
(2010) 11 UK CK 0024

In the Uttarakhand High Court

Case No : Criminal Appeal No. 195 of 2002

Veeran Lal and Rajan Lal

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 26-11-2010

Acts Referred:

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

Citation : (2011) 1 NCC 125 : (2010) 3 UC 2087

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—Both these two appeals are directed against judgment and order dated 10.07.2002, passed by Sessions Judge, Udham Singh Nagar, in Sessions Trial No. 443 of 2000, whereby Appellants namely Veeran Lal, Rajan Lal and Prabhu Charan are convicted u/s 302 read with Section 34 of Indian Penal Code, 1860 (for short IPC), and each one of them has been sentenced to rigorous imprisonment for life.

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

3. Prosecution story, in brief, is that P.W.1 Chotte Lal (complainant) used to run a meat shop in Sitarganj. Accused/Appellant Veeran Lal had also a meat shop in the neighbourhood. The two also got shops opened to sell the meat in village Padagaon where Baburam (deceased) son of the complainant used to sit. P.W.2 Rahul was servant of the complainant who used to sell meat at the shop at Sitarganj. There was some dispute between complainant, and accused/Appellant Veeran Lal relating to winning over the customers of each other due to which it is alleged by the prosecution that accused Veeran Lal started harboring enmity. On 17.07.2000, when Baburam was about to go from Sitarganj to Padagaon at about 3:30 P.M., he was surrounded, and stopped by the three accused/Appellants Veeran Lal, Rajan Lal and Prabhu Charan near the shop in Sitarganj,

who were armed with knives. The three asked the Baburam not to go, and sell meat in Padagaon. To this, he (Baburam) objected. On this, the three accused assaulted the deceased (Baburam) with knives. To save his life, injured Baburam rushed towards the shop in Sitarganj, but the three accused chased him, and further inflicted knife blows on his person, and killed him. The incident was witnessed by P.W.1 Chotte Lal (complainant), and his servant P.W.2 Rahul. Soon after the incident, first information report (Ex. A1) was lodged by Chotte Lal at 16:15 hours on the very day against the three accused Veeran Lal, Rajan Lal and Prabhu Charan that they have committed murder of Baburam in the manner stated above. On the basis of said report, crime No. 337 of 2000, was registered against the three accused relating to offence punishable u/s 302 read with Section 34 I.P.C., check report (Ex.A5) was prepared, and necessary entry was made in the general diary (extract Ex. A6). P.W.8 Inspector Prahalad Sigh took up the investigation, and reached at the spot at about 17:25 hours (on 17.07.2000). Inquest report (Ex. A9) was prepared by the police after taking dead body in their possession. The body was sealed. The Investigating Officer got further prepared police form No. 13 (Ex. A13), sketch of the dead body (Ex. A14), sample seal (Ex. A15), and letter to Chief Medical Officer (Ex. A16) requesting him for post -mortem examination. P.W.3 Dr. S.C.S. Koranga, conducted post-mortem examination on the body of Baburam on 18.07.2000, at 11:00 A.M.. He recorded as many as six incised wounds, all in the thorax cavity region in the autopsy report (Ex. A2), and opined that deceased had died due to hemorrhage and shock as a result of ante-mortem injuries. Meanwhile, the Investigating Officer, who had inspected the spot prepared site plan (Ex. A23), and interrogated the witnesses. The three accused were arrested during investigation, and knives were recovered from their possession by the Investigating Officer (Separate crime Nos. were registered against the accused/Appellants for keeping unauthorized knives which was separately investigated, and charge sheets were filed). On completion of investigation of this case, the Investigating Officer submitted charge sheet (Ex. A27) against the three accused namely Veeran Lal, Rajan Lal and Prabhu Charan for their trial in respect of offence punishable u/s 302/34 I.P.C.

