
(2005) 04 UK CK 0021

In the Uttarakhand High Court

Case No : Criminal Jail Appeal No. 378 of 2004

Anusuya Prasad Raturi

APPELLANT

Vs

The State of Uttaranchal

RESPONDENT

Date of Decision : 29-04-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313, 374, 383
Penal Code, 1860 (IPC) — Section 201, 302

Citation : (2005) 3 UC 1674

Hon'ble Judges : Prafulla C. Pant, J;Irshad Hussain, J

Bench : Division Bench

Advocate : Sri K.S. Verma, Amicus Curaie, for the Appellant; Sri Nandan Arya, learned A.G.A. for Respondent-State, for the Respondent

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—This appeal, preferred u/s 374 read with Section 383 of the Code of Criminal Procedure, 1973 (for brevity hereinafter Code of Criminal Procedure), is directed against the judgment and order dated 01-10-2004 passed by learned Sessions Judge, Chamoli at Gopeshwar, in Sessions trial No. 12 of 2003 whereby, the Appellant Anusuya Prasad Raturi has been convicted u/s 302 and u/s 201 of the Indian Penal Code, 1860 (for brevity hereinafter I.P.C.) and sentenced to life imprisonment and fine of Rs. 5,000/- and three years rigorous imprisonment under the aforesaid two sections respectively.

2. The prosecution story, in brief, is that Smt. Kamla Devi (P.W.1.), wife of the deceased submitted a written report (Ext. A-1) with the police station Chamoli on 25-01-2003 that her husband Bahadur Singh (deceased) was missing since 24-01-2003 after 10:00 A.M. after he went towards forest. The next day on 26-01-2003, Smt. Kamla Devi (informant) lodged a First Information Report (Ext. A-2) with the police station Chamoli stating that dead body of her husband is lying in the bushes near the ridge of village Bachcher of Bugalkodi Dhar Tokk. It was further alleged in said report that Anusuya Prasad Raturi (appellant), son

of Trilok Prasad Raturi, who lives in the village of the complainant, after committing murder of Bahadur Singh, has concealed his dead body there. The said First Information Report further discloses that Appellant wanted to marry Geeta, minor daughter of the deceased, who refused to agree to the proposal on which he was annoyed with the deceased and on 24-01-2003 after committing the murder, the death of the deceased was concealed by the Appellant. At the end of the First Information Report (Ext. A-2), it was mentioned that complainant Kamla Devi and her son has identified the dead body which was lying with the incised wounds. On the basis of said report the police prepared the check report (Ext. A-14) and registered a crime u/s 302 and 201 of the I.P.C. against the Appellant Anusuya Prasad Raturi. An entry in the general diary Ext. A-15) was made on the same day i.e. 26-01-2003 at serial number 17. An entry (Ext. A-13) of the earlier report dated 25-01-2003 was also made in the general diary by the police at serial number 24 on that day. The police team headed by S.H.O., G.L. Shah (P.W.8.) went to the forest and recovered the dead body of Bahadur Singh and prepared the inquest report (Ext.A-17) on 26-01-2003. The inquest report shows that the dead body was found in the jungle of Bugalkodi Dhar Tokk within the limits of village Bachcher at a distance of 20 kms. from the police station, Chamoli. It was also mentioned in the inquest report that there were incised wounds present on the dead body. After the diagram of the dead body (Ext. A-18), police form No. 13 (Ext. A-19), letter (Ext. A-20) to the Chief Medical Officer, Chamoli for post-mortem of the dead body were pre-pared, the body was sent through Con-stable Davendra Kumar and Constable Daleep Singh for autopsy.

3. Dr. S.P.S. Negi (P.W.4.) con-ducted the postmortem examination on 27-01-2003 at about 10:30 A.M. and prepared postmortem report (Ext. A-12). He observed at the time of post-mortem examination in the aforesaid report that the dead body was more than 72 hours old, of an average built person aged 45 years. Rigor mortis passed out. Foul smell was coming from the body. Eyes were closed and mouth was open. The Doctor found following ante mortem injuries at the time of autopsy:

- i) Incised wound on right side of neck extending from parietal bone up to the thyroid cartilage. Size 25 cm x 10 cm. Colour brown.
- ii) Incised wound on the right side of the face extending from temporal region to thyroid cartilage on the neck. Size 15.3 cm x 3cm. depth 7cm. Colour brown.
- iii) Lacerated wound on the neck at the level of below the thyroid cartilage. Size 10cm x 10cm. Colour brown. Depth 8cm.
- iv) Incised wound on the face from hair margin on scalp to the neck upto the thyroid cartilage. Size 20cm x 8cm x 9cm deep. Bone is cut. Colour brown.
- v) Fracture in the 5th and 6th cervical vertebrae.

