



2026:UHC:3552

Judgment Reserved on: 23.04.2026
Judgment Pronounced on: 08.05.2026

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No.94 of 2017

Shivam Joshi

...Appellant (In Jail)

Vs.

State of Uttarakhand

.....Respondent

Presence: Mr. D.K. Sharma, learned Senior Counsel assisted by Mr. Maneesh Bisht,
learned counsel for the Appellant.
Mr. Dinesh Chauhan, learned AGA for the State of Uttarakhand.

Hon'ble Ashish Naithani, J.

The present criminal appeal has been preferred by the Appellant, Shivam Joshi, against the judgment and order dated 19.04.2017/22.04.2017 passed by the learned District and Sessions Judge, Nainital, in Session Trial No.38 of 2015, arising out of FIR No. 38 of 2013, Police Station Bhowali, District Nainital, whereby the Appellant has been convicted under Sections 308 read with 34 IPC and 324 read with 34 IPC and sentenced to undergo rigorous imprisonment for four years and two years respectively, with both sentences directed to run concurrently.

2. The prosecution case, in brief, is that on the intervening night of 14/15.12.2013, the injured, Nikhil Deopa, had come to the rented accommodation of the Appellant and other students. It is alleged that during the night, at about 3:00 AM, the Appellant along with co-accused Kamlesh Bhandari assaulted the injured with an iron rod and sickle, causing injuries to him.



3. On the basis of the written report submitted by the informant, Hoshiyar Singh Deopa, FIR No. 38 of 2013 was registered. After investigation, charge sheet was submitted and the case was committed to the Court of Sessions.

4. The prosecution examined nine witnesses, including the injured (PW6), the informant (PW2), eyewitnesses (PW3, PW8), medical witnesses (PW5, PW7), and the Investigating Officer (PW9). The defence also examined one witness.

5. The learned trial court, upon appreciation of the evidence, convicted the Appellant and sentenced him as aforesaid.

6. The appeal was admitted, and the execution of sentence was suspended by this Court. The Appellant has remained on bail during the pendency of the appeal, which has remained pending since 2017.

7. Learned Senior Counsel appearing for the Appellant submits that the impugned judgment suffers from serious infirmities in appreciation of evidence, and that the conviction itself is not sustainable. It is contended that material prosecution witnesses have not supported the case in its entirety and there are inconsistencies in the testimony regarding the manner of occurrence.

8. It is further submitted that PW3, who was present at the spot, did not fully support the prosecution version and was declared hostile, thereby weakening the prosecution case. It is argued that the alleged incident occurred in darkness and the presence and participation of the Appellant has not been established beyond reasonable doubt.



9. Learned Senior Counsel also submits that the entire incident arose out of a sudden altercation between young students who were known to each other and had consumed liquor together. There was no premeditation or prior enmity.

10. Without prejudice to the challenge on conviction, learned Senior Counsel submits that even if the conviction is sustained, the sentence awarded is harsh and excessive. It is argued that the Appellant was a young student at the time of the incident, the occurrence is of the year 2013, and he has faced prolonged criminal proceedings for more than a decade.

11. It is further submitted that the Appellant has remained on bail during trial as well as during the pendency of the appeal and has not misused the liberty granted to him. Therefore, it is prayed that the sentence be reduced to the period already undergone or suitably modified, along with imposition of fine or compensation.

12. Per contra, learned A.G.A. for the State supports the impugned judgment and submits that the prosecution has proved its case beyond reasonable doubt. It is contended that the testimony of the injured (PW6) clearly implicates the Appellant and is duly corroborated by medical evidence.

13. Learned A.G.A. further submits that the nature of injuries, particularly on the head, and the use of iron rod and sickle indicate the gravity of the offence. The injured had to be hospitalized and suffered serious injuries, including fractures, which are supported by medical evidence.



14. It is, therefore, submitted that no interference is warranted either in the conviction or in the sentence awarded by the learned trial court.

15. Heard learned counsel for the Parties and perused the records.

16. Upon a reappraisal of the evidence, the testimony of the injured witness (PW6) assumes significance. The said witness has attributed the role of assault to the Appellant and has stated that he was beaten with an iron rod and sickle during the night. The medical evidence on record, including the injury report and treatment papers, corroborates the factum of injuries, including injuries on the head region.

17. Though certain witnesses, including PW3, have not fully supported the case and have been declared hostile, it is settled that the testimony of a hostile witness is not to be discarded in toto. The same can be relied upon to the extent it supports the prosecution version. More importantly, the testimony of the injured witness carries greater evidentiary value.

18. This Court does not find such contradictions or infirmities in the testimony of the injured so as to discard it altogether. His presence at the place of occurrence is established and the injuries sustained by him stand duly proved.

19. However, the surrounding circumstances also merit consideration. The Appellant and the injured were admittedly known to each other and were residing in close proximity. The record indicates that the occurrence took place during the night after consumption of liquor and arose out of a sudden altercation.



20. There is no material indicating prior enmity or premeditation. The incident appears to have been the result of a sudden escalation between young individuals in an intoxicated condition.

21. Thus, while the finding of guilt recorded by the learned trial court does not call for interference, the question of appropriate sentence requires consideration.

22. Sentencing must balance the gravity of the offence with mitigating factors. It is not merely punitive but also reformative.

23. The incident is of the year 2013. The Appellant has undergone the ordeal of criminal proceedings for more than a decade. The appeal has remained pending since 2017.

24. The Appellant was a young student at the time of the occurrence. There is no material indicating antecedents or subsequent criminal conduct.

25. The Appellant remained on bail during trial and throughout the pendency of the appeal. There is nothing on record to suggest misuse of liberty.

26. The occurrence, though serious, appears to have arisen out of a sudden quarrel without premeditation.

27. At the same time, the injuries sustained by the victim, particularly on the head, and the use of weapons such as iron rod and sickle cannot be ignored.



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28. In the totality of circumstances, this Court is of the view that while the conviction deserves to be sustained, the sentence imposed requires modification.

ORDER

29. The criminal appeal is partly allowed.

30. The conviction of the Appellant, Shivam Joshi, under Sections 308 read with 34 IPC and 324 read with 34 IPC is affirmed.

31. However, the sentence awarded to the Appellant is modified.

32. The sentence of rigorous imprisonment under Section 308 read with 34 IPC is reduced to the period already undergone.

(Ashish Naithani J.)

08.05.2026

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