
(2011) 03 UK CK 0119

In the Uttarakhand High Court

Case No : Criminal Appeal No. 310 of 2001 and Old No. 907 of 2000

Babu @ Vijay Kumar

APPELLANT

Vs

State of U.P (now State of Uttarakhand)

RESPONDENT

Date of Decision : 15-03-2011

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 25, 7A

Citation : (2011) 1 NCC 735 : (2011) 2 UC 919 : (2011) 1 UD 261

Hon'ble Judges : V.K. Bist, J; Prafulla C. Pant, J

Bench : Division Bench

Judgement

Prafulla C. Pant, J.—This appeal, preferred u/s 374 of Code of Criminal Procedure, 1973, (for short Cr.P.C), is directed against the judgment and order dated 20.04.2000, passed by IIIrd Additional Sessions Judge, Nainital, in Sessions Trial No. 236 of 1996, and Sessions Trial No. 257 of 1996, whereby accused/Appellant Babu @ Vijay Kumar has been convicted u/s 302 I.P.C., and sentenced to imprisonment for life. He has been further convicted u/s 25 Arms Act, and sentenced to rigorous imprisonment for a period of three years.

2. Heard learned Counsel for the parties and perused the record of the case.

3. Prosecution story in brief is that on 27.12.1995, at about noon, in Village Durgapur, within the limits of Police Station Rudrapur accused/Appellant Babu @ Vijay Kumar had a quarrel with Ranjit Kumar (deceased) over the question of repayment of some loan. Thereafter, at about 7.00 p.m. on the same day Babu @ Vijay Kumar (Appellant) fired a shot from a country made pistol on the chest of Ranjit Kumar and killed him. The incident was witnessed by PW2 Rasik Dhali and PW3 Gopal. First Information Report of the incident was lodged by PW1 Anil Kumar Mandal (father of the deceased) at Police Station Rudrapur (Earlier police station Rudrapur was part of District Nainital, now part of District Udham Singh Nagar). On the basis of the First Information Report Crime No. 895 of 1995, was registered at the Police Station against the accused/Appellant Babu @ Vijay Kumar. The dead body of the deceased was taken into possession by the police

and inquest report (Ex A-4) was prepared along with other necessary papers. The dead body was sent for post mortem examination. Dr. Arvind Aggarwal (PW7) conducted post mortem examination on 28.12.1995 and prepared autopsy report (Ex A-5). In the report the Medical Officer found one wound of entry and one wound of exit of the fire arm, and opined that the deceased had died as a result of shock and hemorrhage on account of ante mortem injuries suffered by the deceased. After interrogating the witnesses, the Investigation Officer submitted charge sheet (Ex A6) against the accused Babu @ Vijay Kumar for his trial in respect of offence punishable u/s 302 I.P.C.

4. It appears that during investigation the fire arm was also recovered and separate crime No. 898 of 1995 was registered against the accused in respect of offence punishable u/s 25 Arms Act, and after investigation a separate charge sheet was filed against the accused/Appellant Babu @ Vijay Kumar, relating to said offence.

5. Both the cases appear to have been committed to the court of Sessions for trial. After hearing the parties, the trial court framed charge of offences punishable u/s 25 Arms Act, and one relating to Section 302 I.P.C., separately to which the accused/Appellant Babu @ Vijay Kumar, pleaded not guilty and claimed to be tried. On this prosecution got examined PW1 Anil Kumar Mandal (informant), PW2 Rasik Dhali (eye witness), PW3 Gopal (another eye witness), PW4 Dulal Sarkar (witness of recovery of fire arm), PW5 Chitranjan (witness of preparation of inquest report), PW6 Kali Dass (another eye witness of recovery of fire arm), PW7 Dr. Arvind Aggarwal (who conducted post mortem examination), PW8 Sub Inspector Tej Pal (who investigated the crime), PW9 Sub Inspector P.C. Mathpal, and PW10 Station House Officer Yogendra Singh. Oral and documentary evidence was put to the accused u/s 313 Cr.P.C., in reply to which the accused pleaded that due to enmity he has been falsely implicated in the crime. However, no evidence in defence was adduced. The trial court after hearing the parties found accused Babu @ Vijay Kumar guilty of charge of offence punishable u/s 302 I.P.C., and one relating to offence punishable u/s 25 Arms Act. After hearing on sentence, the convict was sentenced to imprisonment for life u/s 302 I.P.C., and rigorous imprisonment for a period of three years u/s 25 Arms Act. Aggrieved by said judgment and order dated 28.04.2000, passed by IIIrd Additional Sessions Judge, Nainital, in Sessions Trial No. 236 of 1996, and Sessions Trial No. 257 of 1996, this appeal was filed before Allahbad High Court on 20.04.2000. The appeal is received by transfer, by this Court u/s 35 of U.P. Reorganisation Act, 2000 (Central Act 29 of 2000), for its disposal.

6. We have gone through the statements of the eyewitnesses and the statements of other witnesses and the documentary evidence on record. The trial court has committed no illegality in coming to the conclusion that it is proved on the record that accused/Appellant Babu @ Vijay Kumar committed murder of Ranjit Kumar on 27.12.1995. It is also proved on the record that the fire arm for which the accused/Appellant had no license to possess was recovered from him during

investigation and he was guilty also of the charge punishable u/s 25 Arms Act. Oral testimony of the witnesses is corroborated by the Medical evidence on record, and the recovery made during investigation.

7. Learned Counsel for the accused/Appellant raised only one point before this Court in the appeal. It is pleaded on behalf of the Appellant that date of birth of Appellant Babu @ Vijay Kumar was 08.03.1980, and the date of incident is 27.12.1995, as such the accused/Appellant was less than 16 years on the date of incident. From the impugned judgment and other papers on record, it appears that age of the accused/Appellant Babu @ Vijay Kumar is shown as 17 years in the year 1996. In the statement recorded u/s 313 of Cr.P.C., the age of the accused is mentioned by the trial court as 21 years. Said statement was recorded by the trial court in July 1999. Apart from this a copy of the Transfer Certificate issued by the Government Inter College, Dineshpur, also indicates that the date of birth of the Appellant was 08.03.1980. In the counter affidavit filed on behalf of the State also the same document has been relied and it has been admitted that date of birth of accused/Appellant Babu @ Vijay Kumar Son of Moti Lal was 08.03.1980. In the above circumstance, it is established on the record that the accused/Appellant Babu @ Vijay Kumar, Son of Moti Lal, Resident of Dineshpur was aged less than 16 years on the date of incident. It appears that nobody raised plea of juvenility before the trial court, during trial.

8. In view of Principle of law laid down in Dharambir Vs. State (NCT of Delhi) and Another, read with Pratap Singh Vs. State of Jharkhand and Another, and the Section 7 A of juvenile Justice (Care and Protection of Children) Act, 2000, inserted in the year 2006, we are of the view that the sentence awarded against the Appellant who was minor on the date of incident, can not be sustained.

9. Accordingly, the appeal is partly allowed. As far as the conviction of the Appellant Babu @ Vijay Kumar in respect of offence punishable under f 302 I.P.C., and 25 Arms Act, recorded by the trial court is concerned, same is upheld. But keeping in mind that the Appellant was minor on the date of commission of crime, the sentence awarded by the trial court is hereby set aside, and to that extent appeal stands allowed. The Appellant is on bail, he need not surrender. Lower court record be sent back.