4. The Magistrate, on receipt of the charge sheet, after giving necessary copies to the accused, committed the case to the court of session for their trial (The cases relating to 25/4 of Arms Act, were also committed to the court of sessions). The trial court, after hearing the parties, framed charge of offence punishable u/s 302 read with Section 34 I.P.C., on 08.06.2001, against all the three accused Veeran Lal, Rajan Lal and Prabhu Charan, who pleaded not guilty, and claimed to be tried. On this, prosecution got examined P.W.1 Chotte Lal (complainant, and father of the deceased), P.W.2 Rahul (an eye witness), P.W.3 Dr. S.C.S. Koranga (who conducted post-mortem examination), P.W.4 S.I.K.P. Singh (in whose presence accused Veeran Lal was arrested), P.W.5 Balwant Singh (the then Head Constable who prepared the check report, and made necessary entry in general diary), P.W.6 S.I. G.L. Arya (who prepared the inquest report of

the dead body), P.W.7 S.I. Devki Nandan (in whose presence accused Prabhu Charan was arrested), and P.W.8 Inspector Prahalad Singh (the Investigating Officer). Oral and documentary evidence was put to the accused u/s 313 Cr.P.C., in reply to which they alleged that they have been falsely implicated due to enmity. However, the three accused admitted that in the shop opened in Padagaon by Chotte Lal, Baburam used to sit there to sell meat. They also admitted that in Sitarganj the meat shop of Chotte Lal, and that of Veeran Lal is separated by a road. No evidence in defence was adduced. The trial court, after hearing the parties, found all the three accused guilty of charge of offence punishable u/s 302 read with Section 34 I.P.C.. After hearing on sentence, each one of the convicts was sentenced to rigorous imprisonment for life. Aggrieved by said judgment and order dated 10.07.2002, passed by Sessions Judge, Udham Singh Nagar, in Sessions Trial No. 443 of 2000, these two appeals were filed by the three convicts.

5. Before further discussion, we think it just and proper to mention the ante-mortem injuries recorded by P.W.3 Dr. S.C.S. Koranga, who conducted post-mortem examination on 18.07.2000 at 11:00 A.M., on the dead body of Baburam. The same are being reproduced below from autopsy report (Ex. A2):

- (i) Incised wound 3.5cm X 3cm X thorax cavity deep (4cm after probing), present above xiphisternum. Clotted blood present.
- (ii) Incised wound 3cm X 2cm X thorax cavity deep (6cm), 5cm lateral to left nipple. Clotted blood present.
- (iii) Incised wound 3cm X 2cm X 5cm deep (thorax cavity), present 4 cm above the lateral to injury No. 2. Clotted blood present.
- (iv) Incised wound 3cm X 2cm X thorax cavity deep (5cm), 3cm below 7th cervical on back of neck. Clotted blood present.
- (v) Incised wound 4cm X 3cm X thorax cavity deep (3cm), just below right scapula. Clotted blood present.
- (vi) Incised wound 3cm X 2cm X thorax cavity deep (5cm), 3cm lateral to injury No. 5. Clotted blood present.

On internal examination, the medical officer found corresponding incised injuries in pleura, lungs and heart. P.W.3 Dr. S.C.S. Koranga, opined in the autopsy report that deceased had died of hemorrhage and shock as a result of ante-mortem injuries. The medical evidence on record fully establishes that Baburam died a homicidal death on 17.07.2000. Now, we have to see whether the accused Veeran Lal, Rajan Lal and Prabhu Charan with common intention committed murder of Baburam as suggested by prosecution or not.

6. P.W. 1 Chotte Lal, is the complainant who has stated that he runs a meat shop in Sitarganj near post-office. He has further stated that accused Veeran Lal also runs his meat shop in the neighbourhood, and the two shops are separated by a

road. The witness has further stated that he also got a meat shop opened in village Padagaon for his son Baburam (deceased). He has further narrated that after the dispute of winning over the customers, complainant and accused Veeran Lal entered into oral compromise to run a shop in Sitarganj for seventeen days by Veeran Lal, and for nine days by the complainant. According to this witness, Veeran Lal did not honour the agreement, and used to take away the customers of the complainant. Baburam had asked Veeran Lal not to interfere with the working of the shop of his father on which Veeran Lal started harboring the enmity. P.W.1 Chotte Lal further states that on 17.07.2000, at about 3:30 P.M., his son Baburam was taking meat to Padagaon from the shop situated in Sitarganj but he was intercepted by accused/Appellants Veeran Lal, Rajan Lal and Prabhu Charan. All the three accused were armed with knives. The witness further narrates that accused asked Baburam as to why he is selling meat in Padagaon, thereafter the three accused started assaulting Baburam. Baburam Started running towards the shop (in Sitarganj) to save his life but the three accused chased him, and further gave blows with knives, and killed him. According to P.W.1 Chotte Lal, the incident was also witnessed by P.W.2 Rahul. This witness (P.W.1) has proved the F.I.R. (Ex. A1) lodged by him at the police station against the accused. Nothing has come out in the cross-examination of this witness which creates doubt in the statement given by him.