On internal examination fracture on 5th and 6th cervical vertebrae were

confirmed. Injury Nos. 1 and 2, as mentioned above, in the scalp were confirmed. Nothing significant found in the membranes, brain, base, lungs, pleura and abdomen. Both the chambers of heart were empty. Spinal cord not opened. In the small intestine gases and semi digested food found present. In the large intestine gases with faecal matter found. Nothing abnormal found in the urinary bladder and pancreas. Spleen was 120 gms. and kidneys were found weighing 240 gms. In the opinion of the Doctor the cause of death was haemorrhage and shock as a result of ante mortem injuries.

4. The Investigating Officer apart from recording the statements of the witnesses u/s 161 of the Code of Criminal Procedure. collected the blood stained soil on 26-01-2003 and prepared the memo (Ext. A-4). He also collected on the same day one pair of slippers from the site where the dead body was found, and prepared the memo (Ext. A-5) of the same. After the arrest of Anusuya Prasad Raturi (appellant), at his instance on 27-01-2003, the Investigating Officer got recovered "DAO" (a sharp edged weapon) used in the commission of crime from the bushes ahead of the house of the Appellant, regarding which memo (Ext. A-8) was prepared, which was signed by the Appellant apart from the members of the police party. The police also collected the blood stained clothes of the Appellant, at his instance, from his house on 27-01-2003, regarding which memo (Ext. A-9) was prepared by the police. The Investigating Officer also got Km. Geeta (P.W.6.), daughter of the deceased, medically examined on 07-02-2003 by lady Medical Officer at Gopeshwar (Ext. A-16). The Doctor on medical examination of the girl gave the opinion that no signs of virginity were present. It appears that the Investigation Officer took into possession on 06-02-2003 school certificate of Km. Geeta (P.W.6.).

5. After completion of the investigation, a charge-sheet (Ext. A-27) was submitted against Anusuya Prasad Raturi (appellant) in respect of offences punishable under Sections 302 and 201 of the I.P.C. for his trial before the Magistrate. The Magistrate concerned after giving necessary copies to the accused (appellant) committed the case to the court of Sessions. The learned Sessions Judge after hearing the parties framed charges under Sections 302 and 201 of the I.P.C. against Anusuya Prasad Raturi (appellant) on 18-06-2003 to which the Appellant pleaded not guilty and claimed to be tried. The prosecution got examined P.W. 1., Kamla Devi (Informant, wife of the deceased); P.W. 2., Bhupal Singh (neighbour of the deceased); P.W. 3., Ranjeet Singh; P.W. 4., Dr. S.P.S. Negi (who conducted the postmortem examination); P.W. 5., Con-stable Kailash Chand; P.W. 6., Km. Geeta (minor daughter of the deceased); P.W.7., Dr. Monika Joshi (who medically examined Km. Geeta) and P.W. 8., S.H.O., G.L. Shah (Investigating Officer). The oral and documentary evidences were put to the Appellant u/s 313 of the Code of Criminal Procedure., which he alleged to be false. After hearing the parties the learned Sessions Judge, Chamoli found the Appellant guilty of the offences punishable under Sections 302 and 201 of the I.P.C. and sentenced him as mentioned earlier. Ag-grieved by which this appeal has been preferred.

