Advocate for the complainant.

**[Per: Hon'ble Lok Pal Singh, J. ]**

Appellants have been convicted under Section 307 read with Section 34 of IPC and were sentenced to undergo seven years' rigorous imprisonment along with a fine of Rs.30,000/- each, vide judgment and order dated 11.03.2019 / 15.03.2019, passed by II Addl. Sessions Judge, Kashipur, District Udham Singh Nagar.

2) Briefly put, the prosecution case is that, on 20.09.2011, at about 07:00 A.M., when Raj Kumar was walking in the main market and reached in front of 'Shivang Garments', Kishan Lal Arora @ Khairati, who was driving the motorcycle and Mohit Arora, sitting as a pillion rider, came there. Mohit Arora fired a shot on Raj Kumar with the intention to kill him. The complainant got seriously injured in the incident. Yogesh Kumar Chaturvedi witnessed the said incident. Both the

assailants fled away from the place of occurrence. Ashish @ Bobby, son of the complainant, took the injured to Government Hospital, Kashipur. On the basis of complaint made by the complainant, a case was lodged against the accused persons. After completion of investigation, the Investigating Officer submitted charge sheet in respect of offence punishable under Section 307 IPC against both the accused. Thereafter, the case was committed to the court of Sessions for trial. Charge of offence punishable under Section 307 read with Section 34 IPC was framed against accused Kishan Lal Arora @ Khairati Lal and accused Mohit Arora was charged under Section 307 IPC. In support of its case, prosecution got examined as many as seven prosecution witnesses. Incriminating evidence was put to the accused persons under Section 313 of Cr.P.C., in reply to which they stated that the case against them is false and has been lodged on account of business rivalry between the parties. Having heard learned counsel for the accused as well as learned D.G.C. (criminal) and on the basis of evidence brought on record, the trial court convicted and sentenced both the appellants as above.

3) Learned counsel for the appellants would submit that the appellants and the complainant side are all members of the same family and are involved in the same business, as such, due to business rivalry between the parties the appellants were falsely implicated in the crime. He would further submit that learned trial court has

committed illegality in ignoring the fact that as enmity between the parties was admitted, the possibility of false implication of the appellants in the crime cannot be ruled out. It is contended that there is no recovery of weapon as well as the vehicle used in the commission of crime, which makes the prosecution story highly doubtful. It is argued that the trial court has not taken into consideration the fact that as PW2 Ashish Arora @ Bobby and PW3 Yogesh @ Yogi are noted criminals, their oral testimonies cannot be believed. Lastly, learned counsel for the appellants submits that as the impugned judgment and order passed by the trial court suffers from illegality and perversity, the same is liable to be set aside.

4) Learned counsel for the respective parties filed a joint compromise application no. 4210 of 2020, on behalf of both the appellants as well as son and wife of the complainant Raj Kumar, who is reported to have died during the pendency of trial. It has been stated in the said application that the appellants and the complainant side are all members of the same family and the FIR was lodged due to some misunderstanding between them. It has been further stated that now, the appellants namely, Kishan Lal Arora @ Khairati Lal & Mohit Arora as well as Ashish Arora @ Bobby and Krishna Arora, legal heirs of late Raj Kumar (complainant) have buried their differences and have settled their dispute amicably. It is prayed that the offence may be permitted to be compounded. Joint compromise

has been filed along with affidavits of appellants and the legal heirs of the complainant to this effect.

5) This Court has gone through the judgment under challenge and carefully perused the lower court record. On perusal of the record and on re-appreciation of evidence, I am of the view that the trial court has committed illegality in convicting and sentencing the appellants under Section 307 read with Section 34 IPC. Thus, the impugned judgment and order is liable to be set aside. On perusal of the lower court record it is evidently clear that the appellants are guilty of the offence punishable under Section 325 IPC.

6) In such view of the matter, the judgment and order dated 11.03.2019 / 15.03.2019 passed by the trial court is set aside. Consequently, the conviction and sentence recorded by the trial court against the appellants in respect of offences punishable under Section 307 read with Section 34 IPC is also set aside. Appellants are acquitted of charge of offences punishable under Section 307 read with Section 34 IPC. However, they are held guilty of the offence punishable under Section 325 read with Section 34 IPC.

7) Learned counsel appearing on behalf of the appellants submitted that he has nothing to say on the conviction recorded by this Court against the appellants. He further submitted that now, the appellants as well as legal heirs of late Raj Kumar (complainant) have buried their differences and

have settled their dispute amicably outside the court, therefore, the offence may be permitted to be compounded.

8) Though the parties have filed the compromise application, but as the conviction and sentence recorded against the appellants under Section 307 read with Section 34 IPC has been set aside by this Court, the compromise application is treated to have been moved in respect of offences punishable under Section 325 read with Section 34 IPC, which is a compoundable offence under the Scheme of Section 320 Cr.P.C., with the permission of the Court.

9) Having considered the submission of learned counsel for the appellants and having regard to the facts of this case that the legal heirs of the complainant and the accused are close relations who are now living amicably and have settled their dispute outside the court, this Court grants permission to the parties to compound the offence punishable under Section 325 read with Section 34 IPC. The effect of that is the acquittal of the appellants in view of the provision of law contained in Section 320(8) of Cr.P.C. for the said offence.

10) The criminal appeal stands disposed of accordingly.

11) Appellants are on bail. Their bail bonds are cancelled and the sureties discharged. They need not surrender.

12) Let the lower court record be sent back to the court below along with a copy of this judgment for ensuring compliance as above.

**(Lok Pal Singh, J.)**

**Dt. December 03, 2020**

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