7. P.W.2 Rahul, another eye witness, has stated that he was working as labour in the meat shop of Chotte Lal in Sitarganj. He further states that on 17.07.2000, at about 3:30 P.M., Baburam was taking meat to sell in Padagaon but as soon as he started from the shop in Sitarganj, the accused/Appellants armed with knives intercepted him, and asked him to stop selling meat in Padagaon. Baburam questioned them as to what is wrong in selling meat in Padagaon. On this, the three accused who were armed with knives started assaulting the deceased. P.W.2 Rahul further states that injured Baburam ran towards his shop (in Sitarganj) but the three chased him, and further inflicted knife blows, and after killing him, ran away.

8. The presence of P.W.2 Rahul appears to be natural at the place of incident. It is nowhere suggested by the defence to him that he was not servant of the complainant, and was not in the shop on the day of the incident. Similarly, presence of P.W.1 Chotte Lal is natural at the spot. Having read the testimony of the two eye witnesses namely P.W.1 Chotte Lal and P.W.2 Rahul, we are convinced that the prosecution has successfully proved the charge of offence punishable u/s 302 read with Section 34 I.P.C., that the three accused/Appellants committed murder of Baburam with common intention. The statement of the two eye witnesses get fully corroborated from the medical evidence on record which shows as many as six incised wounds on the persons of Baburam which resulted in his death. It is pertinent to mention here that F.I.R., is prompt one, and the incident is a day light incident. Apart from this, motive of commission of crime, though not necessary to be proved, has also been explained fully.

9. It is argued on behalf of the Appellants that P.W.1 being father of the deceased, is an interested person, and P.W.2 Rahul being servant of P.W.1 (Chotte Lal), is also not an independent witness as such, it cannot be said that prosecution has proved charge of offence punishable u/s 302 read with Section 34 I.P.C., beyond reasonable doubt as against the accused. No doubt P.W.1 Chotte Lal is father of the deceased, and P.W.2 Rahul is servant of the complainant but merely for that reason their testimony cannot be discarded as two are the most natural witnesses , as to what had happened in front, and inside their meat shop.

10. Shri Ram Singh Sammal, learned Counsel for the Appellants contended that had the incident taken place in the manner suggested by the prosecution, P.W.2 Rahul and Baburam (deceased) who were younger in age to the accused, could have easily over powered the accused with the help of Chotte Lal, as such, the evidence adduced by the alleged eye witnesses cannot be said to be reliable. We have carefully gone through the statement of the witnesses ,and we are of the view that had the accused not been armed with the knives, what learned Counsel for the Appellants contended could have been accepted but in the present case since the three accused were armed with knives, it was not expected of the witnesses that they could over power the three accused armed with deadly weapons, and there is nothing unnatural in merely witnessing what was happening before them .

11. Lastly, it is submitted that even if the prosecution story as stated by the alleged eye witnesses is accepted, the enmity of the complainant, and his son was with Veeran Lal only as such, the implication of the other two accused/Appellants Prabhu Charan, and Rajan Lal is false in the case. On this point, on going through the evidence on record we find that the accused Rajan Lal is brother of the accused Veeran Lal, and accused Prabhu Charan is also cousin. That being so, there coming up with accused Veeran Lal in commission of murder of Baburam cannot be said to be doubtful, particularly, when the F.I.R., was a prompt one and there was little scope of making false implication of the persons who were not involved in the crime.

12. Having reassessed entire evidence on record, and after considering the statement of learned Counsel for the parties, we do not find force in these two appeals. The appeals are liable to be dismissed. Both the appeals are dismissed. The impugned judgment and order relating to conviction and sentence recorded against accused/Appellants Veeran Lal, Rajan Lal and Prabhu Charan by the trial court is affirmed. All the three accused/Appellants are in Jail. Let a copy of this judgment be sent to the Superintendent of Jail concerned. Lower court record be sent back alongwith copy of this judgment.