6. We heard Learned Counsel for the parties at length and perused the entire evidence on record.

7. P.W. 1., Kamla Devi (informant, wife of the deceased) has stated on oath that she has a minor girl named Geeta. Anusuya Prasad Raturi (appellant) used to come to her house and wanted to marry Geeta. This witness further states that her husband Bahadur Singh (deceased), father of Geeta, re-fused to accept the proposal of marriage. P.W. 1., Kamla Devi further stated that on 24-01-2003 at about 10:30 A.M., Anusuya Prasad Raturi (appellant) came to her house and told her husband that in the forest he has laid a trap for catching some animal. On this Bahadur Singh (deceased) along with Anusuya Prasad Raturi (appellant) went towards the forest. In the cross examination in para 14 of her statement P.W. 1., Kamla Devi has stated that Anusuya Prasad Raturi and her husband used to catch wild animals for about an year and they used to earn money by selling the animals captured by them. This witness has told in her examination-in-chief that on the day when Anusuya Prasad Raturi took her husband with him, he did not return till evening. At 7:30 P.M. on the same day i.e. 24-01-2003, Anusuya Prasad Raturi came back but Bahadur Singh, her husband did not return. On this the witness states that she went to Anusuya Prasad Raturi and made inquiries about her husband, who is turn told her that there was nothing to worry and Geeta's father has already come back and was at his own house. However, on coming back to their house, P.W. 1., Kamla Devi and her daughter Geeta did not find Bahadur Singh in their house. Again this witness went to Anusuya Prasad Raturi (appellant), this time Appellant told her that Bahadur Singh was sleeping in his (appellant's) house and would come back to the house of the informant next day. But Bahadur Singh did not return even in the morning of 25th January, 2003. P.W. 1., Kamla Devi states that she then lodged the report (Ext. A-1) about the fact that her husband was missing since 24-01-2003. This witness further states that in the late evening at about 8:00 P.M. on 25-01-2003 while searching with the police, the villagers found the dead body of Bahadur Singh in Bugalkodi Tokk. She got the information in the night and next morning, she herself witnessed the dead body which has marks of incised injuries. Thereafter, on 26-01-2003 she lodged the First Information Report (Ext. A-2). She further stated that Anusuya Prasad Raturi (appellant) had committed the murder of Bahadur Singh as he refused to agree to marry his daughter Geeta to the Appellant. In the cross examination this witness has stated that Appellant as well as Bahadur Singh, both originally belonged to Nepal.

8. P.W. 2., Bhupal Singh is also resident of village Bachcher, who states that on 24-01-2003 when he came back to his house from daily work, Kamla Devi (P.W.1.) and her daughter Geeta came to him and inquired about the whereabouts of Bahadur Singh. Both mother and daughter also told him that Bahadur Singh had gone in the morning with Anusuya Prasad Raturi towards forest. Bhupal Singh (P.W.2.) further corroborates that after sometimes Anusuya Prasad Raturi (appellant) came back to the village and when he was asked about Bahadur Singh, he told that Bahadur Singh had come back to his house. This

witness has further corroborated that when Kamla Devi and Geeta went to their house, they found that Bahadur Singh had not returned back. Again inquiries were made from Anusuya Prasad Raturi, and, this time the Appellant told that Bahadur Singh (deceased) was sleeping in his (appellant's) house. However, Bahadur Singh did not return to his house. P.W. 2. further states that next day morning search for Bahadur Singh went on and in the evening on that day i.e. 25-01-2003 at about 8:00 P.M. dead body of Bahadur Singh was traced in Bugalkodi forest. This witness has also proved the documents-memos (Ext. A-4, A-5 and A-6) prepared by the police.

9. P.W. 3., Ranjeet Singh is also resident of village Bachcher. This witness states that on 25-01-2003, Kamla Devi (P.W.1.) told him that her husband is missing for last one day. This witness further states that he also made search for Bahadur Singh. P.W. 3., Ranjeet Singh corroborated the fact that on 25-01-2003 at about 8:00 P.M. dead body of Bahadur Singh was found in Bugalkodi forest but due to the dark night formalities relating to preparation of inquest report etc. were made on the next day i.e. 26-01-2003. P.W. 4., Dr. S.P.S. Negi, who conducted the post-mortem examination on 27-01-2003, has proved postmortem report (Ext. A-12) and narrated the nature of ante mortem injuries as mentioned earlier. This witness has stated that cause of death of the deceased was haemorrhage and shock as a result of ante mortem injuries. He has also made clear that deceased could have died on 24-01-2003 at about 6:00 P.M. At the end of examination-in-chief, Dr. S.P.S. Negi (P.W.4.) has stated that the injuries could have been caused by "DAO" (a sharp edged weapon). P.W. 5., Constable Kailash Chand is a formal witness who has stated that regarding reports (Ext. A-1 and A-2), the necessary entries were made in the general diary (extract of which are Ext. A-13 and A-15) on 25-01-2003 and 26-01-2003 respectively. This witness in the cross examination has clarified that on 25-01-2003 at about 8:30 P.M. a message was received on R/T set of the police station that dead body of Bahadur Singh has been found.

