
(2012) 03 UK CK 0086

In the Uttarakhand High Court

Case No : Criminal Appeal No. 83 of 2006

Jitendra Kumar @ Babloo Yadav

APPELLANT

Vs

State of Uttaranchal (Now, State of Uttarakhand)

RESPONDENT

Date of Decision : 02-03-2012

Acts Referred:

Arms Act, 1959 — Section 25, 4

Criminal Procedure Code, 1973 (CrPC) — Section 207, 313, 374

Penal Code, 1860 (IPC) — Section 302

Citation : (2012) 2 NCC 177 : (2013) 1 UC 777

Hon'ble Judges : Servesch Kumar Gupta, J; Prafulla C. Pant, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Hon. Prafulla C. Pant, J.—This appeal, preferred u/s 374 of the Code of Criminal Procedure, 1973 (for short Cr.P.C.), is directed against the judgment and order dated 12.05.2006 passed by learned Sessions Judge, Dehradun in Sessions Trial No. 153 of 2004 whereby the said court has convicted the appellant Jitendra Kumar @ Babloo u/s 302 of the Indian Penal Code, 1860 (for short IPC) and sentenced him imprisonment for life.

2. Heard learned counsel for the parties and perused the lower court record. Prosecution story, in brief, is that Dinesh Chand (deceased) had a quarrel with accused appellant Jitendra Kumar @ Babloo on 11.07.2004 at about 06.30 p.m. near Dobhal Chowk, Dehradun within the limits of Police Station Raipur, District Dehradun. Soon thereafter, at 07.00 p.m. the accused appellant inflicted knife injuries on the person of Dinesh Chand. Injured Dinesh Chand was taken to Doon Hospital by PW3 Hirdyesh Kumar where PW6 Dr. K.C. Pant, Emergency Medical Officer admitted him as unknown person. Injured (Dinesh Chand) succumbed to the injuries on the very day at about 07.55 p.m. PW1 Krishan Kumar, brother of the deceased, lodged First Information Report (Exhibit A1) at Police Station Raipur against accused Jitendra Kumar @ Babloo in respect of offence punishable

u/s 302 IPC. Investigation was taken up by PW8 Inspector Chandan Singh Bisht. Dead body of the deceased was taken into possession by the police on 12.07.2004 at about 10.00 a.m. and inquest report (Exhibit A14) was prepared. Police further got prepared police form no. 13 (Exhibit A 15), sketch of the dead body (Exhibit A16), letter to Chief Medical Officer (Exhibit A17) requesting him for postmortem examination.

3. PW2 Dr. S.K. Gupta of Doon Hospital on 12.07.2004 at 04.00 p.m. conducted postmortem examination on the dead body of Dinesh Chand. He opined in the autopsy report (Exhibit A2) that deceased had died due to shock and haemorrhage, as a result of ante mortem injuries suffered by him. Investigating Officer interrogated the witnesses, arrested the accused and discovered the knife allegedly used in the crime and registered a separate case u/s 25/4 of the Arms Act against the accused.

4. On completion of the investigation, two charge sheets were filed by the Investigating Officer; one relating to offence punishable u/s 302 IPC arising out of crime no. 86 of 2004, and another relating to offence punishable u/s 25/4 of the Arms Act arising out of crime no. 87 of 2004.

5. The Chief Judicial Magistrate, on receipt of the charge sheets, after giving necessary copies to the accused as required u/s 207 of Cr.P.C. appears to have committed the cases to the court of Sessions for trial. Sessions Trial No. 153 of 2004 arose out of crime no. 86 of 2004 relating to offence punishable u/s 302 IPC and Sessions Trial No. 154 of 2004 arose out of crime no. 87 of 2004 relating to offence punishable u/s 25/4 of the Arms Act. After hearing learned counsel for the parties, learned Sessions Judge, Dehradun framed charge of offence punishable u/s 302 IPC on 27.11.2004 against accused Jitendra Kumar @ Babloo to which he pleaded not guilty and claimed to be tried. A separate charge appears to have been framed in respect of offence punishable u/s 25/4 of the Arms Act to which also accused pleaded not guilty and claimed to be tried. Consequently, prosecution got examined PW1 Krishan Kumar, informant and eye witness; PW2 Dr. S.K. Gupta, who conducted the postmortem examination; PW3 Hirdyesh Kumar, who took injured to the hospital (partially hostile); PW4 Pradeep Patwal, declared hostile; PW5 Robin Gurung, declared hostile; PW6 Dr. K.C. Pant, who recorded injuries on the person of Dinesh Chand at the time of admitted him in the hospital; PW7 Head Constable Raj Kumar, who prepared the Check Report of the First Information Report; and PW8 Inspector Chandan Singh Bisht, the Investigating Officer.

