
(2011) 05 UK CK 0134

In the Uttarakhand High Court

Case No : Criminal Appeal No. 169 of 2003

Raman @ Babloo and Randhawa @ Billoo	APPELLANT
Vs	
State of Uttaranchal (Uttarakhand)	RESPONDENT

Date of Decision : 12-05-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 313, 374
Penal Code, 1860 (IPC) — Section 302, 324, 34, 452

Citation : (2011) 05 UK CK 0134

Hon'ble Judges : Sudhanshu Dhulia, J; Prafulla C. Pant, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—These two appeals, preferred u/s 374 of the Code of Criminal Procedure, 1973 (for short Cr.P.C.), are directed against the judgment and order dated 1st of April 2003, passed by Addl. Sessions Judge/II F.T.C., Haridwar, in Sessions Trial No. 261 of 2000, whereby said court has convicted accused/Appellants Raman @ Babloo, Randhawa @ Billoo and Bijendra Bhagat u/s 302/34, 324/34 and 452 of the Indian Penal Code, 1860 (for short I.P.C.). Each one of the convicts is sentenced to imprisonment for life and directed to pay fine of Rs. 5,000/- u/s 302/34 of I.P.C., rigorous imprisonment for a period of one year and directed to pay fine of Rs. 1,000/- u/s 324/34 of I.P.C., and rigorous imprisonment for a period of one year and directed to pay fine of Rs. 1,000/- u/s 452 of I.P.C.

2. Heard learned Counsel for the parties and perused the lower court record.

3. It is a case of DOUBLE MURDER. Prosecution story, in brief, is that accused/Appellants, namely Raman @ Babloo, Randhawa @ Billoo & Bijendra Bhagat, and the informant P.W. 1 Sanjay Kumar, P.W. 2 Surat Singh and P.W. 3 Krishna are residents of Village Thethki in District Haridwar. It is alleged that on 21.10.1999, at about 06:30 P.M., there was a quarrel between the children of P.W. 2 Surat Singh and accused Bijendra Bhagat. Thereafter, at about midnight (in the

intervening night of 21st and 22nd of October 1999) accused/Appellants Raman @ Babloo and Randhawa @ Billoo, both armed with TABALS (heavy sharp edged weapon) and country made pistols, and accused/Appellant Bijendra Bhagat, armed with LATHI, came to the house of P.W. 2 Surat Singh. They (accused/Appellants) dragged Rakesh (son of Surat Singh) from his house, and started assaulting him. Informant Sanjay Kumar (P.W. 1), his father Surat Singh (P.W. 2) and mother Attar Kali (one of the deceased) came forward to save Rakesh, on which accused/Appellants Raman @ Babloo and Randhawa @ Billoo assaulted Attar Kali, and accused/Appellant Bijendra Bhagat armed with lathi assaulted Sanjay Kumar (P.W. 1). In the scuffle, TABALS and country made pistols fell down from the hands of accused/Appellants Raman @ Babloo and Randhawa @ Billoo. Thereafter, the two (Raman and Randhawa) dragged dead body of Rakesh from the spot to the gallery of their house. The dead body of Attar Kali was left lying at the spot. The incident was also witnessed by Krishna (P.W. 3), a neighbour of the two deceased. Immediately after the incident, injured Sanjay Kumar (P.W. 1) went to the police station, Manglore, and gave written first information report (Ext. A -1) at about 1:50 A.M. (within two hours of the incident). On the basis of said report, Crime No. 270 of 1999 was registered at the police station, relating to offences punishable u/s 452, 302, 324 of I.P.C. against the three accused, namely Bijendra Bhagat, Raman @ Babloo and Randhawa @ Billoo. The investigation was taken up by Sub Inspector Hari Prakash Vats (P.W. 7), which was later transferred to P.W. 10 Sub Inspector J.P. Juyal. The police rushed to the spot in the wee hours of 22.10.1999 to Village Thethki, where the incident had taken place. Dead bodies of Attar Kali and Rakesh were taken into possession by the police, and inquest report (Ext. A -10) relating to dead body of Attar Kali, and inquest report (Ext. A -11) relating to dead body of Rakesh, were prepared by P.W. 8 Sub Inspector Kripal Singh Rathi, at about 06:30 A.M., and 08:00 A.M., respectively. Police also got prepared forms No. 13 (Ext. A -12 and Ext. A -16), sketches of the dead bodies (Ext. A -13 and Ext. A -17), sample seals (Ext. A -14 and Ext. A -19), letters to the Chief Medical Officer (Ext. A -15 and Ext. A -18) requesting for postmortem examination of the dead bodies. P.W. 6 Dr. S.C. Srivastava conducted postmortem examination on dead body of Rakesh on 22.10.1999, at 03:00 P.M., and on the dead body of Attar Kali at 03:30 P.M. He recorded as many as seven incised wounds, and one firearm injury, as ante mortem injuries on the body of Rakesh, in autopsy report (Ext. A -3), and four incised wounds as ante mortem injuries in the autopsy report (Ext. A -4) relating to dead body of Attar Kali. The Medical Officer opined that both have died of shock and haemorrhage, as a result of ante mortem injuries. Meanwhile, the Investigating Officer inspected the spot, and started interrogating the witnesses. The TABALS and country made pistols found at the spot and the blood stained soil & simple soil and blood stained clothes were taken by the police in their possession and necessary recovery memos (Ext. A -5, Ext A -6 and Ext. A -7) were prepared. Site plan (Ext. A -9) was also prepared by the Investigating Officer. On completion of investigation, charge sheet (Ext. A -22) was filed by the Investigating Officer against all the three accused, namely

