

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Revision No.270 of 2020

Kallu Ram and Another Revisionists

Versus

The State of Uttarakhand ... Respondent

Dated: 23.06.2021

*Mr. S.R.S. Gill, Mr. D.N. Sharma and Ms. Manju Bahuguna, learned counsel for the revisionists.
Mrs. Pushpa Bhatt, learned Dy. A.G. and Mr. Siddharth Bisht, learned Brief Holder for the State.*

Hon'ble R.C. Khulbe, J.

Since the revision is time barred, accordingly, delay condonation application (CRMA No.3440/2020) has been moved. Learned counsel for the State has no objection to the application seeking condonation of delay. Accordingly, delay condonation application is allowed and delay in preferring the present revision is condoned.

2. Heard learned counsel for the parties.

3. Admit.

4. This criminal revision, preferred by the revisionist u/s 397 read with Section 401 of Code of Criminal Procedure, 1973 (*hereinafter to be referred as Cr.P.C.*), is directed against the judgment and order dated 15.07.2014 passed by learned Chief Judicial Magistrate, Udham Singh Nagar in Criminal Case No.1642 of 2013, "State of Uttarakhand Vs. Kallu Ram and another whereby the learned trial Court convicted the revisionists u/s 411 IPC and sentenced them to undergo three years' R.I. with a fine of Rs.10,000/- with default stipulation, as well as judgment and order dated 29.11.2019 passed by learned Second Additional Sessions Judge, Udham Singh Nagar, in

criminal appeal no.228 of 2014, “Kallu Ram Vs. State of Uttarakhand” and criminal appeal no.229 of 2014,“Om Prakash Vs. State of Uttarakhand whereby the appellate Court dismissed the appeal and affirmed judgment and order dated 15.07.20214 passed by the trial Court.

5. Brief facts of the case are that an FIR was lodged on 26.07.2008 with police station Pant Nagar U/s 379 IPC regarding missing of the motorcycle of the informant. On 16.09.2008 two motorcycles were recovered from the possession of the revisionists. After completion of the investigation, charge sheet was submitted and, accordingly, cognizance was taken. After compliance of provision of Section 207 Cr.P.C., the charges were framed under Sections 379, 411 IPC. The revisionists denied all the allegations and claimed to be tried.

6. To prove its case, the prosecution produced PW1 Rajbahadur Sah, PW2 Contable Kailash Kumar, PW3 S.I. Manoj Raturi and PW4 Contable Mahendra Giri.

7. After completion of prosecution evidence, statements of accused were recorded under Section 313 of Cr.P.C. in which they denied all the evidence and stated that the prosecution produced false evidence against them. In defence, no evidence was produced.

8. After hearing both the parties, the learned trial Court convicted and sentenced the revisionists, as mentioned in para no.1 of the judgment above. Aggrieved by it, the revisionists preferred separate criminal appeals before the learned Sessions Judge, which were transferred to the learned Additional Sessions Judge.

9. After hearing both the parties, the appellate Court came to this conclusion that there is no illegality in the judgment passed by the trial Court and, accordingly,

dismissed the appeals and affirmed the trial Court's order. Aggrieved by it, the present revision has been preferred.

10. Heard learned Counsel for the revisionist and perused the entire evidence available on the record.

11. Learned Counsel for the revisionists fairly submitted that he does not want to argue the case on merit because the trial Court rightly convicted the revisionists based on evidence. He fairly submitted that there is no information regarding previous conviction; both the revisionists have already served more than one year in jail; they are the only bread earners of their families; as per the evidence two motorcycles were recovered from their possession; both the revisionists have been acquitted U/s 379 IPC; he also submitted that, this Court, while upholding revisionists' conviction, may consider to alter the sentence awarded to the revisionists and reduce it to the extent of period already undergone.

12. Learned counsel for the State also submitted that there is no information regarding the previous conviction of the revisionists.

13. I have also gone through the entire evidence on record produced by the prosecution and came to this conclusion that the trial Court has rightly convicted the revisionists based on sufficient evidence as produced by the prosecution. There is no illegality or infirmity in the impugned findings regarding conviction. The appellate Court has also dismissed the appeal legally.

14. After hearing learned counsel for the parties and on perusal of the record of the case and considering the fact that the incident is quite old and seems to have occurred in the year 2008; they are the sole bread earner of their families; there is no evidence regarding previous

conviction; both the revisionists have already served more than one year in jail; as per the evidence two motorcycles were recovered from their possession; as regards to the sentence is concerned the revisionists have been acquitted U/s 379 IPC while there is maximum three years' imprisonment prescribed U/s 411 IPC; and, they are not required in any other criminal case except the present one, it is considered to be just and appropriate to reduce the sentence from three years' RI to fifteen months U/s 411 IPC.

15. In view of the above discussion, the revision is allowed in part. The revisionists are sentenced as follows:-

A. The revisionists are sentenced to undergo fifteen months' RI imprisonment U/s 411 IPC instead of three years' RI, as awarded by the trial Court and affirmed by the appellate Court.

B. The fine awarded by the trial court under Section 411 IPC will remain intact.

C. On completion of period of sentence, as modified by this Court, they shall be released from jail as per law and after due verification of records.

16. Let a copy of this judgment alongwith records, if any, be sent back to the court concerned. The Registry is directed to send a copy of this judgment to the jail authority also for compliance.

17. Pending application, if any, stands disposed of.

(R.C. Khulbe, J.)
23.06.2021