

**(2009) 08 UK CK 0012**  
**Uttarakhand High Court**  
**Case No:** None

Shyam Babu and Lal Babu

APPELLANT

Vs

The State

RESPONDENT

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**Date of Decision:** Aug. 7, 2009

**Acts Referred:**

- Arms Act, 1959 - Section 25, 4
- Criminal Procedure Code, 1973 (CrPC) - Section 207, 313, 374
- Juvenile Justice Act, 1986 - Section 2
- Penal Code, 1860 (IPC) - Section 302, 304, 307, 34, 452

**Hon'ble Judges:** Dharam Veer, J

**Bench:** Single Bench

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**Judgement**

Dharam Veer, J.

All these criminal appeals relate to one and common incident, therefore, all of them are being decided with this common judgment and order.

2. Criminal jail appeal Nos. 238/2006 and No. 73 of 2007, both preferred u/s 374(2) of The Code of Criminal Procedure, 1973 (hereinafter to be referred as Cr.P.C.), are directed against the common judgment and order dated 11-8-2006 passed by Sessions Judge, U.S. Nagar in Sessions Trial No. 310/1999, State v. Shyam Babu, whereby the learned Sessions Judge has convicted the appellant/accused-Shyam Babu u/s 452 of The Indian Penal Code, 1860 (hereinafter to be referred as I.P.C.) and sentenced him to two years" rigorous imprisonment. He was further convicted u/s 304 r/w Section 34 IPC and was sentenced to ten years" R.I. with fine of Rs. 5,000/and in default of payment of fine, six months" further simple imprisonment was awarded. Both the sentences were directed to run concurrently. However, he was acquitted for the offence punishable u/s 506 (Part II) IPC.

3. Criminal Jail Appeal No. 70 of 2007 is preferred against the common judgment and order dated 2.12.2006 passed by Sessions Judge, U.S. Nagar in S.T. No. 310A-99

and S.T. No. 55/2000, whereby the appellant-accused-Lal Babu has been convicted u/s 452 IPC for two years" R.I. and also u/s 304 IPC for ten years" R.I. with fine of Rs. 5,000/-and in default of payment of fine, six months" simple imprisonment was awarded. He was further convicted u/s 4/25 of The Indian Arms Act, 1959 [hereinafter to be referred as "the Act"] and was sentenced to one year"s R.I. All the sentences were directed to run concurrently. He was however acquitted for the offence punishable u/s 506 (Part II) IPC.

4. Criminal Appeal No. 361 of 2008 has also been preferred by the appellant-accused-Lal Babu against the same judgment and order dated 2.12.2006 whereby he was convicted and sentenced u/s 4/25 of the Act for one year"s R.I.

5. Heard learned Counsel for the parties and perused the entire material on record.

6. In brief the prosecution case is that P.W.1 Dinanath lodged a report stating therein that on 16.4.1999 at about 9:00 A.M., his son Harish Chandra @ Monu, aged about 21 years, had come on his shop. As soon as he opened the shop, appellants-accused Lal Babu, Shyam Babu @ Lalla and Ram Babu (died during trial) and Rameshwar Dayal (also died during trial) entered inside the shop. The accused persons dragged Harish Chandra @ Monu, son of complainant, outside the shop and caused injury on his stomach with knife with intention to kill him. The accused were armed with knife and Dandas. On the accumulation of crowd, accused persons ran away from there while threatening to kill. After that Rajendra Kumar (P.W.2) also reached on the spot and then the injured Harish Chandra @ Monu was taken to the Government Hospital, whose condition was very serious. It was also stated that those accused came in the shop on 15.4.1999 in drunken state and demanded some articles in credit. The injured refused for the same due to which the incident had occurred. With the same averments, the FIR Ex.Ka-1 was lodged by P.W.1 Dinanath on 16.4.1999 at 12:30 PM at P.S. Sitarganj, U.S. Nagar. On the basis of the FIR (Ex.Ka-1), Constable Clerk Chani Ram (P.W.9) prepared the Chik FIR of the case, i.e. Ex.Ka-13. The entry was also made in the G.D. by him, carbon copy of which is Ex.Ka-14. Investigation of this case was entrusted initially to P.W.6 S.I. Surendra Pal Singh. Injured Harish was medically been examined on 16.4.1999 at 9:20 AM by P.W.3 Dr. R.C. Sharma and medical report Ex.Ka-2 was prepared. The I.O. inspected the place of occurrence and prepared the site plan, i.e. Ex.Ka-4. The injured Harish was referred to Lucknow from Bareilly by the doctors, however on the way, the injured succumbed to his injury on 18.4.1999. Accordingly the case was converted u/s 302 IPC from Section 307 IPC and entry in that regard was made in the G.D., the copy of which is Ex.Ka-18. Thereafter, the inquest of dead body was prepared, the inquest report is Ex.Ka-5. Along with the inquest report, other necessary documents viz. letter sent to CMO by I.O. Ex.Ka-6; sketch of dead body Ex.Ka7; specimen of seal Ex.Ka-8; Challan Lash Ex.Ka-9 and Fard Ex.Ka-10 for taking the clothes of deceased Harish @ Monu into possession, were also prepared. Autopsy on the dead body of Harish @ Monu was conducted on 19.4.1999 at 10 AM by P.W.7 Dr. T.C. Pant and