Bijendra Bhagat, Raman @ Babloo and Randhawa @ Billoo, for their trial in respect of offences punishable u/s 302, 324 and 452 of I.P.C.

4. The Addl. Civil Judge (Senior Division)/Addl. Chief Judicial Magistrate, Roorkee, District Haridwar, on receipt of the charge sheet, after giving necessary copies to the accused as required u/s 207 of Code of Criminal Procedure, committed the case to the court of Sessions for trial. Meanwhile, a report dated 02.12.1999, was received from the Forensic Science Laboratory, reporting that the blood stained TABALS, blood stained soil, and blood stained clothes, contained human blood. Blood stained soil relating to Rakesh contained human blood of Group "B". Blood stained Petticoat and blood stained shawl of Attar Kali found containing human blood of Group "A". On 20th of July 2000, after hearing the parties, the trial court framed charge of offences punishable u/s 452, 324 read with Section 34, and 302 read with Section 34 of I.P.C. against all the three accused, namely Bijendra Bhagat, Raman @ Babloo and Randhawa @ Billoo, who pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1 Sanjay Kumar (injured eyewitness and informant), P.W. 2 Surat Singh (eyewitness and father of Sanjay Kumar and Rakesh), P.W. 3 Krishna (a neighbour and eyewitness), P.W. 4 Satpal (in whose presence inquest reports were prepared); P.W. 5 Dr. A.K. Chaudhary (who recorded medical injuries found on person of Sanjay Kumar on 22.10.1999, at Primary Health Center, Manglore); P.W. 6 Dr. S.C. Srivastava (who conducted postmortem examination on the dead bodies of Rakesh and Attar Kali on 22.10.1999); P.W. 7 Sub Inspector Hari Prakash Vats (who started the investigation); P.W. 8 Sub Inspector Kripal Singh Rathi (who prepared inquest reports); P.W. 9 Head Constable Baljoor Singh (who prepared check report on the basis of written FIR received, and made necessary entries in the General Diary); and P.W. 10 Sub Inspector J.P. Juyal (who completed the investigation). The oral and documentary evidence was put to the accused u/s 313 of Code of Criminal Procedure, in reply to which they alleged the evidence as false. They have further pleaded that they were falsely implicated in the crime due to enmity. In defence, D.W. 1 Virendra Singh was examined, who stated that on 22.10.1999, he signed the inquest reports after he was called at police station Manglore. After hearing the parties, the trial court, found that the prosecution has successfully proved charge of offences punishable u/s 452, 324/34 and 302/34 of I.P.C. against all the three accused, namely Bijendra Bhagat, Raman @ Babloo and Randhawa @ Billoo. Thereafter, the parties were heard on sentence, and each one of the convicts was sentenced to imprisonment for life and directed to pay fine of Rs. 5,000/- u/s 302/34 of I.P.C., rigorous imprisonment for a period of one year and directed to pay fine of Rs. 1,000/- u/s 324/34 of I.P.C., and rigorous imprisonment for further period of one year and directed to pay fine of Rs. 1,000/- u/s 452 of I.P.C. Aggrieved by said judgment and order dated 01.04.2003, passed by Addl. Sessions Judge/II F.T.C., Haridwar, in Sessions Trial No. 261 of 2000, these appeals are filed by the convicts.

