
(2011) 04 UK CK 0083

In the Uttarakhand High Court

Case No : Criminal Appeal No. 189 of 2007

Abdul Wahid and Sarafat

APPELLANT

Vs

State of Urranchal (Now Uttarakhand)

RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 313
Penal Code, 1860 (IPC) — Section 120B, 201, 302, 34

Citation : (2011) 04 UK CK 0083

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

Bench : Division Bench

Final Decision : Allowed

Judgement

Prafulla C. Pant, J.—The both these appeals are directed against judgment and order dated 24.04.2007/02/05/2007 passed by Additional Sessions Judge/II Ird F.T.C., Hardwar in Sessions Trial No. 272 of 2002 whereby the Appellants Abdul Vahid, Sarafat and Samshad are convicted under Sections 302/34, 201/34 and u/s 120-B of Indian Penal Code, 1860 (for short I.P.C.). Each one of them has been sentenced to imprisonment for life and directed to pay fine of Rs. 10,000/- u/s 302/34 IPC, rigorous imprisonment for a period of seven years and directed to pay fine of Rs. 5,000/- u/s 201/34 IPC, imprisonment for life and directed to pay fine of Rs. 10,000/- u/s 120-B of IPC.

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

3. Prosecution story in brief is that on 27.06.2001, a First Information Report (Exhibit A-1) was given by PW-1 Rati Ram, Chaukidar of village Sherpur at Police Station Laksar that a dead body of a girl is lying in sugarcane field of Patel (PW-2). On the basis of said report, Police registered crime No. 141 of 2001 relating to the offence punishable u/s 302/201 IPC against unknown persons. Investigation was taken up by PW-10 Sub Inspector N.R. Sagar who went to spot alongwith police personnel and prepared inquest report (exhibit A-7) on 27.06.2001 at 02.00 p.m., after taking dead body of deceased in his possession.

At that point of time PW-9 Ibrahim identified the dead body as that of his daughter Fatima. He further prepared Police Form No. 13 (exhibit A-8), sketch of dead body (exhibit A-9), sample of seal (exhibit A-10) and letter to Chief Medical Officer (exhibit A-11). PW-5 Dr. P.K. Bhatnagar conducted postmortem examination on the dead body of Fatima on 28.06.2001 aged about 15 years and prepared autopsy report (exhibit A-2). He found the continuous ligature mark around the neck of the deceased as ante mortem injury. He opined that deceased had died of Asphyxia due to strangulation. However, as to the rape, Medical Officer observed that no opinion can be given relating the said offence. During the investigation, PW-3 Kallu and his wife PW-4 Aamna disclosed that they had seen accused/Appellant Samsad with Fatma before her death. Recovery of Chappals of deceased were said to have been made on pointing out of accused/Appellant Abdul Wahid from the house of accused/Appellant Sarafat. Later part of investigation was done PW-11 Asstt. Sub Inspector Dinesh Kumar who filed chargesheet (exhibit A-13) against the three accused/Appellants Abdul Wahid, Samsad, Sarafat and one Julfu.

4. The Judicial Magistrate, Roorkee on receipt of the chargesheet, after giving necessary copies to the accused/Appellants as required u/s 207 of the Code of Criminal Procedure, committed the case to the court of Sessions for trial. The trial court on 31.03.2003 framed the charge of offence punishable u/s 302/34, 201/34 and 120-B IPC against all the four accused namely Abdul Wahid, Samsad, Sarafat and Julfu, to which all of them pleaded not guilty and claimed to be tried. On this, prosecution got examined PW-1 complainant Rati Ram who informed about the dead body of a girl lying in sugarcane field, PW-2 Patel owner of the sugarcane, witness of inquest report, PW-3 Kallu and his wife PW-4 Aamna both witnesses of "Last Seen" of accused Samsad with deceased, PW-5 Dr. P.K. Bhatnagar who conducted postmortem examination, PW-6 Riyasat witness of recovery of Chappals on pointing out accused Abdul Wahid, PW-7 A.S.I. Dinesh Kumar who prepared the recovery memo of Chappals, PW-8 Head Constable Vinod Kumar who prepared check report and also made necessary entry in the General Diary, PW-9 Ibrahim father of the deceased, PW-10 S.I. N.R. Sagar who started investigation and PW-11 S.I. Dinesh Panswar who completed the investigation.

5. The oral and documentary evidence was put to the accused u/s 313 of Code of Criminal Procedure in reply to which they alleged that the evidence produced against them was false and they are innocent. However, no evidence in defence was adduced. After hearing the parties, trial court found that accused/Appellant Abdul Wahid, Samsad and Sarafat are guilty of charge of the offence punishable u/s 302/34, 201/34 and 120-B IPC. However, no charge was said to have been proved against fourth accused Julfu who was acquitted by the trial court. After hearing on sentence, trial court sentenced each of three convicts to imprisonment for life and directed to pay fine of Rs. 10,000/- u/s 302/34 IPC, rigorous imprisonment for a period of seven years and directed to pay the fine of Rs. 5000/- u/s 201/34 IPC, imprisonment for life and directed to pay fine of Rs.

10,000/- u/s 120-B of IPC. Aggrieved by the said judgment and order dated 24.04.2007/02.05.2007, these two appeals are filed by the convicts.

6. Before further discussions, we think it just and proper to mention the ante mortem injuries recorded by PW-5 Dr. P.K. Bhatnagar who prepared autopsy report (exhibit A-2) after conducting postmortem examination on 28.06.2001 on the dead body of Fatima (the deceased girl). The ante mortem injuries recorded in autopsy report (exhibit A-2) by the Medical Officer is reproduced below:

Ligature mark around the neck, horizontal, continuous below thyroid cartilage, abrasions at the margin of ligature mark, the base of groove soft and reddish, face congested, bleeding from the both ears and nostril, present.