post-mortem report Ex.Ka-11 was prepared. The investigation of the case was later on transferred to Inspector K.C. Pundir who on 20.4.1999 also got recovered a blood stained knife which was used in the aforesaid crime from the house of appellant-accused Lal Babu and prepared the Fard, i.e. Ex.Ka-3. Thereafter, the case was registered against the appellant-accused Lal Babu u/s 4/25 of the Act on 20.4.1999 at 8:30 P.M. at P.S. Sitarganj. Chik FIR thereof was prepared by P.W.8 Puran Lal Tamta, i.e. Ex.Ka-11. Entry thereof was also made in the G.D., the copy of which is Ex.Ka-12. The I.O. also prepared the site plan of the place of occurrence, i.e. Ex.Ka-16. The knife as well as clothes of deceased was also sent for chemical examination and the report given by Assistant Director/Scientific Officer, Agra is Ex.Ka-19. During investigation, the I.O. recorded the statements of witnesses and on completion of investigation, filed the charge sheet against the appellant-accused Lal Babu, Shyam Babu and also against Ram Babu and Rameshwar Dayal (who died during trial) u/s 452/307/302/506 IPC, i.e. Ex.Ka-15. The I.O. also filed charge sheet against the appellant-accused Lal Babu u/s 4/25 of the Act, i.e. Ex.Ka-17.

7. After receiving the charge sheet, learned CJM, U.S. Nagar committed the case to the court of Sessions on 30.09.1999 after giving necessary copies to the accused as provided u/s 207 Cr.P.C.

8. On 4.11.2000, learned Sessions Judge, U.S. Nagar framed the charges against the appellants/accused Lal Babu, Shyam Babu and against Ram Babu and Rameshwar Dayal (who died during trial) Under Sections 452/302/506(Part II) IPC. The charges were read over and explained to accused, who pleaded not guilty and claimed to be tried. Charge against the appellant-accused Lal Babu u/s 4/25 of the Act was also framed by Sessions Judge. The charge was also read over and explained to him who pleaded not guilty and claimed to be tried.

9. To prove its case, the prosecution has examined P.W.1 Dinanath, complainant and father of deceased, P.W.2 Rajendra, eyewitness, P.W.3 Dr. R.C. Sharma, who initially medically examined the injured, P.W.4 Sita Ram, also an eyewitness, P.W.5 Ramesh Chandra, before whom the Fard Ex.Ka-3 for recovery of bloodstained knife was prepared, P.W.6 S.I. Surendra Pal Singh, who started investigation, P.W.7 Dr. T.C. Pant, who conducted autopsy, P.W.8 Constable Pooran Lal Tamta, who prepared Chik FIR u/s 4/25 of the Act and made entry in G.D., P.W.9 Chani Ram, who prepared Chik FIR and made entry in G.D. in the main case, P.W.10 Inspector K.C. Pundir, also I.O. of the case and P.W.11 S.I. Vijay Pal Gautam, also an I.O., who filed the charge sheet against the appellant-accused Lal Babu u/s 4/25 of the Act.

10. After that the statements of the appellant/ accused Shyam Babu and Lal Babu were recorded u/s 313 Cr.P.C. The oral and documentary evidence was put to each of them in question form, who denied the allegations made against them. However, they did not produce any oral or documentary evidence in defence.