10. P.W. 6., Km. Geeta (daughter of the deceased & Kamla Devi), has corroborated the statement of Kamla Devi (P.W.1.) by stating that Anusuya Prasad Raturi (appellant) wanted to marry her, but her father did not agree on the ground that she is too young for marriage. This witness has further stated that Anusuya Prasad Raturi whenever got opportunity, used to have physical relationship with her. Km. Geeta (P.W.6.) further states that on 24-01-2003, Anusuya Prasad Raturi (appellant) came to their house at about 10:00 A.M. and told her father that he has laid a trap to catch the animal, on which Bahadur Singh (deceased); her father, went with the Appellant towards the forest and did not return. This witness has further corroborated the statement of Kamla Devi (P.W.1.) that in the evening when Anusuya Prasad Raturi came back and was asked about Bahadur Singh, he told that Bahadur Singh had come back to his house while he had actually not returned back. Again when he was contacted he told that Bahadur Singh was sleeping at his (appellant's) house and will come next day to his own house. This witness has also proved the reports given to the

police on 25-01-2003 and 26-01-2003 i.e. (Ext. A-1 & A-2) by Kamla Devi (P.W.1.) which were scribed by her. P.W. 6., Geeta has further stated that deceased and Appellant both are Nepalese and Appellant has committed murder of her father. P.W. 7., Dr. Monika Joshi, who medically examined Km. Geeta and prepared her medical report (Ext. A-16) stated on oath that on medical examination she found her hymen torn. This witness has further stated that minor girl Geeta had earlier visited her for getting aborted the pregnancy. Km. Geeta (P.W.6.) has also stated in her examination-in-chief that she had a pregnancy from Appellant, which however aborted. Kamla Devi (P.W.1.) has also corroborated this fact. P.W. 8., Station House Officer, G.L. Shah is the Investigating Officer, who has formally proved the recovery of the articles 1 to 9 and 17 to 20 and also the site-plans (Ext. A-21, A-23, A-24 & A-25).

11. On behalf of the Appellant, it is argued that there is no eye witness of crime of murder by the Appellant, as such learned trial court has wrongly convicted the Appellant. Every crime is not committed before the eye witnesses. The Court in absence of eye witness account of murder, has to see circumstantial evidences adduced on the record to prove the alleged commission of crime. In the present case, statements of Kamla Devi (P.W.1.), Bhupal Singh (P.W.2.) and Km. Geeta (P.W.6.), beyond all reasonable doubt proved the fact that on 24-01-2003, Appellant took the deceased with him towards the forest and in the evening when he was asked about the deceased, he made a false statement to these witnesses that Bahadur Singh had returned back. Not only this, when the witnesses did not find Bahadur Singh in his house, they again went to the Appellant, this time the Appellant made another false excuse by saying that Bahadur Singh was sleeping in his (appellant's) house and will come next day. The conduct of the Appellant coupled with the circumstances and the ante mortem injuries found at the time of postmortem examination complete the chain of circumstances and fully establish the commission of murder by the Appellant and also that he caused disappearance of dead body by concealing it in the jungle. Also, recovery of "DAO" at the instance of Appellant further corroborates and proved the commission of murder by the Appellant. The prosecution has also been successful in showing the motive to get rid of the deceased for he refused the proposal of the Appellant to marry Geeta (daughter of the deceased). The Chemical Examiner's re-port dated 07-04-2003 which is at page 36 of the paper book before the appellate court, shows that in the clothes (article 11, 12, 13 and 14) of the Appellant, human blood was found to which the Appellant has no explanation to offer.

12. In view of the above discussion and evidence on record, we are in agreement with the findings of the learned trial court as to conviction of Appellant and sentence awarded to him, and there appears no illegality in the impugned judgment and order passed by the learned Sessions Judge, Chamoli. Accordingly, the appeal is liable to be dismissed and the same is dismissed.