On external and internal examination, the Medical Officer did not find any mark of injury in around vagina. Hymen was not ruptured and admitted one finger only. The Medical Officer further observed that dead body was 3-5 days old. At the end of autopsy report (exhibit A-2), PW-5 Dr. P.K. Bhatnagar observed that the deceased had died of Asphyxia due to strangulation. He further observed that no opinion was possible regarding rape. From the medical evidence on record, it is established that Fatma aged about 15 years had died homicidal death. Now we have to examine whether the accused/Appellants Abdul Wahid, Samshad and Sarafat, with common intention, committed murder of Fatma, or whether they conspire to commit the murder and whether they, in order to cause disappearance of dead body threw the same in sugarcane field of Patel (PW-2).

7. It is case of circumstantial evidence. No one is named in the First Information Report. PW-1 Rati Ram, Chaukidar of village Sherpur, who has simply given First Information Report (exhibit A-1) at Police Station Laksar reporting that a dead body of a girl was found lying in the sugarcane field of Patel. PW-2 Patel has also stated that dead body of girl was found lying in his field and when police came, inquest report (exhibit A-7) was prepared in his presence. The perusal of the inquest report shows that at the time of preparing inquest report (exhibit A-7), PW-9 Ibrahim came there and identified the dead body of one of his daughter Fatma.

8. PW-9 Ibrahim father of the deceased states that his daughter used to live with her grand mother in village Nastarpur alongwith her brother Ismile. It is relevant to mention here that Ibrahim (PW-9) is resident of village Jurasi. The dead body was found in village Sherpur and deceased is said to have been resident of village Nastarpur. PW-9 Ibrahim further states that he told police that his daughter has been picked up by one Wahid (not in the present accused/Appellant), Ilias and Chhota. He further states that his report was not got lodged by the police. PW-9 Ibrahim further disclosed that Wahid (not accused/Appellant), Ilias and Chhotu were caught by the police but they were later let off. As such so far as the evidence against the present accused/Appellants is concerned, nothing has been said by PW-1 Rati Ram, PW-2 Patel, or by the PW-9 against them.

9. Now we come to the remaining part of the circumstantial evidence brought on record. Only two circumstances have been attempted to be brought on the record by prosecution - one relating to the last seen of the deceased with accused/Appellant, and -two that chappals of deceased was recovered on pointing out of the accused/Appellant Wahid from the house of accused/Appellant Sarafat. We have to examine the evidence adduced by the prosecution on these counts, if the same is reliable and whether the chain gets completed or not. PW-3 Kallu, PW-4 Aamna are husband and wife who have stated that before the death of Fatma accused Appellant Samshad brought her to their house for a day and took her on the next day. On behalf of accused/Appellants, our attention is drawn to the statement given in the cross examination by PW-3 Kallu shows that he had no opportunity to see if the deceased with accused Appellant Samshad. It is pointed out that in the cross examination, PW-3 admits that he did not know Samshad from before. On careful examination to the evidence of this witness, we find that it is strange as to how Samshad who was not known to Kallu was allowed stay in his house with a girl. Not only this from the cross examination of this witness (PW-3) it appears that in fact on the day when Samshad is said to have come his house he (PW-3) was guarding his grove away from his house. PW-3 Kallu has further stated that girl brought to his house was not known to him. In the circumstances, we are of the view that evidence of "last seen" given by this witness does not inspire confidence. Now we come to the testimony of PW-4 Aamna, wife of PW-3 Kallu who has also given evidence on the point of "last seen" of accused Samshad with Fatma. She admits that Kallu (PW-3) was not at home when Samsad brought Fatma in her house. This witness (PW-4) further states that the girl who was brought by Samshad in her house was not known to her as she had never seen her before. It is strange how she allowed the girl to stay in her house with Shamshad. As such evidence of "last seen" given by these two witnesses is not convincing. Now we come to the recovery of Chappals said to have been made of pointing out of accused Appellant Abdul Wahid from the house of accused Appellant Sarafat. We have already mentioned above that the girl was resident of Nastarpur and her dead body was found in village Sherpur and her father was resident of Jurasi. From the statement of PW-6 Riyasat PW-7 S.I. Dinesh Panwar appears that the recovery of chappal is made from the village Navrojpur. There is no link evidence as to how the chappals of the deceased were taken to the house of Sarafat. Assuming for a moment that such recovery was made, there is no evidence to complete chain of circumstances which indicates that accused/Appellants Sarafat, Abdul Wahid and Shamshad conspired to commit the murder of Fatma and after committing her murder they threw the dead body in the field of Patel to cause disappearance of evidence.

For the reasons as discussed above, we are of the view that prosecution has utterly failed to prove charge for the offences punishable under Sections 302/34, 201/34 and 120-B IPC against any of the accused/Appellants Samsad, Abdul Wahid and Sarafat. Therefore, in our opinion, trial court has erred in law in

convicting and sentencing them u/s 302/34, 201/34 and 120-B of IPC.

Accordingly, both appeals are allowed. Impugned judgment and order dated 24.04.2007/02.05.2007 passed by Additional Sessions Judge/II Ird F.T.C., Hardwar in Sessions Trial No. 272 of 2002, so far as it relates to the conviction and sentence of the accused Appellants Abdul Wahid, Samsad and Sarafat, is hereby set aside. They are acquitted from the charge for the offences punishable u/s 302/34, 201/34 and 120-B of IPC. Accused Appellants Abdul Wahid and accused Sarafat are on bail. They not need to surrender. Accused Shamsad is in jail. He shall be set at liberty forthwith if not required in connection with other crime. Let the copy of the order be sent to the Superintendent, Jail concerned. Lower court record be sent back.