11. After recording of statement of appellant- accused u/s 313 Cr.P.C. on 11.11.2005, appellant- accused Lal Babu absconded; therefore, his trial was separated on 17.2.2006. On 11.8.2006, trial of appellant- accused Shyam Babu was decided by Sessions Judge, U.S. Nagar. On 30.10.2006, appellant-accused Lal Babu was produced in the court by his sureties and accordingly his trial was decided on 2.12.2006 by Sessions Judge, U.S. Nagar.

12. After hearing learned Counsel for the parties and appreciating the entire material available on record, the learned Sessions Judge, U.S. Nagar vide judgment and order dated 11.8.2006 and 2.12.2006 convicted and sentenced the appellants/accused as discussed above. Feeling aggrieved, the accused/appellants have preferred the present appeals.

13. Before further discussion, it is pertinent to mention that the injured Harish was initially medically been examined on 16.4.1999 at 9:20 AM by P.W.3 Dr. R.C. Sharma and injury report Ex.Ka-2 was prepared and the injuries recorded therein are as under:

1. There is triangular superficial lacerated wound is present on middle of abdomen just below the umbilicus measuring 2.5 cm x 1.0 cm x 0.2 cm in size. Edges are ragged and margins are ill- defined. There is no fresh bleeding on monopulation, Kept under observation.

2. C/o severe pain all over the abdomen. O/E abdomen is not protruded, soft. Tenderness is present all around the wound area. B/S are (+). Kept under observation.

3. A 3.5 cm x 1.5 cm in longitudinal incised wound is present on left lower leg. Edges are clean cut. Fresh bleeding on monopulation.

Opinion-Above injuries No. 1 and 2 seems to be caused by blunt, hard, crushing object, fresh, kept under observation. While injury No. 3 is caused by some sharp object, fresh, simple in nature.

14. To prove the aforesaid medical report, the prosecution has examined P.W.3 Dr. R.C. Sharma who has proved the report Ex.Ka-2 prepared by him. He also stated that these injuries could possibly be caused on 16.4.1999 at 9 A.M.

15. After the death of Harish @ Monu on 18.4.1999, the post-mortem on his dead body was conducted by P.W.7 Dr. T.C. Pant on 19.4.1999 at 10 A.M. and the following ante-mortem injuries were found in the autopsy report i.e. Ex.Ka-11:

1. "Stitched wound present vertical 18 cms. long present on right para-median area.

2. Stitched wound on right iliac fossa 2 1/2 cms. oblique on right side

3. Dressed wound on left foot 1 1/2 cm x .5 cms. just before right medial malleolus.

16. To prove the post-mortem report, the prosecution got examined P.W.7 Dr. T.C. Pant who has proved the post-mortem report prepared by him, i.e. Ex.Ka-11. He further stated that the deceased had died due to ante-mortem injuries and hemorrhage.

17. To further prove its case the prosecution has examined P.W.1 Dinanath, complainant and father of deceased, who stated that on 16.4.1999 at about 9 A.M., when his son Monu went inside his shop after opening it, then appellants-accused Lal Babu, Shyam Babu @ Lalla and Ram Babu & their father Rameshwar Dayal (both died during trial) also entered inside the shop being armed with knife and Rameshwar Dayal was having Lathi in his hand. He was sitting nearby his shop. Meanwhile, Rameshwar Dayal and appellant-accused Shyam Babu dragged his son Harish outside the shop. Appellant-accused Lal Babu and Ram Babu (now dead) caused injury on the stomach and foot of his son with intention to kill him. Rameshwar Dayal also exhorted his son to kill his (Dinanath's) son. On the spot, Rajendra, Sitaram and Jasvir were there who also witnessed the incident. When he and other witnesses challenged the accused, then they ran away from there leaving his son injured. On 15.4.1999, accused persons wanted some articles on credit. On refusal, accused persons threatened to kill his son as a result of which on 16.4.1999 at 9 A.M., the accused came with the intention to kill his son. Thereafter he got his son medically examined at Sitarganj Hospital and went to lodge the report leaving his son in the hospital. Thereafter he lodged the report i.e. Ex.Ka-1. Since there was no improvement in health of his son, therefore, he proceed to take his son Lucknow, however on the way, his son succumbed to his injuries caused by the accused persons. Thereafter he came back at his house along with dead body of his son and informed about his death in the police station. Thereafter, the police prepared the inquest of dead body and then dead body was sent to Haldwani for post-mortem. This witness was cross-examined at length by the defence counsel but nothing has come out in his statement which may create any doubt in his statement. The statement of this witness is reliable and believable.