6. The oral and documentary evidence was put to the accused u/s 313 of Cr.P.C. in reply to which accused Jitendra Kumar @ Babloo alleged the same to be false and pleaded that he has been falsely implicated due to enmity. However, no evidence, in defence, was adduced. The trial court, after hearing learned counsel for the parties, found that prosecution has successfully proved the charge of offence punishable u/s 302 IPC and convicted him accordingly. However, the trial court found that charge relating to offence punishable u/s 25/4 of the Arms Act

was not proved. After hearing on sentence, the accused was sentenced to imprisonment for life u/s 302 IPC. Aggrieved by the said judgment and order dated 12.05.2006 passed by the learned Sessions Judge, Dehradun in Sessions Trial No. 153 of 2004, this appeal is preferred by the convict.

7. Before further discussion, we think just and proper to mention the injuries found on the dead body of Dinesh Chand recorded by PW 2 S.K. Gupta on 12.07.2004 at 04.00 p.m., who prepared the autopsy report (Exhibit A2). Ante mortem injuries are being reproduced as below:

- i. Stitched wound 2.5 cm on the left side of chest. 9 cm below left nipple. 3 stitches present. On opening the stitches injury found cavity deep.
- ii. Stitched wound 6 cm long across the front left arm. 4 cm above left elbow. 5 stitches present. On opening the stitches the injury was found muscle deep.
- iii. Abrasion 1 X 0.5 cm. on left side of chest 8 cms. above the left nipple.
- iv. Abrasion 1 X 0.5 cm. 4 cm below the angle of mandible.
- v. Abrasion 3 X 1.5 cm on the top of left shoulder.
- vi. Abrasion 1X 0.5 cm on the forehead 4 cm above medial end of right eye brow.

PW2 Dr. S.K. Gupta in autopsy report (Exhibit A2) has opined that deceased died due to shock and haemorrhage as a result of ante mortem injuries. The evidence adduced by this witness establishes on record that Dinesh Chand died a homicidal death.

8. Now, we have to examine whether accused / appellant Jitendra Kumar @ Babloo committed murder of Dinesh Chand, as suggested by prosecution or not? The only eye witness, who has stated that accused Jitendra Kumar @ Babloo inflicted knife blows on the person of Dinesh Chand on 11.07.2004 at about 07.00 p.m., is PW1 Krishan Kumar (informant) brother of deceased. Other eye witnesses PW4 Pradeep Patwal and PW5 Robin Gurung have not supported the prosecution story and the two were declared hostile.

9. Learned counsel for the appellant argued that two witnesses namely PW4 Pradeep Patwal and PW5 Robin Gurung are the only witnesses, regarding whom, it can be said that their presence was natural at the place of incident, as they used to run their shops near the place of incident but they have not supported the prosecution story that they saw accused Jitendra Kumar @ Babloo stabbing the deceased. As to the presence of PW1 Krishan Kumar, brother of deceased, it is argued that his presence at the place of incidence is not natural. In this connection, attention of this Court is drawn to the statement given by this witness in his cross examination, in which he admits that his house is quarter to 1 kilometre from the spot. It has further been contended on behalf of the appellant that had PW1 Krishan Kumar seen the incident, he would have taken his injured brother to the hospital. We do find force in the submissions made by the defence counsel.

10. Statement of PW3 Hirdyesh Kumar three wheeler driver shows that when he was passing through the place of incident he was stopped by the people and took injured to the hospital but this witness did not see, who caused injuries on the person of Dinesh Chand, the witness was got declared hostile. However, his statement to the extent that he took injured to the hospital gets corroborated from injury report (Exhibit 2A) prepared by PW6 Dr. K.C. Pant, in which it is mentioned that one Hirdyesh Kumar Sharma and Sushil Saxena brought the injured to the hospital, who got admitted the injured as unknown person. Injury report shows that injuries on person of unknown person were recorded. Exhibit A2 and A3 prepared by the same Medical Officer show that information was sent to the police. Exhibit A4 prepared by said Emergency Medical Officer Dr. K.C. Pant further shows that injured succumbed to injuries at 07.55 p.m. in the hospital and his body was kept in the mortuary, as such, only this much gets corroborated on the record that deceased suffered injuries on 11.07.2004 in the evening and he was admitted in Doon Hospital, where he died. However, the evidence, as to who has committed the crime, is not sufficient on record to hold accused appellant Jitendra Kumar @ Babloo guilty of the charge.

11. In the above circumstances the only evidence adduced by PW1 Krishan Kumar regarding the role of the accused person in commission of crime does not appear to be convincing, for the reasons already discussed above. Therefore, we are of the view that accused appellant Jitendra Kumar @ Babloo is entitled to get benefit of reasonable doubt.

12. Accordingly, appeal is allowed. Impugned judgment and order dated 12.05.2006 passed by the Sessions Judge, Dehradun in Sessions Trial No. 153 of 2004 is hereby set aside. Accused appellant Jitendra Kumar @ Babloo is acquitted of the charge of offence punishable u/s 302 IPC. He is in jail. He shall be set at liberty, if not required in connection with any other crime. Let the copy of this judgment be sent to the Superintendent of the Jail concerned. Lower court record be sent back.