5. Before further discussion, we think it just and proper to mention the ante mortem injuries recorded by P.W. 6 Dr. S.C. Srivastava, who conducted

postmortem examination on the two dead bodies on 22.10.1999, recovered by the police from the spot. Autopsy report (Ext. A -3) of Rakesh discloses following ante mortem injuries on his body:

- i) Incised wound 1.5 cm X 0.5 cm X bone deep right side forehead, 1 cm above right eyebrow.
- ii) Incised wound 2 cm X 1 cm X cartilage deep on lower part of right pinna.
- iii) Incised wound 3 cm X 1 cm X bone deep right mandibular region.
- iv) Incised wound 4 cm X 1 cm X brain cavity deep, 7 cm above left ear.
- v) Incised wound 6 cm X 3 cm X brain cavity deep, brain coming out, 3 cm behind injury No. (iv).
- vi) Incised wound 1 cm X 0.5 cm X bone deep, 1 cm behind left pinna.
- vii) Incised wound 1 cm X 0.5 cm X bone deep on top of left shoulder.
- viii) Firearm wound of entry and exit 2 cm X 1 cm right side front of wrist surrounded by blackening and tattooing.

On internal examination, the aforesaid Medical Officer Dr. S.C. Srivastava (P.W. 6) found that there was fracture on the frontal bone in the parietal and left occipital part of skull in the body of Rakesh. He opined in the report that deceased (Rakesh) had died of shock and haemorrhage, as a result of ante mortem injuries, suffered by him.

6. The ante mortem injuries recorded by P.W. 6 Dr. S.C. Srivastava, after conducting postmortem examination on dead body of Attar Kali, are mentioned in the autopsy report (Ext. A -4), which are being reproduced below:

- i) Incised wound 15 cm X 5 cm X brain cavity deep and mouth cavity deep with fracture of skull bone and bones of face obliquely transverse tailing down towards and medially. Brain coming out. Right nose incised 3 cm above right ear.
- ii) Incised wound 4 cm X 2 cm X brain cavity deep right side forehead and head connected with injury No. (i).
- iii) Incised wound 4 cm X 2 cm X brain cavity deep 2 cm medial to injury No. (ii).
- iv) Incised wound 1 cm X 0.5 cm X bone deep on right side of bridge of nose with fracture of nose bones, right side.

On internal examination, the Medical Officer Dr. S.C. Srivastava (P.W. 6) found fracture on the frontal and right parietal bones and right side of sphenoid and right maxilla and right zygomatic bones of Attar Kali. He (Dr. S.C. Srivastava) opined that the deceased Attar Kali had died of shock and haemorrhage, as a result of ante mortem injuries. P.W. 6 Dr. S.C. Srivastava in his examination stated that both the deceased could have suffered injuries in the midnight of 21st and 22nd of October 1999. From the medical evidence discussed above, it is

established on the record that Rakesh and his mother Attar Kali died homicidal death. Now, we have to examine whether the two were murdered, with common intention, by the three accused/Appellants Raman @ Babloo, Randhawa @ Billoo and Bijendra Bhagat, as suggested by prosecution, or not. We have to further examine whether the three accused persons trespassed in the house of Surat Singh and dragged Rakesh from his house. It is also to be examined whether the accused/Appellants with common intention, assaulted Sanjay Kumar (P.W. 1), or not.

7. P.W. 1 Sanjay Kumar (informant and injured) has stated that he knows all the three accused who are his neighbours. He further told that on 21.10.1999, in the evening, there was quarrel between the children of his side and the side of the accused. P.W. 1 Sanjay Kumar further told that at about midnight on 21st and 22nd of October 1999, accused/Appellants Raman @ Babloo and Randhawa @ Billoo both armed with TABALS and country made pistols, Bijendra Bhagat armed with LATHI, entered in his house and dragged Rakesh, and started assaulting him in front of the house. The two accused, armed with TABALS (heavy sharp edged weapon), assaulted Rakesh with said weapons, and also fired at him. According to this witness, he (P.W. 1) and his mother Attar Kali attempted to save Rakesh, on which the two accused assaulted Attar Kali with TABALS (heavy sharp edged weapon). In the scuffle in an attempt to save Rakesh and Attar Kali, TABALS and country made pistols fell down from the hands of the two accused. On this, according to this witness, accused/Appellant Bijendra Bhagat who was armed with LATHI, gave blows with LATHI on his person. P.W. 1 Sanjay Kumar has further stated that while going back accused/Appellants Raman @ Babloo and Randhawa @ Billoo, on exhortation of accused/Appellant Bijendra Bhagat, dragged dead body of Rakesh to the gallery of their house. The witness has further stated that the incident was witnessed not only by his family members but also by Krishna (P.W. 3). The witness has proved written report (Ext. A -1) lodged as first information report at police station Manglore, immediately after the incident. P.W. 1 Sanjay Kumar has been subjected to lengthy cross-examination, but nothing has come out in his testimony which creates reasonable doubt in the truthfulness of the story narrated by him.