18. P.W.2 is Rajendra who stated that the accused persons were known to him. On 16.4.999 at 9 A.M., he was sitting in front of shop of Harish @ Monu. At that time, accused Ram Babu (died during trial), Shyam Babu (appellant), Lal Babu (appellant) and Rameshwar Dayal (died during trial) came in the shop of Harish and dragged him outside his shop. Accused Rameshwar Dayal and appellant-accused Shyam Babu exhorted to kill Harish on which appellant-accused Lal Babu and Ram Babu (now deceased) caused injuries with knife on his stomach and foot with intention to kill him. He was accompanied by Sitaram. They tried to save Harish, however the accused ran away from there. After that injured Harish was taken to Govt. Hospital, Sitarganj and father of injured Dinanath went to lodge the report. Later on, the doctors directed them to take the injured at Khatima. Afterwards, he came to know that while taking Harish to Lucknow from Bareilly, he succumbed to his injuries on 18.4.1999. This witness was also cross-examined at length by the defence counsel

but nothing has come out in his statement which may create any doubt in his statement. The statement of this witness is also reliable and believable.

19. P.W.4 is Sitaram who stated that on the date of incident at about 9 A.M., he was sitting in the shop along with Monu and Rajendra was also with them. Then the accused Ram Babu, Lal Babu, Shyam Babu and Rameshwar Dayal came on the shop of Harish @ Monu and dragged him outside the shop. Appellant-accused Lal Babu and Ram Babu (died during trial) with intention to kill Harish, caused injuries with knife on his stomach and foot. Thereafter, the accused ran away from there. Afterwards, injured Harish @ Monu was taken to Govt. Hospital, Sitarganj from where he was referred to Khatima Hospital. This witness was also cross-examined at length by the defence counsel but nothing has come out in his statement which may create any doubt in his statement. The statement of this witness too is reliable and believable.

20. P.W.5 is Ramesh Chandra who stated that on 20.4.1999 at about 5:45 PM, he came to know that in the murder case of Harish @ Monu, accused persons were arrested by the police. Appellant-accused Lal Babu got produced a knife from his house before him and also said that with the same knife, he and other accused caused death of Harish @ Monu. The said knife was sealed by the police on the spot and Fard Ex.Ka-3 was prepared and he proved the same. The said knife was marked as Ex.1. This witness was also cross-examined at length by the defence counsel but nothing has come out in his statement which may create any doubt in his statement. The statement of this witness is also reliable and believable.

21. P.W.6 is S.I. Surendra Pal Singh who stated that on 16.4.1999 he was entrusted the investigation of this case. He inspected the place of occurrence and prepared the site plan, i.e. Ex.Ka-4. On 18.4.1999 injured Harish @ Monu succumbed to his injuries due to which he went at the house of Dinanath for conducting the inquest, the inquest report prepared by him is Ex.Ka-5. He also prepared the documents viz. letter to CMO, sketch of dead body, specimen of seal and challan lash which are Exs.Ka-6, 7, 8 and 9 respectively. He also recovered the blood stained clothes of deceased Harish @ Monu in front of witnesses Jasvir Singh and Iqbal Singh and prepared Fard, i.e. Ex.Ka-10. On 18.4.1999, investigation was transferred from him. On 20.4.1999, appellant-accused Lal Singh was arrested by him who got recovered a bloodstained knife from his house by which the aforesaid incident had occurred. The Fard for recovering the same was prepared by him on the dictation of S.O. K.C. Pundir, i.e. Ex.Ka-3. The knife was marked as Ex.1.

22. P.W.8 is Constable Puran Lal Tamta who stated that on 20.4.1999 he prepared the Chik FIR of the case on the basis of recovery fard of SHO Krishan Chand Pundir, Chik FIR is Ex.Ka-11. He also made entry in the G.D., the copy of which is Ex.Ka-12.

