

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.300 OF 2013

BABLU KOTHARI @ BALBIR

....APPELLANT

VERSUS

**STATE OF UTTARAKHAND THROUGH
PRINCIPAL SECRETARY**

....RESPONDENT

O R D E R

1. The appellant is before us against the order dated 24.08.2011 passed by the Division Bench of Uttarakhand High Court whereby it has dismissed the criminal appeal of the appellant who was convicted and sentenced under Section 302 and Section 364 read with Section 34 of the Indian Penal Code (IPC).

2. The appellant has been convicted by the Sessions Judge, Dehradun in Sessions Trial No. 57 of 2007 for the above offences. He has been sentenced for life imprisonment under Section 302 and for 10 years under Section 364 along with fine, with default stipulations. In appeal his conviction and sentence have been upheld and the appeal was dismissed. There were four accused

before the Trial Court out of which one Banti was absconding, another one (Pradip Singh) was declared as juvenile and his case was sent to Juvenile Justice Board and only two of the accused i.e., present appellant-Bablu Kothari @ Balbir and co-accused Rajendra have faced the trial in which they both were convicted and sentenced as referred to above. Presently we have the appeal of only Bablu Kothari @ Balbir before us.

3. The incident is of 02.01.2007 when the deceased (Vipin Gupta) who was a taxi driver could not be located in the Taxi Union Stand, Dehradun though his taxi was parked at the wrong place, one Sandeep known to deceased then went to the house of Vikas Gupta, who was elder brother of the deceased and asked for the whereabouts of the deceased. His brother had no clue of Vipin and then both of them went to the same taxi stand where they met Raju Chowkidar who informed them that last night i.e., on 01.01.2007, at about 8.00 PM or nearabout, he had seen the deceased being forcibly taken away by four persons (the four accused named above), in an Alto Car and that was the last when he was seen. Rajendra was apprehended the same day and on his pointing out the dead body was discovered from a ditch on road side near Laxmansidh Mandir, Dehradun. The second accused-Bablu Kothari surrendered before the court on

17.01.2007 and was taken in judicial custody and thereafter his remand was taken by the Police on 19.01.2007. On his pointing out the murder weapon that is an "axe" was recovered. The third accused was juvenile and the fourth accused could not be apprehended. The Trial Court discussed the evidence of the prosecution and came to the conclusion that although it is the case of circumstantial evidence but there is very strong evidence of last seen in the form of Chowkidar and the discovery of the body of the deceased as well as the murder weapon were discovered on the pointing out of the two accused, and hence both were convicted, and sentenced, under the provisions referred above.

4. Separate appeals were filed by Rajendra and Babloo Kothari against the said order of Trial Court. Rajendra filed Criminal Appeal No. 78 of 2008 and Babloo Kothari filed Criminal Jail Appeal No. 43 of 2008 which were heard together by the Division Bench of the Uttarakhand High Court. The Uttarakhand High Court after narrating the incident, came to the conclusion that the chain of circumstances is complete and both Rajendra and Babloo Kothari were last seen with the deceased and though they were not bound to speak but it was their duty to speak about the whereabouts of the deceased and since they failed to

do that their complicity with the crime has been established. The Division Bench has not taken pains to reappreciate the evidence of the prosecution which was its duty as an appellate court. There is no determination or evaluation of either the evidence or the facts of the case. Only a generalised view of the legal position has been spelt out by the Division Bench and on that basis the appeal has been dismissed.

5. In our considered view, this is not the manner in which a criminal appeal has to be decided, more so, a murder appeal. It was the duty of the appellate court to reappreciate the entire evidence and then come to a conclusion. This has evidently not been done. There has been no appreciation of evidence as mandated by law for an appellate court. In view of above, the appeal is allowed, we set aside the order dated 24.08.2011 of the High Court and remit the case back to High Court for fresh decision in the case in accordance with law. Considering that it is an old matter, we request the High Court to dispose of the appeal expeditiously and in case the appellant is not represented, let a defence counsel be provided as mandated under Section 304, Code of Criminal Procedure.

6. We have also been informed that the appellant has been in jail for more than 10 years. Under these circumstances, he shall be released on bail on such sureties and conditions as may be fixed by the Court concerned.

Let the records be sent back to the High Court forthwith..

.....J.
[HEMANT GUPTA]

.....J.
[SUDHANSHU DHULIA]

**New Delhi,
September 2, 2022.**

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 300/2013

BABLU KOTHARI @ BALBIR

Appellant(s)

VERSUS

STATE OF UTTARAKHAND THROUGH PRINCIPAL SECRETARY

Respondent(s)

(Application for bail)

The matter was taken up for hearing on 02.09.2022 and the reasoned order is being uploaded today i.e. on 10.09.2022.

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE SUDHANSHU DHULIA

For Appellant(s) Mr. Anurag Dubey, Adv.
Ms. Meenakshi Parihar, Adv.
Mr. Bhupendra Kumar Bhardwaj, Adv.
Mr. Rajesh Kumar Pandey, Adv.
Mr. Ashish Kumar Pandey, Adv.
Mr. S. R. Setia, AOR

For Respondent(s) Mr. Jatinder Kumar Bhatia, AOR
Mr. Ashutosh Kumar Sharma, Adv.

UPON hearing the counsel the Court made the following
O R D E R

On 02.09.2022, the following order was passed :-

"Heard the learned counsel for the parties.

Appeal is allowed.

Reasons to follow."

The reasoned order is being uploaded today i.e. on 10.09.2022.

Pending interlocutory application(s), if any, is/are disposed
of.

(JAYANT KUMAR ARORA)
ASST. REGISTRAR-CUM-PS

(RENU BALA GAMBHIR)
COURT MASTER

(Signed order is placed on the file)

ITEM NO.2

COURT NO.7

SECTION II-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 300/2013

BABLU KOTHARI @ BALBIR

Appellant(s)

VERSUS

STATE OF UTTARAKHAND THR.PRINC.SECR.

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(Application for bail)

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Reasons to follow.

(JAYANT KUMAR ARORA)
ASST. REGISTRAR-CUM-PS

(RENU BALA GAMBHIR)
COURT MASTER