8. The statements of P.W. 1 Sanjay Kumar gets corroboration from the medical evidence relating to injuries suffered by him which were recorded by P.W. 5 Dr. A.K. Chaudhary on 22.10.1999, at Primary Health Center, Manglore. The injuries suffered by P.W. 1 Sanjay Kumar which are recorded by aforesaid Medical Officer in the injury report (Ext. A -2) are being reproduced below:

- i) A lacerated wound 5 cm X 0.5 cm X bone deep on posterior part of left parietal region of head placed obliquely. Fresh clotted blood present over and in nearby area of wound. Some blood oozing out on pressure.
- ii) A lacerated wound 1.5 cm X 0.5 cm X muscle deep on the left side of upper lip. Fresh clotted blood present over and in the nearby area of wound, and some blood oozing out on pressure.

iii) Fresh abrasion 2.5 cm X 1 cm on the back and upper part of right forearm. Some fresh clotted blood present over it.

P.W. 5 Dr. A.K. Chaudhary has stated that injuries No. (i) and (ii) were simple in nature, and caused by some blunt object, and injury No. (iii) could have been caused by friction. P.W. 5 Dr. A.K. Chaudhary further told that the injuries could have been caused in the midnight on 21st and 22nd of October 1999.

9. The prosecution story narrated by P.W. 1 Sanjay Kumar (injured) is not only corroborated by the medical evidence discussed above, but also from the statement of other two eyewitnesses, namely P.W. 2 Surat Singh (father of informant and Rakesh), and third eyewitness P.W. 3 Krishna. P.W. 2 Surat Singh has narrated the same prosecution story as narrated by his injured son Sanjay Kumar. P.W. 3 Krishna, who is neighbour of the informant and the deceased, has also corroborated the incident which he witnessed in the midnight of 21st and 22nd of October 1999. Presence of all the three eyewitnesses at the place of incident is natural and cannot be doubted. The statements of the three eyewitnesses is not only corroborated by the medical evidence on record discussed above, but also from the report received from the Forensic Science Laboratory which relates to the items taken into possession by the police from the place of incident, and were sent for chemical analysis. Having re-assessed the entire evidence on record, we agree with the trial court that the prosecution has successfully proved charge of offences punishable u/s 452, 324/34 and 302/34 of I.P.C. against the three accused/Appellants, namely Bijendra Bhagat, Raman @ Babloo and Randhawa @ Billoo.

10. On behalf of the Appellants, learned Counsel pleaded that site plan does not show any bulb at the place of incident outside the house of Kanvarpal. We have seen the site plan and read the statement of the witnesses carefully. It has been mentioned in the first information report, and also in the statement of P.W. 1 Sanjay Kumar and P.W. 2 Surat Singh, that there was electric light at the place of incident. Assuming for a moment that there was no electric light, even then the accused/Appellants, who were neighbours of the deceased, there was no difficulty for the eyewitnesses to identify the accused from a close distance. They all are relative. P.W. 3 Krishna is equally related to both the sides.

11. Next argument advanced on behalf of the Appellants is that no independent eyewitness has corroborated the incident and the conviction cannot be based on the testimony of the interested witnesses. We do not find any force in this argument. There appears no enmity of the accused as against P.W. 3 Krishna. Apart from this, in the present case, it is a midnight incident committed in front of house of the deceased, as such, presence of family members of the deceased was natural and all others must have come after sometime as at the midnight no one keeps roaming in the village.

12. It is also submitted on behalf of the Appellants that Appellant Bijendra Bhagat is an old man, and he has been named only due to enmity. In this

connection, it is pointed out that there is contradiction in the statements of P.W. 1 Sanjay Kumar and P.W. 10 Sub Inspector J.P. Juyal, as the eyewitness has stated that accused Bijendra Bhagat was armed with Lathi, while the Investigating Officer says that he was told that Bijendra Bhagat was armed with TABAL. Merely on that minor contradiction, we do not see sufficient reason to discard the otherwise trustworthy testimony of the injured eyewitness, who himself suffered injuries of LATHI. He is the best person who could tell that who assaulted him with LATHI.

13. For the reasons as discussed above, we do not find any force in the two appeals. Therefore, both the appeals are liable to be dismissed. The same are dismissed. The accused/Appellants are on bail. Their bail is cancelled. Lower court record be sent back to make the accused/Appellants Raman @ Babloo, Randhawa @ Billoo and Bijendra Bhagat serve out the sentences awarded by the trial court.