23. P.W.9 is Constable Chani Ram who stated that on 16.4.1999 on the basis of report Ex.Ka-1, he prepared Chik FIR of the case, i.e. Ex.Ka-13. He also made entry

thereof in the G.D., the copy of which is Ex.Ka-14.

24. P.W.10 is Inspector K.C. Pundir, who stated that on 19.4.1999 he was entrusted the investigation and prior to him, S.I. Surendra Pal Singh was conducting the investigation of this case. On 20.4.1999, he arrested both the appellants-accused Lal Babu and Shyam Babu. Appellant-accused Lal Babu also got produced a bloodstained knife from his house which was used in commission of the aforesaid crime. The accused was taken into custody u/s 4/25 of the Act and the knife was sealed on the spot and Fard was written by S.I. Surendra Pal Singh on his dictation, i.e. Ex.Ka-3. Thereafter, he brought the appellant-accused Lal Babu in the police station and registered the case against him u/s 4/25 of the Act. During investigation, he recorded the statements of witnesses and on completion of investigation, he filed the charge sheet against the accused u/s 452/307/302/506 IPC, i.e. Ex.Ka-15.

25. P.W.11 is S.I. Vijay Pal Gautam who stated that investigation of Case Crime No. 101/99 u/s 4/25 of the Act was entrusted to him. During investigation he inspected the place of occurrence and prepared the site plan, i.e. Ex.Ka-16. He also recorded the statements of witnesses and after completing the investigation, he filed the charge sheet, i.e. Ex.Ka-17. He also proved the entry made in the G.D. No. 44 dated 22:15 hours dated 18.5.1999 by Constable Rishipal for converting the case u/s 302 IPC, i.e. Ex.Ka-18.

26. After that the statements of the appellant/ accused Shyam Babu and Lal Babu were recorded u/s 313 Cr.P.C. The oral and documentary evidence was put to each of them in question form, who denied the allegations made against them. However, they did not produce any oral or documentary evidence in defence.

27. Sri Umesh Belwal and Sri I.P. Kohli, learned amicus curiae for the appellants/accused argued that as per the above-said evidence, the case against the appellants/accused is not proved beyond reasonable doubt. I do not find any force in this argument as P.W.1, Dinanath, who is the complainant and father of deceased as well as eyewitness of the case, has stated that on 16.4.1999 at about 9 A.M., when his son Monu went inside his shop after opening it, then appellants-accused Lal Babu, Shyam Babu @ Lalla & Ram Babu & their father Rameshwar Dayal (both died during trial) also entered inside the shop, who were armed with knife and Rameshwar Dayal was having Lathi in his hand. He (Dinanath) was sitting nearby his shop. Meanwhile, Rameshwar Dayal and appellant-accused Shyam Babu dragged Harish outside the shop. Appellant-accused Lal Babu and Ram Babu (now dead) caused injury on the stomach and foot of Harish with intention to kill him. On the spot, Rajendra, Sitaram and Jasvir were there who also witnessed the incident. When he and other witnesses challenged the accused, then they ran away from there leaving his son injured. The motive behind the incident is that on 15.4.1999, accused persons wanted some articles on credit. On refusal of complainant's son, the accused threatened to kill Harish. As a result thereof, on 16.4.1999 at 9 A.M., the accused persons came with the intention to kill his son and the above-said incident

had happened. Thereafter he got his son medically examined at Sitarganj Hospital and went to lodge the report leaving his son in the hospital, the report is Ex.Ka-1. The doctors advised the complainant to take his son at Lucknow, however on the way, his son succumbed to his injuries caused by the accused persons. Thereafter he came back at his house along with dead body of his son and informed about his death in the police station. The evidence of P.W.1 Dinanath is reliable, believable and natural and the same inspires implicit confidence. His evidence also gets corroborated from the evidence of P.W.2 Rajendra and P.W.4 Sita Ram and further from the medical report Ex.Ka-2 and the evidence of medical officers that is of P.W.3 Dr. R.C. Sharma, who initially examined the victim and P.W.7 Dr. T.C. Pant, who conducted the autopsy on the dead body and reached to the conclusion that the death was caused as a result of ante-mortem injuries and hemorrhage. As such, the medical evidence also supports the prosecution version. Therefore, in view of the aforesaid discussion, the offence punishable under Sections 452 IPC and 304 r/w Section 34 IPC against the appellant-accused Shyam Babu and against the appellant-accused Lal Babu, the offence punishable u/s 452 IPC and also u/s 304 IPC is clearly made out.

28. So far as offence punishable u/s 4/25 of the Act against the appellant-accused Lal Babu is concerned, the prosecution so as to prove its case got examined P.W.5 Ramesh Chandra who stated that appellant-accused Lal Babu got recovered a knife from his house before him and also confessed that with the same knife, he and other accused caused death of Harish @ Monu. The said knife was sealed by the police on the spot and Fard Ex.Ka-3 was prepared and he proved the same. The said knife was marked as Ex.1. P.W.10 Inspector K.C. Pundir and P.W.6 S.I. Surendra Pal Singh also corroborated the above-said evidence of P.W.5 Ramesh Chandra about the recovery of knife from the house of appellant-accused Lal Babu. As such, the offence punishable u/s 4/25 of the Act is clearly made out against the appellant-accused Lal Babu beyond reasonable doubt.

29. Sri Umesh Belwal, learned amicus curiae for the appellant-accused lastly argued that on the date of incident, appellant-accused Shyam Babu was minor. In this regard on 27.4.2009, this Court directed Sessions Judge, Udham Singh Nagar for making an enquiry as to whether the appellant-accused Shyam Babu was juvenile under the provisions of Juvenile Justice (Care & Protection of Children) Act, 2000 & whether he is entitled to get the benefit of being juvenile in the matter of sentence or not. In compliance thereof, learned Sessions Judge, U.S. Nagar vide his report dated 7.7.2009 has reported that on the date of incident, appellant-accused was aged about 15 years. The incident in question had occurred on 16.4.1999 and at that relevant point of time, Juvenile Justice Act, 1986 was in force. Section 2(h) of the Juvenile Justice Act, 1986 provides that "juvenile" means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years. After considering the aforesaid facts and circumstances of the case, the Court is of the view that the appellant-accused- Shyam Babu was definitely aged about 15 years



on the date of incident and therefore, he was juvenile on the date of incident. Accordingly, the appellant-accused Shyam Babu is entitled for the benefit of being juvenile. In a judgment rendered by Hon"ble Apex Court in the case of Babban Rai and Anr. Vs.State of Bihar reported in AIR 2008 SCW 511, it has been held in para 5 as under:

5. So far as the convictions of these two appellants, as confirmed by the High Court, are concerned, learned Counsel appearing on behalf of the appellants is not in a position to point out any error in the order of the High Court whereby convictions of the appellants have been confirmed. Having gone through the impugned judgment and the records, we also do not find any ground to hold that the High Court was not justified in upholding the conviction of the appellants. This being the position, we are of the view that the High Court has not committed any error in upholding the convictions of the appellants. Now, the question arises in relation to sentences. In view of our aforesaid finding that these two appellants were juvenile on the date of alleged occurrence and they have now attained majority, it would be just and expedient to set aside their sentences and pass an order of releasing them as they cannot be sent to remand home.

30. In view of the aforesaid proposition of law, the appeal preferred by appellant-accused Shyam Babu is partly allowed. His conviction u/s 452 IPC and also u/s 304 r/w Section 34 IPC is maintained. However, his sentence, being a juvenile on the date of occurrence, for two years" R.I. u/s 452 IPC and ten years" R.I. u/s 304 r/w Section 34 IPC with fine of Rs. 5,000/-and in default further six months" simple imprisonment, is hereby set aside. He is in jail. Let him be released forthwith if he is not wanted in any other case.

31. So far as the conviction and sentence of the appellant-accused Lal Babu is concerned, I concur my view taken by the trial court in convicting and sentencing the appellant-accused Lal Babu as discussed above. Therefore, the appeal preferred by appellant-accused-Lal Babu is devoid of merits and the same is dismissed. He is already in jail. He shall undergo the rest of the sentence as awarded against him by the trial court. However, it is made clear that the period of sentence already served out by him during investigation, trial or during appeal shall be adjusted after verifying from the records.

32. Let a copy of this order be sent back to the trial court concerned for compliance of the order forthwith.